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Neutral Citation No. - 2024:AHC-LKO:40424

Case :- WRIT - A No. - 34844 of 2019

Petitioner :- Mahendra Kumar Tewari

Respondent :- State Of U.P. Thru Addl.Chief Secy./Prin.Secy.Technical Andors

Counsel for Petitioner :- Vijai Shankar Tripathi,Jai Narayan Pandey,Syed Mohd. Arshad Rizvi

Counsel for Respondent :- C.S.C.

alongwith

Case :- WRIT - A No. - 2001467 of 2012

Petitioner :- Mahendra Kumar Tiwari

Respondent :- State Of U.P. Through Principal Secy.Deptt. Of Technicalandors

Counsel for Petitioner :- Ajay Pratap Singh,S.M.Arshad Rizvi

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard Sri Vijai Shankar Tripathi along with Sri Syed Mohd. Arshad Rizvi, learned counsels for the petitioner and Ms Parul Bajpai, learned Additional Chief Standing Counsel appearing on behalf of the State-respondents.

2. The WRIT - A No. - 34844 of 2019 has been filed praying for the following main relief(s):

"(I) Issue a writ, order or direction in the nature of mandamus commanding the opposite party no. 1 to regularize the petitioner on the post of Lecturer (Maths) retrospectively w.e.f. his date of initial appointment i.e. 26.04.1983 and thereafter pass an order for payment of gratuity, pension and commutation with its admissible revised rates.

(II) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties no. 1 and 2 to pay the 24% interest per annum at the delayed payment of retiral benefits.

(III) Issue a writ, order or direction in the nature of mandamus commanding the opposite party no. 2 and 2 to pay the arrears of salary for the period 05.06.2007 to 30.06.2009 forthwith with interest 24% per annum to till the payment is made."

3. The WRIT - A No. - 2001467 of 2012 has been filed praying for the following main relief(s):

"(a) issue a writ order or direction in the nature of certiorari quashing the impugned order dt. 21.09.2011 passed by the O.P. No.1 rejecting the claim of the petitioner with regard to retiral dues and other service claims as contained in Annexure No. 1 to this writ petition.

(b) issue a writ order or direction in the nature of mandamus commanding the opp. party no. 1 & 2 to sanction the pension to the petitioner and release to all his retiral dues i.e. amount of General Insurance Scheme, Gratuity, Commutation value of pension, leave encashment etc. within a specified period alongwith interest @12% per annum, from the date of superannuation to the date of actual payment.

(c) issue a writ order or direction in the nature of mandamus commanding the O.P. No. 1 & 2 to allow the pay fixation of the petitioner in pay scale of Lectures i.e. Rs. 15600 to 39100/- with Grade Pay of Rs 6600/- within a specified period and also pay the arrears of salary within a specified period along with interest @12% per annum."

4. Both the writ petitions have been filed by Sri Mahendra Kumar Tiwari, the petitioner and as such, are being heard and decided together. For the sake of convenience, the facts as set forth in Writ Petition No. 34844 of 2019 are being taken.

5. Bereft of unnecessary details, the facts of the case are that the petitioner had been appointed on 26.04.1983 as Lecturer (Mathematics) in Government Polytechnic, Uttar Kashi on adhoc basis. Copy of the said order is annexure 1 to the writ petition. By means of order dated 15.01.2004, a copy of which is annexure 2 to the writ petition, the respondents had drawn up a list of 54 persons who were found eligible for regularization. The name of the petitioner finds placed at Serial No. 1 of the said list. Through an order dated 13.02.2004, a copy of which is annexure 3 to the writ petition, 53 persons were regularized except the petitioner. Subsequent thereto, vide order dated 03.08.2007, a copy of which is annexure 4 to the writ petition, the petitioner had been transferred while working as ad-hoc Lecturer (Mathematics) to the

Government Polytechnic at Kanpur and in pursuance thereof, the petitioner claims to have submitted his joining at Kanpur. Though, the petitioner was due to retire on attaining the age of superannuation on 31.12.2008 yet on account of session benefit that had been granted to him, he continued and was subsequently retired on 30.06.2009.

