

Court No. - 5

Case :- WRIT - A No. - 6791 of 2024

Petitioner :- Shiv Kumar Shukla

Respondent :- State Of U.P. Thru. Secy. Secondary Education Lko. And 6 Others

Counsel for Petitioner :- Om Prakash Mani Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Vakalatnama filed today by Shri Vishal Pandey, Advocate, on behalf of respondent no. 7 is taken on record.

2. Heard learned counsel for the petitioner, Shri G. C. Pathak, learned Additional Chief Standing Counsel for the respondents no. 1 to 6 and Shri Vishal Pandey, learned counsel for the respondent no.7.

3. Shri Vishal Pandey, learned counsel for the respondent no.7 states that he does not want to file reply to the counter affidavit and prays that the matter may be decided on merit. Accordingly, the Court proceeds to hear and decide the matter finally.

4. The instant writ petition has been filed praying for the following main relief(s):

"I. Issue a writ, direction or order in the nature of certiorari to quash the order No. Ma-2/4917-26/2024-25 dated 29.07.2024 passed by the Regional Committee, the opposite party No.3 (Annexure No.1 to the writ petition) to the extent it has denied promotional pay scale and the regular pension to the petitioner by not reckoning the services rendered by him as L.T. Grade Teacher prior to 22.03.2016, the date of regularization.

II. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to reckon the services rendered by the petitioner as L.T. Grade Teacher prior to 22.03.2016, the date of his regularization in terms of Rule 19(b)

of Uttar Pradesh Contributory Provident Fund Insurance Pension Rules, 1964.

III. Issue a writ, order or direction in the nature of mandamus to sanction and pay the promotional grade w.e.f. 01.03.2018 to the petitioner.

IV. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to pay the regular pension and other post retiral dues to the petitioner w.e.f. 1.4.2021.

V. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to pay interest @ 12% on the delayed payment of post retirement dues to the petitioner.

VI. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to pay damages to the petitioner for mental agony which he has suffered due to illegal & arbitrary action of the opposite parties."

5. Bereft of unnecessary details the facts of the case are that the petitioner had initially been appointed in the year 1994 against vacancies in L.T. Grade in short term capacity and continued to work in the same capacity. His services have been regularized vide order impugned itself dated 29.07.2024, a copy of which is annexure 1 to the writ petition, with effect from 22.03.2016. The petitioner has also been granted selection grade. However the petitioner has been denied (a) the promotional pay scale on the ground that as the petitioner has retired on 31.03.2021 and has been regularized on 22.03.2016 and grant of promotional pay scale requires a service of 12 years and consequently he is not entitled for the same, (b) the pension has also not been granted to the petitioner considering the U.P. Qualifying Service for Pension and Validation Ordinance, 2020 (now U.P.

Qualifying Service for Pension and Validation Act, 2021) (hereinafter referred to as the Ordinance, 2020 and Act, 2021 respectively) on the ground that he does not have 10 years of qualifying service which is a sine qua non considering the provisions of Act, 2021.

6. Admittedly the petitioner has retired on attaining the age of superannuation on 31.03.2021 and as per the Act, 2021 (earlier Ordinance, 2020) the petitioner has not completed 10 years of qualifying service from the date of his regularisation i.e. 22.03.2016 till his retirement on 31.03.2021.

7. The sheet anchor for denial of claim of the petitioner, as has been indicated by the respondents during the course of arguments by Shri G. C. Pathak, learned Additional Chief Standing Counsel on the basis of averments contained in the counter affidavit, more particularly paragraph 11 of the counter affidavit, are that in terms of Ordinance, 2020 (now Act, 2021) as well as Government Order dated 23.12.2016 which provides in clause 5 that under Article 474 of the Civil Service Regulations government employee who retire before completing 10 years of qualifying services are not eligible for pension.

8. Placing reliance on the Ordinance, 2020, Act, 2021 and Government Order dated 23.12.2016 the argument of Shri Pathak, learned Additional Chief Standing Counsel is that once admittedly the petitioner was regularized on 22.03.2016 and having retired on 31.03.2021, consequently, keeping in view the provisions of Ordinance, 2020 and Act, 2021 and the aforesaid government order as the petitioner has not completed 10 years of qualifying service from the date of his regularization as such the petitioner is not entitled for pension nor promotional pay scale, which requires a service of 12 years from the date of his

regularisation and thus the order dated 29.07.2024 so far as it does not grant the aforesaid benefits to the petitioner has correctly been passed by the respondents.

