
(2017) 02 AHC CK 0145
In the Allahabad High Court
Case No : Special Appeal No. 414 of 2014

Gaya Prasad Shukla

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

Citation : (2017) 3 AILLJ 99

Hon'ble Judges : V.K. Shukla and Mrs. Sangeeta Chandra, JJ.

Bench : Division Bench

Advocate : O.D. Malviya and A.R. Dubey, Advocates, for the Appellant; C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shukla, J. (Oral) - Gaya Prasad Shukla is assailing the validity of order dated 23.05.2013 passed by learned Single Judge in Writ Petition No.77957/2005 (Gaya Prasad Shukla v. State of U.P.L. and others) wherein the learned Single Judge has proceeded to non-suit the claim of petitioner-appellant in following terms:-

"The petitioner retired from service as Assistant Development Officer, Panchayat on 31.1.2001, after completing 33 years of service. The petitioner became entitled for pension. The respondents calculated the pension by taking 25 years of service. The petitioner made a representation which was rejected by the impugned order dated 5.10.2005, passed by the Additional Director, respondent No.2. The petitioner has therefore, filed the present writ petition.

The sole contention before the Court is whether the respondents were justified in not adding 8 years 10 months of the petitioner's service while calculating the pension. According to the respondents this period was not added as he was on unauthorized leave and this period was treated as leave without pay.

The learned counsel for the petitioner has placed reliance upon a decision of this Court in Bhagmaniya Devi v. State of U.P. and others, in which, in similar

circumstances the Court held that the period spent on unauthorized absence would be treated as leave without pay and that such period should be counted for calculation of retirement benefits.

In the instance case, the Court finds, that the authority has taken support of a Government Order dated 20.7.1989, which indicates that the period spent on unauthorized leave would not be counted as period spent on service for the purpose of calculation of retirement benefits. In the light of this Government Order, which has not been disputed by the petitioner, this Court does not find any error in the impugned order.

The writ petition fails and is dismissed."

2. Petitioner-appellant joined service in the year 1967 as Panchayat Secretary in Zila Karyalaya (Pnachayat Anubhag), Mirzapur and with the passage of time has been promoted as Assistant Development Officer. Petitioner-appellant retired from the post of Assistant Development Officer on 31.03.2001 and his retiral benefits have been finalized by taking into account 25 years of service whereas petitioner-appellant claimed that as his continuity in service has been accepted, his retiral benefits be finalized by keeping in view the service rendered by him for 33 years 10 months.

3. Petitioner-appellant came to this Court and this Court in Writ Petition No.17983 of 2005 asked the Additional Director, Panchayat Raj, U.P. at Lucknow to take decision on petitioner's claim within stipulated period and thereafter the decision in question has been taken and claim in question has been non-suited vide order dated 05.10.2015 passed by Additional Director, Panchayat Raj, U.P. at Lucknow on account of the fact that for period of eight years and 10 months, petitioner-appellant has not at all functioned and accordingly, no salary has been paid to him and in view of this, the said period cannot be clubbed for counting service for providing pensionary benefits to the petitioner-appellant. The order dated 05.10.2005 has been subjected to challenge before learned Single Judge and as mentioned above the Learned Single Judge has upheld the order dated 05.10.2005 passed by Additional Director, Panchayat Raj, U.P. at Lucknow.

4. Shri A.R. Dubey, Advocate submitted before us that by no stretch of imagination, the said service period rendered by him could be ignored and once there is continuity of service, the said period has to be clubbed for the pensionary and other benefits.

5. Countering the said submission, learned Standing Counsel Mrs. Rathi, submitted that whatever action has been taken, same is strictly in consonance with the Government Order dated 28.07.1989 and the policy that holds the field and the said period, as petitioner has admittedly not functioned and has not received salary, rightfully has been ignored.

6. After respective arguments have been advanced, at the outset we proceed to take note of the fact that after petitioner-appellant has represented his matter,

his claim has been revisited and following findings have been returned:-

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(I) ekg uoEcj] 72 ls tuojh] 1973 rd dk osru dk;Z{ks= ls vuqifLFkr jgus ds dkj.k vkgfjr ugha fd;k x;kA