6. Incidentally, the services of the petitioner had been terminated vide order dated 28.07.1991 while the petitioner was working as ad-hoc lecturer at Uttar Kashi. Being aggrieved, the petitioner had filed Writ Petition No. 31334 (SS) of 1991 Inre; Mahendra Kumar Tiwari Vs. State of U.P and Ors. before this Court. The writ Court vide order dated 30.10.1991 had stayed the termination order. Subsequently, with the formation of Uttrakhand State, the writ petition which was pending at Allahabad was transferred to Uttrakhand which was re-numbered as Writ Petition No. 1072 of 2011. On 28.11.2006, the petitioner withdrew the said writ petition. The order dated 28.11.2006 has been reproduced in the supplementary counter affidavit dated 14.03.2024 filed by the respondents in the connected Writ Petition No. 2001467 of 2012.

7. After the retirement of the petitioner, the Technical Education Department passed an order dated 21.01.2010, a copy of which is annexure 15 to the writ petition whereby six persons including the petitioner were considered for regularization of which five persons have in fact been regularized with immediate effect. Incidentally, the name of the petitioner finds placed at Serial No. 6 but against his name it has been indicated that the records from Uttrakhand State have not been received.

8. Reliance has been placed on a letter sent by State of Uttrakhand dated 30.05.2017, a copy of which is annexure 20 to the writ petition wherein two points have been indicated namely (a) the State of Uttrakhand has indicated that no reasons are discernible as to why the petitioner has not been regularized despite his name finding place in the list of 54 person that has been issued for regularization of which 53 persons had been regularized and

(b) that all records had been sent to the State of U.P pertaining to the petitioner.

9. As the petitioner retired at the end of session benefit on 30.06.2009 and his retiral benefits were not paid he filed Writ Petition No. 1072 (SS) of 2011 praying for payment of his retiral dues. The writ Court had required the representation of the petitioner to be considered which was rejected vide order dated 21.09.2011, a copy of which is annexure 1 to Writ-A No. 2001467 of 2012 wherein the respondents while placing reliance on the provisions of Civil Service Regulations 361 have indicated that the ad-hoc services are not countable for the purpose of retiral dues consequently, no pension as well as retiral dues are payable to the petitioner. The said order has been challenged in Writ-A No. 2001467 of 2012.

10. So far as Writ-A No. 34844 of 2019 is concerned, a mandamus has been prayed for regularization of the services of the petitioner w.e.f the date of his initial appointment i.e 26.04.1983 with all consequential benefits including arrears of pay. A mandamus is also sought for payment of arrears of salary for the period 05.06.2007 to 30.06.2009.

11. The contention of learned counsel for the petitioner is that the petitioner has been agitating for his rights right since the year 1991 initially by filing a writ petition aggrieved against his termination order and now despite lapse of almost 33 years and the petitioner having retired from service after having rendered ad-hoc services and despite the claim of the petitioner for regularization having twice being considered and he also having been found fit for being regularized vide orders dated 13.02.2004 and 21.01.2010 yet no orders were passed for his regularization with the result that the entire period of service of the petitioner has been treated to be ad-hoc and the petitioner has been deprived of his pension and other retiral dues by treating him only to be an ad-hoc employee.

12. It is contended that once the petitioner has spent his entire working life in service of the respondents consequently now at his age when the petitioner is around 71 years of age he cannot be deprived of being given the

benefit of service rendered by him under the respondents and consequently he is entitled for pension and other retiral dues considering him to be regularized at least with effect from the date the persons similarly circumstanced were regularized i.e. way back in the year 2004 with all consequential benefits.

13. In this regard reliance has been placed on a recent judgement of Hon'ble Supreme Court in the case of **Vinod Kanjibhai Bhagora vs State of Gujarat and another, 2024 SCC Online SC 126**, judgement of Hon'ble Supreme Court passed in **Special Leave to Appeal (C) No. 1109 of 2022** in re: **The State of Gujarat & others vs Talsibhai Dhanjibhai Patel** decided on 18.02.2022 and judgement of Hon'ble Supreme Court passed in **Special Leave to Appeal (C) No. 7898 of 2022** in re: **Raman Kumar & others vs Union of India & others** decided on 03.07.2023.

