

Neutral Citation No. - 2024:AHC-LKO:59829-DB

Court No. - 2

Case :- SPECIAL APPEAL DEFECTIVE No. - 865 of 2023

Appellant :- State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Deptt. Of Revenue Civil Sectt Lko And 4 Others

Respondent :- Daya Shankar Shukla

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Shrawan Kumar Verma

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

C.M.A. No.1 of 2023 (Application for Condonation of Delay)

1. Heard.
2. Learned Counsel for the respondent does not have any objection to the application for condonation of delay in filing the appeal. Even otherwise, after going through the affidavit filed in support of the instant application, we find that reasons given therein are satisfactory.
3. In view of the above, the application is allowed and delay in filing the instant appeal is hereby condoned.

Order on Appeal

4. Contention of the appellants' Counsel is that similar circumstances where earlier a judgment had been passed in favour of a similarly situated person giving the benefit of the judgment dated 19.08.2006 passed in **Writ Petition No.4031 (S/S) of 2001** in the case of ***Pratap Narain Pandey Vs. State of U.P. & others*** and the proceedings attained finality between the parties, when, for pensionary period, the period of service for which the principle of 'no work and no pay' had been applied

were not counted for calculating the qualifying service for pensionary benefits, and the said petitioner filed a writ petition bearing Writ Petition No.6155 (S/S) of 2015 which was dismissed on 08.12.2020, the said person filed a special appeal bearing Special Appeal No.349 of 2022, which was also dismissed, therefore, the said judgment applies in this case.

5. Per contra, learned Counsel for the opposite party says that the judgment is in the facts of its own case and does not lay down any law constituting a binding precedent specially as in the case of the petitioner he had earlier filed a Writ Petition No.1853 (S/S) of 2004 before this Court seeking the following reliefs:-

"(i) Issue a writ, order or direction in the nature of mandamus to direct the opposite parties to regularize the services of the petitioner on the post of Collection Amin and give him all other consequential benefit of regularisation of the same post with effect from the date the services of his junior have been regularised.

(ii) Issue a writ, order or direction in the nature of mandamus thereby commanding the opposite parties not to create artificial break in the services of the petitioner and allow him to continue to work and discharge his duties without interruption and to pay him his full regular salary along with usual allowances which is being given to all other employees working on regular basis.

(iii) Issue a writ, order or direction in the nature of certiorari to quash the termination order if any was issued by the opposite parties.

(iv) Issue any other writ, order or direction which this Hon'ble Court may deem just and proper under the facts and circumstances of the case.

(v) Allow the writ petition with cost."

The said petition was disposed of in terms of the judgment dated 19.02.2006 passed in Writ Petition No.10539 of 1990 in

the case of *Pratap Narain Pandey Vs. State of U.P. & others*. Against this judgment passed in the case of the respondent - petitioner, special appeal was filed which was dismissed on 23.05.2019 in the following terms :-

"Ignoring the delay, we have examined the arguments advanced by the learned Standing Counsel for the appellants on merits.

This appeal is preferred against the judgment dated 15.02.2012 passed by learned Single Bench in Writ Petition No.1853 of 2004 (SS) Daya Shanker Shukla vs. State of U.P. & Ors. The writ petition was disposed of on the basis of the acceptance of the fact by the learned standing counsel appearing on behalf of the respondents that the case of the petitioner is also similarly situated as the persons of other writ petitions decided earlier. On the basis of the admission made by the learned standing counsel, the writ petition was disposed of in terms of the judgment dated 19.02.2006 passed in Writ Petition No.10539 of 1990 with a specific direction to extend the benefits to the petitioner also as the petitioner in the writ petition referred above.

Learned counsel appearing on behalf of the appellant states that the case of the petitioner stands on different pedestal vis-a-vis petitioners in Writ Petition No.10539 of 1990 and, therefore, learned Single Bench erred while accepting the writ petition in the same terms of the judgment dated 19.02.2006.

In view of the fact that the writ petition was accepted on the basis of an admission made by the learned standing counsel, we are not inclined to interfere with the same. The appeal is dismissed. However, the dismissal of the appeal will not be an impediment for the appellant, if they desire to move an application before the learned Single Bench for review of the order aforesaid."

This judgment was not challenged by the State any further before the Supreme Court and no review application was filed

by the State for reviewing the judgment dated 15.02.2012 passed in Writ Petition No.1853 (S/S) of 2004, therefore, according the Counsel for the respondent-petitioner, the said judgment attained finality. Now he has invited our attention to the operative portion of the judgment in the case of *Pratap Narain Pandey (supra)*, benefit of which was extended to the respondent-petitioner, which reads as under :-

"Accordingly, both the writ petitions are allowed. The order dated 19.09.2000 is hereby quashed and a writ of mandamus is issued to the respondents to allow the petitioner to work as Regular collection Amin as he was duly selected under the Uttar Pradesh Collection Amin Services Rules, 1974. It is made clear that the petitioner shall be treated as a regular Collection Amin in service since 5th June, 1986 for the purposes of seniority etc. except the salary for the period during which he did not work on the principle of 'No work No pay'. There will be no order as to costs".

