

Court No. - 29

Case :- SPECIAL APPEAL No. - 986 of 2024

Appellant :- State Of Up And 2 Others

Respondent :- Krishan Keshav Pandey

Counsel for Appellant :- C.S.C.,Chandan Kumar,S.C.

Counsel for Respondent :- P.K. Upadhyay

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Praveen Kumar Giri,J.

1. This appeal is filed by the State challenging the order dated 23.03.2023 passed by the learned Single Judge in Writ-A No. 39177 of 2015, whereby, the writ petition filed by the petitioner for inclusion of his working in the work charge establishment from 11.12.1979 to 01.04.1982 for determination of pension has been allowed.

2. The undisputed facts of the case are that the respondent/petitioner was initially engaged as work charge employee on 11.12.1979 in the tube well Division Mirzapur of the State. He was offered substantive appointment on 01.04.1982. Various service benefits were thereafter granted to the respondent-petitioner. He was granted selection grade on 01.04.1982; promotion pay scale on 01.04.1996; second selection grade on 01.04.2001 as well as second and third promotional pay scale under the ACP scheme from time to time upon completion of the requisite numbers of years in employment. Respondent-petitioner attained the age of superannuation on 30.09.2014. Till such time that he was in employment no claim was instituted for counting the work charge employment between 11.12.1979 to 01.04.1982 in service. After the superannuation the respondent has been allowed all retiral benefits including the pension by counting his services from 01.04.1982. The claim instituted now by the respondent-petitioner was for counting of his services as work charge employee between 11.12.1979 to 01.04.1982 before substantive appointment was offered to him. It is this claim of the respondent which came to be rejected by the authorities leading to the

respondent-petitioner filing Writ-A No. 39177 of 2015, wherein, the order dated 10.02.2015 is passed. Learned Single Judge has allowed the writ petition relying upon the judgment of the Supreme Court in **Prem Singh v. State Of U.P. & Others, (2019) 10 SCC 516.**

3. Learned counsel for the appellant submits that the learned Single Judge has not appreciated the controversy in correct prospective in as much as the limited grievance pressed by the writ petitioner was for inclusion of his work charge employment for counting the length of service and redetermine his pension. It is contended that this was not a case where pension was being denied to the employee concerned on the ground that the qualifying service was not complete as his working in the work charge establishment was not counted. In support of such plea, reliance is placed upon the subsequent decision of the Supreme Court in Civil Appeal No. 3155 of 2023 (**Udai Pratap Thakur & Another Versus State of Bihar & Others**) reported in (2023) 4 SCR 530.

4. Sri P.K. Upadhyay, learned counsel for the respondent-petitioner does not dispute the fact that the writ petitioner was already receiving pension and it was not a case where his qualifying service for pension was falling short for the purposes of payment of pension. It is also admitted that the claim for counting of the work charge employment has been instituted only after the employee was nearing his superannuation. The claim otherwise was based essentially upon the judgement in **Prem Singh** (supra). Learned counsel for the respondent-petitioner submits that in view of the judgment delivered by the Supreme Court in the case of **Prem Singh** (supra) the writ petitioner was entitled to a declaration that his service rendered in the work charge establishment be counted as period spent in service, so as to correctly compute his pension.

5. We have heard learned counsel for the parties and perused the materials on record. The issue raised in the present matter is squarely covered by the adjudication of the Supreme Court in the case of **Udai Pratap Thakur** (Supra). In para 5, the question for consideration before the Supreme Court in **Udai Pratap Thakur** (supra) is enumerated and is answered in paragraph nos. 6.2 & 6.3 of the judgment.

"6.2 Insofar as the submission on behalf of the appellants that their entire services rendered as work charged should be considered and/or counted for the purpose of pension / quantum of pension is concerned, the same cannot be accepted. If the same is accepted, in that case, it would tantamount to regularizing their services from the initial appointment as work charged. As per the catena of decisions of this Court, there is always a difference and distinction between a regular employee appointed on a substantive post and a work charged employee working under work charged establishment.