9. Responding to that, Shri O. P. M. Tripathi, learned counsel for the petitioner, argues that admittedly the petitioner is an Assistant Teacher and after his regularisation has retired while working as Assistant Teacher itself on 31.03.2021.

10. Placing reliance on the division bench judgement of this Court in **Special Appeal Defective No. 172 2023** in re: **State of U.P. and others vs Surendra Singh and another** decided on **20.04.2023** the argument of learned counsel for the petitioner is that the division bench of this Court has held that with respect to teachers and non-teaching employees serving in state aided educational institutions it is the Rules 1964 more particularly U.P. State Aided Educational Institution Employees Contributory Pension Funds, Insurance Pension Rules, 1964 which would be applicable. The division bench has also placed reliance on Rule 19(b) of the Rules, 1964 wherein it is indicated that continuous temporary or officiating service followed without interruption by confirmation in the same or any post shall also count as qualifying service.

11. Placing reliance on the division bench judgement of this Court in the case of **Surendra Singh (supra)** as well as Rule 19(b) of the Rules 1964 the contention of learned counsel for the petitioner is that once Rules 1964 are specifically applicable to permanent employees serving in State aided educational institutions run by either a local body or by a private management and recognised by competent authority as such for the purpose of payment of grant in aid consequently it is the Rules 1964 which would be applicable on the petitioner and not the Ordinance 2020, Act, 2021 and the government order dated

23.12.2016 placing reliance on which the pension and promotional pay scale of the petitioner has been rejected.

12. Heard learned counsel for the parties and perused the record.

13. From perusal of record it clearly emerges that after the petitioner had been appointed in the year 1994 against short term vacancy as Assistant Teacher his service has been regularized with effect from 22.03.2016 by means of order impugned dated 29.07.2024. Incidentally the order impugned dated 29.07.2024 has been passed in purported compliance of earlier judgement of this Court in Writ A No. 1411 of 2023 in re: Shiv Kumar Shukla vs State of U.P. and others dated 11.01.2024, a copy of which annexure 12 to the writ petition. The Special Appeal filed by the State against the judgement and order dated 11.01.2024 has been disposed of vide judgement and order dated 30.05.2024 in Special Appeal No. 106 of 2024 in re: State of U.P. and others vs Shiv Kumar Shukla an others, a copy of which is annexure 13 to the writ petition.

14. Be that as it may, the fact of the matter remains that service of the petitioner has been regularized with effect from 22.03.2016 and he retired on attaining the age of superannuation on 31.03.2021.

15. By means of the order impugned the petitioner had not been granted promotional pay scale on the ground that the said benefit requires a service of 12 years and the petitioner having been regularized with effect from 12.03.2016 and having retired on 31.03.2021 has not rendered requisite years of service and consequently is not entitled for promotional pay scale. By the same order the grant of pension has also been denied to the petitioner on the ground that after regularisation of the

petitioner, he has not rendered 10 years of qualifying service considering the provisions of the Ordinance, 2020 and Act, 2021 and is thus not entitled to pension.

16. In the counter affidavit the respondents have placed reliance on government order dated 23.12.2016 as specifically averred in paragraph 11 of the counter affidavit.

17. On the other hand, reliance has been placed on Rules 1964 more particularly Rule 19(b) of Rules 1964 by the petitioner to contend that it is neither the Ordinance, 2020, Act, 2021 or the government order dated 23.12.2016 that would govern the service conditions, so far as it pertains to pension of the petitioner, rather it is Rules 1964 which would be applicable on the petitioner for the purpose of grant of pension and other benefits.

18. The aforesaid issue is no longer res integra having been considered threadbare by a division bench of this Court in the case of **Surendra Singh (supra)** wherein this Court has held as under:

"24. The submission of the learned Additional Advocate General that the writ petitioners were borne into the cadre only w.e.f from the date of their regularisation, i.e 22.03.2016 is to be seen in light of the above facts and the rules providing for pension other retiral benefits to the teachers serving in State aided institutions. The Rules, 1964 which came into force on 01.10.1964 provided in Rule 3 (4)(a) as under:-

"3. These rules shall apply to permanent employees serving in State aided educational institutions of the following categories run either by a Local Body or by a Private management and recognised by a competent authority as such for purposes of payment of grant- in-id;

(1) Primary Schools;

(2) Junior High Schools;

(3) Higher Secondary Schools;

(4) Degree Colleges;

(5) Training Colleges.

