

Court No. - 33

Case :- WRIT - A No. - 32542 of 1993

Petitioner :- Suleman

Respondent :- Principal S.T.High School And Others

Counsel for Petitioner :- Anand Tiwari,Kavish Suhail

Counsel for Respondent :- Dilip Gupta,Shashank Shekhar Singh

Hon'ble Prakash Padia,J.

1. Heard Sri Anand Tiwari, learned counsel for the petitioner and Sri Shashank Shekhar Singh, learned counsel for the respondent no. 2/The Registrar, Aligarh Muslim University, Aligarh.

2. The writ petition was filed in the year 1993 challenging the order dated 27.07.1993 passed by the Section Officer on behalf of the Principal, S.T. High School, A.M.U. Aligarh. By the aforesaid order, the petitioner was informed that his services may not be required after 31.07.1993. The writ petition was duly entertained and the following interim order was granted by this Court on 14.09.1993 which is quoted below:-

"Sri Dilip Gupta has accepted notice on behalf of respondent nos. 1, 2 and 3. He prays for and is granted one month's time to file counter affidavit. Petitioners' will have three weeks' thereafter to file rejoinder.

List this petition immediately after expiry of the aforesaid period.

Meanwhile operation of the order dated 27th July, 1993, Annexure No. 3 to the writ petition shall remain stayed. Petitioners shall be allowed to work on the post of Mali and shall be paid salary."

3. The writ petition was dismissed in default vide order dated 07.12.2011. Restoration/Recall Application No. 2 of 2019 alongwith Delay Condonation

Application No. 1 of 2019 was filed by the petitioner on 26.03.2019. The same were allowed by this Court vide order dated 05.01.2023. By the aforesaid order, the order dated 07.12.2011 was recalled and the writ petition was restored to its original number.

4. Though the writ petition was dismissed in default on 07.12.2011, since the parties did not have any knowledge of the aforesaid order, the petitioner was continued to work and also paid his salary regularly and subsequent to the same he was also superannuated from his services after attaining the age of superannuation on 31st March, 2018. Before his retirement, a letter dated 29.05.2017 was written by the petitioner to the Vice Chancellor of the University. In the aforesaid letter a request has been made for confirmation of the service of the petitioner so he could get post retiral benefits. On the said application an order dated 04.02.2019 was passed by the Assistant Registrar (Administration-NT) addressed to the Principal, S.T. High School, Aligarh Muslim University, Aligarh. By the said letter, the request made by the petitioner was turned down on the ground that the writ petition was dismissed in default vide order 07.12.2011 and thereafter a legal opinion was sought for and pursuant to the same the application filed by the petitioner for his confirmation and other retiral benefits was turned down.

5. Aggrieved against the aforesaid an amendment application was filed by the petitioner in this writ petition which was numbered as Amendment Application No. 11 of 2023. The same was allowed by this Court vide order dated 06.11.2024. Subsequent to the same the amendments were duly incorporated in the writ petition and an amended copy of the writ petition was also filed. Counter affidavit and rejoinder affidavit have been exchanged on the amended writ petition and with the consent of the parties the same was disposed of finally at the admission stage itself.

6. Facts in brief as contained in the writ petition are that the Principal of the Institution in question, i.e., S.T. High School, Aligarh Muslim University, Aligarh is the appointing authority to the post of Mali. The Principal vide its order dated

27.02.1991 appointed the petitioner on the post of Mali for three months. The aforesaid appointment was extended from time to time by the Principal without any break. The Principal in continuation of the services, placed the petitioner on probation for one year i.e. from 4.02.1992 till 03.02.1993, the petitioner was continuing his services even after completion of his probation period and there was no interference in his work, no complaint was there in the work and conduct of the petitioner. It is argued that wholly illegally and in arbitrary manner an order dated 27.07.1993 was passed by the Section Officer on behalf of the Principal, S.T. High School. It is argued that services of the Class IV employees i.e. non teaching employees are governed by "University Non-Teaching Employees (Terms and Conditions of Services) Rules, 1972. The relevant rules in this regard namely Rule 11 and Rule 14 of the Rules, 1972 are quoted hereinbelow:-

11- Probation and Confirmation:-

1. Every employee of the University when appointed to a permanent post shall be placed on probation for one year unless. It is provided otherwise in the contract, after the expiry of which he may be confirmed in his post. If he is not so confirmed, the Executive Council, appointing authority may, if it deems fit, dispense with his services or extend the period of probation, but in no case shall the period of probation be extended beyond two years, unless otherwise decided by the Executive Council/ appointing authority in the interest of university.

