

Court No. - 6

Case :- WRIT - A No. - 8016 of 2021

Petitioner :- Mohd. Fariyad

Respondent :- State Of U.P.Thru.Prin.Secy. Rural Devlp. And Ors.

Counsel for Petitioner :- Mohd. Ali,Ankit Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Supplementary counter affidavit filed today in Court is taken on record.
2. Sri Mohd. Ali, learned counsel for the petitioner, contends that he does not intend to file any reply to the supplementary counter affidavit filed today and prays that the matter may be heard finally.
3. As such, the Court proceeds to hear the matter finally.
4. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.
5. Instant petition has been filed praying for the following reliefs:

"(i) to issue a writ, order or direction in the nature of Mandamus commanding the State of U.P. and the Commissioner, Rural Development, U.P., Lucknow the opposite parties No.1 and 2 to issue appropriate directions/guidelines in consequent upon the Government orders dated 24.7.2012 and 4.8.2012 as well as office order dated 19.9.2012, issued by the opposite party No.2, contained in Annexure Nos.4, 5 and 6 to the writ petition, in reference to the letter of Chief Development Officer, Shahjahanpur, dated 7.1.2021 as contained in Annexure No.2 to the writ petition, by counting the services of the petitioner rendered in D.R.D.A. with effect from 25.2.1995 to 30.9.2012 towards reckoning qualifying services for pension and the pensionary dues of the petitioner, which includes Pension, Gratuity and Commutation etc., be granted accordingly on the basis thereof along with interest @ 12% per annum;

(i)(a) to issue a writ, order or direction in the nature of Certiorari quashing the order dated 12.8.2021, passed by the District Development Officer, Shahjahanpur, the opposite party No.4, together i)(b) to issue a writ, order or direction in the nature of Mandamus commanding the opposite parties not to give effect to the order dated 12.8.2021, passed by the District Development Officer, Shahjahanpur, the opposite party No.4, and G.O. dated 11.8.2021, as contained in Annexure Nos.24 and 25 to the writ petition;

(ii) to issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to pay penal interest @ 12% per annum or an amount as may be quantified by this Hon'ble Court over the entire

pending retiral dues of the petitioner, due to inordinate delay from the due date after retirement i.e. 1.6.2019 till the actual payment is made by the opposite parties to the petitioner;

(iii) to issue any other suitable order or direction which this Hon'ble Court may deem just and proper under the circumstances of the case;

(iv) to allow the writ petition with costs."

6. The facts, as urged by the learned counsel for the petitioner are that by means of Government Order dated 20.08.1994, 5061 posts of Urdu Translator-cum-Junior Clerk were sanctioned in all the offices of Heads/departments, Divisional Commissioner, Division level offices, District Magistrates, District level offices, Tehsils and Block level offices in all divisions and in Police Stations in all the divisions. Subsequently, an advertisement was issued on 23/25.9.1994 by the State Government.

7. In terms of the advertisement, the applications were invited for the post of Urdu Translator cum Junior Clerk in various departments of the State Government. The petitioner along with several others being qualified for the said post, applied for the said posts. He appeared in the selection and was selected and placed in the select list prepared in district Shahjahanpur. The petitioner was issued appointment letter and joined in Rural Development Agency (DRDA) on 25.02.1995.

8. On 14.10.2000 one similarly appointed person, Km. Shaheen Parveen, who had appeared and was selected in the same select list along with the petitioner and appointed in Fish Farmer Development Agency i.e. an autonomous body filed a writ petition bearing No.5811 (S/S) of 2000 before this Court along with other persons. The petitioners of that writ petition sought relief to the effect that they be treated as government servants with all consequential benefits. During the pendency of the said writ petition, the State government issued a government order dated 12.3.2003. By the said Government Order those petitioners were permitted to be treated as government employees and extended all consequential benefits of being government servants from the date of their initial appointment in the autonomous body i.e. Fish Farmer Development Agency. The Director, Fisheries vide his letter dated 8.4.2003 directed all the concerned Deputy Directors to comply with the government order dated 12.3.2003. On 9.5.2003 the Deputy Director, Fisheries Lucknow issued an office order in terms of government order dated 12.3.2003 and the intervening period of Km. Shaheen Parveen was directed to be treated

as on deputation. The said order was to be effective from 12.5.1995 itself.

