

Neutral Citation No. - 2024:AHC-LKO:32513

Court No. - 20

Case :- WRIT - A No. - 2202 of 2024

Petitioner :- Ram Ji Pandey

Respondent :- State Of U.P. Thru. Secy. (Secondary Education) Lko. And 5 Others

Counsel for Petitioner :- Sanjay Misra,Arvind Kumar Pandey,Mrs. Anju Raghuvansh,Pratyush Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Shree Prakash Singh,J.

1. Heard Shri Sanjay Mishra learned counsel for the petitioner and Sri Shailendra Kumar Singh learned Chief Standing Counsel, Sri Vivek Shukla and Sri Pankaj Patel, learned Additional Chief Standing counsel for the State.

2. Notice to the opposite party no. 5 is hereby dispensed with.

3. Under challenge is the order dated 20th January 2024 passed by the opposite party no. 3, i.e., Deputy Director, Secondary Education, IXth Region, Ayodhya, whereby the claim of the petitioner for grant of pension has been rejected on the premises that by vide of Government order dated 12th December 2023, the pension scheme is amended with retrospective effect.

4. Contention of the counsel for the petitioner is that the petitioner was initially appointed in the Institution in question, on the post of Assistant Teacher on ad-hoc basis on 13th March 1997 and in the event, the salary was not being paid to him, he

filed a writ petition on 7th May 1999, wherein, an interim order was passed in favour of the petitioner and thereafter, on 16.11.1999, the financial concurrence was accorded with respect to the payment of salary by the DIOS concerned. He submits that the writ petition was disposed off on 17th August 2017 with final judgement and order, with a direction that the regularization of the service of the petitioner shall be considered by the competent authority and in compliance, thereof on 13th March 2019, the order was passed while regularising the services of the petitioner. He added that the petitioner retired from service after attaining the age of superannuation on 31st March 2019, and thereafter, the petitioner prayed for the retiral dues, including the grant of pension, and admittedly, all the post-retiral dues are paid, except the payment of pension.

5. Being aggrieved, the petitioner moved a Writ Petition No. 3673 of 2023, whereby, praying that the opposite parties may be directed to make payment of pension, which was decided on 18th May 2023, and the respondent no. 3 was directed to consider and decide the claim of the petitioner with respect to payment of pension and thereafter, the Deputy Director Education passed the order, whereby, the claim of the petitioner with respect to grant of pension was rejected vide order dated 1st August 2022, on the premises that the Validation Act, 2021 is applicable in the case of the petitioner and therefore, the petitioner is not entitled for any pension. The petitioner again challenged the order dated 1st August 2022 by preferring a Writ Petition No. 9446 of 2023, wherein, the Coordinate Bench of this Court has passed the order on 13th December 2023, which is extracted hereinunder:-

"1. Heard learned Counsel for the petitioner and Sri Ranvijay Singh,

learned Additional Chief Standing Counsel.

2. The present petition has been filed by the petitioner challenging the order dated 11.08.2023, whereby the request of the petitioner for grant of pension was rejected placing reliance on the judgment and order dated 28.01.2023 passed in Special Appeal (Defective) No.31 of 2023.

3. The sole contention of the Counsel for the petitioner is that the foundation for passing the impugned order being the judgment dated 28.01.2023 passed in Special Appeal (Defective) No.31 of 2023 has lost its substratum in view of the subsequent Civil Misc. Review Application No.33 of 2023, whereby the order dated 28.01.2023 was reviewed, vide order dated 21.07.2023 and ultimately the special appeal was dismissed.

4. It is argued by the Counsel for the petitioner that the order of the review application was not considered in the impugned order. On the face of it, the order impugned is based upon the judgment dated 28.01.2023 which itself was reviewed by means of subsequent order dated 21.07.2023, which has not been considered, as such, the impugned order dated 11.08.2023 (Annexure-1 to the writ petition) is quashed.

5. The matter is remanded to the respondent no.3 to pass fresh orders. While doing so, he will take into consideration the order dated 21.07.2023 passed in Civil Misc. Review Application No.33 of 2023.

6. The fresh order as directed above shall be passed within a period of six weeks from today.

7. The writ petition is allowed in terms of the abovesaid order. "

6. Referring the aforesaid, he submits that considering the ambiguity and other unlawfulness, the order dated 1st August 2023 was quashed and remitted it back to decide the matter a fresh, within a period of six weeks and in compliance, thereof, the Deputy Director Education IXth Region, Ayodhya passed the order on 20 January 2024, while rejecting the claim of the petitioner on the ground that since, the Rules 1964 has been amended with effect from 12th December 2023, and by operation of the aforesaid amendment, it has been provided in

Rule 19(B) that 'such teachers, who were appointed against ad-hoc/short-term vacancies and their services are regularised, their services shall be counted from the date, i.e., 22nd March 2016, with respect to the qualifying services.

