

Court No. - 17

Case :- WRIT - A No. - 15418 of 2019

Petitioner :- Ram Dahin Singh And Another

Respondent :- State Of U.P. Thru Prin.Secy. Cooperative Lucknow And Ors.

Counsel for Petitioner :- Rajesh Kumar Awasthi

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. Rajesh Kumar Awasthi, learned counsel for petitioners and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 23.10.2018 whereby petitioners' grievance regarding counting services rendered on the post of Kurk Amin on commission basis for purposes of pensionary benefits has been rejected. Further prayer for a direction to opposite parties to count the period of service rendered as Kurk Amin on commission basis and on salary basis for purposes of pensionary and other retiral benefits has also been sought for treatment at par with Government servants from the date of initial appointment and for payment of all benefits payable to such Amins working in the Revenue Department in terms of judgment rendered by Hon'ble Supreme Court in the case of **State of U.P. versus Chandra Prakash Pandey**, AIR 2001 Supreme Court 1298 and other concomitant judgments and orders.

3. Learned counsel for petitioners submits that initially petitioner No.1 and 2 were appointed as Kurk Amin on commission basis vide order dated 02.03.1981 and 26.05.1982 respectively. It is submitted that in view of fact that Kurk Amins on commission basis were not being treated at par with substantively appointed such Amins, one Ram Bihari Mishra filed Writ Petition No. 738 of 1980, which was allowed by means of judgment and order dated 16.11.1985 whereby it was held that Kurk Amins appointed even under the contractual scheme would be treated as Government servants holding civil posts and therefore directions were issued that their emoluments be suitably adjusted in view of their success in the writ petition. It is submitted that aforesaid judgment and order attained finality since it was not challenged by the State. It is submitted that subsequently a circular dated 05.12.1990 was issued by the opposite parties seeking to

deny such benefit as had been granted. The same was challenged by one Chandra Prakash Pandey in Writ Petition No. 199 of 1981, which was allowed by means of judgment and order dated 26.04.1993 quashing the aforesaid circular. Special Appeal No. 15 (S/B) of 1994 thereagainst was also rejected whereafter the State approached Hon'ble Supreme Court in Civil Appeal No. 8467-68 of 1995 along with other connected Civil Appeals. The said appeals were also thereafter dismissed by means of judgment and order dated 20.03.2001 as reported in AIR 2001 Supreme Court 1298 in which also it was held that Kurk Amins even if appointed on commission basis would be treated to hold their posts as employee of the State Government holding a civil post within meaning of Article 311 of the Constitution of India.

4. It is submitted that thereafter the opposite parties notified the Uttar Pradesh Co-operative Collection Fund and the Amins and other Staff Service Rules 2002 in which in terms of definitions indicated in Rule 2, Amin was defined as an Amin working or appointed on salary basis under these Rules. The said rules were thereafter challenged in Writ Petition No. 7326 (S/S) of 2004, which was allowed by means of judgment and order dated 25.11.2008. Special Appeal No. 187 of 2009 along with other connected appeals were thereafter filed by the opposite parties, which was also dismissed by means of common judgment and order dated 19.11.2010. However, apart from upholding the judgment of learned Single Judge, certain other directions were also issued due to which the opposite parties filed Civil Appeal No. 312 of 2017 before Hon'ble Supreme Court, which was disposed of by means of judgment and order dated 10.01.2017 upholding the view taken by learned Single Judge while setting aside the extra directions issued by Division Bench in Special Appeal.

5. It has been submitted that in the meantime the opposite parties in pursuance of the Rules of 2002 regularized/absorbed services of petitioners as Kurk Amin on 30.10.2002 but subsequently petitioner s superannuated on 31.10.2018 and 20.03.2020 but since they were not being made entitled to post retiral benefits, the writ petition has been filed challenging the orders whereby such post retiral benefits to petitioner have been denied on the ground that petitioner's case is different from that of Chandra Prakash Pandey to the extent that petitioner was appointed on the said post on commission basis whereas Chandra Prakash Pandey was appointed

on salary basis.

6. It is submitted that once this Court as well as Hon'ble Supreme Court has already held that Kurk Amins even on commission basis would be deemed to hold civil post and to be treated as State Government employees, there was no occasion for opposite parties to reject claim of petitioner.

7. Learned State Counsel has refuted submission advanced by learned counsel for petitioners with the reiteration that the case of petitioners who were appointed as on the post of Kurk Amin on commission basis is different from that of Chandra Prakash Pandey who was in fact appointed on the said post on salary basis. Learned counsel has adverted Rule 2 of the Service Rules of 2002 particularly Rule 2 (b) (d) (p) to submit that Amin as defined thereunder would mean an Amin working or appointed on salary basis and that cadre of service means Amins and Sahyogis substantively appointed or deemed so and would not include Amin on commission basis. It has also been submitted that substantive appointment has been defined as an appointment not being an ad hoc appointment on the post in the cadre of service made after selection in accordance with rules.

8. It is therefore submitted that since Rule 2 (d) specifically excludes Amins appointed on commission basis from being within purview of cadre of service, petitioner being an Amin appointed on commission basis cannot be deemed to be in the cadre of service of Amin or to having been substantively appointed prior to the year 2015 and therefore since he had not worked for the qualifying period of service required for pensionary benefits, the impugned orders have been correctly passed.

