



2025:AHC:164880

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 13774 of 2025

Ram Sukh And 15 Others

.....Petitioner(s)

Versus

State Of U.P. And 6 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Shreesh Bahadur Tripathi
Counsel for Respondent(s)	:	C.S.C.

Court No. - 4

HON'BLE AJIT KUMAR, J.

1. Heard learned counsel for the parties and perused the record.

2. By means of this petition filed under Article 226 of the Constitution, petitioners have prayed for quashing the impugned order dated 13.09.2025, whereby, claim for pension has been rejected on the ground that previous service rendered by the petitioners prior to their regularization could not be counted towards pensionable service.

3. It is argued on behalf of the petitioner that the petitioner continued to discharge duties in the work charge establishment of the respondents prior to his regularization finally on March 2011.

4. Under the circumstances, therefore, the service from the date of their appointment in work charge establishment till the regularization were granted to the petitioners in the regular establishment on March, 2011 and in the light of the principles laid down in the matter of **Prem Singh vs. State of U.P. and others:2019 (10) SCC 516** and the later judgments of this Court following the same in the case of **Kaushal Kishore Chaubey and others versus State of U.P. and others, Writ A No.5817 of 2020, delivered on 08.10.2021** and the judgment of the Supreme Court in the case of **Udai Pratap Thakur and others vs. State of Bihar in SLP (C) No.10653 of 2018 decided on 28.04.2023**, his previous service deserved to be counted to make him qualified for pension under the old pension scheme.

6. Learned Additional Chief Standing Counsel has tried to contest the matter on the ground that the judgment in the case of Kaushal Kishore Chaubey (*Supra*) who was also a Collection Ameen (Class IV), has been referred to a larger Bench of this Court in Writ A No.23244 of 2016 under order dated 26.05.2023 but he does not dispute that the larger Bench has yet not been constituted. Learned Standing Counsel has also sought to urge that in view of the judgment passed in the review application in the case of **Board of Revenue through its Chairman, U.P. at Lucknow vs. Ram Ji**

Shukla and another connected matter decided on 31.05.2023 by the Division Bench, the previous services rendered by the petitioner cannot be taken into account to make him qualify for pension.

7. Learned Additional Chief Standing Counsel has also placed reliance upon the judgment in the case of **Sri Chandra Singh vs. State of U.P. and others being Special Appeal No. 398 of 2021 decided on 22.04.2022** in which reliance has been placed by the Division Bench upon the U.P. Qualifying Services for Pension and Validation Act, 2021 (Act No.1 of 2021).

8. Having heard learned counsel for the parties and their arguments raised across the Bar, in the first instance I may observe that a mere reference to a judgment to a larger Bench does not result in automatic overruling of the same.

9. The law laid down by the Court will occupy the field and will be taken to be a good law until it is reversed. So the mere reference would not dilute the ratio of the judgment in Kaushal Kishore Chaubey's case.

10. Besides the above in case of Udai Pratap Thakur (*supra*), Supreme Court has come to deal with all these aspects including its earlier judgment in the case of Prem Singh (*supra*) and has held this vide paragraph 6:

"6. It is required to be noted that the respective appellants were working as work charged under the work charged establishment in the State. Their services have been regularized under the Rules, 2013 and the follow up notification of the Finance Department vide Circular No. 10710 dated 17.10.2013. Rule 5(v) of the Circular reads as under:-

5(v) Old pension rules shall be applied on these employees. The benefit pension & gratuity shall be counted by giving one year advantage against the five years services as work-charged employee. Even then if the minimum requirement of 10 years of service for pension is not met under the old rules, then minimum service shall be added to give advantage thereof.? Civil Appeal No. 3155 of 2023.

6.1 Rule 5(v) of the Rules, 2013 as such can be said to be beneficial to such work charged employees, whose services have been regularized subsequently. As per Rule 5(v), even if the minimum requirement of 10 years of service (qualifying service) for pension is not met, in that case also, the service rendered as a work charged to be added for qualifying service for pension. Therefore, the efforts have been made by the State Government to see that after rendering services for number of years as work charged, and thereafter, their services have been regularized, they may not be denied the pension on the ground that they have not completed the qualifying service for pension. It also further provides that the benefits like pension & gratuity shall be counted by giving one year advantage against the five years services as work-charged employee. Therefore, Rule 5(v) as observed hereinabove, is beneficial also in favour

of such work charged employees, whose services have been regularized subsequently, and they may not be deprived of the pension on the ground that they have not completed the qualifying service for pension. The denying of pension after rendering service as work charged for number of years on the ground that they have not completed the qualifying service can be said to be Civil Appeal No. 3155 of 2023 unfair and illegal and can be said to be exploitation.

Therefore, to make such work charged employees eligible for pension, Rule 5(v) provides that if any work charged employee, whose services have been regularized under the Rules, 2013, is short of qualifying service, to the extent of such shortage of qualifying service, the services rendered as work charged to be counted for the purpose of qualifying service for pension. Under the circumstances, the Larger Bench of the High Court has rightly observed and held that for the purpose of pension, only such period from the work charged tenure would be added for making the service of an employee, who has been regularized to qualify him for pension.

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."

(Emphasis

added)

12. In such above view of the matter, therefore, there was no occasion for the respondent to reject the claim of the petitioners to count their service as work charge employees towards pensionable service right from adjustment to till the regularization of their services towards the service qualifying for pension. Still further, I notice that the order passed by the respondent is absolutely cryptic one as it only states that petitioners services rendered in work charge establishment cannot be counter towards pensionable service, no reason as such has been assigned except for certain circular letters referred to therein.

13. Thus, for there being lack of due application of mind, the order deserves to be declared as an uninformed decision and hence unsustainable.

14. In view of the above, writ petition succeeds and is allowed.

15. The order dated 13.09.2024 passed by the Executive Engineer, Construction Division No. 3, Public Work Department, Prayagraj is hereby quashed. Respondents are directed to pass fresh orders counting the service of the petitioners spent by them right from initial date of appointments till their regularization towards qualifying period of for pension to be computed in the light of judgment of Supreme Court in the case of Uday Pratap Thakur (*supra*). After calculating the same and passing order in that respect, since the petitioners have retired from pensionable establishment, they shall be paid their entire pension and shall also be paid their current pension. The entire exercise shall be carried out by the respondents within a maximum period of three months of presentation of certified copy of this order. It is made clear that if the arrears of pension are not paid within next three months time of presentation of certified copy of this order and petitioners are not paid their current pension, the respondents will be liable to pay interest @ 8% upon the dues towards the arrears of pension from the date they had retired till the actual payment is made.

September 15, 2025
Sanjeev

(Ajit Kumar,J.)