

Neutral Citation No. - 2024:AHC-LKO:78201

Reserved

Court No. - 8

Case :- WRIT - A No. - 1334 of 2018

Petitioner :- Mohan Thakur

**Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of
Appointment And Pers**

Counsel for Petitioner :- Sarvesh Kumar Dubey

**Counsel for Respondent :- C.S.C.,Pradeep Tiwari,Sanjay
Bhasin**

Hon'ble Jaspreet Singh, J.

1. The petitioner was initially appointed in UPTRON (a State Government undertaking) in the year 1986 on the post of Assistant Manager. The petitioner was thereafter promoted from the post of Assistant Manager to Deputy Manager and again to the post of Joint Manager in the year 1993.

2. The State Government undertaking i.e. UPTRON was declared as a sick unit in the year 1998. The State Government taking stock of the situation transferred the employees of UPTRON and posted them in different departments, institutions, corporations and societies of the State Government.

3. In view of the aforesaid malaise inflicting the UPTRON Corporation, the petitioner was nominated as the State

Project Coordinate in the Smart City Project with the approval of the State Government. The petitioner was sent on deputation and all the rules and regulations of the Government applicable to the deputationist were applicable to the petitioner. In so far as the petitioner is concerned, a government order dated 14.05.2007 indicated that the petitioner shall be relieved from UPTRON and his services were transferred on deputation to 'State Smart City Project Unit' (hereinafter referred to as e-Suvidha) which was a society controlled by the State.

4. Since large number of employees of UPTRON were adjusted and shifted to various places including in various departments, hence the State Government taking a holistic view promulgated the Uttar Pradesh Absorption of Surplus Employees of UPTRON India Limited in Government Services Rules, 2011 which came into effect immediately i.e. from 20.12.2011. On the same date i.e. 20.12.2011 another Government Order was issued which provided that the employees of UPTRON India Limited will be absorbed in their respective departments of the State Government where they were working.

5. In this view of the matter, it is the case of the

petitioner that he should be treated to have been absorbed in the department of the State Government even though he was working in e-Suvidha which was a Government owned and controlled Society. The petitioner claim that since he was earlier working with UPTRON India Limited an undertaking of the State Government and the said undertaking having been declared sick and the petitioner though transferred on deputation to e-Suvidha being a State owned and controlled society yet as per the Rules of 2011 and Government Order dated 20.12.2011 the petitioner should be treated to have been absorbed in the department of Information Technology and Electronics Government of U.P. as e-Suvidha was a Society under the said Government Department.

6. It is also the case of the petitioner that even though he was retired at the age of 58 years yet he should be treated to have retired at the age of 60 years as he ought to have been absorbed in the Government Department where the age of retirement is 60 years.

7. It is in the aforesaid backdrop where the petitioner retired at the age of 58 years as an employee of e-Suvidha, he assailed the said action and claimed relief that he should

be treated as absorbed in the department of the State Government and all benefits accruing thereto shall be admissible to the petitioner. Since his representation did not find favour with the authorities coupled with the fact that the petitioner was discriminated as similarly situated other erstwhile employees of UPTRON, who were transferred to different State Controlled Societies, were absorbed in the department of the State and were also granted the benefit of having been retired at 60 years but the same has not been extended to the petitioner, hence he escalated the matter by filing the instant writ petition.

8. The petitioner has also stated that several other similarly situated persons had approached this Court and this Court considering the matter upheld the contention of such employees in the leading case of Brahmanand Lavaniya and another Vs. State of U.P. & others, Writ Petition No.3316 (S/S) of 2013 which came to be decided on 29.05.2014. The said order was challenged by the State in a Special Appeal Defective No.430 of 2014 and the same came to be dismissed by means of order dated 08.08.2014.

9. It is also the case of the petitioner that thereafter several petitions were filed by such similarly situated

persons who were granted the benefit of the judgment of this Court in Brahmanand Lavaniya (supra). Accordingly, the State by denying the same benefit to the petitioner has made a hostile discrimination which is arbitrary and the orders declining to extend the benefits to the petitioner have been assailed in this writ petition.