If for any reason the orders for confirmation are not issued after the stipulated period of probation, the period of probation will be deemed to have been automatically extended upto the date when an order is issued in this behalf.

2. Where a person appointed to a post under the University on probation is, during his period of probation, found, on a subjective consideration unsuitable for holding that post or has not completed his period of probation satisfactorily the appointing authority may:-

(i) In case of a person appointed by promotion, revert him to the post held by him immediately before such appointment and

(ii) In the case of a person appointed by direct recruitment, terminate his services under the University after giving him one month's salary in lieu thereof.

3. Every person appointed to a permanent post under the University by

promotion or by direct recruitment shall, on satisfactorily completing his period or probation, be eligible for confirmation in that post.

4. No employee shall be confirmed in any post unless:-

(i) Such post is permanent and no one else holds a lien on the post.

(ii) The service of the employee under the University is approved by the appointing authority.

7. Rule 14 relates to termination of service which is quoted below:-

14- termination of services:-

(1) The service of a temporary employee/ an employee on probation may be terminated by the Executive Council/ appointing authority as indicated below:-

a. The services of an employee appointed on probation can be terminated any time during the probationary period by giving one month's notice without assigning any cause. The employee is also entitled to relinquish his appointment after giving one month's notice; and

b. The service of temporary employee may be terminated at any time without any notice or assigning any reason.

C. The services of an employee appointed who holds a permanent post will automatically come to an end when he reaches the age of superannuation and not notice from the University Authorities will be required informing him of the termination of his service due to superannuation.

8. It is argued that the order dated 27.07.1993 is absolutely illegal and without jurisdiction since the same has not been passed by the competent authority. It is further argued that impugned order has been passed without any notice and opportunity to the petitioner.

9. After the writ petition was entertained an interim order was passed in favour of the petitioner as stated above, the Vice-Chancellor of the Aligarh Muslim University has approved the list to the effect that the employees who are fulfilling the requirement of training in their skill job and satisfactory service record be transferred from category D to category C with common designation as "Multi Tasking Staff" and the aforesaid persons were placed in pay band-1 with Grade Pay

of Rs. 1800 w.e.f. 01.01.2006 or from the date of their appointment. In the said list, the name of the petitioner was placed at serial no. 34.

10. It is further stated that pursuant of the office memo dated 03.02.2012, the salary of the petitioner has been fixed by the respondents vide order dated 28.07.2012. It is further stated that the respondent-University has accepted the recommendation of 7th Pay Commission and in this regard the respondents duly issued the statement of fixation of pay in respect of the petitioner. The increment was also paid to the petitioner in July, 2016. After completion of successful service on the post of Mali, the petitioner was retired on 31.03.2018. It is further argued that from the date of initial appointment till 31st March, 2018, the petitioner was worked regularly and got his salary. It is further argued that all the benefits of services were duly provided by the respondents to the petitioner from time to time.

11. It is further stated that the effect and operation of the termination order dated 27.07.1993 had been stayed by this Court vide its order dated 14.09.1993 and on the basis of the same, the petitioner continued to work on the post of Mali and getting his salary. In this view of the matter, the writ petition is liable to be allowed and the order dated 27.07.1993 is liable to be quashed. In so far as the order dated 04.02.2019 passed by the Assistant Registrar (Administration-NT) is concerned, the same was passed due to dismissal of the writ petition in default on 07.12.2011. It is argued that since the aforesaid order i.e. 07.12.2011 has already been recalled, therefore the order dated 04.02.2019 passed by the Assistant Registrar is liable to be set aside and the respondents be directed to pay all the post retiral benefits to the petitioner, for which the petitioner is legally entitled.

