

Court No. - 2

Case :- WRIT - A No. - 18096 of 2021

Petitioner :- Girish Chandra Tripathi

Respondent :- U.P.State Public Services Tribunal Lucknow And Ors.

Counsel for Petitioner :- Rajendra Prasad Shukla,Pallavi Dubey

Counsel for Respondent :- C.S.C.,Shikhar Anand

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. Rejoinder affidavit filed today in Court is taken on record.

2. Heard.

3. At the very outset, counsel for the petitioner submitted that he does not press relief no. (c) in this writ petition as also relief no. 8 (iii) in the claim petition which are same.

4. By means of this writ petition the petitioner has challenged the judgment and order dated 02.08.2021 passed by the State Public Services Tribunal, Lucknow in Claim Petition No. 346 of 2014 (Girish Chandra Tripathi vs. State of U.P. and others) by which the claim petition of petitioner has been dismissed.

5. The facts of the case, in brief, are that the petitioner was earlier employed as Documentation Assistant w.e.f. 21.11.1980 with the Auto Tractor Company Limited (Government Cell), Pratapgarh. At some point of time, he became Chemist in the same Company and worked as such till 20.11.1990, as claimed. On 20.11.1990, the closure of the Company took place. The petitioner was retrenched. Retrenchment Certificate dated 04.02.1994 is on record as Annexure-3 to the writ petition which says that the petitioner had worked in the said Company from 21.11.1980 to 20.11.1990 and he was recommended for absorption as a retrenched employee.

6. The fact of the matter is that the petitioner came to be temporarily appointed as Additional National Savings Officer in the National Savings Directorate of State of Uttar Pradesh on 06.11.1998 and the said order is Annexure-4 to the writ petition. The said appointment was made with the condition that it was purely temporary appointment which could be terminated at any time with

one month's notice or salary of one month in lieu of such notice. In 2010, certain orders were passed by the State Government in respect of retrenched employees of U.P. State Cement Corporation in pursuance to certain orders passed by the Courts including Supreme Court of India and the contempt proceedings initiated in pursuance thereof treating the retrenched employees absorbed in the said Corporation as having been absorbed with effect from the date of their initial retrenchment. The said orders are orders dated 27.08.2010 and 22.10.2010, they are Annexure-5 and Annexure-11 to the writ petition.

7. It appears that the petitioner claiming himself to be similarly situated although having been retrenched from another Company moved some representation which ultimately came to be rejected on 31.12.2012. The order of rejection is on record as Annexure-2 to the writ petition. The State Government rejected the claim of the petitioner of parity with the retrenched/absorbed employees of the U.P. State Cement Corporation on the ground that the orders dated 27.08.2010 and 22.10.2010 had been passed only in respect of certain personnel of U.P. State Cement Corporation in pursuance of the orders of the Court and the contempt proceedings initiated in respect thereof with the specific stipulation that they will not automatically apply to any other retrenched employee. The said order also mentions that claim of similarly situated persons has already been rejected by Courts. However, it is contended that no such judgment and order was filed before the Tribunal nor before this Court by the State Government.

8. Be that as it may, this order dated 31.12.2012 was challenged by the petitioner before the Tribunal. Specific objection was raised by the State that the claim petition was barred by limitation in view of the provisions contained in Section 5 (b) (i) of the U.P. State Public Service (Tribunals) Act, 1976 as the same had been filed on 23.02.2014 challenging an order dated 31.12.2012, limitation for filing the such claim petition being one year. However, the claim petition was filed by the petitioner saying that the said rejection of the petitioner's representation was communicated vide office letter dated 11.03.2013.

9. Mr. Nishant Shukla, learned Additional Chief Standing Counsel says that no such document proving service upon 11.03.2013 was filed by the petitioner, however, when we peruse the the written statements, we find that

there two written statements. In the written statement dated .06.08.2015 although a plea of bar of limitation has been raised but no documentary proof has been annexed as to when the order dated 31.12.2012 was served upon the petitioner. Moreover, in the other written statement the contents of para 3 of the claim petition have not been denied, therefore, we do not wish to enter into this issue.

10. Now, coming back to the merits of the matter. The only ground raised before us is that the Tribunal has failed to appreciate the fact that the petitioner was similarly situated to the retrenched employees who were absorbed in the U.P. State Cement Corporation and the petitioner's entire claim was based on the ground of parity with such employees, especially as the benefit of the said order dated 27.08.2010 was extended to the retrenched employees who were absorbed in other departments/corporations vide order dated 22.10.2010.

11. We specifically asked learned counsel for the petitioner to show any principle of law or law on the basis of which the petitioner could be treated as absorbed with effect from the date of closure of Auto Tractor Company Limited i.e., 20.11.1990, especially when no such claim was ever raised by the petitioner between 20.11.1990 till 06.11.1998 or even thereafter till submission of a representation sometimes in 2012 and the temporary appointment of the petitioner was accepted by him as given to him vide order dated 06.11.1998. Moreover, we find that the orders dated 27.08.2010 and 22.10.2010 have been passed in compliance of certain orders passed by the Courts and contempt proceedings initiated in respect thereof with the specific stipulation that benefit of the said orders would not be available to other employees automatically.

12. We asked learned counsel for the petitioner to place the judgments and orders referred in the said Government Orders so as to enable the Court to see as to whether any principle of law had been laid down which may be applied generally to other retrenched employees, but, no such decision has been placed before us.

13. So far as the notification dated 09.05.1991 referred in the order dated 06.11.1998 which are in fact the Rules of absorption of retrenched employee, they only speak of protection of last pay drawn and do not permit any such benefit as is being claimed by the petitioner. This aspect has already been considered by a Full Bench of which

one of us (Rajan Roy, J.) was a member in the context of ***Writ A No. 2001647 of 2015 (Anukul Prakash vs. State of U.P. and others)*** decided on 18.05.2023. Unless and until any legal basis for the claim is shown, it is very difficult for this Court to set aside the judgment of the Tribunal and grant the relief prayed for, merely because certain other persons who were absorbed in certain other Corporation have been extended the said benefit, especially as it is not shown that those persons were also earlier retrenched employees of Auto Tractor Company Limited. Moreover, the case of retrenched employees of Auto Tractor Company Limited has been considered by the Full Bench in the judgment referred hereinabove.

14. For all these reasons, in our opinion, the Tribunal has rightly rejected the claim of the petitioner and its judgment does not require any interference by us in exercise of jurisdiction under Article 226 of the Constitution of India as it does not suffer from any factual or legal error.

15. The writ petition is ***dismissed***.

[Om Prakash Shukla, J.] [Rajan Roy, J.]

Order Date :- 25.4.2024
Santosh/-