

Court No. - 4

Case :- WRIT - A No. - 6082 of 2025

Petitioner :- Sudesh Pal

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Krishna Mohan Ojha

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri Krishna Mohan Ojha, learned counsel for the petitioner as well as learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution, petitioner wants consideration of his representation made before the respondent no. 3 for benefit to be accorded to him under the Old Pension Scheme.

3. According to the petitioner the process of appointment had started since prior to scraping of the Old Pension Scheme in the year 2005 even though the appointment order came to be issued to him in the year 2007 and thus, he stands covered by the judgment of this Court in the case of Nirupama Malviya v. State of U.P. & 5 Ors, Writ - A No. 67274 of 2015 decided on 19.10.2023 and reliance has been placed on paras 15, 16, 17, 21 & 22 thereof that are reproduced hereunder:

"15. Now, it would be a great travesty of justice if the petitioner is made to suffer either on account of the inaction or lethargy of the Selection Board, or the District Inspector of Schools or their callousness in selecting the appropriate institution to place the petitioner while allocating. If the institution, where the petitioner was first allocated, had not resisted her appointment or the District Inspector of Schools had enforced it, she would have joined well before the cut-off date under the Government Order dated 28th March, 2005, introducing a new pension scheme. The petitioner's rights cannot turn upon mere fortune dependent upon a chance of her date of joining being placed on the right side of the cut-off date. A crystallized right under the statute must move on surer ground about time when it comes into effect. It cannot be made dependent upon inaction or lethargy of Authorities about enforcement, or on the correctness of their choice to realize that right for the petitioner.

16. This Court is, therefore, of opinion that the petitioner would be entitled to trace her rights, as already said, either to the date when the allocation order was issued on 01.12.2004 or at any time before 25.01.2005, when the District Inspector of Schools, Meerut referred the matter to the Secretary of the Selection Board to allocate another college in same district or another

district for the petitioner. The petitioner's right would, therefore, be traceable to a point of time, well before the cut-off date; not after it, when, in fact, she succeeded in securing an appointment letter from the allocated college after failing on two occasions, resisted by managements.

17. A similar question arose before a learned Single Judge of this Court in *Mahesh Narayan and others v. State of U.P. and others*, 2019 SCC OnLine All 5325, where after considering a wealth of authorities, some running contra as well, it was held:

"21. From the perusal of judgments of *Satyesh Kumar Mishra (Supra)* and *Firangi Prasad (Supra)*, there is no doubt on the point that similar dispute was before this Court in the matter of *Satyesh Kumar Mishra (Supra)*, which was dismissed by this Court against which Special Appeal Defective No. 480 of 2016 is pending. It is also not disputed that legal issue involved in the matter of *Satyesh Kumar Mishra (Supra)* was also before Division Bench of this Court in the matter of *Firangi Prasad (Supra)* where the Court has clearly held that on the fault of appointing authority in issuing appointment letter, petitioners cannot be put any type of disadvantage. It appears that at the time of deciding the matter of *Satyesh Kumar Mishra (Supra)*, judgement of *Firangi Prasad (Supra)* was not placed before this Court, therefore, without considering the same, decision was given in the matter of *Satyesh Kumar Mishra (Supra)*. Under such facts and circumstances, judgement of *Satyesh Kumar Mishra (Supra)* is per incuriam and cannot be treated as precedent in the present case and will not come in the rescue of respondents.

22. The controversy and question of law involved in the present case is squarely covered with the judgement of *Firangi Prasad (Supra)* as well as other judgments relied upon by learned counsel for the petitioners and Courts have taken consistent view that respondents cannot by their inaction deprive a candidate to his legitimate right.

23. So far as facts of the case are concerned, there is no dispute on the point that pursuant to advertisement No. A-3/E-1/2000, advertisement was issued in news paper on 22.12.2000 and as per order of this Court dated 29.12.2001 passed in Special Appeal No. 485 (S/B) of 2001 (supra), there was no legal impediment in completion of recruitment process, but due to inaction on the part of respondents, it was completed only after dismissal of writ petition on 05.07.2005. Final selected list of selected candidate was published in daily newspaper 'Dainik Jagran' dated 12.03.2006 and thereafter appointment letters were issued. It is also not disputed that in between again in subsequent advertisement No. A-3/E-1/2002, recruitment was completed and candidates had been granted appointment prior to 01.04.2005 and getting the benefit of 'Old Pension Scheme'.

24. Therefore, considering the facts and circumstances of the case and legal position discussed herein above, writ petition is partly allowed and petitioners are excluded from the effect and operation of Notification dated 28.03.2005 and 07.04.2005 as it is in violation of Article 14 of Constitution of India as well as law laid down by the Courts."

21. It would be an added buttress to premise the petitioner's right that her right to be governed by the old pension scheme, would be traceable to the

date of commencement of the recruitment process. There appears to be consensus of opinion on the issue, amongst various High Courts, including the Supreme Court's approval to the principle that rights crystallize about the governing pension regime, like other rights, with reference to the date on which the process of recruitment commenced.

22. This is quite apart from the principle on which this Court finds for the petitioner that the petitioner's right stands crystallized on the date the letter of allocation was issued, and for the most, the day when the District Inspector of Schools declined to enforce the allocation and secure an appointment for her, which was well before the cut-off date. "

4. It is further submitted that the petitioner's case also stands covered under the Government Order dated 28.06.2024, copy whereof has also been brought on record as Annexure No. 5 to his petition and reliance has been placed upon para 4 of the said Government Order.

5. It is further submitted by learned counsel for the petitioner that at no point of time, he was required to opt for a particular pension scheme.

6. Learned Standing Counsel submits that petitioner has already raised his grievance before the respondent no. 2 by making representation dated 05.04.2025, the same may be directed to be disposed of in accordance with law.

7. In view of the above, this petition stands **disposed of** with a direction that respondent no. 2 shall consider the grievance of the petitioner raised in his representation and decide the same within a period of two months from the date of receipt of certified copy of this order.

8. Needless to add the order to be passed by the competent authority, as directed herein above, shall be reasoned and speaking one.

Order Date :- 14.5.2025
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