9. The petitioner claimed parity of that order and submitted his representation to the authorities way back in the year 1999 and on subsequent dates also but to no avail.

10. In the year 2008, persons similarly circumstanced like the petitioner filed Writ Petition No.7068 (SS) of 2008 in re: Syed Hadi Asghar and others vs. State of U.P. and others, for a direction to the State Government to treat the petitioner as government servant as allowed to Km. Shaheen Parveen.

11. This Court vide interim order dated 06.04.2012 considering the facts of the case gave an opportunity to the Government itself to make the correction on its own accord. Copy of the order dated 06.04.2012 is Annexure-3 to the petition.

12. In pursuance thereof, the respondents issued an order dated 24.07.2012 and 04.08.2012, copies of which are Annexures 4 and 5 to the petition, whereby 31 posts of Urdu Translator cum Junior Clerk as were available in DRDA were adjusted in Gram Vikas Vibhag and the said petitioners along with others were directed to be adjusted in Gram Vikas Vibhag. The writ petition itself was decided vide judgment and order dated 16.05.2013, a copy of which is Annexure-8 to the petition, considering the aforesaid orders dated 24.07.2012 and 04.08.2012.

13. Subsequent thereto, vide order dated 19.09.2012, a copy of which is Annexure-6 to the petition, the petitioner along with others were adjusted in the office of the Commissioner, Gram Vikas Vibhag, U.P. The name of the petitioner finds place at serial no.7 in the said order. The said order also indicates that the petitioner along with others i.e. Urdu Translators cum Junior Clerks would be entitled for seniority w.e.f. the date of their appointment in DRDA. The petitioner claims that he continued to work in pursuance to the said adjustment order having been posted on 01.10.2012, a copy of which is Annexure-7 to the petition. Subsequent thereto, the petitioner was promoted as Senior Clerk and thereafter retired on attaining the age of superannuation on 31.05.2019. The petitioner submitted his pension papers but vide order dated 11.08.2021, a copy of which is Annexure-25 to the petition, the competent authority of the State Government asked the Gram Vikas Vibhag as to from which date the services of the petitioner are to be counted i.e. from the date of his

appointment in DRDA or upon his adjustment. The same has been replied to vide order impugned dated 12.08.2021, a copy of which is Annexure-24 to the petition, by contending that in view of Clause 3(2) of the order dated 04.08.2012 the services of the petitioner from 25.02.1995 to 30.09.2012 would not be counted as he has worked in DRDA, which is a registered society but after his adjustment, in terms of the order dated 19.09.2012 in the Gram Vikas Vibhag, his services from 01.10.2012 till 31.05.2019 are to be counted. However, as the said service is less than 10 years, as such, as per Regulation 361 of the Civil Service Regulations, the petitioner not having rendered 10 years of qualifying service, would not be entitled for pension.

14. The contention of learned counsel for the petitioner is that while passing the impugned order dated 12.08.2021, the respondents have only considered a part of the order dated 04.08.2012 i.e. Clause 3(2) but have ignored Clause 5 of the said order which has adjusted the petitioner along with others in the Gram Vikas Vibhag which fact is also reflected from the order dated 19.09.2012 per which the seniority of the petitioner in the Gram Vikas Vibhag is to be counted w.e.f. the date of his appointment in DRDA. However, both the aspects of the matter have totally been ignored by the respondents while passing the order impugned and they have only counted the service of the petitioner on the basis of the order dated 19.09.2012 treating it to be an adjustment w.e.f. the said date itself in the Gram Vikas Vibhag and the earlier service in the DRDA has not been counted which thus reflects patent non-application of mind on the part of the competent authority while passing the orders impugned.

15. The further contention is that once this aspect of the matter had been considered earlier by the writ Court while passing the order dated 06.04.2012 read with order dated 16.05.2013 in Writ Petition No.7068 (SS) of 2008 and the said order has attained finality and the order dated 19.09.2012 had been passed by the respondents considering the interim order of this Court dated 06.04.2012 consequently, after retirement of the petitioner, the respondents cannot be permitted to take the said plea in total ignorance of their own orders dated 04.08.2012 read with adjustment order dated 19.09.2012 and thus the petitioner is perfectly entitled for counting of his entire service rendered w.e.f. the date of his appointment i.e. 25.02.1995 in DRDA till the date of his retirement on 31.05.2019 as qualifying service for the payment of pension and other retiral dues. It is

further contended that as the respondents have failed to pay the retiral dues of the petitioner on the basis of the orders which reflect patent non-application of mind consequently the petitioner would also be entitled for interest at market rate on the arrears of pension, gratuity and other retirement benefits.