14. On the other hand, learned Standing Counsel on the basis of averments contained in the counter affidavit argues that as the petitioner retired on attaining the age of superannuation while working on ad-hoc basis and he had never been regularized consequently keeping in view the provisions of Regulation 361 of the Civil Service Rules the service of the petitioner rendered on ad-hoc basis cannot be treated to be qualifying service for the purpose of pension as there has been no substantive appointment of the petitioner and as such the petitioner is not entitled for being paid pension and other retiral dues.

15. It is further contended that the service of the petitioner had been terminated on 28.08.1991 which termination order had been stayed by this Court but later the writ petition has been dismissed as withdrawn and thus the termination order of the petitioner stands revived and consequently as the petitioner is a terminated employee he can neither be regularized nor granted the benefit of regularization and payment of pension and other retiral dues.

16. The further contention is that the petitioner between the years 1986 to 1999 and in the year 2006-2007 had been awarded adverse entry and as such

he has not been found eligible or fit for regularization by the regularization committee.

17. As regards the claim of the petitioner for salary for the period 05.06.2007 to 30.06.2009, learned Standing Counsel submits that after the petitioner had joined at Kanpur subsequent to being relieved from the State of Uttarakhand with effect from 09.08.2007 the petitioner was posted at Government Polytechnic, Orai (Jalaun) as Lecturer (Mathematics) and he joined duty on 11.03.2008. However as he had not worked from 09.08.2007 to 10.03.2008 and further at the time of he being transferred from Government Polytechnic, Dehradun as per last pay certificate an amount of Rs 17,37,555/- was recoverable out of which Rs 4,90,188/- was recoverable in favour of State of Uttar Pradesh and Rs 12,45,367/- in favour of State of Uttarakhand and considering this aspect, the last pay certificate of the petitioner was drawn up but the petitioner refused to accept less pay.

18. It is further submitted that as the petitioner has been working on the basis of interim order that had stayed his termination which writ petition was withdrawn by the petitioner himself on 28.11.2006 as such his termination order would come into effect and therefore the petitioner would not be entitled for any benefits as he is a terminated employee.

19. Placing reliance on the aforesaid arguments, learned Standing Counsel states that the petitioner has no right for being regularized and as he had not been regularized prior to his retirement consequently he is not entitled for being granted any retiral dues and thus prays that the petition be dismissed.

20. Heard learned counsels for the parties and perused the record.

21. From the arguments as raised by learned counsels for the parties and perusal of records it emerge that the petitioner had been appointed on 26.04.1983 as Lecturer (Mathematics) in Government Polytechnic, Uttar Kashi on ad-hoc basis. He was terminated vide order dated 28.07.1991. In Writ Petition No. 31334 (SS) of 1991 this Court vide order dated 30.10.1991 had stayed the termination order. In pursuance thereto, the petitioner continued to work as ad-hoc Lecturer. The respondents issued an order dated

15.01.2004 which contained the names of 54 persons who had been found eligible for being regularized. The name of the petitioner found place right at top of the list at serial no. 1. Through an order dated 13.02.2004, 53 persons of the said list were regularized except the petitioner. In a letter sent by the State of Uttarakhand dated 30.05.2017 it has categorically been stated at serial no. 3 that no reasons are discernible as to why the petitioner has not been regularized. Vide order dated 03.08.2007 the petitioner was transferred as ad-hoc Lecturer to Government Polytechnic at Kanpur where he continued to work. He was due to retire on 31.12.2008 yet on account of session benefit that had been granted to him, he retired on 30.06.2009.

22. Subsequent to his retirement, the Technical Education Department has passed an order dated 21.01.2010 wherein six persons including the petitioner were considered for regularization of which five persons have been regularized with immediate effect. Against the name of the petitioner, at serial no. 6, it has been indicated that records from the State of Uttarakhand have not been received with respect to the petitioner but in the letter sent by the State of Uttarakhand dated 30.05.2017, at point no. 4, it has been indicated that personal file of petitioner had been sent on 30.09.2008 to the Technical Education Department.

