

Court No. - 6

Case :- WRIT - A No. - 12136 of 2024

Petitioner :- Foolkali

Respondent :- State Of U.P. Thru. Its Addl. Chief Secy. Public Work Deptt. And 3 Others

Counsel for Petitioner :- Ram Bali Tiwari, Vinay Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Ram Bali Tiwari, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. It has been submitted by learned counsel for the petitioner that petitioner's husband namely Heera Lal was working in the office of Executive Engineer, Construction Division-I, PWD, Pratapgarh as daily wager since 01.02.2084. In the year 2011 services of husband of petitioner were regularised and he superannuated from service on 03.07.2016 and subsequently died on 26.03.2024.

3. It is next submitted by learned counsel for the petitioner that after retirement, husband of petitioner had moved a representation before respondent no. 4 for calculation of his past services rendered as Daily Wager and work charge capacity and prayed that he should be granted pensionary benefits treating him to be in regular service since the date of his initial appointment.

4. It is submitted that aforesaid representation was never considered by the respondents and it is only after his death that when petitioner received no family pension, she made representation in this regard and approached this Court by means of Writ - A No. 5033 of 2024 - Phool Kumari Vs. State of U.P. and Others, which was disposed of by this Court by means of order dated 08.07.2024, directing the respondents to consider and decide petitioner's representation.

5. It is in compliance of directions of this Court dated 08.07.2024, that the respondents by means of impugned order dated 17.09.2024, rejected her representation only on the ground that benefit which was granted to similarly situated employees could not be granted to the petitioner inasmuch as husband of petitioner had never approached this Court

previously seeking direction to the respondents to compute pension considering the services rendered as work charge/temporary employee, from the date of his initial appointment till the date of his regularisation.

6. There is no doubt that persons similarly situated to the petitioner had filed writ petitions and in Writ Petition No. 1458 of 2020 - U.P. Ground Water Department Non Gazetted Employees Union and Others Vs. Chief Secretary, Government of U.P. and Others and other connected matters were decided by the Hon'ble Supreme Court on 07.12.2023 and in pursuance to the order passed by the Apex Court as well as by this Court in Contempt Petitions, order was passed on 10.01.2024, and Government Order was issued granting benefit of considering previous services prior to their regularisation of all the similarly situated employees. Accordingly, there is no doubt that husband of the petitioner ought to have been granted benefit which was granted to the other similarly situated employees.

7. The question before this Court is as to whether mere fact that husband of petitioner never approached the Court, would be a ground for rejection of her representation and not granting pensionary benefits to the petitioner.

8. This aspect of the matter has recently been considered by the Apex Court in the case of **Lt. Col. Suprita Chandel Vs. Union of India - Civil Appeal No. 1943 of 2022** (decided on 09.12.2024), where it has been held by the Apex Court that once High Court or Supreme Court have passed a judgment adjudicating the rights vested in the Government servant, then it would not be necessary for all the similarly situated employees to approach the Court for grant of said benefit. It is the duty of the State Government to extend the benefit as decided by the Court to all such similarly situated employees. The Apex Court in para nos. 14 and 15 has observed as under :-

*"14. It is a well settled principle of law that where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court. [See **Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others**, (1975) 4 SCC 714]*

*15. In **K.I. Shephard and Others vs. Union of India and***

Others, (1987) 4 SCC 431, this Court while reinforcing the above principle held as under:-

"19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners."

9. This Court is conscious of the fact that all the similarly situated persons have approached this Court previously where their writ petitions have been allowed relying upon the leading writ petition being Writ - A No. 8969 of 2022 and benefit granted therein has been extended to the similarly situated persons. The similar judgment has been passed in **Writ - A No. 12158 of 2024 - Baliram Singh Vs. State of U.P. Thru. Prin. Secretary, Agricultural Marketing and Agriculture Foreign Trade and 2 Others** (decided on 17.12.2024). The judgment of this Court in the case of **Baliram Singh (supra)** is quoted herein below :-

"Heard learned counsel for petitioner and learned Standing Counsel for the State.

Present writ petition is filed by the petitioner challenging the impugned action of opposite parties whereby the respondents have denied the service benefits for the purpose of pension, Gratuity, and other retiral benefits.

The petitioner was appointed on the post of Subordinate Agriculture Marketing Inspector, Grade-II on adhoc basis on 19.02.1983 and his services were regularized on 02.09.20034.

