

Court No. - 18

Case :- WRIT - A No. - 860 of 2022

Petitioner :- Ajay Kumar And 20 Others

Respondent :- State Of U.P. Thru. Prin. Secy. /Addl. Chief Secy. Revenue Deptt. Lko. And Another

Counsel for Petitioner :- Avinash Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Instructions received from Shri Pramod Kumar, Section Officer, is taken on record.

2. The present writ petition has been preferred for quashing of the impugned order dated 20.07.2021 whereby the claim of the petitioners for grant of benefit of Old Pension Scheme has been denied; and with a further prayer to direct the respondent no. 1 to extend the benefit of old pension scheme to the petitioners.

3. Learned counsel for petitioners has submitted that the petitioners were selected and appointed after the written test, physical examination and interview held in the month of October, 2001 in pursuance of the advertisement issued in the year 1999-2000 for the post of Lekhpal. The petitioners after being declared successful, were sent for Lekhpal training in May, 2003, but the result of the training examination was declared after the delay of one year, i.e. in the month of June, 2005 and thereafter the appointment letters were issued on 01.07.2005.

4. It is further submitted that the petitioners were denied the benefit of Old Pension Scheme as they had been appointed on 01.07.2005 whereas the New Pension Scheme has come into force with effect from 01.04.2005.

5. It is further submitted that the similarly situated persons like the petitioners, who had been given appointment on 01.07.2005 or after the promulgation of the New Pension Scheme on 01.04.2005, having being denied the benefit of Old Pension Scheme for the same reason as it has been given in the impugned order while rejecting the claim of the petitioners, those persons had preferred writ petitions before this Court and the bunch of writ petitions were decided by judgment and order dated 26.10.2023 and the leading one was Writ-A No. 18197 of 2021, U.P Lekhpal Sangh Through Its Treasurer Vinod Kumar Kashyap versus State of U.P and 7 Others. The relevant paragraphs (Paragraph nos. 8, 13, 14, 15, 16, 131, 133, 134, 135, 136 & 137) are quoted hereinbelow:-

"8. The written examination for selection for the post of Lekhpal was

conducted on 05.11.2000 in district Shahjahanpur; on 07.05.2000 in district Jaunpur and on 23.10.2001 in district Baghpat. The petitioners passed the physical test. The final result of the selection in district Shahjahanpur was declared on 24.10.2001. Further case of the petitioners is that after the selection was finalised in the year 2001, petitioners were not permitted to join for undergoing training for the post of Lekhpal on account of the stay order granted by the Apex Court in Writ Petition (Civil) No.488 of 2001 (Akhil Bhartiya Chatra Yuva Berojgar Front Vs. State of U.P.) under Article 32 of Constitution of India wherein a challenge was raised in respect to U.P. Public Service (Reservation for Schedule Castes, Schedule Tribes and Other Backward Class) Act, 1994 (hereinafter referred to as 'Act, 1994'). The State Government on account of the stay order by the Apex Court in the aforesaid writ petition kept in abeyance the selection proceedings. Later on, the State Government rescinded the amendment made in the Act, 1994 and restored the position of the said act as it stood before the amendment. Consequently, the writ petition before the Apex Court became infructuous and stood dismissed.

13. The petitioners took admission and participated in the training session 2003-04 in their respective Lekhpal Training Schools. They completed their training in the year 2004 and the written examination of the Lekhpal Training was held in August 2004, but their result was not declared. However, the result of Lekhpal Training was declared on 17.05.2005. After the declaration of the result, the petitioners were issued appointment letters between June 2005 to July 2005. The petitioners and other Lekhpals joined the post of Lekhpal immediately after getting the appointment letters.

14. In the meantime, the State Government issued a notification dated 28.03.2005 notifying a New Contributory Pension Scheme to be effective from 01.04.2005. The State Government pursuant to the aforesaid notification issued another notification titled 'U.P Retirement Benefits (Amendment) Rules, 2005 (hereinafter referred to as 'Rules, 2005') dated 07.04.2005 amending the U.P Retirement Benefit Rules, 1961 (hereinafter referred to as 'Rules, 1961').

15. By Rules 2005, sub-rule 3 has been added in Rule 2 of Rules, 1961 which states that any appointment made after 01.04.2005 shall be governed by the New Pension Scheme. Consequently, petitioners, who have been selected pursuant to the advertisement in the year 1999 & 2000, have been placed under the New Pension Scheme as they have been issued appointment letters after 01.04.2005.

