
(2014) 11 AHC CK 0222
In the Allahabad High Court
Case No : Special Appeal No. 1014 of 2014

Budhi Ram Maurya

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 ADJ 181 : (2015) 109 ALR 38 : (2015) 2 AWC 1409 :
(2015) 145 FLR 811 : (2014) 4 UPLBEC 3347

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J;P.K.S. Baghel, J

Bench : Division Bench

Advocate : Saurabh Kumar Srivastava and Ajay Kumar Srivastava, Advocate for the Appellant

Judgement

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1. The appellant had moved a writ petition under Article 226 of the Constitution for challenging an order dated 22 August 2014 passed by the Executive Engineer, Nalkoop Prakhanda, Mirzapur and for a mandamus to the Authority to count his service of three years and eight months as part of his service for computing the retiral dues. The appellant was initially appointed as a Sahayak Krishi Prasar Nirikshak in the Tube-well Division at Jaunpur. In 1975, the post was abolished and according to the appellant he was accommodated together with other similarly placed persons in 1976 as a Tube-well Operator. The appellant attained the age of superannuation on 21 July 2008. His grievance was that the service rendered by him as Sahayak Krishi Prasar Nirikshak from 25 April 1972 to 31 December 1975 had not been reckoned, as a result of which, his retiral dues had not been properly computed. Since his representations were not considered, the appellant had filed a writ petition in which this Court issued a direction for the disposal of his representation. Following that, the Executive Engineer passed an order on 22 August 2014 rejecting the representation. The learned Single Judge has declined to interfere under Article 226.

2. The order of the learned Single Judge, as would be evident from a reading of the order, is substantially guided by the finding that even if the period of service which was rendered by the appellant as a Sahayak Krishi Prasar Nirikshak is to be taken into account, there would be no difference in the computation of the retiral benefits. It was on that basis, that the learned Single Judge declined to entertain the petition. If indeed, this finding is correct, there would be no reason for this Court to entertain a special appeal. But on a close perusal and an analysis of the order of the Executive Engineer which was impugned before the learned Single Judge, we are of the view that the matter cannot be disposed of merely on an a priori basis. The Executive Engineer noted that when the post which was held by the appellant was abolished, there was an entry in his service book to the effect that his service would be brought to an end, whereas in the case of other employees, the entries in their service books were to the effect that they have been adjusted on the post of Tube-well Operator. As a result of this, the appellant has been deprived of the service which he had rendered on the post of Sahayak Krishi Prasar Nirikshak from 25 April 1972 to 31 December 1975.

3. The Executive Engineer recorded that, for the grant of pensionary benefits, the minimum qualifying service is 20 years, whereas the appellant had a service of 32 years and six months and one day. The point, however, is that though the appellant may have qualified in terms of the minimum qualifying service, the actual length of service over and above the minimum qualifying service would determine the quantum of the pensionary benefits. The issue in the present case is not just about the qualifying service but a proper computation of the total length of service which would determine the actual pension payable. This issue has not been considered by the learned Single Judge. Secondly, even as regards gratuity, the Executive Engineer noted that the minimum period required was 33 years, whereas the appellant after including the earlier service has only 32 years and six months of service. Therefore, the entitlement of the appellant to the payment of dues on account of gratuity has been affected.

4. For these reasons, we are of the view that the learned Single Judge was not justified in coming to the conclusion that the actual computation of the retiral dues to the appellant would not be affected even if the prior service between 25 April 1972 till 31 December 1975 in the post of Sahayak Krishi Prasar Nirikshak, is to be included. The Executive Engineer found that he had no authority to take the prior service into account. That is exactly why the appellant had moved the writ proceeding before the learned Single Judge. Since the learned Single Judge has not dealt with the basic grievance, we are of the view that the special appeal would have to be allowed and the matter be restored to the file of the learned Single Judge for fresh consideration. We, accordingly, allow the special appeal and set aside the impugned order of the learned Single Judge dated 9 October 2014 in Writ A No. 53744 of 2014. The writ petition would be restored to the file of the learned Single Judge for a decision afresh.

The respondents shall file their counter-affidavit no later than by 5 December

2014. Thereafter, the appellant would be at liberty to move the learned Single Judge for expeditious disposal of the writ petition.

The special appeal is, accordingly, disposed of in the aforesaid terms. There shall be no order as to costs.