7. Further contention of the counsel for the petitioner is that the identical issue has been dealt with, in Special Appeal (Defective) No. 976 of 2023 and he has referred paragraph 15 to 17 of the judgement and order dated 24th January 2024, which is extracted hereinunder:-

"15. So far as the scheme contained in the government order dated 17.12.1965 is concerned, it is apparent that the pension scheme is a separate and distinct scheme framed by the Executive in respect of the teachers and non-teachers of specified institutions.

16. A Co-ordinate Bench of Lucknow Bench of this Court in Civil Misc. Review Application No. 33 of 2023 has already held that the provision of U.P. Retirement Benefits Rules, 1961 or the amendments made vide U.P. Act No. 1 of 2021 therein, are not applicable to teachers employed in Government Aided Educational Institutions.

17. So far as the argument of the State based on the amendment of the pension scheme vide government order dated 12.12.2023 is concerned, we find that this argument also cannot be sustained to resist the claim of the respondent. The Constitution Bench of the Supreme Court in Chairman Railway Board versus C.R. Rangadhamaiah, AIR (SC) 1997 0 3828, wherein the retrospective amendment of the pension scheme was examined, clearly held that vested rights cannot be taken away in such manner. In para 24 to 34 of the judgment, the Constitutional Bench has crystallized the law as per which the accrued/vested right cannot be retrospectively taken away, as is sought to be done by the State in the present matter. The Constitution Bench judgment has been relied upon by the Supreme Court in Punjab State Cooperative Agricultural Development Bank Ltd versus Registrar, Cooperative Societies, AIR (SC) 2022 0 1349. In Para 44, the Supreme Court has referred to the Constitution Bench judgment in Chairman Railway Board (supra).The law has been culled out in para 47 to 50 of the judgment which are reproduced hereinafter:

"47. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

48. In the instant case, the Bank pension scheme was introduced from 1st April 1989 and options were called from the employees and those who had given their option became member of the pension scheme and accordingly pension was continuously paid to them without fail and only in the year 2010, when the Bank failed in discharging its obligations, respondent employees approached the High Court by filing the writ petitions. The Bank later on withdrawn the scheme of pension by deleting clause 15(ii) by an amendment dated 11th March, 2014 which was introduced with effect from 1st April, 1989 and the employees who availed the benefit of pension under the scheme, indeed their rights stood vested and accrued to them and any amendment to the contrary, which has been made with retrospective operation to take away the right accrued to the retired employee under the existing rule certainly is not only violative of Article 14 but also of Article 21 of the Constitution.

49. It may also be noticed that there is a distinction between the legitimate expectation and a vested/accrued right in favour of the employees. The rule which classifies such employee for promotional, seniority, age of retirement purposes undoubtedly operates on those who entered service before framing of the rules but it operates in futuro. In a sense, it governs the future right of seniority, promotion or age of retirement of those who are already in service.

50. For the sake of illustration, if a person while entering into service, has a legitimate expectation that as per the then existing scheme of rules, he may be considered for promotion after certain years of qualifying service or with the age of retirement which is being prescribed under the scheme of rules but at a later stage, if there is any amendment made either in the scheme of promotion or the age of superannuation, it may alter other conditions of service such scheme of rules operates in futuro. But at the same time, if the employee who had already been promoted or fixed in a particular pay scale, if that is being taken away by the impugned scheme

of rules retrospectively, that certainly will take away the vested/accrued right of the incumbent which may not be permissible and may be violative of Article 14 and 16 of the Constitution." "

8. Placing reliance on the ratio of the judgement abovesaid, he submits that identical controversy has been dealt with by the Division Bench and it has been held that 'so far as the argument of state based on the amendment of pension scheme vide government order dated 12th December 2023 is concerned, we find that this argument also cannot be sustained to resist the claim of the respondent, as the Constitutional Bench of the Supreme Court in **Chairman, Railway Board And Ors Vs C.R. Rangadhamaiah And Ors.; AIR SC 1997 3828** has held that wherein, retrospective amendment of the pension scheme was examined and held that vested rights cannot be taken away in such manner and therefore the Division Bench comes to the conclusion that the amendment vide court order dated 12th December 2023, would not apply to the petitioner and will not commence from retrospective effect.

