

Neutral Citation No. - 2025:AHC:24605

Reserved on :- 11.02.2025

Delivered on :- 20.02.2025

Court No. - 10

Case :- WRIT - A No. - 29332 of 2014

Petitioner :- Keshav Pandey

Respondent :- Joint Director Of Education Azamgarh And 3
Others

Counsel for Petitioner :- Indra Raj Singh, Siddharth Khare

Counsel for Respondent :- Dalvir Singh

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri Siddharth Khare, learned counsel for petitioner, and Ms. Shruti Malviya, learned Brief Holder.
2. This writ petition was initially filed to grant salary to petitioner in trained grade and order dated 07.02.2014 and 21.04.2014 were challenged, whereby said claim was rejected. Initially, the writ petition was allowed by this Court by an order dated 04.04.2016 with the direction that petitioner shall be entitled to pension under the provisions of Rules 1964.
3. The aforesaid order was challenged by way of filing Special Appeal No. 59 of 2017 which was disposed of by an order dated 03.02.2017 and order impugned therein dated 04.09.2016 was set aside and matter was remitted to decide it fresh as well as an opportunity was granted to petitioner to file an amendment application. The relevant part thereof is mentioned hereinafter :-

“Moreso, with regard to law settled by the Division Bench of this Court in the case of U.P. Senior Basic Shikshak Sangh vs State of U.P. and others, 2016 (1) ADJ 667 which affirms the observations of the Hon'ble Single Judge in the case of Budhi Ram vs State of U.P. 2013 (1) ADJ 254, there are no observations in the judgment impugned, and perhaps it escaped the notice of the Hon'ble Single Judge that it has already been held by this Court that all teachers of un-aided Institutions being not covered by the provisions of Pension Rules, 1964 earlier, could not be granted the benefit of pension after such schools were taken under grant in aid. Since after 01.04.2005, the New Pension Scheme became applicable, and the earlier Pension Rules, 1964 were not applicable whether it could be permitted to teachers working in unaided private Institutions to deposit managerial contribution under the earlier Pension Rules, 1964 by the Hon'ble Single Judge as has been done in the judgment under appeal dated 04.04.2016; is an issue which needs also to be considered whether the judgment in the case of Smt. Shanti Solanki striking down the cut off date for deposit of managerial contribution under the provisions of 1964 Rules could also be followed for the benefit of teachers of unaided primary section of aided Junior Basic or Higher Secondary School is also a question that needs to be considered.

Since the petitioner had come praying for limited relief for grant of trained grade salary and exemption from training and no pleadings in regard to these issues/questions as have cropped up for consideration before us can be found in writ petition were before the Hon'ble Single Judge, the matter needs reconsideration afresh by the Hon'ble Single Judge.

Consequently, the judgment and order dated 04.04.2016 is set aside and the writ petition is restored to its original number with liberty to the petitioner to move appropriate amendment application before the Hon'ble Single Judge for finding on such issues as have been discussed aforesaid.

The special appeal is disposed of.”

4. In pursuance of above order an amendment application was filed which was allowed and accordingly amendments were carried out which includes a prayer for grant pension and other retiral benefits to petitioner.
5. It is not under dispute that the petitioner has retired on 30.06.2014 on attaining age of superannuation.

6. Learned counsel for petitioner submitted that in the light of judgment passed by Supreme Court in case of State of U.P. and others Vs. Pawan Kumar and others, 2014(9) SCC 692. It has now been settled that a Junior High School necessary includes class 1st to 5th when they are open in a senior basic school class 6th to 8th after obtaining separate recognition and for which their may not be a separate order of grant-in-aid by the Government.

7. Learned counsel further submitted that petitioner was entitled for grant of trained pay scale in terms of Government Order dated 04.12.1982, 05.06.1987 and 21.10.1994, which provides for grant of trained pay scale of such untrained teachers who were functioning for more than 5years, 10 years, as the case may be and cut off date fixed by other Government Order dated 21.10.1994.

8. Learned counsel further submitted that cut of date as fixed by Government Order dated 09.12.2003 that 5 year service ought to have been completed on 31.12.2003 as well as at that time the employee must have two years of remaining service would not have been considered adverse to claim of petitioner since the petitioner was already retired in 2014 as well as that in terms of earlier GOs he was entitled for trained pay scale even before it.