6. The submission is that in view of the above, the respondent-petitioner was entitled to be allowed to work as regular Collection Amin, which in fact he was allowed undisputably by the appellant-State and after confirmation of the services of the respondent-petitioner he was further promoted as Revenue Inspector which is the post from which he has retired from service on 28.02.2019. The contention is that there is specific direction in *Pratap Narain Pandey (supra)* to treat the petitioner therein as a regular Collection Amin in service since 5th June, 1986 for the purposes of seniority etc., which according to him, will include the calculation of qualifying service for pensionary benefits as it has not been specifically excluded. What has been excluded is the arrears of salary for the said period during which he did not work and this has been excluded on the principle of 'no work no pay'. The submission is that merely because arrears of salary is not to be paid on the

principle of 'no work no pay', there is no law which says that the said period is to be treated as a break in service or that such service is not to be included in the qualifying service while calculating the same for pensionary benefits.

7. We asked the learned Counsel for the State to kindly place the relevant provisions of Civil Service Regulation or the U.P. Pensionary Benefits Act, 1961 which may contain any such provision, but he could not place any such provision from the Civil Service Regulation or the U.P. Pensionary Benefits Act, 1961 which contain the substantive provision for calculation of qualifying service, however, he has relied upon the relevant extract of the Government Order dated 28.07.1989 under the heading of '(च) सेवा में व्यवधान का प्रभाव'. This government order, however, relates to break in service. We are not aware of any principle in Service Jurisprudence where if a person is to be treated as regular Collection Amin since 5th June 1986, but arrears of salary is not to be given on the basis of 'no work no pay', the said period would be excluded for the purposes of pensionary benefits nor do we find any such stipulation in the judgment of *Pratap Narain Pandey (supra)*, benefit of which has been given to the respondent-petitioner.
8. This is not a case of break in service. In fact, from the very language and spirit of the judgment dated 19.08.2006 in the case of *Pratap Narain Pandey (supra)*, benefit of which has been given to the respondent-petitioner, the period from 5th June 1986 has to be treated as continuous regular service but only arrears of salary for the period he has not worked is to be given. The opposite parties have clearly erred in interpreting the said judgment and applying the aforesaid government order which does not apply and in any case if this is how the State understand the government order and applies it in the facts of the case, it would be apparently unreasonable and against the

provisions of Civil Service Regulation and the U.P. Pensionary Benefits Act, 1961.

9. As regards reliance placed by the learned Counsel for the State upon the judgment of a Co-ordinate Bench dated 17.01.2023 rendered in Special Appeal No.349 of 2022 (*Mata Prasad Tiwari Vs. State of U.P. Thru. Secy. Revenue Deptt. Lko & others*) with respect we have gone through the said judgment and we do not find any principle of law or precedent having been discussed therein as to on what basis the conclusion has been arrived at that in the facts as mentioned therein the period in question would be excluded for the purposes of calculation of qualifying service. Therefore, with utmost respect we say that the said judgment of the Co-ordinate Bench has been rendered in the facts of the said case and is not a binding precedent.
10. Moreover, we find that there is another judgment of Co-ordinate Bench, which is dated 02.05.2018, in Special Appeal Defective No.196 of 2018 (*State of U.P. Through Secy. Revenue Govt. of U.P. Lko & Ors. Vs. Rajendra Prasad Tiwari*) arising out of Writ Petition No.4963 (S/S) of 2015 wherein the law on the subject has been discussed at length which supports the respondent-petitioner's case. We see no reason to refer the decision of the Co-ordinate Bench in *Mata Prasad Tiwari (supra)* as the said judgment as already observed is purely in the facts of the case and it has not considered the earlier Division Bench judgment in *Rajendra Prasad Tiwari (supra)*. The law of precedents is very clear that if earlier judgment has not been considered in the subsequent judgment by a Co-ordinate Bench then it is the earlier judgment which has to be followed, specially as in this case the subsequent judgment does not lay down any principle of law, therefore, it is not required to be referred to a larger Bench.

11. Moreover, as already stated in the facts of this case, the earlier judgment has attained finality between the parties and the respondent is to be treated in regular service since 05.06.1986 subject to the conditions mentioned therein thus there is no way that the period of service for which he has not been paid the arrears of salary should not be counted as continuous regular service for pensionary benefits specially when it is to be counted for seniority etc. The use of the word 'etc.' in *Pratap Narain Pandey (supra)* is also not without significance.
12. We have also perused the impugned judgment. In view of the above discussion, we do not find any reason to interfere with the same.
13. Purely in facts of this case this appeal is **dismissed**. Pensionary benefits shall be made available to the respondent within two months.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date :- 31.08.2024

Anand/-