10. In the aforesaid backdrop, the petitioner assailed the order dated 05.01.2018 whereby the representation made by the petitioner has been rejected refusing to absorb the petitioner in the government department. The petitioner also challenged the orders dated 30.11.2017 and 25.11.2017 by which the petitioner was retired from e-Suvidha at the age of 58 years. The petitioner also challenged the order dated 03.08.2015 by which the respondent no.2 extended the period of deputation of the petitioner by two years bringing it in consonance to his date of retirement i.e. 30.11.2017 at the age of 58 years.

11. The writ petition was contested by the State by filing counter-affidavit wherein, *inter alia*, it has been stated that the petitioner enjoyed his deputation and only after his retirement in the year 2017 i.e. the petitioner has filed the instant petition.

12. It is said that the petitioner should have earlier applied for his absorption and should have escalated the matter before the appropriate authorities in time and not after his retirement, hence for the said reason no relief can be granted to the petitioner.

13. It is also stated that e-Suvidha is not a government department rather it is a Society and in such circumstances, the petitioner could not be absorbed as an absorption can be in a Government Department. It is further taken as a defence that the age of the retirement both in UPTRON India Limited which is the parent corporation where the petitioner was appointed and in e-Suvidha, a Society from where the petitioner retired, in both cases is 58 years and thus no discrimination or prejudice has been caused to the petitioner. In view of all the above reasons, cumulatively, the relief as sought by the petitioner cannot be granted and the writ petition deserves to be dismissed.

14. The Court had heard Shri Sarvesh Kumar Dubey, learned counsel for the petitioner and Shri Tushar Verma, learned Additional Chief Standing Counsel for State respondents and also perused the material on record.

15. The record indicates that initially this petition was

filed before the Division Bench of this Court who after taking note of the respective contention of the parties by means of order dated 18.01.2018 were passed the following orders which read as under :-

"Vakalatnama filed by Sri Sanjay Bhasin, Advocate on behalf of opposite party nos. 4 and 5 and supplementary affidavit filed on behalf of the petitioner, are taken on record.

Heard learned counsel for the petitioner, Sri Sanjay Bhasin, learned counsel for opposite party nos. 4 and 5 and learned Additional Chief Standing Counsel.

Learned counsel for the petitioner submitted that the petitioner happens to be the surplus employee of the UPTRON which has been closed and all the employees who were declared surplus in the UPTRON by virtue of the Absorption Rules, 2011 have been absorbed in various Government departments in view of Government Order dated 20.12.2011.

Learned Additional Chief Standing Counsel pointed out from the impugned order dated 05.01.2018 that the issue with regard to the absorption of the petitioner has been referred to the State Government and is pending consideration over their. He further submits that he will seek instructions in respect of the decision taken by the Government with regard to the absorption of the petitioner.

Let a copy of this order be given to the learned Standing Counsel free of cost today itself.

List this case on 24.01.2018 as fresh."

16. Thereafter the Division Bench on 24.01.2018 passed the following order which reads as under:-

Counter affidavit filed today on behalf of opposite parties no.4 and 5 is taken on record.

Heard learned counsel for the parties.

The petitioner feeling aggrieved with the orders dated 5.1.2018, 30.11.2017, 25.11.2017, 3.8.2015 & 21.12.2017, contained in Annexures No.1, 2, 3, 4 & 40 respectively to the writ petition.

Submission of learned counsel for the petitioner is that

initially the policy was formulated by the State Government to absorb all the surplus employees of UPTRON India Ltd. and various employees were absorbed in various Government Departments. The petitioner was one of the employees, who was sent to e-Subidha Society. The petitioner as a law abiding citizen and being an honest Government servant joined the post in question. The petitioner served up till the age of 58 years in the e-Subidha Society, which happens to be an autonomous body. Learned counsel submits that the e-Subidha Society is owned and controlled by the Government and in all similar Societies, retirement age has been extended from 58 years to 60 years, but in the present Society it is 58 years. Learned counsel submits that right of the petitioner to be absorbed in the Government Department continued and if the opposite parties failed to take note of the aforesaid aspect, then the opposite parties are to be blamed for the same and not the petitioner and the orders which have been issued against the petitioner are only in respect of the fact that in the said Society age of retirement is 58 years, therefore, he has been retired at the age of 58 years.