The petitioner retired on 31.12.2020.

Similar controversy has already been adjudicated by this Court by means of judgment and order dated 17.2.2023 passed in a bunch of writ petitions, leading one is Writ-A No.8968 of 2022, wherein issue relating to interpretation and application of Section 2 of the Act of 2021 for counting qualifying service for the purpose of pension with regard to adhoc employees has been dealt with in detail by this Court. Relevant portion of the said judgment reads:

"..19. The very initial appointment letters show that petitioners were appointed against substantive posts on adhoc basis. Since their appointment is against a substantive post, hence, they are squarely covered even by Section 2 of the Act of 2021 as it stands. Further, in view of interpretation as given above to Section 2 of the Act of 2021 and it is held that the services performed in temporary or permanent nature need to be counted for pensionary purposes, otherwise, it again would be hit by the judgment of the Supreme Court in case of Prem Singh (supra), thus, there can be no dispute that all the petitioners are entitled for counting of services rendered by them as ad-hoc employees for pensionary purposes.

In view of above, all the impugned orders are set aside.

....

22. In the aforesaid facts and circumstances of the case, all the orders impugned in the writ petitions are passed either on the ground that they are covered by the Ordinance/Act of 2021 or they were not party in case of Prem Singh (supra) or without considering the judgment of Prem Singh (supra) and hence, the same are squarely covered by the finding given above. Therefore, the impugned orders cannot stand and are set aside. However, petitioners shall be entitled to past pensionary benefits for last three years only.

23. All the writ petitions are allowed."

Since grievance of the petitioners in the present petition is similar to one which has already been adjudicated by this Court in the aforesaid case, the benefit of the aforesaid judgment and order dated 17.2.2023 shall also be made available to the present petitioners in the same terms.

Learned counsel for petitioner has also placed reliance upon the judgment of Hon'ble Supreme Court passed in the case of Lt. Col. Suprita Chandel Vs. Union of India (Civil Appeal No. 1943 of 2022) dated 09.12.2024 where Hon'ble the Supreme Court has held that the State Government should extend the benefit of directions of the courts to all the government servants so that all the government servants do not approach in the

court for seeking similar benefits, Paragraph nos. 14 & 15 are quoted as under:-

" 14. It is a well settled principle of law that where a citizen 10 aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court. [See *Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others*, (1975) 4 SCC 714]

15. In *K.I. Shephard and Others vs. Union of India and Others*, (1987) 4 SCC 431, this Court while reinforcing the above principle held as under:- "19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners...." (Emphasis Supplied)"

16. Accordingly, the writ petition is **allowed**. However, petitioners shall be entitled to past pensionary benefits for last three years only. Payment shall be made to petitioners expeditiously."

10. Learned Standing Counsel has opposed the writ petition but could not dispute the aforesaid facts.

11. In the light of above this Court is of the considered view that representation of petitioner has been rejected only on the ground that her husband had not approached this Court for grant of relief for computing his past services rendered by him from the date of his initial appointment till the date of his regularisation, for the purposes of grant of pension. It is noticed that all the other similarly situated employees have been granted the said benefit and judgment in the case of **Baliram Singh (supra)** has been followed.

12. Apart from the above, this Court is of the view that confining to the judgment of the Apex Court in the case of **Lt. Col. Suprita Chandel (supra)** where it has been held that all the employees are not bound to approach the Court for grant of

similar relief which has already been granted to other similarly situated employees.

13. Accordingly, husband of petitioner was entitled for counting of his services since the date of his initial appointment i.e. 01.11.1992 for the purposes of his pension and in case relief was so granted to him, petitioner's husband would have been entitled for pension and consequently the petitioner would have been entitled for grant of family pension.

14. In the light of above, present writ petition is **allowed**. Impugned order dated 17.09.2024, is hereby quashed .

15. The respondents are directed to grant benefit of family pension to the petitioner giving her benefit of order dated 10.01.2024, passed in **Writ Petition No. 1458 of 2020 - U.P. Ground Water Department Non Gazetted Employees Union and Others Vs. Chief Secretary, Government of U.P. and Others**. It is made clear that family pension shall be given to the petitioner from the date of death of her husband. Let fresh orders be passed in this regard within two months from the date of production of certified copy of this order before respondent no. 4.

Order Date :- 19.12.2024

A. Verma

(Alok Mathur, J.)