4. (a) These rules are intended to the employees of the State aided educational institutions, three types of service benefits, viz., Contributory Provident Fund, Insurance and Pension (Triple Benefit Scheme). The quantum of the benefits and the conditions by which they are governed are described in the succeeding Chapters.”

25. The word 'employee' has been defined in Rule 5(g) of the 1964 Rules in the following terms:-

“Employee” means a permanently employed person borne on the whole-time teaching or non-teaching establishment of an aided institution, excluding-(a) the inferior staff, and (b) the ministerial staff of the institutions maintained by a Local Body.”

26. Rule 17 contained in Chapter V provides eligibility of 'employee' defined above for pension and amongst other conditions provided therein,

“(i) retirement on attaining the age of superannuation”.

27. Rule 18 contained in the same Chapter further provides that the amount of pension that may be granted shall be determined by the length of 'qualifying service' and provided as to how such computation shall be made.

28. Rule 19 relevant for our purpose is to be extracted as under:-

“19.(a) Service will not count for pension unless the employee holds a substantive post on a permanent establishment.

(b) Continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service. (See also C.S.R. Para 422).

(c) Leave without allowance, suspension allowed to stand as a specific penalty, overstayed of joining time or leave not subsequently regularised, and period of breaks in service shall not be reckoned as qualifying service.

(d) Period of breaks between 2 periods of service due to termination of service, for no fault of the employee shall not be treated as interruption involving forfeiture of post qualifying service. In other cases breaks due to other causes shall result in forfeiture of past service unless condoned by Government.

(e) Time passed on earned leave shall fully count as qualifying service, but time passed on other kinds leave with allowances shall count as qualifying service as follows :

(i) If the total service is not less than 13 years, but less than 30 years, one year of such leave shall count as qualifying service;

(ii) If the total service is not less than 30 years, two years of such leave shall count as qualifying service.

Notes - (1) The term 'Earned Leave' means leave on full average pay.

(2) In case of a married woman employee time passed on maternity leave may be allowed to count as qualifying service, provided that the period covered by such leave and also earned leave shall not exceed what: would have been admissible had she availed of the whole of the earned leave to which she was entitled under the rules.

(3) 'Total Service' means total service reckoning from the date of commencement of service qualifying for pension and includes periods of leave referred to above.

(4) The service put in by an employee before he has completed 18 years of age or after attaining the age of superannuation unless extended by competent authority or on re-employment after retirement shall not qualify for pension.

(5) The entry relating to confirmation of an employee in the service book shall be countersigned.

(6) In cases not covered by these rules qualifying service shall

be determined by Government and its decision shall be final.”

29. The clear language employed in the said Rule 19 is that services rendered by an employee will not be counted for pension unless he holds substantive post on permanent establishment. The continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall count as qualifying services.

30. Rule 21 further provides that an employee shall be eligible for superannuation/retiring/invalid pension only after completing 10 years of qualifying service, thus, provided the maximum limit of pension payable to employee completing 10 years or more of qualifying service.

31. Rule 34 relied by the learned Additional Advocate General may also be noted herein to deal with his argument with regard to applicability of the said provision. Rule 34 reads as under:-

“34. In matters concerning pension/family pension not provided to specifically in these rules, the. corresponding procedure laid down in respect of State Government employees shall apply mutatis mutandis.”

32. A careful and conjoint reading of the relevant provisions of Rules 1964, and the language employed therein, there remains no doubt that a permanent employee, a whole time teacher, working in a permanent establishment of aided institution, having rendered 10 years or more of qualifying service, which shall include continuous temporary or officiating services followed without interruption by confirmation in the same or another post, shall be eligible for superannuation pension and other retiral benefits admissible under the Rules, 1964”.

33. Learned Additional Advocate General tries to create a classification/distinction by providing different meaning to the words “confirmation” and “regularisation” to submit that appointment on a substantive post by regularisation in continuation of ad-hoc services rendered by the teachers in aided institutions would not be covered by the meaning given to the 'qualifying service' in sub-Rule (b) of Rule 19 of the Rules, 1964.

