

Court No. - 20

Case :- WRIT - A No. - 3660 of 2024

Petitioner :- Rudrabhan Singh

Respondent :- State Of U.P. Thru. Secy. Secondary Education
U.P. Lko. And 3 Others

Counsel for Petitioner :- Arunima Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Shree Prakash Singh,J.

1.) Heard Mr. Adarsh Singh and Ms. Arunima Shukla, learned Counsels for the petitioner, Mr. Shailendra Kumar Singh, learned Chief Standing Counsel and Mr. Vivek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2.) Since, the pure legal question is involved, hence the matter is decided at admission stage.

3.) Under challenge is the order dated 21.03.2024 passed by the Deputy Director of Education (Secondary), 9th Region, Ayodhya whereby the matter for grant of pensionary benefits to the petitioner is remitted back.

4.) The contention of Counsel for the petitioner is that the petitioner was appointed on the post of Assistant Teacher on ad-hoc basis on 09.08.1995 and he joined thereafter on 14.08.1995 and later on, when the financial concurrence was not granted by the District Inspector of Schools, a writ petition bearing no. 839 (S/S) of 1997 was preferred before this Court, whereby, he was granted salary by an interim order. He further submitted that once the provision under Section 33G of the U.P. Act No. 5 of 1982 was promulgated, the petitioner was considered and his services were regularized vide order dated 08.06.2017 and

thereafter, he was also granted the other benefits. He also added that the petitioner attained the age of superannuation after completing 62 years of age on 30.04.2023.

5.) Further contention of Counsel for the petitioner is that once the matter was preferred before the Deputy Director of Education (Secondary), 9th Region, Ayodhya for payment of pension, the same was relegated back, while observing that since the Government Order dated 12.12.2023 came into effect which says that the qualifying service for grant of pension shall be counted from the date of substantive appointment, thus, the petitioner is not entitled for pension. Adding his argument, he submits that in fact, the petitioner could be treated retired while attaining the age of superannuation while completing 62 years of age on 30.04.2023 as provided under Regulation 21 of the Regulations made under the U.P. Intermediate Education Act, 1921 (hereinafter referred to as 'Act, 1921'), and therefore, the date of retirement is much prior than the date of issuance of the Government order, hence, the Government order dated 12.12.2023 will not apply so far as the case of the present petitioner is concerned.

6.) In support of his contention, he has placed reliance on judgment & order dated 25.04.2024 passed in Writ A 2202 of 2024 and has referred Paragraph 19 to 21 which are quoted herein below:-

".....(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 judgment 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 any 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."*

7.) Referring the aforesaid, he submits that the controversy has been put to rest and it has been held that if the institute does not envisage the provision regarding retrospective effect, applying it contrary, amounts to legislate such provisions which is not permissible under the law.

8.) Concluding his arguments, he submits that in fact the Deputy Director of Education (Secondary), 9th Region, Ayodhya, under the impression that the petitioner was retired after completing the benefit of academic session on 31.03.2024 remitted back the matter, while observing that the Government order dated 12.12.2023 came into effect and he is not entitled for salary, though the same is incorrect and thus submission is that the order date 21.03.2024 may be quashed and Deputy Director of Education (Secondary), 9th Region, Ayodhya may be directed to decide the matter afresh.

9.) On the other hand, Counsel appearing for the State has refuted the contentions above said on the ground that there is nothing in the order dated 21.03.2024 which goes against the petitioner. He added that so far as the issue with respect to the application of the Government order dated 12.12.2023 is concerned, that has already been settled and since the petitioner is retired on 21.03.2024, therefore, the Government order dated 12.12.2023 would apply in case of the petitioner. Thus submission is that the petitioner is not entitled for any relief.

10.) Considering upon the submissions advanced by learned Counsels for the parties and after perusal of records, it transpires that the controversy arose, when the Deputy Director

of Education (Secondary), 9th Region, Ayodhya passed an order on 21.03.2024 whereby observing about the Government order dated 12.12.2023 and remitted back the matter while not granting the benefit of pension which amounts to denial of the same.