Whether under the garb of the aforesaid argument, right of the petitioner to be absorbed and continued up till the age of 60 years is to be curtailed has been considered by this Court in Writ Petition No.3316 (SS) of 2013 vide judgment and order dated 29.5.2014 and the said order has attained finality as the special appeal against the aforesaid judgment has also been dismissed vide order dated 8.8.2014 passed in Special Appeal Defective No.430 of 2014 and the order passed in the aforesaid writ petition has been complied with.

Considering the entire facts and circumstances of the case, right of the petitioner subsists to continue up till the age of 60 years by virtue of the fact that Absorption Rules, 2011 have also been promulgated and initial decision of the Government is also to the effect that surplus employees of UPTRON India Ltd. will be absorbed in the Government Departments.

Learned Standing Counsel was directed to seek instructions, but he has failed to produce the relevant instructions, which may have any bearing in the matter.

In the aforesaid circumstances, the State Government is directed to consider and absorb the petitioner in any Government Department.

Learned Standing Counsel may file counter affidavit within two weeks.

*Learned counsel for the petitioner may also file rejoinder affidavit to the counter affidavit filed on behalf of opposite parties no.4 & 5 within two weeks.
List after two weeks.*

17. This order dated 24.01.2018 was assailed by the State before the Apex Court and the Special Leave Petition bearing No.16409 of 2018 came to be disposed of on 22.10.2019 and the said order reads as under:-

"We have heard Ms. Aishwarya Bhati, learned Additional Advocate General along with Mr. Anuvrat Sharma, learned counsel appearing for the petitioners-State.

This special leave petition has been preferred against an interim order dated 24.01.2018 passed by the High Court of Judicature at Allahabad, Lucknow Bench, in Service Bench No.1334 of 2018 in and by which the High Court has inter alia directed the absorption of the respondent in the Government Department as per Uttar Pradesh Absorption of Surplus Employees of Uptron India Limited in Government Service Rules 2011.

Since the special leave petition is preferred against the interim order and considering the fact that the matter i.e. Service Bench No.1334 of 2018 is pending before the High Court, we are not inclined to interfere with the impugned order; nor entertain the special leave petition.

The special leave petition is accordingly disposed of.

At this stage, Mr. Anil K. Mishra, learned counsel appearing for the respondent, has submitted that in W.P.No.3316 of 2013 all the issues pertaining to the formal absorption of the employees of the Uptron India Ltd. with the Government Department as per 2011 Rules and other relevant issues have been decided on merits by the High Court vide judgment dated 29.05.2014 and the entire issues raised by the petitioner-State are covered by the said judgment.

Since the matter is remitted back to the High Court, we are not inclined to go into the merits of the contentions raised by the learned counsel for the respondent. All the contentions raised by the learned counsel for the parties are left open to be raised before the High Court in Service

Bench No.1334 of 2018. We request the High Court to take up Service Bench No.1334 of 2018 at an early date and decide the same as expeditiously as possible.

Until Service Bench No.1334 of 2018 is finally decided by the High Court, Contempt Application (Civil) No.682 of 2018 shall remain stayed.

Pending applications, if any, shall also stand disposed of."

18. From the perusal of the aforesaid order, it would reveal that the Apex Court while remitting the matter to the High Court left all contentions available to the parties to be raised before the High Court and further it was requested that the matter may be taken up at early date and it be decided expeditiously.

19. Thereafter by means of order dated 08.01.2024 passed by the then Acting Chief Justice of this Court, the petition was nominated to this Court and in the aforesaid backdrop this Court had heard the learned counsel for the parties at length and the parties also filed their written submissions on record which has been taken note of while considering the submissions of the respondents parties.