16. On the other hand, Sri Ram Pratap Singh Chauhan, learned Additional Chief Standing Counsel, on the basis of averments contained in the counter affidavit as well as supplementary counter affidavit, argues that the petitioner would only be entitled for counting of his service upon his adjustment in the Gram Vikas Vibhag i.e. w.e.f. 01.10.2012.

17. Placing reliance on the provisions of Regulation 361 of Civil Service Regulations, the contention is that as the petitioner, after his adjustment in the Gram Vikas Vibhag in the year 2012, retired in the year 2019 consequently the petitioner has not completed 10 years of service so as to be entitled for payment of pension and other retiral dues and thus no error has been occasioned on account of the respondents having passed the order dated 12.08.2021. It is further contended that as the earlier service of the petitioner right since his appointment i.e. on 25.02.1995 was in the DRDA till his adjustment in the year 2012 in Gram Vikas Vibhag and the DRDA being a non-pensionable establishment the petitioner is not entitled for counting of his service so as to be entitled for grant of pension and other retiral dues.

18. Heard learned counsels for the contesting parties and perused the records.

19. From perusal of record, it emerges that an advertisement was issued on 23/25.9.1994 by the State Government inviting the applications for the post of Urdu Translator cum Junior Clerk in various departments of the Government. The petitioner along with several others being qualified for the said post, applied for the said posts. He appeared in the selection and was selected and placed in the select list prepared in the district concerned. Petitioner was issued appointment letter by the District Magistrate/Chairman, DRDA Shahjahanpur.

20. On 14.10.2000 one similarly situated person, Km. Shaheen Parveen, who had appeared and was selected in the same selection filed a writ petition bearing No.5811 (SS) of 2000 before this Court. The petitioner of that writ petition sought relief to the effect that she be treated as

government servant with all consequential benefits. During the pendency of the said writ petition, the State government issued a government order dated 12.3.2003. By the said Government Order the said petitioner was permitted to be treated as government employee of Fisheries departments of U.P.. She was extended all consequential benefits of being government servant from the date of her initial appointment in the autonomous body i.e. Fish Farmer Development Agency. The Director, Fisheries vide his letter dated 8.4.2003 directed all the concerned Deputy Directors to comply with the government order dated 12.3.2003. On 9.5.2003 the Deputy Director, Fisheries Lucknow issued office order in terms of government order dated 12.3.2003 and the intervening period of Km. Shaheen Parveen was directed to be treated as on deputation. The said order was to be effective from 12.5.1995 itself. In the year 2008, certain persons similarly circumstanced filed Writ Petition No.7068 (SS) of 2008 in re: Syed Hadi Asghar and others vs. State of U.P. and others, for a direction to the State Government to treat the petitioners as Government servants as allowed to Km. Shaheen Parveen.

21. This Court vide interim order dated 06.04.2012 considering the facts of the case gave an opportunity to the Government itself to make the correction on its own accord.

22. In pursuance thereof, the respondents issued an order dated 24.07.2012 and 04.08.2012, whereby 31 posts of Urdu Translator cum Junior Clerk as were available in DRDA were adjusted in Gram Vikas Vibhag and the said persons along with others were directed to be adjusted in Gram Vikas Vibhag. The writ petition itself was decided vide judgment and order dated 16.05.2013 considering the aforesaid orders dated 24.07.2012 and 04.08.2012.

