

(1999) 08 AHC CK 0097

In the Allahabad High Court

Case No : Writ petition No. 9123 (S/S) of 1993 (with connected W.P. Nos. 7445(s/s)/1990, 10727 (s/s)/1990, 10134 (s/s)/1990, 1600 (s/s)/1991, 2316 (s/s)/1991 etc.)

Barkat Ali

APPELLANT

Vs

State of U.P.&Ors.

RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Citation : (1999) 08 AHC CK 0097

Hon'ble Judges : D.K.Trivedi, J and U.K.Dhaon, J

Final Decision : Disposed Of

Judgement

D.K. Trivedi, J.—In all these above mentioned writ petitions identical and common question of law is involved hence all these petitions are consolidated together and are decided by a common judgment.

2. These writ petitions were initially cognizable by the Single Judge and were listed before the Hon"ble Single Judge and it appears that the Hon"ble Single Judge passed an order and issued directions that the files of these writ petitions be put up before the Hon"ble Chief Justice for nominating a larger bench. In compliance of the order passed by the Hon"ble Single Judge, these writ petitions were put up before the Hon"ble Chief Justice and the Hon"ble Chief Justice directed that the matters be listed before this Division Bench.

3. Heard learned Counsel for the petitioners and Sri Rakesh Bajpai, learned Standing Counsel appearing for the opposite parties.

4. By means of these petitions, the petitioners have challenged the validity of notices and letters by which the petitioners were directed to be retired on attaining their age of superannuation at the age of 58 years or 60 years, as the case may be. At the time of filing of the writ petitions, interim stay orders were granted and the learned Standing Counsel informed that on the basis of stay orders, the petitioners are still working. In some cases, the petitioners have

crossed the age of more than 65 years. The contention of the petitioners is that there is no age of superannuation as they are industrial employees and further there is no standing order in that respect. Therefore, the opposite parties committed an error in issuing notices and letters for retiring the petitioners at the age of 58 years or 60 years, as the case may be. The petitioners are workcharge employees in the Irrigation Department. The Standing Counsel further pointed out that some of workcharge employees of the Irrigation Department filed a writ petition, being Writ Petition No. 11632 of 1993, before this Court at Allahabad and the said writ petition was dismissed in limine. The petitioners of the said writ petition filed a Special Appeal No. 238 of 1993 and the Bench of this Court sitting at Allahabad by order dated 18/4/1994 dismissed the said Appeal holding that the provisions of Fundamental Rule will apply in the case of the petitioners and the contention of the petitioners that there is no age of superannuation in Irrigation Department, has got no force.

5. It is also pointed out that as regards the question of regularisation, the employees of the Irrigation Department filed a Writ Petition (Raj Narain Prasad and others v. State of U.P. and others), under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India and the opposite parties submitted a scheme of regularisation in respect of workcharge employees before the Hon'ble Apex Court which was accepted. It is also pointed out by the learned Standing Counsel that in compliance of the order passed by the Apex Court in the case of Raj Narain Prasad and others, the State Government issued a Government order dated 7/2/1997 and the department is proceeding in accordance with the said scheme. In these circumstances both these questions now stand already disposed of and to that extent those petitions have become infructuous, and the petitioners will also be governed by the Government order mentioned above.

6. In some of the writ petitions, the petitioners have also claimed pensionary benefits after retirement. The attention of this Court is drawn that if the petitioners are Government servants, they are also entitled for the pensionary benefits after retirement. On the other hand, the learned Standing Counsel pointed out that the petitioners are employees of the Government and it has specifically been held that their services will be governed under the provisions of Para 669 of Financial Handbook read with Articles 361 and 370 of Civil Services Regulations and in these circumstances, the petitioners are not entitled for any pensionary benefits. From a perusal of the above mentioned provisions it is evident that the petitioners are not entitled for any pensionary benefits and in these circumstances, no relief can be granted to the petitioners as regards pensionary benefits. It may be pointed out that the provisions of Financial Handbook and Civil Services Regulations have not been challenged by the petitioners in these writ petitions.

7. The petitioners submit that they are entitled for the benefit of the Government Order dated 17/1/1989 as it has prescribed the entitlement of pensionary benefit to

those who have completed 10 years service. A bare perusal of the said Government Order reveals that this concession has been granted to only these State Government employees who were otherwise eligible for pension but due to requisite length of service they were not entitled for the pensionary benefits.

8. With these observations, the writ petitions are finally disposed of with the direction to the State Government to consider the case of these petitioners who have not attained the age of superannuation for regularisation in accordance with the directions issued by the Apex Court in the case of *Raj Narain Prasad v. State of U.P.* reported in 1998(8) SCC 473. There shall be no order as to costs.