20. In this petition, it is to be seen as to whether the petitioner has been discriminated from the other employees of UPTRON India Limited, who were transferred on deputation or otherwise to various Departments including

Society and whether they have been granted the benefit of retirement available to a government servant at the age of 60 years alongwith other consequential benefits.

21. In this regard the counsel for the petitioner has primarily relied upon the decision of the Co-ordinate Bench of this Court in the case of Brahmanand Lavaniya and another (supra).

22. In contrast, the learned Additional Chief Standing Counsel for the State submits that the case of Brahmanand Lavaniya (supra) is not applicable to the petitioner as the petitioner has not been declared as a surplus employee under the Rules of 2011, hence the petitioner cannot claim the benefit of the said decision.

23. Upon perusal of the decision of the Co-ordinate Bench of this Court in Brahmanand Lavaniya (supra), it would reveal that the petitioners of the said Writ Petition No.3316(S/S) of 2012 and Writ Petition No.5600 (S/S) of 2012, were both employees of UPTRON India Limited. Brahmanand Lavaniya was sent on deputation on the post of Computer Operator in the Sarv Shiksha Abhiyan. The other petitioner, namely, Sharad Malhotra was appointed on

deputation to the post of Assistant Finance and Accounts Officer in Sarv Shiksha Abhiyan. Both the erstwhile employees of UPTRON were to superannuate at the age of 58 years as per the rules applicable to the employees of UPTRON India Limited.

24. In the said case of Brahmanand Lavaniya (supra) considering the facts and circumstances and the defence raised by the State which is similar to the one as raised in the instant case, the Co-ordinate Bench noticed the question for consideration of the Court, in the following words, which is being reproduced for ready reference:-

"The question for consideration for this Court in this matter is as to whether the petitioners have wrongly been denied the benefits of absorption in terms of the provisions contained in Absorption Rules, 2011 and the Government Order dated 20.12.2011. Another question which falls for consideration of the Court is as to whether the authorities of the State Government and Sarva Shiksha Abhiyan have unduly delayed the matter relating to consideration of the case of the petitioners for absorption in terms of the aforesaid Absorption Rules, 2011 and the Government Order dated 20.12.2011 which has resulted in denial of benefit of absorption of the petitioners in government service."

25. Thereafter the Court after considering and noticing the Absorption Rules, 2011 and the Government Order found that Absorption Rules 2011 and the notified order dated 20.12.2011 did not prescribe any time period or limit to

consider the cases of eligible surplus employees for absorption. It further noticed that if the decision making process for extending the benefit flowing from the Absorption Rules, 2011 and the notified order dated 20.12.2011 is prolonged then it would defeat the very purpose for which the Rules of 2011 and the notified order was issued in the first place. Thereafter the Co-ordinate Bench held as under:-

"The impugned order denying the benefit of the absorption in service to the petitioners has been passed treating the petitioners to have retired at the age of 58 years, that is to say, petitioners have been treated as retired employees of UPTRON India Limited and not the employees of the State Government Department. Such a presumption by the State Government while passing the order dated 28.05.2013 unambiguously runs contrary to the prescriptions made in the notified order dated 20.12.2011 which provides surplus employees working even in a Society or any other Organization functioning under a department of the State Government are to be treated to be working in the Government Department itself."

26. From the above, it would reveal that the entire controversy stood resolved by this Court in the case of Brahmanand Lavaniya and another (supra). The special appeal preferred by the State was also dismissed by means of order dated 08.08.2014 and the relevant portion thereof reads as under:-

"Counsel for the appellants submits that while

adjudicating and passing the impugned judgment and order dated 29.5.2014, learned Single Judge has not considered the submissions advanced on behalf of the appellants. The learned Single Judge erred in not considering the fact that the respondents are surplus employees of the UPTRON India Ltd. and were serving on deputation in a project of Basic Education Department and before the Absorption Rules, 2011 could be implemented, the respondents attained the age of superannuation.