34. The submission is that word used in Rule 19(b) is

“confirmation on the post” “in continuation of temporary or officiating service rendered interruption” whereas in the instant case the writ petitioners were regularised by virtue of the provision which was brought on the statute book on 22.03.2016. The regularisation of service of an adhoc teacher by application of Section 33G of the Act, 1982 cannot be equated with confirmation of temporary or officiating services of an employee appointed on a substantive post on probation under the selection rules.

35. The contention is that regularised teachers were appointed on probation in a substantive capacity only after their selection, from the date of their substantive appointment which was 22.03.2016. The services rendered by them in adhoc capacity, prior to the date of their regularisation cannot be equated with the temporary officiating services rendered on a substantive post, followed by confirmation in the same or another post, to be counted as 'qualifying service' within the meaning of Rule 19(b) of the Rules, 1964.

36. For this reason, the Rule 34 of the Rules, 1964 as noted above will come into play and the corresponding procedure concerning pension as laid down in respect of the State Government employees shall apply mutatis mutandis. The result is that U.P. Retirement Benefits Rules 1961 and the U.P. Qualifying Service for Pension and Validation Act, 2021 would be applicable to such employees/teachers who had entered into services on after 01.04.2005. Having been borne on a pension establishment, whether temporary or permanent, after 01.04.2005, none of the writ petitioners can be said to have completed 'qualifying service' for the purpose of entitlement of pension within the meaning of U.P. Qualifying Services for Pension and Validation Act, 2021 which has been enforced w.e.f 01.04.1961, the date of commencement of the U.P. Retirement Benefit Rules, 1961.

37. It was, thus, argued that the writ petitioners cannot be said to have completed 'qualifying services' for the purpose of entitlement of the pension nor they are entitled for the benefit of the old pension scheme as applicable to the whole time teachers permanently employed in establishment of an aided institution. 38. The writ petitioners having been borne into the cadre of permanent establishment of the aided institution only

on 22.03.2016 cannot be held to be entitled for pension or other retiral benefits under the Rules, 1964.

39. We find inherent fallacy in the arguments of the learned Additional Advocate General, for an effort to make distinction between the word “confirmation” and “regularisation”.

40. Having noted the reasons and the provisions of adhoc appointment of teachers against substantive vacancies or short term vacancies which were later converted into a substantive vacancies, we find that Section 33G for regularisation of ad-hoc appointment made under the above noted provisions was in recognition of the long services rendered by the teachers appointed on adhoc basis against substantive vacancy or short term vacancy which were later converted into substantive vacancy. The procedure for regularisation under Section 33G had taken care that the teachers appointed on adhoc basis possessed qualification prescribed in the statutory provisions and were suitable for appointment in a substantive capacity.

41. It was provided in Section 33G that such teachers must have been continuously serving the institution from the date of their appointment upto the commencement of regularisation provision w.e.f 22.03.2016. Such teachers were working against substantive vacancies and their names were recommended for substantive appointment on their selection by the Selection Committee constituted under the statutory provisions/Act, 1982 to assess their suitability to the post. The substantive appointment of such teachers was kept on probation and only after they were found suitable, they were made permanent.

42. We may further note that such teachers who were not found suitable by the Selection Committee and were found ineligible to get a substantive appointment under the aforesaid provisions had ceased to hold the appointment, thereafter, which means that only those teachers who possessed eligibility qualification and were found suitable for appointment in adhoc capacity, by the Selection Committee were appointed in the substantive capacity and allowed to continue on permanent basis. All the writ petitioners herein have been made permanent and superannuated in permanent capacity while working on a substantive post.

43. The procedure adopted for regularisation of adhoc teacher as provided in Section 33G of the Selection Board Act, 1982 does not give any room to make any distinction between confirmation of an employee or teacher working in temporary or officiating capacity or confirmation of adhoc teachers working on substantive posts in a permanent establishment. The dictionary meaning of the word “confirmation”, from the Black's Law Dictionary 8th Edition (South Asian Edition) shows the meaning of the word confirmation:- (i) as the act of giving formal approval; (ii) the act of verifying or corroborating; (iii) the act of ratifying a voidable estate; (iv) a declaration that corrects a null provision of an obligation in order to make the provision enforceable.

44. The same meaning can be assigned to the word “regularization” for regularization of the services of an ad-hoc appointee.

