

Court No. - 18

Case :- WRIT - A No. - 3110 of 2022

Petitioner :- Suvas Chandra Pathak

Respondent :- State Of U.P. Thru. Secy. Dept. Of Ayush Civil
Secrty. Lko. U.P. And Others

Counsel for Petitioner :- Suresh Chandra Verma, Dileep Kumar
Pathak, Mohammad Tauseef Siddiqui, Praveen Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar, J.

The present petition has been filed challenging the order dated 12.01.2022 whereby the petitioner has been denied the benefit of the pension merely on the ground that the petitioner did not have the necessary qualifying service, which has been calculated based upon the Validation Act, 2021, placing reliance on Section 2 of the said Act.

Learned counsel for the petitioner has submitted that the case of the petitioner is squarely covered by the judgment and order dated 06.08.2021 passed in Writ A No. 9030 of 2021 (Awadhesh Kumar Singh Vs. State of U.P. and others)

The facts, in brief, are that the petitioner was initially appointed on ad hoc basis vide order dated 22.05.1990 and the services of the petitioner stood regularized vide order dated 25.02.2005 w.e.f. 25.02.2005. He was retired on 31.07.2017. The claim of the petitioner is that the period of 22.05.1990 up to 24.02.2005 was not considered while computing the qualifying service in the light of Section 2 of the Validation Act, 2021.

The said question is no more res integra and is squarely considered by Special Appeal Bench of this Court in Special Appeal Defective No. 1003 of 2020, decided on 4.2.2021 as well as Special Appeal No. 97 of 2021 (State of U.P. and others Vs. Bhanu Pratap Sharma), decided on 9.6.2021, wherein this Court while dealing with the similar issues, held that the services of the appellant rendered prior to his regularization would entitle benefit to the appellant even in terms of Section 2 of the said Validation Act, 2021, the special appeals were allowed.

It is further submitted that the issue has again been decided by this Court vide its judgment and order dated 18.03.2024 passed in Special Appeal Defective No. 217 of 2024 (State of U.P. and 3 others Vs. Dr. Mahendra Singh and 2 others). The relevant extract of the said judgment is quoted hereinbelow:-

"6. So far as the U.P. Act No.1 of 2021 as well as ordinance issued prior thereto on 21.10.2020 are concerned, though these provisions would apply retrospectively from the date of introduction of the U.P. Retirement Benefit Rules, 1961, but the amended provisions cannot be pressed into service in respect of such retired employees in whose favour entitlement had already stood crystallised prior to the incorporation of amending provisions vide ordinance or U.P. Act No.1 of 2021. The issue in that regard has been settled by a Constitution Bench in *Chairman Railway Board versus C.R. Rangadhamaiah*, AIR (SC) 1997 0 3828. 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) and expounded the law 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 future. 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."

7. Since the right to receive pension had accrued in favour of the respondent on the date of his superannuation, we find that such accrued and vested right cannot be taken away by retrospective application of the Pension Rules, as is sought to be pressed by the State."

Learned Standing Counsel is unable to distinguish the judgment relied by learned counsel for the petitioner.

Following the said judgments and considering the fact that the impugned order records the only reason for counting the services of the petitioner from 22.05.1990 up to 24.02.2005 being the mandate of Section 2 of the said Validation Act, 2021, no useful purpose would be served in keeping the writ petition pending.

Since the right to receive pension had accrued in favour of the respondent on the date of his superannuation i.e. 31.07.2017, we find that such accrued and vested right cannot be taken away by retrospective application of the Pension Rules, as is sought to be pressed by the State.

Accordingly, the writ petition deserves to be allowed.

The order dated 12.01.2022 is set aside with direction to the respondents to compute the period w.e.f. 22.05.1990 up to 24.02.2005 as qualifying service for calculating the total qualifying service of the petitioner and the petitioner shall be entitled to payment of pension and other retiral dues on the

basis of the said total qualifying services rendered by the petitioner.

The writ petition is allowed in terms of the said order.

Order Date :- 28.3.2024/Ashish