23. Subsequent thereto, vide order dated 19.09.2012, the petitioner along with others were adjusted in the office of the Commissioner, Gram Vikas Vibhag, U.P. The name of the petitioner finds place at serial no.7 in the said order. The said order also indicates that the petitioner along with others i.e. Urdu Translators cum Junior Clerks would be entitled for seniority w.e.f. the date of their appointment in DRDA. The petitioner claims that he continued to work in pursuance to the said adjustment order having been posted on 01.10.2012. Subsequent thereto, the petitioner was promoted as Senior Clerk and thereafter retired on attaining the age of superannuation on 31.05.2019. The petitioner submitted his pension

papers but vide order dated 11.08.2021, a copy of which is Annexure-25 to the petition, the competent authority of the State Government asked the Gram Vikas Vibhag as to from which date the services of the petitioner are to be counted i.e. from the date of his appointment in DRDA or upon his adjustment. The same has been replied to vide order impugned dated 12.08.2021 by contending that in view of Clause 3(2) of the order dated 04.08.2012 the services of the petitioner from 25.02.1995 to 30.09.2012 would not be counted as he has worked in DRDA, which is a registered society, and after his adjustment in terms of the order dated 19.09.2012 in the Gram Vikas Vibhag, his services only from 01.10.2012 till 31.05.2019 are to be counted which are less than 10 years as per Regulation 361 of the Civil Service Regulations and thus the petitioner not having rendered 10 years of qualifying service would not be entitled for pension.

24. The aforesaid order dated 12.08.2021 is patently fallacious and reflects patent non-application of mind on account of the fact that the respondents had passed the order dated 04.08.2012 on the basis of the interim order issued by the writ Court dated 06.04.2012. No doubt, clause 3(2) of the order dated 04.08.2012 indicates that the services of the petitioner were placed with the DRDA but then clause 5 of the said order itself indicates that the Urdu Translators cum Junior Clerks working in DRDA are to be adjusted in Gram Vikas Vibhag on the same post i.e. Urdu Translators cum Junior Clerks. The respondents on their own accord had issued the order dated 19.09.2012 per which the adjustment on the basis of order dated 04.08.2012 has been made and the seniority of the petitioner along with others has also been counted w.e.f. the date of appointment in the DRDA itself. Incidentally, the order dated 04.08.2012 was also perused by the writ Court earlier while finally deciding the writ petition vide judgment and order dated 16.05.2013. The said judgment has attained finality between the parties. It also emerges that the advertisement that had been issued by the respondents indicated the vacancies in the government departments yet the respondent no.1 in its own accord, had posted the petitioner in DRDA. This aspect of the matter has been considered by the writ Court in detail while passing the order dated 06.04.2012 and this fact has also been tacitly accepted by the respondents while passing the order dated 04.08.2012 and the respondents have rectified the error which has been caused to the petitioner and other persons similarly circumstanced while adjusting them through order dated 19.09.2012 and by granting

them seniority w.e.f. the date of their appointment in DRDA. Incidentally, the order dated 19.09.2012 still stands good as of date and has not been withdrawn by the respondents even as of date meaning thereby that the respondents have themselves accepted the appointment of the petitioner to be w.e.f. 25.02.1995 in Gram Vikas Vibhag. In view of the aforesaid tacit acceptance by the respondents while passing the order dated 19.09.2012 and the petitioner along with others having been adjusted in Gram Vikas Vibhag with counting of his seniority w.e.f. the date of his appointment in DRDA and also after his adjustment in the Gram Vikas Vibhag having been promoted as Senior Clerk and thereafter retired on attaining the age of superannuation on 31.05.2019 consequently it would be too late in the day for the respondents to pass the order impugned dated 12.08.2021 to contend that the services of the petitioner rendered in DRDA would not be counted on the ground that the services were non-pensionable. Even otherwise, at the risk of repetition, the order impugned dated 12.08.2021 would run contrary to the order of the respondents themselves dated 04.08.2012 read with order dated 19.09.2012 whereby the petitioner along with others has been adjusted in the Gram Vikas Vibhag and the seniority has been assigned to the petitioner along with others w.e.f. the date of their appointment in DRDA.

25. Keeping in view the aforesaid discussion, the writ petition is allowed. The impugned orders dated 12.08.2021 and 11.08.2021, copies of which are Annexures 24 and 25 respectively to the petition, are quashed. A writ of mandamus is issued commanding the respondents to count the entire service of the petitioner from the date of his appointment in DRDA which is said to be 25.02.1995 till the date of his retirement in the Gram Vikas Vibhag i.e. 31.05.2019 as qualifying service for grant of pension and other retiral dues.

26. Let the dues as admissible to the petitioner be paid along with admissible interest, which is quantified to 6% per annum, from the date the said dues became due i.e. 01.06.2019 till the date of actual payment within a period of three months from the date of receipt of a certified copy of this order.

Order Date :- 16.5.2024

A. Katiyar