45. The distinction drawn by the learned Additional Advocate General between the word “confirmation” provided in Rule 19(b) of Rules, 1964 and “regularisation” used in Section 33G for substantive appointment of adhoc teachers working in a permanent establishment of aided institution is imaginary. The continuous ad-hoc services rendered by the teachers followed without interruption, by confirmation of their services on the substantive post on selection by the Selection Board in accordance with the statutory provision, shall qualify and be counted as “qualifying service”, within the meaning of Rule 19(b) of the Rules 1964. The writ petitioners who have completed 10 years of qualifying service within the meaning of Rules, 1964, as noted above, shall be eligible for superannuation pension and other retiral benefits as applicable under the Rules, 1964.

46. We may further note that the Rules, 1964 are special provisions applicable to the teachers and non-teaching employees serving in State Aided Educational Institutions in the State of U.P. The general provisions of U.P. Qualifying Service for Pension and Validation Act, 2021 defining the term 'qualifying service' in U.P. Retirement Benefits Rules, 1961 w.e.f 01.04.1961, applicable to 'officers' defined in Rule 3(6) of the Rules, 1961, which means the Government servant having a lien on permanent pensionable post under “the Government,”

would not be applicable to the writ petitioners. All the arguments of the learned Additional Advocate General to challenge the correctness of the decision of the learned Single Judge dated 30.09.2022 in *Nand Lal (supra)*, subject matter of challenge in connected special appeals are found without any force.

47. For the added reasons given above to the reasoning assigned by the learned Single Judge in the judgment of *Nand Lal (supra)* impugned, to allow the writ petitions no merit is found in the appeal. The other decisions of the learned Single Judge dated 25.07.2022 and 23.05.2022 in allowing the writ petitions relying upon the decision of this Court in *Sunita Sharma (supra)* also do not warrant any interference, for the reasons given above and the reasoning of the learned Single Judge in the judgment and order dated 30.09.2022 in *Nand Lal (supra)*, affirmed hereinabove."

19. Likewise, a division bench in the case of **Civil Misc Review Application No. 33 of 2023** in re: **State of U.P. and others vs Mohd. Sharif Khan and another** vide the judgement dated 21.07.2023 has also held as under:

"5. The fact that the review-applicant is not in the service of the Government, had escaped attention of this Court while allowing the Special Appeal filed by the State. As the review-applicant was in the service of a Government aided educational institution, his services will be governed by the provisions of the U.P. State Aided Educational Institutions Employees Contributory Provident Fund-Pension Rules, 1964.

6. In view of the law laid down in *State of U.P. v. Surendra Singh (supra)*, it is clear that the provisions of U. P. Act No. 1 of 2021 will not be applicable in the case of the review-applicant-respondent. Therefore, we are of the considered view that the judgment dated 28.01.2023 is erroneous and it needs to be reviewed."

20. Incidentally, the division bench of this Court in the case of **Mohd. Sharif Khan (supra)** has placed reliance on the judgment of this Court in the case of **Surendra Singh (supra)**.

21. From perusal of aforesaid discussion as well as judgement of this Court in the case of **Surendra Singh (supra)** it clearly emerges that as the petitioner is a Assistant Teacher consequently it is the Rules 1964 which would be applicable upon him and not the ordinance 2020, Act 2021 or the government order dated 23.12.2016 which incidentally all pertains to employees working under the state government.

22. Needless to mention that once Rules 1964 specifically deal with and are applicable to the employees serving the state aided educational institutions run either by local body or by private management and recognised by competent authority for the purpose of payment of grant in aid, consequently it is the Rules, 1964 which would be applicable on the petitioner.

23. Keeping in view the aforesaid discussion, it is thus apparent that the respondents while passing the order impugned 29.07.2024, so far as it does not grant the benefit of promotional pay scale to the petitioner and grant of pension, have patently erred in law in passing the aforesaid order placing reliance on the provisions of the Ordinance 2020, Act, 2021 and the government order as referred to above.

24. Keeping in view the aforesaid discussion, the writ petition is **allowed.**

25. The order impugned dated 29.07.2024 so far as it does not grant promotional pay scale and pension to the petitioner is quashed.

26. The respondent no.5 i.e. the Joint Director, Secondary Education, Lucknow is directed to pass a fresh order on the claim of the petitioner for grant of pay scale and pension keeping in view the discussion made above.

27. Let such an order be passed within a period of four weeks from the date of receipt of a certified copy of this order.

Order Date :- 23.11.2024
J. K. Dinkar