On perusal of the impugned order, it reflects that while passing the impugned order, learned Single Judge noted down the submission made on behalf of the appellants and has considered the pleas raised by the appellant.

The learned Single Judge observed that respondent Brahma Nand had retired on 31.8.2012 and Sharad Mehrotra on 31.10.2012 without getting benefit of Absorption Rules, 2011. The notified order relating to absorption was issued on 20.12.2011 and there was sufficient time available with the appellant to take decision regarding their absorption, but the lackadaisical attitude of the authorities deprived the legitimate right of the respondents. The learned Single Judge rightly observed that the order denying the benefit of absorption in service to the respondents has been passed treating them to have retired at the age of 58 years and retired employees of UPTRON India Limited and not the employees of the State Government. This presumption of the appellants was totally illegal and unreasonable.

The findings recorded by the learned Single Judge are based on cogent reasons and have been discussed in detail. Therefore, the assertions of the appellant are wholly misconceived and untenable.

In view of the above, we are of the view that there is no illegality or infirmity in the impugned order passed by the learned Single Judge, which is hereby confirmed.

The special appeal is dismissed."

27. The record further indicates that another Division Bench of this Court in Narendra Kumar Yadav Vs. State of U.P. & others bearing Writ Petition No.16783 (S/B) of 2016

also considered the aforesaid provisions and directed the State Government to absorb the said writ petitioners in the departments of the State Government. The relevant portion of the said order reads as under:-

"A bare perusal of the letter dated 02.01.2015 written by the Special Secretary, State of U.P. to the Principal Secretary, Department of Coordination of the State Government shows that the petitioner is required to be absorbed in Department of Coordination. Therefore, we do not find any hurdle in the petitioner's absorption on the said post. At the same very time it is also necessary to observe that the petitioner shall have no right to claim any particular post except the post of equal rank and equal pay scale.

With the aforesaid observations, the order impugned dated 04.07.2016, 28.01.2016 and 30.01.2016 (Annexure No.1, 2 & 21) issued by the opposite parties No.4 & 5 is hereby quashed and a writ of mandamus is issued to the respondents including the State Government to absorb the petitioner in Department of Coordination (opposite party No.1) on the post of District Project Coordinator or in the event of non availability of post, on any post bearing equal pay scale and status.

With the aforesaid observations, the writ petition is disposed of."

28. In similar fashion, there are several orders passed both the Division Bench as well as Co-ordinate Bench of this Court wherein similar benefits have been granted to the writ petitioners, who were initially appointed in UPTRON India Limited and thereafter upon it being declared as a sick unit were appointed in different Departments and Societies of the State.

29. The record further indicates that in similar circumstances another writ petitioner, namely, Smt. Noor Bano was granted the benefit of the case of Brahmanand Lavaniya (supra) by means of order dated 21.11.2017. The said order passed in favour of Smt. Noor Bano dated 21.11.2017 in Writ Petition No.17657 (S/S) of 2016 was challenged by the State in Special Appeal Defective No.640 of 2018 which affirmed the order dated 21.11.2017 passed by the learned Single Judge vide order dated 20.12.2018.

30. The judgment passed by the learned Single Judge as well as passed in special appeal were further assailed by the State before the Apex Court in Special Leave Petition No.14368 of 2019 which too came to be dismissed on 12.07.2019.

31. Thus, it would be seen that number of employees of UPTRON India Limited, who were not absorbed and they were retired at the age of 58 have been extended the benefit of the case of Brahmanand Lavaniya and another (supra) and despite the State having assailed the said orders passed from time to time before a Division Bench of this Court in special appeal and even before Apex Court were dismissed, hence the said order attained finality.

32. The fact that the dictum laid down by a Co-ordinate Bench of this Court in Brahmanand Lavaniya (supra) still holds the field and this fact could not be disputed by the learned Additional Chief Standing Counsel for the State. It also could not be disputed that several other similarly situated persons, who had approached the Court from time to time have been granted benefit as made available to the said writ petitioners who were employees of the erstwhile UPTRON India Limited

33. In light of the aforesaid factual position including the orders passed by a Co-ordinate Bench and Division Bench of this Court in respective cases, the Additional Chief Standing Counsel could not indicate as to how the case of the petitioner is different to the case of other similarly situated persons who have been extended the benefits as noticed in Brahmanand Lavaniya (supra).