The work charged employees are not appointed on a substantive post. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered as work charged cannot be counted for the purpose of pension / quantum of pension. However, at the same time, after rendering of service as work charged for number of years and thereafter when their services have been regularized, they cannot be denied the pension on the ground that they have not completed the qualifying service for pension. That is why, the service rendered as work charged is to be counted and/or considered for the purpose of qualifying service for pension, which is provided under Rule 5(v) of the Rules, 2013.

6.3 Now, insofar as the reliance placed upon the decision of this Court in the case of Prem Singh (supra) by the learned counsel appearing on behalf of the appellants is concerned, the reliance placed upon the said decision is absolutely misplaced. In the said case, this Court was considering the validity of Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, under which the entire service rendered as work charged was not to be counted for qualifying service for pension. To that, this Court has observed and held that after rendering service as work charged for number of years in the Government establishment / department, denying them the pension on the ground that they have not completed the qualifying service for pension would be unjust, arbitrary and illegal. Therefore, this Court has observed and held that their services rendered as work charged shall be considered / counted for qualifying service. This Court has not observed and held that the entire service rendered as work charged shall be considered / counted for the quantum of pension / pension. The decision of this Court in the case of Prem Singh (supra), therefore, would be restricted to the counting of service rendered as work charged for qualifying service for pension."

6. After considering the judgment in the case of **Prem Singh** (supra) the Supreme Court has observed that the judgment in **Prem Singh** (supra) provided for inclusion of the service rendered in work charge establishment towards qualifying service so as to include the services rendered in such work charge establishment. However, the judgement in Prem Singh (supra) did not lay down

any proposition that where the employee is entitled to pension his pension is liable to be revised so as to include the work charge period. In para 6.2 and 6.3 The Supreme Court held as under:

"6.2 Insofar as the submission on behalf of the appellants that their entire services rendered as work charged should be considered and/or counted for the purpose of pension / quantum of pension is concerned, the same cannot be accepted. If the same is accepted, in that case, it would tantamount to regularizing their services from the initial appointment as work charged. As per the catena of decisions of this Court, there is always a difference and distinction between a regular employee appointed on a substantive post and a work charged employee working under work charged establishment. The work charged employees are not appointed on a substantive post. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered as work charged cannot be counted for the purpose of pension / quantum of pension. However, at the same time, after rendering of service as work charged for number of years and thereafter when their services have been regularized, they cannot be denied the pension on the ground that they have not completed the qualifying service for pension. That is why, the service rendered as work charged is to be counted and/or considered for the purpose of qualifying service for pension, which is provided under Rule 5(v) of the Rules, 2013.

6.3 Now, insofar as the reliance placed upon the decision of this Court in the case of Prem Singh (supra) by the learned counsel appearing on behalf of the appellants is concerned, the reliance placed upon the said decision is absolutely misplaced. In the said case, this Court was considering the validity of Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, under which the entire service rendered as work charged was not to be counted for qualifying service for pension. To that, this Court has observed and held that after rendering service as work charged for number of years in the Government establishment / department, denying them the pension on the ground that they have not completed the qualifying service for pension would be unjust, arbitrary and illegal. Therefore, this Court has observed and held that their services rendered as work charged shall be considered / counted for qualifying service. This Court has not observed and held that the entire service rendered as work charged shall be considered / counted for the quantum of pension / pension. The decision of this Court in the case of Prem Singh (supra), therefore, would be restricted to the counting of service rendered as work charged for qualifying service for pension."

7. The facts in the case are squarely covered by the decision in case of **Udai Pratap Thakur** (supra) in as much as the writ petitioner otherwise was receiving pension, after the length of

service was determined taking into consideration his substantive appointment on 01.04.1982. It was not a case that the qualifying service was falling short for the purposes of payment of pension as was the exigency in the case of **Prem Singh** (supra). In such circumstances, the pension already accorded to the respondent-petitioner is not liable to be modified by counting his services rendered in the work charge establishment. We find that learned Single Judge has failed to consider the matter in the correct prospective.

8. In that view of the matter, this special appeal succeeds and is allowed. The judgment and order dated 23.03.2023 passed by learned Single Judge is set aside. The writ petition filed by the respondent is accordingly dismissed.

Order Date :- 21.4.2025

K.K. Maurya