9. Learned counsel refers paragraph Nos. 13, 14 and 15 of this writ petition in support of his claim and further submitted that petitioner's case were squarely covered under the Government Order dated 21.10.1994, however, benefit of the same was also not granted, which earlier required the cut of

date of being 01.09.1994, having prior service of 10 years and remaining service of two years which factually applies in favour of petitioner. For reference, the relevant part of said Government Order Notification dated is reproduced hereinafter :-

“जिन अध्यापकों / अध्यापिकाओं की अनवरत सेवा दिनांक 01.09.1994 को 10 वर्ष हो गयी हो अथवा जिनकी सेवा निवृत्ति में मात्र दो वर्ष शेष रह गयी हो, उन्हें प्रशिक्षण से मुक्ति प्रदान की जायेगी। ऐसे अध्यापक / अध्यापिकाओं के सम्बन्ध में प्रशिक्षण से मुक्ति के आदेश सम्बन्धित मण्डलीय सहायक शिक्षा निदेशक (बे०) तथा मण्डलीय उप शिक्षा निदेशक द्वारा निर्गत किये जायेंगे।”

10. For reference, paragraph Nos. 13, 14 and 15 of writ petition is also referred hereinafter :-

“13. That on the basis of aforesaid impugned order dated 07.02.2014, the District Inspector of Schools, Mau also without giving any notice or affording any opportunity of hearing of any kinds, whatsoever to the petitioner and without application of mind, passed impugned order dated 21.04.2014 and declined to fix salary of petitioner in trained grade. A true copy of impugned order dated 21.04.2014 is being filed herewith and marked as Annexure No. 10 to the writ petition.

14. That as a matter of fact, the claim of petitioner to grant exemption of training and to fix salary in trained grade is squarely covered under the Govt. order dated 21.10.1994, but the respondent nos. 1 and 2 have wrongly relied upon the alleged Govt. order dated 09.12.2003 upon the petitioner in the impugned orders. A true copy of Govt. order dated 09.12.2003 is being filed herewith and marked as Annexure No. 11 to the writ petition.

15. That it is pertinent to mention before this Hon'ble Court that the aforesaid impugned orders dated 07.02.2014 and 21.04.2014 passed by respondent Nos. 1 and 2 were neither noticed nor served prior to 17.05.2014 and first time the said were noticed to the petitioner from the office of the Institution and immediately thereafter, he rushed to this Hon'ble Court to seek shelter under Article 226 of the Constitution of India and in pursuance thereof, he is filing the present writ petition.”

11. Per contra, learned Brief Holder for State has referred paragraph 8 of the counter affidavit an application for

amendment so far as claim of pension and exemption from training, which is reproduced hereinafter :-

“8. That the contents of paragraph no. 6 and its sub para 18F of the amendment application as stated are not admitted. In reply it is submitted that the petitioner retired from service on 30.6.2014 while getting salary from 29.2.2009 to 30.6.2011 (total 05 years four months). Apart from that, it has been clearly provided in the government order dated 08.04.2009 that such institutions in question which were taken in grant in aid list after 01.4.2005, the new pension policy (NPS) shall be applicable there. The institution of the petitioner was taken in grant in list in the year 2007. As such, the old pension scheme is not applicable on the petitioner. The claim of the petitioner is illegal. The petitioner does not come under the purview of exemption from training and the petitioner is not entitled to get pension as claimed by him. The writ petition as framed and filed by the petitioner under article 226 of the constitution of India deserves to be dismissed being devoid of merits. ”

12. I have considered the above submission and perused the record.

13. The Division Bench while remitting the matter to this Court has taken note of an order dated 04.05.2006 passed in writ petition No. 24344 of 2006 filed by Committee of Management of concerned college, whereby a positive direction was passed to reimburse the salary. The State Government in compliance of said judgment has issued an order dated 15.05.2007 for payment of salary to teacher working in attached primary school that petitioner being untrained were entitled for salary of untrained teacher and not a trained teacher.

14. The said order was not challenged when initially writ petition was filed and even it was not challenged when an application for amendment was filed, therefore, despite an opportunity was granted, the said order was not challenged

which remains adverse to the case of petitioner. The said order has even not placed by way of amendment.

15. In the aforesaid circumstances, the Court is of opinion that petitioner was not entitled for salary of trained teacher as well as a factor that an adverse order rejecting their claim by government vide order dated 15.05.2007 was not challenged also goes against him.

16. The Court also takes note paragraph No.7 of counter affidavit filed by State on 21.08.2019 that since the institution of petitioner was taken in grant in the list of 2007, therefore, the claim of old pension scheme was absolutely not applicable and since admittedly petitioner does not fall within the ambit of new pension policy either since preconditions are not complied with, therefore, all claims of petitioner are not supported by any legal provision, therefore, present petition having no force and accordingly, it is **dismissed**.

Order Date :- 20.02.2025

P. Pandey

[SAURABH SHYAM SHAMSHERY, J.]