9. Learned counsel has however adverted to the amendment of the aforesaid Rules of 2005 incorporated by means of the IInd Amendment Rules, 2005 whereunder the definition of Amin under Rule 2 (b) has been amended to include an Amin working or appointed on salary or on commission basis under the rules.

10. Learned counsel has further submitted that even if petitioners are deemed to be government servants, services rendered by them prior to absorption/regularization in service would be governed by the U.P. Qualifying Service for Pension and Validation Act, 2021

whereunder Rule 3, counting of such services for the purposes of qualifying service for pension has been prohibited particularly since Section-3 commences with a non obstante clause pertaining to any judgment, decree or order of any Court.

11. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is quite evident that litigation with regard to rights of persons appointed as Kurk Amins on commission basis has been an ongoing feature since 1980s. In the first such judgment rendered by Division Bench of this Court by means of judgment and order dated 16.11.1985, the Division Bench relying upon judgment of Hon'ble Supreme Court in the case of **State of Gujarat & Another versus Raman Lal Keshav Lal Soni & others**, 1983 (2) SCC 33 has clearly held that such Kurk Amins even on commission basis are to be treated as Government servants. The issue has again been considered by learned Single Judge and Division Bench of this Court in the case of Chandra Prakash Pandey (supra) while considering validity of the circular dated 05.12.1990 which was thereafter quashed. The latter judgment has also been upheld by Hon'ble Supreme Court subsequently as reported in AIR 2001 Supreme Court 1298.

12. In view of the said judgment, it is quite evident that it was the consistent enunciation of law that Kurk Amins appointed even on commission basis were to be treated as Government servants holding a civil post in terms of Article 311 of the Constitution of India.

13. The situation was sought to be changed by opposite parties with the advent of service Rules of 2002 which specifically sought to exclude Amins appointed on commission basis from the cadre of service of Amins. However, the challenge to said rules was also upheld by Co-ordinate Bench of this Court in Writ Petition No. 7326 of 2004 (S/S), Chandra Prakash Pandey (supra).

14. A perusal of the judgment and order dated 25.11.2008 passed in the said matter clearly indicates the fact that learned Single Judge has analyzed the entire controversy and has expressed astonishment at the activities of the opposite parties in notifying the Rules of 2002 despite consistent judgments of this Court as upheld by Hon'ble Supreme Court. While allowing the writ petition, the opposite parties had been directed to consider entitlement

of petitioners therein for appropriate pay scales with all other benefits w.e.f. their initial date of appointment on the post of Kurk Amin on commission basis. Specific directions for payment of appropriate pay scale, arrears of salary etc. were also issued. The aforesaid judgment has also been upheld by Division Bench and in Special Leave Petition as indicated hereinabove.

15. The aforesaid narration therefore clearly brings to the fore the aspect that it has been the consistent view of this Court has upheld by Hon'ble Supreme Court that Kurk Amins appointed even on commission basis would be treated as Government servants holding civil post in terms of Article 311 of the Constitution of India. The said exposition has been maintained even after the advent of Rules of 2002.

16. It is also evident that the opposite parties realizing their mistakes have amended the Rules of 2002 to incorporate Amins appointed on commission basis in the definition of Amin in terms of Rule 2 (b) of the Rules.

17. Thus it is evident that the distinction sought to be drawn by opposite parties between petitioner and Chandra Prakash Pandey (supra) is quite imaginary. Once it has been held that Kurk Amin even on commission basis are to be deemed Government servants from the very inception into service, the fact as to whether they were appointed on commission basis or on salary basis loses relevance.

18. So far as submission of learned State Counsel with regard to Validation Act of 2021 is concerned, it is quite evident that the provisions of Section 3 thereof are inapplicable in the facts and circumstances of the case.

19. In the considered opinion of this Court the validation Act would come into play only in case services have been rendered by an employee in a temporary or a permanent post on a temporary basis and have been subsequently regularized whereafter such prohibition for counting of irregular service for purposes of qualifying service for pension has been issued.

20. In the present case, as noticed above, Kurk Amins on commission basis have been held consistently to be deemed to be Government servants holding a civil post in terms of Article 311 of the Constitution of India right from the very inception and therefore such services cannot be

termed to be temporary or irregular in nature. The judgments indicated hereinabove clearly indicate the aspect that services rendered by Kurk Amins even on commission basis are to be treated to be permanent in nature. Therefore, submissions advanced by opposite parties pertaining to Validation Act of 2021 being devoid of merits is hereby rejected.

21. In view of discussion made hereinabove, it being apparent that petitioner despite being a Kurk Amin appointed on commission basis was required to be treated at par with substantively appointed Government servants, the impugned orders dated 23.10.2018 is hereby quashed by issuance of a writ in the nature of certiorari. A further writ in the nature of mandamus is issued commanding the opposite parties to pay retiral benefits along with all other concomitant benefits to petitioners treating the period of service rendered by him even as a Kurk Amin on commission basis to be of substantive nature. Relevant orders and actual payment of such benefits shall be ensured within a period of four months from the date a certified copy of this order is produced before the concerned authority.

22. Resultantly, the petition succeeds and is allowed. Parties to bear their own costs.

Order Date :- 22.2.2024

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