9. Next argument of the counsel for the petitioner is that the sole ground of rejection of the claim of the petitioner for pension is that an amendment is done by vide the Government Order dated 12th December 2023, and that does not sustain as per the judgement and order passed in Special Appeal (Defective) No. 976 of 2023, as well as subsequent judgement and order dated 15th April 2024, passed in Special Appeal (Defective) No. 286 of 2024. He added that the controversy has already been settled by virtue of the judgement and orders passed in aforesaid special appeals, thus, impugned order is passed against the settled law. Therefore, submission is that the impugned order dated 20th January 2024 may be quashed and the respondent authority may be directed to proceed to pay the pension to the petitioner.

10. On the other hand, counsel for the State submits that the order dated 20th January, 2024 has rightly been passed by the Deputy Director Education as after calling the response from the petitioner, the matter is dealt with in exhaustive manner. Further submission is, that since the amendment was done, vide Government Order dated 12th December 2023, which clearly provides that the petitioner is entitled for pension from the date of his substantive appointment and therefore, the petitioner is not entitled for grant of pension.

11. Considering upon the submission of the counsel for the parties and after perusal of the material placed on record, it transpires that the controversy arose when the petitioner was denied the grant of pension on the premises that the Uttar Pradesh, State-aided Educational Institution Employs Contributory Fund Insurance Pension Rules (hereinafter referred as Pension Rules) introduced vide Government Order dated 17th December 1976, which was later on amended by the Government Order dated 12th December 2023, says that for 'qualifying services', the date of substantive appointment is a criteria.

12. Clause 4 of the relevant provision is reproduced hereinunder:-

"(1) लाभत्रयी योजना नियमावली दिनांक 01-अक्टूबर, 1964, शासनादेश दिनांक 17.12.1965, शासनादेश संख्या- 531/पन्द्रह-8-3004 (2)/1974 दिनांक 31 मार्च, 1978 प्रख्यापित/प्रभावी होने के फलस्वरूप लाभत्रयी योजना के शासनादेश दिनांक 17 दिसम्बर, 1965, का अध्याय तीन विलोपित किया जाता है।

(2) दिनांक- 31.03.2014 के बाद नियुक्त सहायता प्राप्त शिक्षण/प्रशिक्षण संस्थाओं के शिक्षक/कर्मचारी अनिवार्य जीवन बीमा योजना से आच्छादित नहीं माने जायेंगे।

(3) लाभत्रयी पेंशन नियमावली 1965 के अध्याय- पांच, नियम 17 वर्तमान उप नियम-4 के पश्चात नया उप नियम 05 बढ़ाया जाता है अर्थात्- (5), यह नियमावली उत्तर प्रदेश राज्य सहायता प्राप्त शिक्षा संस्थाओं के संबंध में पेंशन स्थापन सेवाओं और पदों पर चाहे

वे अस्थायी हों या स्थायी हों, 01 अप्रैल 2005 को या उसके पश्चात प्रवेश करने वाले कर्मचारियों पर लागू नहीं होगी। यह आदेश दिनांक 01.04.2005 से प्रभावी माना जायेगा।

(4) लाभत्रयी पेंशन नियमावली 1965 के अध्याय-पांच (पेंशन) के बिन्दु संख्या-19 (ख) में परन्तुक के रूप में प्रस्तावित व्यवस्था "ऐसे शिक्षक जो तदर्थ/ अल्पकालिक रिक्त पद पर नियुक्ति प्राप्त करके उत्तर प्रदेश माध्यमिक शिक्षा सेवा चयन बोर्ड अधिनियम 1982 की धारा- 33 छ के अन्तर्गत विनियमित हुए हैं, उनकी सेवा मौलिक नियुक्ति की तिथि 22 मार्च, 2016 से ही अर्हकारी सेवा के रूप में गिनी जायेगी।"

13. Earlier Rule 19(b) of the Rules of the Pension Rules were undisputedly applicable to the employees of unaided institution.

14. Section 19(b) is reproduced hereinunder:-

"19(b)- Continuous, temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service."

15. Fact remains that the petitioner was appointed on the post of Assistant Teacher in Bhagwati Adarsh Vidyalaya Inter-College, Bhagwatiganj, District Balrampur and thereafter, once the UP Secondary Education (Services Selection Board), Act, 1982 (hereinafter referred as Act, 1982) was amended vide UP Act No. 7 of 2006 and Section 33-G was inserted, whereafter, the petitioner became entitled to be considered for regularisation.

