

(2011) 10 AHC CK 0114
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29177 of 2003

Badri Prasad Dubey

APPELLANT

Vs

Managing Director, U.P.S.R.T.C. Lucknow and Others

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Citation : (2011) 10 ADJ 198 : (2012) 1 AWC 707

Hon'ble Judges : Devendra Pratap Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon'ble Devendra Pratap Singh, J.—Heard learned counsel for the parties.

2. This petition is directed against an order dated 14th of May 2003 whereby the respondent has rejected the claim of the petitioner for grant of pension.

3. The petitioner was appointed as an Assistant Traffic Inspector in the erstwhile U.P. Government Roadways on 18.8.1964 and thereafter was also confirmed on the said post. Upon creation of the U.P. State Road Transport Corporation (herein after referred to as the "Corporation") w.e.f. 1.6.1972, he was sent on deputation where he was absorbed w.e.f. 28.7.1982. Subsequently he was posted as Junior Station Incharge and thereafter as Senior Station Incharge and then promoted to the post of Traffic Superintendent vide order dated 29.9.1995 and on this post he worked till he retired on 31.7.2001. He claimed pension and post retiral benefits accordingly, but as no decision was taken he was constrained to file Writ Petition No. 47681 of 2002 and a learned Single Judge of this Court vide order dated 1.11.2002 disposed it off directing the respondent No. 1 to decide his claim within two months. In compliance thereof, he filed his representation alleging that the employer's share from the petitioner's account has been taken and transferred to the Regional Manager, Allahabad and further that since the post of Traffic Inspector Grade-I being equivalent to Junior Station Incharge in rank, he was entitled to benefits for which he had already submitted

his option and undertaking. The claim has been rejected primarily on the ground that the post of Traffic Inspector Grade-I was a non pensionable post under the Government as per the Government order dated 28.10.1960 and the employer's share demanded and taken by the Regional Manager, Allahabad was by mistake.

4. The question whether on the date of his absorption the petitioner was holding a pensionable post under the Government is no longer in dispute as this Court in the case of *Ram Singh Singraur v. State of U.P. and others*, 2007 (7) ADJ 137 has held that since the post of Assistant Traffic Inspector had been upgraded as Traffic Inspector Grade-I w.e.f. 5.5.1978 and which post was equivalent to the post of Junior Station Incharge and they being interchangeable, it held that persons holding post of Assistant Traffic Inspector on the date of absorption were entitled to pension. The aforesaid decision has been affirmed in appeal.

5. Both the parties do not dispute the aforesaid position of law.

6. However, it is contended on behalf of the Corporation that since the petitioner had opted for benefits under the Employees Provident Fund scheme and the employer's share having been paid, he would not be entitled to the benefit of the decision in *Singraur's* case (supra). In support thereof, he has relied upon a decision of this Court rendered in the case of *Heera Lal Upadhyaya v. State of U.P.* (Writ Petition No. 63522 of 2005) decided on 3.7.2009 and which has been upheld by the appellate Court in Special Appeal (Defective) No. 944 of 2009 vide order dated 4.9.2009.

7. This Court in the case of *Heera Lal Upadhyaya* (supra) had found that the incumbent had taken all the benefits under the E.P.F. Scheme and therefore even though he was entitled to pension, the Court refused to grant him relief under its discretionary jurisdiction. The facts in the present case appear to be different and further the effect of the Government Orders dated 19th of August, 1993, 28th of November 1998 and 18th of May 1999 were not considered in *Heera Lal Upadhyaya's* case (supra). The Government Order dated 19th of August 1993 read with Government Order dated 28th November 1998 provided that where a person holding a pensionary post on the date of his absorption in the corporation, undertakes to refund the lump sum amount of the employer's share under the E.P.F. Scheme together with interest, he would be entitled to pensionary benefits. It is evident from the record that the employer's share had been transferred from the petitioner's account to the Regional Manager, Allahabad, though it is stated that it was by mistake and the same was remitted. The Government, considering the difficulties faced by the incumbents holding a pensionable post created another avenue to enable them to claim pension by amending the aforesaid Government Orders vide its Government Order dated 18th of May 1999. This Government Order stipulates that if the incumbent undertakes to refund the entire amount as aforesaid from the gratuity payable to him, he would be entitled to claim pension. It is on record and has not been denied, that the petitioner had already given an undertaking that the entire amount of employer's contribution under the E.P.F. Scheme together with

interest may be adjusted from his gratuity. It is also admitted that till date the petitioner has not been paid his gratuity and it is available for adjustment in accordance with the Government Order dated 18th of May 1999. Therefore, the exception carved out in Heera Lal Upadhyaya's case (supra) visa-vis Ram Singh Singraur's case (supra) would not be applicable in the present case and the petitioner would be entitled to be paid the pensionary benefits.

8. Thus, in view of the aforesaid facts, it cannot be said that the petitioner had reached point of no return as in the case of Heera Lal (supra) and in view of the Government orders mentioned above, he is entitled for pension after deduction as aforesaid.

9. Accordingly, the writ petition succeeds and is allowed and the impugned order dated 14th of May 2003 is hereby quashed.

10. The respondents are directed to forthwith pay the pension and other retiral dues to the petitioner within a period of one month, failing which the petitioner would be entitled to simple interest @ 6% per annum from the date of his retirement till the date of actual payment.

11. In the circumstances of the case, no order as to costs.