11.) While examining the matter in facts and law, it emerges that Rule 19(b) of Uttar Pradesh State Educational Institution Employees Contributory Provident Fund-Ensurance Pension Rules introduced vide Government Order dated 17th of December 1965, effected from 1st October 1964, provides provision regarding count of qualifying service for pensionary benefits. Rule 19 (b) is extracted as under:-

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

The aforesaid provision is amended vide order dated 12th of December 2023, which is quoted herein under:-

"(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।"

12.) The provisions of the order dated 12th of December 2023 came into effect, though, without retrospective effect but the authorities assuming that the same is applicable from the

retrospective effect but passed the order while observing that the qualifying service would be counted from the date of substantive appointment and so far as the case of the present petitioner is concerned, his services were regularised with effect from 22nd of March 2016, and, therefore, he was otherwise denied for pensionary benefits.

13.) In an identical circumstances, this issue has been dealt with in Special Appeal (Defective) No. 976 of 2023 as well as in Writ-A No. 2202 of 2024, vide judgements and orders dated 24.1.2024 and 25.4.2024 respectively, wherein, it has been held that 'if an statute does not envisage the provision regarding retrospective effect, applying it contrary, would amount to legislate such provisions, which is not permissible under the law, and it has categorically been held that the provision would be applicable with effect from 12th of December 2023, i.e., the date of issuance of the order.

14.) So far as the case of the present petitioner is concerned, he would have retired after attaining the age of superannuation on 30th of April 2023, i.e., 62 years of age though fact remains that he was accorded the benefit of academic session and was retired on 31st of March 2024.

15.) Now, the question crop up, whether for the purposes of grant of pensionary dues, including the pension, the age of superannuation would be counted as 62 years or it can be beyond the same, after getting the benefit of academic session, being retired subsequently?

16.) The Regulation 21 of Chapter III of the Regulations made under the Act 1921 envisaged the provisions of age of superannuation as 62 years of age. Regulation 21 is extracted as under:-

"[21. आचार्य, प्रधानाध्यापक, अध्यापकों का अधिवर्ष वय 62 वर्ष होगा। फलस्वरूप 58 वर्ष की

अधिवर्षता पर मिलने वाले सेवानिवृत्तिक लाभ अब 60 वर्ष की अधिवर्षता आयु पर तथा 60 वर्ष की अधिवर्षता आयु पर मिलने वाले सेवानिवृत्तिक लाभ 62 वर्ष की अधिवर्षता आयु पर अनुमन्य होगा। यदि किसी आचार्य, प्रधानाध्यापक अथवा अध्यापक का उपर्युक्त अधिवर्ष वय 2 अप्रैल और 30 मार्च के मध्य में किसी तिथि को पड़ता है तो उसे, उस दशा को छोड़ कर जबकि वह स्वयं सेवा विस्तरण न लेने हेतु लिखित सूचना अपने अधिवर्ष वय की तिथि से 2 माह पूर्व दे दें. 31 मार्च तक सेवा विस्तरण स्वमेव प्रदान किया गया समझा जायेगा, ताकि ग्रीष्मावकाश के उपरान्त जुलाई में प्रतिस्थानी की व्यवस्था हो सके। इसके अतिरिक्त सेवा विस्तरण केवल उन्हीं विशिष्ट दशाओं में प्रदान किया जा सकेगा जो राज्य सरकार द्वारा निर्धारित की जाये। यदि किसी लिपिक अथवा चतुर्थ वर्गीय कर्मचारियों के अधिवर्ष वय की तिथि किसी माह के मध्य किसी तिथि को पड़ती है तो उसका सेवा विस्तारण उस मास की अन्तिम तिथि तक प्रदान किया गया समझा जायेगा। किन्तु यदि किसी कर्मचारी की सेवानिवृत्ति की तिथि किसी माह पहली तारीख को पड़े तो उसे पूर्ववर्ती मास की अन्तिम तिथि को सेवानिवृत्ति कर दिया जायेगा।]"