22. On account of aforesaid circumstances the petitioner was constrained to file Writ Petition No. 1072 (SS) of 2011 when he was not paid his retiral dues and this Court had required the Principal Secretary, Department of Technical Education to take a decision with regard to payment of post retiral dues of the petitioner. His claim has been rejected vide order dated 21.09.2011 (challenged in Writ A No. 2001467 of 2012) on the ground that as the petitioner has retired as an ad-hoc employee as such, considering the provisions of Civil Services Regulations, Regulation 361 he does not have qualifying service to his credit so as to entail payment of pension. Subsequent thereto the petitioner has filed Writ A No. 34844 of 2019 praying for a writ of mandamus commanding the respondents to regularize the service of the petitioner on the post of Lecturer (Mathematics) with effect

from his date of initial appointment i.e. 26.04.1983 and to make an order of payment of his retiral dues.

23. Incidentally Writ Petition No. 31334 (SS) of 1991 has been withdrawn by the petitioner on 28.11.2006.

24. From perusal of aforesaid facts it is apparent that the petitioner has been litigating right since the year 1991 and despite lapse of 33 years as of the year 2024, the petitioner is still in litigation having retired way back in the year 2008-09 and now is a senior citizen aged 74 years of age.

25. From perusal of aforesaid facts it is also apparent that despite the name of the petitioner having found place in the list of 54 persons eligible to be regularized, 53 persons have been regularized vide order dated 13.02.2004 with the exception of the petitioner. No reasons emerge as to why the petitioner was not regularized as has been stated in the letter sent by the State of Uttarakhand dated 30.05.2017 which was competent to regularise the petitioner at that stretch of time. The reasons have been indicated by the respondents in the counter affidavit wherein they have indicated that as the petitioner has been awarded various adverse entries between the years 1986 to 1989 and the year 2006-07 as such he was not found fit for regularization by the regularization committee. Incidentally in the order dated 15.01.2004, a copy of which is annexure 2 to Writ A No. 34844 of 2019, the respondents have categorically stated in paragraph 8 of the said order that 54 lecturers who had been appointed in the State of U.P. have been regularized vide government order dated 13.08.2002.

26. The aforesaid ground of the petitioner having adverse entries in the years 1986 to 1989 and 2006-07 has been taken by the respondents while filing the counter affidavit and the respondents have also admitted that the State of Uttar Pradesh has regularized 54 lecturers vide the government order dated 13.08.2002 as at that stretch of time, the petitioner was working in the State of Uttarakhand and the State of Uttarakhand had issued a list on 15.01.2004 of persons eligible for being regularized and 53 persons of the said list excluding the petitioner were regularized vide the order dated 13.09.2004. At

that stretch of time the regularization of the petitioner was to be done by the State of Uttarakhand and the State of Uttarakhand has not taken a plea of the petitioner's services being unsatisfactory. The said plea of unsatisfactory service thus cannot be taken by the State of U.P. for the purpose of non regularization of the petitioner and once no reasons are discernible as per the State of Uttarakhand itself as to why the service of the petitioner was not regularized on 13.02.2004 i.e. at the time of regularization of other 53 persons consequently the Court has no option but to hold that the petitioner is to be regularized as Lecturer (Mathematics) with effect from the date persons similarly circumstanced were regularized vide order dated 13.02.2004 with all consequential benefits.

27. In this regard it would be apt to refer to the judgement of Hon'ble Supreme Court in the case of **Raman Kumar & others (supra)** where in a case where 65 persons were entitled to be regularized yet only 35 persons had been regularized, Hon'ble Supreme Court has held as under:

"10. When the Chief Commissioner of Income Tax has himself found that 65 persons were entitled to be regularized, the act of regularizing the services of only 35 employees and not regularizing the services of other employees, including the appellants, is patently discriminatory and violative of Article 14 of the Constitution of India."