12. In the counter affidavit filed on behalf of respondent-University, the following objections has been raised:-

1. Union of India has not arrayed as respondent and in absence of the same, the writ petition is not maintainable.

2. University Grants Commission has not arrayed as one of the respondent and since the University Grants Commission is a Central Body having supervisory jurisdiction and over the University and other Higher Educational Institutions in India.

3. Statutory alternative remedy is available to the petitioner as provided under section 36-B of Aligarh Muslim University, Aligarh Act 1920.

13. Apart from the same it is further stated in the counter affidavit that one Mr. Kallan was working as 'Mali' in the school. The petitioner had been appointed on temporary basis as a 'Mali' in the vacancy caused due to retirement of Mr. Kallan with effect from 04.02.1991 for a period of three months. The aforesaid appointment was extended from time to time.

14. It is further stated in the counter affidavit that the Executive Council in its meeting held on 16.11.1991 had clearly resolved that the first claim of Group 'D' posts should be that of the claimant for appointment on compassionate ground. In spite of the aforesaid the Principal of the Institution in question placed the petitioner on probation for a period of one year with effect from 04.02.1992 till 03.02.1993 (wrongly stated as 04.02.1991 to 03.02.1993).

15. It is further stated in the counter affidavit that it is obligatory on the part of the Principal of the school to appoint a dependent of deceased employee of the University/School on compassionate ground against the vacancy falling in Grade 'D'. However the petitioner was appointed in place of Mr. Kallan who retired as 'Mali' on 31.01.1991 and thereafter the salary of the petitioner was released. It is further stated in the counter affidavit that the Principal of School was obliged to take immediate steps to appoint a person on compassionate ground.

16. It is further stated in paragraph 20 of the counter affidavit that the petitioner started working and getting his salary on the strength of an interim order dated

14.09.1993 and he was continued in service till 07.12.2011. Although the interim order was not in operation after 07.12.2011, the date on which the writ petition was dismissed by this Court but the services of the petitioner could not be dispensed with for the reason that the order of the dismissal has not been brought into knowledge of the University authorities by the petitioner and he continued in service till he attained the age of superannuation. It is further stated that the services of the petitioner had not been confirmed till he attained the age of superannuation i.e. 31.03.2018 and he retired from the services as temporary employee.

17. It is further stated in the counter affidavit that a letter dated 29.05.2017 was written by the petitioner to the Vice Chancellor to confirm his services in order to enable him to get all the retiral benefits after his retirement but the information with regard to the dismissal of the case has not been disclosed by him in the said letter. It is further stated that after lapse of 11 years from the dismissal of the writ petition and after a lapse of almost 05 years from the date of superannuation the restoration and amendment applications were filed by the petitioner which is sufficient to indicate that the petitioner had slept over his rights and it is settled principle of service jurisprudence that one who slept over his rights is not entitled for any relief. On the basis of aforesaid it is argued that writ petition was filed by the petitioner is liable to be dismissed.

18. In response to the same it is argued by Sri Anand Tiwari, learned counsel for the petitioner that after completion of probation period on 03.02.1993, no orders has been passed with regard to the further extension of probation period hence the services of the petitioner is deemed to be confirmed. It is further argued that the petitioner has continuously worked about 27 years and all the service benefits have been given to him during his service period hence after this retirement he is entitled for all the post retiral benefits.

19. Insofar as preliminary objections raised by the counsel for the respondent-University are concerned, it is argued that these objections were not raised by the

counsel for the respondents neither at the initial stage when the interim order was granted in favour of the petitioner nor in the counter affidavit initially filed by the University in response to the main writ petition. It is further argued that after the writ petition was duly amended, wholly illegally preliminary objections has been raised by the counsel for the University for the first time vide its counter affidavit which was filed on 13.11.2024 i.e. after more than 21 years of filing on the writ petition. It is further argued that once the petitioner had worked in the strength of an interim order granted by this Court and thereafter all the service benefits was provided to him and thereafter while working he was superannuated on 31.03.2018 hence the order dated 27th July, 1993 passed by the Section Officer on the instructions of Officers on Special Duty, S.T. High School is liable to be set aside. It is further argued that insofar as the order dated 04.02.2019 is concerned the same is also liable to be set aside only on the ground that the order of dismissal of writ petition dated 07.12.2011 has already been recalled by this Court vide its order dated 05.01.2023 hence the sole basis of the order dated 04.02.2019 is not in existence as on date.