17.) The aforesaid provision is very clear in terms of the age of superannuation with respect to teacher and headmaster, i.e., completion of 62 years of age and, therefore, this Court is of the considered opinion that any further continuation while granting the benefit of academic session would not change the age of superannuation as provided under the Regulation. The very purpose of granting benefit of academic session is limited to the extent of paramount interest of the students and, thus, the intent of legislature is very clear so far as the date of age of superannuation is concerned.

18.) The petitioner has attained the age of superannuation on 30.4.2023, when he completed 62 years of age, though he was accorded the benefit of academic session, hence he retired on 30.4.2023. Since the petitioner attained the age of superannuation on 30.4.2023, therefore, all the rights of pensionary benefits etc. would accrue on 30.4.2023 itself.

19.) The decision taken by the Deputy Director vide order dated 21.3.2024 while observing the provisions of order dated 12.12.2023, thereby, remitting back the matter while granting the pension to the petitioner, treating the substantive appointment of the petitioner since 22.3.2016, goes against the settled proposition of law rendered vide Judgment and Order

passed in Special Appeal (Defective) No. 976 of 2023 as well as in Writ-A No.2202 of 2024, which clearly provide that the Government Order dated 12.12.2023 would not have retrospective effect and shall apply from the date of issuance.

20.) It is so long settled law in case of ***Nazir Ahmad Vs. King-Emperor, 1936 SEC OnLine PC 41*** rendered by the Privy Council, wherein it is held that 'where a power is given to do a certain thing in certain way, the thing must be done in that way or not at all' and the other methods of performance are necessarily forbidden'. This Court has also considered the judgment and order rendered in the case of ***Chandra Kishroe Jha Vs. Mahavir Prasad and Others***, reported in ***(1999) 8 SCC 266***, wherein, the following principle is laid down:-

".....17. It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: *Nazir Ahmad V. King Emperor [(1935-36) 63 IA 372 : AIR 1936 PC 253 (II)]* , *Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098]* , *State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57]* .) An election petition under the rules could only have been presented in the open court up to 16-05-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done....."

21.) Further, in case of ***Cherukuri Mani Vs. Chief Secretary, Government of Andhra Pradesh and Ors, (2015) 13 SCC 722***, it has been held by the Apex Court that 'where the law prescribed a thing to be done in a particular manner, following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure'. So far as the present matter is concerned, the age of superannuation has been provided by way of promulgating Regulation 21 of Chapter IIIrd of regulations made under the Act, 1921. Therefore, no other inference or meaning can be drawn so far as the age of superannuation is concerned.

22.) The petitioner has admittedly attained the age of

superannuation on 30.4.2023, which in fact is the date of superannuation/retirement as per the provision of Regulation 21 of Chapter III of Regulations made under Act 1921 and, therefore, the date of superannuation is much prior to the issuance of the Government Order dated 12.12.2023 and in considered opinion of this Court, the right of pensionary benefit of the petitioner would accrue on the date of retirement, while attaining the age of superannuation, i.e., on 30.4.2023.

23.) In this view of the aforesaid submission and discussions, the writ petition succeeds and the impugned order dated 21.03.2024 is hereby **quashed**.

24.) The writ petition is **allowed** accordingly.

25.) Resultantly, matter is relegated back to the Deputy Director of Education (Secondary), 9th Region, Ayodhya to decide the matter afresh, considering the judgment and orders passed in Special Appeal Defective No. 976 of 2023, as well as, Writ A No. 2202 of 2024, for grant of pension to the petitioner, within a period of eight weeks, from the date a certified copy of this order is produced before him.

Order Date :- 10.5.2024
Lokesh Kumar