28. Another aspect of the matter is that despite the averments contained in the counter affidavit the respondents themselves have found the petitioner as fit for being regularized vide order dated 21.01.2010 which contains names of six persons including the petitioner but only five persons were regularized with the exception of the petitioner on the ground that the records had not been sent by the State of Uttarakhand which is totally belied from letter of the State of Uttarakhand wherein it has been stated that the records had been sent to the State of U.P. pertaining to the petitioner.

29. As regards the order dated 21.09.2011 whereby the claim of the petitioner with regard to retiral dues has been rejected, suffice to state that the Hon'ble Supreme Court in the case of **Talsibhai Dhanjibhai Patel (supra)** has held as under:

"It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable.

As a welfare State, the State as such ought not to have taken such a stand.

In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years service. "

(emphasis by the Court)

30. From perusal of the judgement of **Talsibhai Dhanjibhai Patel (supra)**, it emerges that Hon'ble Supreme Court was seized of a matter wherein despite the State having continued to take service of an employee on ad-hoc basis for 30 years, the State held that he was not entitled to pensionary benefits. Hon'ble Supreme Court has held that the State cannot be permitted to take the benefit of its own wrong i.e. to take service continuously for 30 years and thereafter to contend that the employee who has rendered 30 years of continuous services shall not be eligible for pension which would be an act which is nothing but unreasonable and no welfare state ought to have taken such a stand.

31. The petitioner has admittedly rendered 26 years of service and once persons similarly circumstanced had been regularized and the case of the petitioner has been found fit for regularization not once but twice as such there cannot be any occasion for the respondents to not count the entire period of service as qualifying service in the peculiar facts and circumstances of the instant case.

32. As regards the claim of the petitioner for salary for the period from 05.06.2007 to 30.06.2009 the respondents would consider grant of payment

of salary to the petitioner in case he has worked in the said period and salary as admissible under law and rules would be paid to the petitioner for the said period.

33. As regard the argument on the part of the respondents that the petitioner only continued to work on the basis of an interim order which interim order stood merged with withdrawal of writ petition by the petitioner vide order dated 28.11.2006, suffice to state that withdrawal of writ petition would have to be seen in the context of the fact that persons who were considered alongwith the petitioner had already been regularized and even the name of the petitioner found place as fit for regularization not once but twice - in the order dated 15.01.2004 which was the list of 54 eligible persons found fit for regularization and which also contained the name of the petitioner followed by the regularization order dated 13.02.2004 of which 53 persons were regularized. Thus once the State of Uttarakhand had itself considered the regularization of the petitioner in the year 2004 and had regularized a large number of persons, the petitioner had a bona fide belief that irrespective of his termination that had been stayed by the writ court, he was considered as fit for being regularized and consequently withdrew the writ petition. Thus no error is found in the withdrawal of the said writ petition by the petitioner in this view of the matter.

34. Keeping in view the aforesaid discussion, the writ petitions are **allowed** in following terms:

Writ-A No.2001467 of 2012

(1) A writ of certiorari is issued quashing the order impugned dated 21.09.2011 passed by the respondent no. 1, a copy of which is annexure 1 to the petition.

(2) A writ of mandamus is issued commanding the respondents to regularise the services of the petitioner as Lecturer (Mathematics) w.e.f. 13.02.2004.

(3) A writ of mandamus is issued directing the respondents to count the entire period of service rendered by the petitioner since 26.04.1983 till his

retirement as qualifying service for the purpose of grant of pension and other retiral dues.

(4) The respondents shall also consider the pay fixation of the petitioner in the pay scale of Lecturer i.e. Rs 15600-39100 with a Grade Pay of Rs 6600 in accordance with law and pay the arrears of salary, if any, to the petitioner.

Writ-A No.34844 of 2019

A writ of mandamus is issued commanding the respondents to pay the arrears of salary to the petitioner for the period from 05.06.2007 to 30.06.2009, if entitled for the same, in accordance with law.

32. Let compliance of the order be made within a period of three months from the date of receipt of a certified copy of this order.

Order Date :- 27.05.2024

(Abdul Moin, J.)

J. K. Dinkar/A. Katiyar