16. The grievance of the petitioners is that though the selection process for appointment to the post of Lekhpal commenced with the publication of notification in the years 1999 & 2000, but because of the apathetic and lackadaisical approach of respondents, the inordinate delay of more than five years had occurred in completing the selection process which was concluded after 01.04.2005 causing serious prejudice to the petitioners as they have been placed under the New Pension Scheme whereas if the selection process had been concluded expeditiously within a reasonable time, the petitioners would have been placed under the Old Pension Scheme. Therefore, petitioners can not be penalised for the inaction on the part of respondents in taking the exorbitant time of more than five years to conclude the selection by placing them under the New Pension Scheme rather they are entitled to be placed under the Old Pension Scheme.

132. Now, so far as the contention of the learned Additional Advocate General that the letter of appointment of the petitioners stipulates that they shall be governed by the new pension scheme is concerned, the perusal of appointment letters of petitioners discloses that there is no such stipulation in the appointment letters of the petitioners.

133. So far as the submission of the learned Additional Advocate

General that petitioners have been appointed in the year 2005 and have raised the grievance for not extending them the benefit of Old Pension Scheme after inordinate delay is concerned, the similar objection was raised by the Central Government in the case of Inspector Rajendra (supra) before the Delhi High Court and the Delhi High Court in paragraph 39 of the judgement repelled the said contention holding that if delay has resulted in unsettling things already settled, the relief may be declined on the ground of delay, but in the instant case, the grant of relief would not result in unsettling things already settled and the judgement of Delhi High Court in the case of Inspector Rajendra (supra) has been affirmed by the Apex Court as Special Leave to Appeal preferred against the said judgement has been dismissed.

134. Even otherwise, the benefit of pension will accrue to the employees after they retire, therefore, the writ petitions are not liable to be dismissed on the ground of delay in raising the grievance by the petitioners with regard to their claim for Old Pension Scheme. The law is also settled that the pension is a recurring cause of action, and for this reason, also, the writ petitions cannot be dismissed on the ground of delay and laches.

135. Now so far as the contention of the learned Additional Advocate General that the claim of petitioners was rejected in the year 2016 which is evident from page 157 of the paper book of the writ petition and petitioners have not challenged the rejection of their claim, this Court may note that said rejection of claim of petitioners have been noted in the file of the department and no order rejecting the claim of petitioners has been supplied to the petitioners. Further, the petitioners continued to raise their grievance against the rejection of their claim and their claim as stated by the respondents in the counter affidavit had been rejected by the Finance Department on 26.11.2019. However, the counter affidavit does not indicate that any order rejecting the claim of the petitioners has been communicated to the petitioners.

136. The remedy under Article 226 of the Constitution of India is discretionary and if petitioners have made out a case that the action of the State Government is arbitrary and is hit by Article 14 of the Constitution of India, rejection of their claim on a technical ground will defeat the purpose of justice since the paramount consideration of the Court in deciding a dispute is to do substantial justice and not to defeat the justice on technical grounds. In such view of the fact, this Court in a given case under Article 226 of the Constitution of India which is a discretionary power conferred to constitutional courts under the Constitution of India can mould the relief and grant the same to subserve the interest of justice. Accordingly, the aforesaid contention of the learned Additional Advocate General does not stand to merit in the present case and deserves to be rejected.

137. Thus, for the reasons given above, the action of the respondents in denying the benefit of the Old Pension Scheme to the petitioners is declared illegal. Accordingly, all the writ petitions are allowed and respondents are directed to place the petitioners and other similarly situated employees under the Old Pension Scheme. There shall be no order as to costs. "

6. Learned State Counsel, on the basis of instructions received in pursuance of the order dated 04.03.2024 passed by this Court has submitted that against the judgment dated 26.10.2023, no special appeal has been preferred and the said judgment still holds good and he is also unable to distinguish the judgment dated 26.10.2023 relied by learned counsel for the petitioner in the bunch of

writ petitions, leading one being Writ A No. 18197 of 2021, U.P Lekhpal Sangh Through Its Treasurer Vinod Kumar Kashyap versus State of U.P and 7 Others.

7. In view of the facts, circumstances and discussion made herein above, the action of the respondents in denying the benefit of Old Pension Scheme to the petitioners by impugned order dated 20.07.2021 is bad in the eyes of law.

8. Accordingly, the writ petition is ***allowed***.

9. The impugned order dated 20.07.2021 is hereby quashed.

10. The respondents are directed to place the petitioners under the Old Pension Scheme.

Order Date :- 18.3.2024

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