20. Heard counsel for the parties and perused the record.

21. From perusal of record it is clear that the petitioner was initially appointed on the post of 'Mali' in the year 1991 on the said post he was continued to work and thereafter he was appointed on probation period for one year i.e. 04.02.1992 till 03.02.1993. Even after completion of his probation period the petitioner was permitted to continue but thereafter an order was passed on 27.07.1993 in which it is stated that the services of the petitioner is no more required after 31.07.1993.

22. The aforesaid order has been stayed by this Court vide its order dated 14.09.1993 on the basis of which the petitioner continued to work in the institution and all the service benefits provided to the similarly situated employee were provided to him. While working in the institution, the petitioner was superannuated after attaining the age of superannuation on 31st March, 2018. In this view of the

matter and especially in view of the fact that the petitioner worked with the respondents since the date of initial appointment i.e. 27.02.1991 till the date of his superannuation i.e. 31st March, 2018 and since all the service benefits were provided to him, after more than 26 years, the Court is of the opinion that at this stage, the writ petition would not be dismissed.

23. Insofar as the preliminarily objections raised by counsel for the respondents are concerned it is clear from the perusal of counter affidavit filed in response to the writ petition (main writ petition) that no such objections were raised either at the initial stage when the interim order was granted in favour of the petitioner or in the counter affidavit initially filed by the University in response to the main writ petition. The aforesaid objections were raised by counsel for University for the first time while filing the counter affidavit to the amended writ petition on 13.11.2024 i.e. after more than 21 years of the filing of the writ petition. It is settled law that in case the person has worked for more than 25 years though on the strength of interim order granted by this Court and at no point of time during those 21 years no preliminary objection has been raised by the University, these objections are not sustainable in the eyes of law especially after retirement of the petitioner.

24. This Court in the case of ***Hridaya Shanker Mishra Vs. State of U.P. and others reported in 2005 SCC OnLine All 1627 : 2005 All LJ 2654*** taking into consideration the law laid down by the Hon'ble Apex Court in case of Agra District Cooperative Bank Ltd. v. Prescribed Authority Labour Court, U.P. and Ors. has held that there may be irregularity in the recruitment but the reasons that a person being in employment for more than 21 years the same stood cured by their long service and he is deemed to have been regularly appointed. Paragraph No. 8 and 9 of the aforesaid judgment reads as follows:-

"8. The further reliance has been placed by the petitioner in the case of Division Bench of this Court reported in (2001) 1 UPLBEC 622 State of U.P. v. Dr. R.P. Goel and Ors. The Division Bench of this Court while considering the termination of the employee after completing 19 years of service treating that employee as a temporary employee, has held that the services after 10 to 20 years can be treated to be arbitrary. The Division Bench has observed as under:-

"In the present case the petitioner had worked from 1956 to 1975 i.e. for 19 years in U.P. Government service. In our opinion, even if he was a temporary employee, a person who has worked for such a long period cannot be suddenly asked to go for no rhyme or reasons. The position may have been different if the service of a temporary employee is terminated only after two or three years of appointment, and in that case the termination order may not be arbitrary. However, where a person has worked in a temporary capacity for say, 10 to 20 years, in our opinion, the termination of his service without opportunity of hearing would certainly be arbitrary because such an employee would ordinarily have got married and have had children, and is overage for other employment, and has settled down in life with reasonable expectation, that ordinarily he will be continued in service till the age of retirement."

9. Further reliance has been placed by the petitioner in a judgment reported in Judgment Today 2001 (4) Supreme Court, 382, Agra District Cooperative Bank Ltd. v. Prescribed Authority Labour Court, U.P. and Ors. and the Apex Court has observed as follows-

"Though the services were terminated the parties concerned invoked the jurisdiction of the Labour Court and the Labour court directed their reinstatement and they were reinstated from the date of the termination itself. In these circumstances they must be deemed to be in service for more than 20 years now and to disturb their services at this stage would be harsh and inhuman."