34. Though an attempt has been made by the learned Additional Chief Standing Counsel to distinguish the case of the instant petitioner with the case of the other writ petitioner who had approached this Court on the grounds as noticed herein above yet this Court finds that the distinction sought to be created by the learned Additional Chief

Standing Counsel is *per se* artificial. It has not been disputed that the present petitioner was initially appointed in UPTRON and the said State owned corporation was declared sick and its employees including the present petitioner was adjusted/transferred on deputation in various Departments and Societies owned and controlled by the State.

35. In the instant case again it is not disputed that e-Suvidha is also a Society and owned and controlled by the State. The Absorption Rule 2011 as well as notified order dated 20.12.2011 clearly provides for absorption of the surplus employees and in this context it cannot be said that the petitioner is not a surplus employee.

36. As noticed in the case of Brahmanand Lavaniya (supra) who was transferred from UPTRON to Sarve Shiksha Abhiyan (a Project of the State under the Department of Basic Education) where he was absorbed by the order of the Court and in the instant case the Society i.e. e-Suvidha is under the Department of Information Technology and Electronics. Accordingly, for the reasons incorporated in the case of Brahmanand Lavaniya (supra), the same analogy is also required to be extended to the present petitioner and

the artificial distinction sought to be created by the State Authorities does not appear to be well founded.

37. Similarly as per the Rules of 2011, the petitioner was required to be absorbed in a Government Department where the age of superannuation would be 60 years, hence the petitioner is also required to be extended the same benefits.

38. Similar issue was considered by a Co-ordinate Bench of this Court in ***Ram Kishan Vs. State of U.P. & others bearing Writ-A No.962 of 2010*** decided on 03.08.2023 wherein considering the case of Brahmanand Lavaniya (supra) the prayer made in the writ petition was allowed.

39. Recently in another similar matter where another erstwhile employee of UPTRON India Limited who had been sent on deputation to Uttar Pradesh Diversified Agriculture Support Project Coordination (referred to as 'U.P. DASPC') had filed a petition claiming similar relief bearing No.23926 of 2019 which came to be dismissed by a coordinate bench of this Court by means of judgment dated 20.03.2023 which was further challenged in Special Appeal No.142 of 2024 which was decided on 09.07.2024 and the appeal was allowed and the relief prayed in the writ petition was granted following the decision of this Court in the case of

Smt. Kiran Bajpai and others Vs. State of U.P. & others, Writ Petition No.15200 (S/S) of 2017 which was also upheld in a special appeal.

40. For the aforesaid reasons, this Court finds that the petitioner herein is also entitled to the benefits as granted to the other similarly situated employees on UPTRON India Limited as has been extended in the case of Brahmanand Lavaniya (supra).

41. The grounds as raised by the learned Additional Chief Standing Counsel for denying the said benefits to the petitioners have already been raised by the State in the aforesaid case of Brahmanand Lavaniya (supra) and after considering the same benefits were extended to many such similarly situated employees of UPTRON and thus once the core issues have already been settled, the State is not justified in raising the said issues over and over again in different cases merely on artificial distinction without any actual and substantive difference to distinguish the petitioner's case from the case of Brahmanand Lavaniya (supra).

42. Accordingly, the writ petition shall stand **allowed** and the impugned order shall stand quashed and the State-

respondents are directed to grant the same benefits to the present petitioner treating him to be absorbed in the Department of Information Technology and Electronics and having retired at the age of 60 years and all the consequences in this regard including fixation of salary and all post retiral benefits and other financial benefits as may be admissible to the petitioner shall be extended to the petitioner and this exercise be done within a period of three months from the date of this judgment. Costs are made easy.

Order Date :- November 26, 2024
ank/-