16. Provisions of Section 33-G is quoted hereinunder:-

"33-G. Regularisation of certain more appointments against short term vacancies-*Any teacher, other than the Principal or the Headmaster, who-*

(a) was appointed by promotion or by direct recruitment in the lecturer's grade or trained graduate grade on or after August 7, 1993, but not later than January 25, 1999 against a short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, as amended from time to time, and such vacancy was subsequently converted into a substantive vacancy:

(b) was appointed by promotion or by direct recruitment on or after August 7, 1993, but not later than December 30, 2000 on adhoc basis against substantive vacancy in accordance with Section 18, in the Lecturer grade or Trained Graduate grade;

(c) possesses the qualifications prescribed under, or is exempted (c from such qualification in accordance with, the provisions of the Intermediate Education Act, 1921;

(d) has been continuously serving the institution from the date of such appointment up to the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2016;

(e) has been found suitable for appointment in a substantive capacity by the selection committee referred to in clause (a) of sub-section (2) of Section 33- C in accordance with the procedure prescribed under clause (b) of the said sub-section; shall be given substantive appointments by the Management.

(2)(a) The names of the teachers shall be recommended for substantive appointment in order of seniority as determined from the date of their appointment;

(b) If two or more such teachers are appointed on the same date, the teacher who is elder in age shall be recommended first.

(3) Every teacher appointed in a substantive capacity under sub- section (1) shall be deemed to be on probation from the date of such substantive appointment.

(4) A teacher who is not found suitable under sub-section (1) and a teacher who is not eligible to get a substantive appointment under the said sub- section shall cease to hold the appointment on such date as the State Government may by order specify.

(5) Nothing in this section shall be construed to entitle any teacher to substantive appointment if on the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2016 such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act.

(6) The services of the adhoc teachers and the teachers who have been appointed against short term vacancies shall be regularised from the date of commencement of the Uttar Pradesh Secondary Services Selection Board (Amendment) Act, 2016.

(7) Reservation Rules shall be followed in regularisation of adhoc teachers and teachers who are appointed against short term vacancies.

(8) Adhoc teachers, who have not been appointed either in accordance with the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981 or in accordance with Section 18 of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 and are otherwise getting salary only on the basis of Interim/Final orders of the court shall not be entitled for regularisation.”

17. After the aforesaid provisions were promulgated, the petitioner claimed for his regularisation and he was considered and subsequently his services were regularised on 30th March 2019 and he claimed the grant of pension under the provision of Rule 19(b) of the Pension Rules, but earlier the same was rejected on several other grounds, including the applicability of the Validation Act, 2001, but those were turned down by this Court and once the matter is again relegated to the Regional Level Committee for consideration, the same was rejected while observing that since the Pension Rules, 1964 has been amended, and it has been provided that the qualifying services will be counted from the date of substantive appointment, i.e., 12th March 2016, as provided in the Government Order dated 12.12.2023.

18. Now the question crop up that whether the petitioner is entitled for pension as per the Rule 19(b) of the Pension Rules or he is covered with the Clause 4 of the Pension Rules.

19. It is undisputed fact that the services of the petitioner was regularised on 30th March 2019 that is much prior than the

Government Order dated 12th December 2023, is issued, when the Clause 4 of the Pension Rules was not in existence.

20. The legal principal culled out is that the vested rights cannot be taken away by way of amendment giving the effect retrospectively. Further, if any statute do not provide any specific terms regarding the provision to be applicable retrospectively, the same shall be applicable prospectively.

21. It has been the view of the Apex Court consistently, including the judgement and order rendered in **Chairman Railway Board versus C.R. Rangadhamaiah** reported in **AIR (SC) 1997 0 3828 (Constitutional Bench)** and in case of **Punjab State Cooperative Agricultural Development Bank Ltd versus Registrar, Cooperative Societies** reported in **AIR (SC) 2022 0 1349** that it would have unjust and unreasonable to give an effect to any statute retrospectively unless any claim or right is vested by way of legislation. Further, recently in case of **Assistant Excise Commissioner, Kottayan & Ors. Vs. Estgappan Cherian & Anr.** reported in **2021 (10) SCC 210**, it has been held that there is a profusion of judicial authority and the proposition that a rule of law cannot be constituted as retrospective unless it expresses a clear or manifest intention to the contrary.

22. This Court is of considered opinion that if statute does not envisaged the provision regarding retrospective effect, applying it contrary, would amount to legislate such provisions, which is not permissible under the law.

23. So far as the present case is concerned, undisputedly, the provision came into effect since 12th December 2023, whereas, the services of the petitioner were regularised in the year 2019, and he attained the age of superannuation on 31st March 2019

and retired from service though the provisions became applicable since 23.12.2023, thus, he is entitled for the grant of pension, which has unlawfully been denied.

24. Resultantly, the writ petition is **allowed** and the competent authority is directed to grant pension to the petitioner within a period of two months.

Order Date :- 25.4.2024

Anurag, PS Gr-I