Even though there may be irregularity in the recruitment but the reasons of respondents being in employment for more than 20 years the same stood cured by their long service and they are deemed to have been regularly appointed."

25. In case of **OM PRAKASH GOEL Vs. HIMACHAL PRADESH TOURISM DEVELOPMENT CORPORATION LTD. SHIMLA** reported in (1991) 2 UPLBEC 967: ((1991) 3 SCC 291: AIR 1991 SC 1490, it has been held by the Hon'ble Apex Court the temporary employee has got the protection of Art. 311 of the Constitution. In N.S.K. Nair's case the Apex Court has taken into consideration the fact that if a person has completed 15 years of service in spite of the fact that no order of confirmation has been passed but it will be deemed to be confirmed employee and the services of the person concerned cannot be terminated treating the petitioner as temporary employee.

26. The petitioner worked continuously from 27.02.1991 until his superannuation on 31.03.2018, a period of approximately 27 years. During this period, he received all service benefits that would be accorded to a regular employee, including salary increments, pay fixation as per Pay Commission recommendations, and even upgradation from Category D to Category C.

27. Insofar as the objection related to enable the petitioner to get retiral dues after his retirement, the Hon'ble Supreme Court recently in **CIVIL APPEAL NO(S). 6118 OF 2024, ANAND PRAKASH MANI TRIPATHI v. STATE OF UTTAR PRADESH & ORS.**, it was held that it is unfair to deny them post retiral benefits or terminal dues as may be admissible to the regular government employees who have worked for such a long period, Relevant portion of the judgment paragraph 5 reads as follows:-

"Having considered the fact that the appellant(s) have worked for such a long period, it would be unreasonable and unfair to deny them post retiral benefits or terminal dues as may be admissible to the regular government employees,"

28. In case of **State of Gujarat & Ors. versus Talsibhai Dhanjibhai Patel reported in 2022 LiveLaw (SC) 187**. It has been held that once State has continued to take service from an employee even on an ad hoc basis for 30 years, State cannot be permitted to take benefit of its own wrong and no error. was found in judgment of High Court directing payment of pensionary benefit to the employee who retired after rendering more than 30 years of service as ad hoc without regularization.

29. Similarly, in another case of **Yashwant Hari Katakhar v. Union of India and ors. reported in 1996 (7) SCC 113**, it was held that an employee who has served more than 20 years is entitled to pension and denial of retiring pension to the petitioner on the ground of not being permanent on any post clearly is violative of Clause (e) of Fundamental Rules, 56. The department cannot keep a person temporary or on daily wages indefinitely. Similarly, in another case of **A.P. Srivastava v. Union of India and Ors. reported in (1995) 3 UPLBEC 1842 (Supplement)**, the Supreme Court has clearly taken a view that in case of a temporary employee who has rendered 20 years of service is entitled to pension.

30. In view of aforesaid judgments, it is clear that ad hoc/ temporary/ daily wage employees rendering long years of service and were permitted to superannuate without regularization/confirmation in service are entitled to post retiral benefits. In this view of the matter, the Court is of the opinion that since the petitioner had

rendered continuous service for decades, it creates a legitimate expectation for proper service benefits.

31. In the present case, the petitioner worked continuously for 27 years until superannuation. The University treated him as a regular employee for all practical purposes, providing him with all service benefits during his tenure. To deny him post-retirement benefits merely because he was not formally confirmed would be unjust and contrary to the principles established by the Hon'ble Supreme Court and this Court.

32. In view of the aforesaid, the Court is of the opinion that the order dated 27.07.1993 passed by the Section Officer on behalf of the Principal, S.T. High School, A.M.U. Aligarh, and the order dated 04.02.2019 passed by the Assistant Registrar (Administration-NT) are liable to be set aside and hereby set aside. The petitioner is entitled to get the all post retiral benefits, hence the respondents are directed to treat the entire service period of the petitioner from 27.02.1991 to 31.03.2018 as qualifying service for the purpose of determining all post-retirement benefits and also directed to calculate and release all post-retirement benefits to the petitioner within a period of three months from the date of communication of this order.

33. With the aforesaid observations, the present writ petition is **allowed**. No order as to costs.

Order Date :- 08.04.2025

Arti