(II) fnIEcj] 73 ls ekpZ] 75 rd dk osru {ks= ls vuqifLFkr jgus ds dkj.k QyLo:i fuyfEcr dj fn;s tkus ,oa Jh "kqDy }kjk vius izkFkZuk&i= fn0 21-02-1975 ds vUrxZr xyfr;ksa ds fy;s {kek ;kpuk djrs gq, fcuk thou fuokZg HkRrk ,oa fcuk osru ds cgky fd;s tkus ds vkosnu i= vkns"k fnukad 26-02-1975 ds }kjk bUgsa fcuk thou fuokZg HkRrk ,oa fcuk osru ds cgky fd;s tkus ds dkj.k vkgfjr ugha gqvka

(III) ekpZ] 1979 ls Qjojh] 1980 rd fodkl [k.M ujk;uiqj ls vfHkys[kksa lfgr iykf;r gks tkus ds dkj.k osru Hkqxrku ugha gqv vkSj u bldh ekax buds }kjk dh x;hA

(IV) tqykbZ 1980 ls ekpZ] 1983 rd {ks= ls iykf;r jgus ,oa Mk;jh izLrqr u djus ds dkj.k Jh "kqDy dk mDr vof/k dk osru vkgfjr dj Hkqxrku ugha fd;k x;kA

(V) Qjojh 1984 ls twu] 1984 rd dh vof/k esa fodkl [k.M lh[kM+ ls fcuk fdLh lwpu ds iykf;r jgus ,oa ckj&ckj ekaxus ij Li"Vhdj.k izLrqr u djus ds dkj.k mDr vof/k dk osru vkgfjr ugha gqvka

(VI) Qjojh] 1985 ls 10-07-1985 rd dk;Z{ks= ls Qjkj gksus ds dkj.k osru Hkqxrku ugha fd;k x;kA

(VII) ekpZ] 1986 ls twu] 1986 rd vodk"k Lohd`r u gksus rFkk fuyafr jgus ds dkj.k osru Hkqxrku ugha gqvka

(VIII) Qjojh] 1987 ls ekpZ] 1988 rd dk;Z{ks= ls iykf;r jgus ds dkj.k osru dk Hkqxrku ugha fd;k x;kA

7. On factual front, the finding that has been returned has not been disputed and the only challenge that is being made before this Court is that there is no such entry in the service book.

8. Once on factual front, the said finding that has been so recorded by the Additional Director, Panchayat Raj, U.P. at Lucknow has not at all been assailed before us, then merely because such fact has not been entered in service book will not dilute the effect of the same, and accordingly challenge made cannot be accepted and in view of this, the fact that petitioner-appellant has not at all worked for 8 years and 10 months and has not received salary is accepted position.

9. For maintaining continuity in service, petitioner has been accorded leave without pay, then the issue is as to whether in such a background, such period could be clubbed or computed for pensionary benefits.

10. In the State of U.P., the State Government has already taken a policy decision on 28.07.1989 dealing with the effect that would accrue on account of

break in service and on account of leave. The relevant extract of the same is as follows:-

"kklukns" k la[;k 41@2@69 fu;qfDr&[k fnukad 20 vxLr] 1971 esa ;g Hkh izkfo/kku gS fd ;fn fdlh ljdkh lsod dh lgh tUeFrFk dh tkudkj u gksdj dsoy o"KZ dh tkudkj gks rks mldh tUeFrFk lEcU/kr o"KZ dh igy tqykbZ ekudj mls 30 twu dks lsokfuo`Rr dj fn;k tk;sxk vkSj ;fn o"KZ ds vfrfjDr ekg dh Hkh tkudkj gks rks lEcU/kr ekg dh 16 rkjh[k ekudj ml ekg dh vfUre frFk dks lsokfuo`Rr dj fn;k tk;sxkA

bl "kklukns" k ds }kjk mijksDr O;oLFkk esa dksbZ la"kk/ku izLrkfor ugha gS vr% tUeFrFk ds lEcU/k esa lHkh dk;kZy; v/;{k mijksDr izfdz;k ds vuqlkj dh dk;Zokgh djsaxsA

p lsok esa O;o/kku dk izHkko%&

1- fuEu ifjLFkfr;ksa dks NksM+dj ,d ljdkh lsod dh lsok esa O;o/kku ds dkj.k mldh iwoZ lsok O;kIr gks tkrh gS%&

1- ,slh vuqifLFkfr ftldk vodk" k izkf/kd`r dj fn;k x;k gks]

2- vukf/kd`r vuqifLFkfr tks Lohd`r vodk" k dh fujUrj esa gqbZ gks] c"krZa fd lEcU/kr in gks LFkk;h :i ls Hkj u fn;k x;k gks]

3- fuyEcu] ;fn ,sls fuyEcu dh lekfir ij ljdkh lsod dks mlh in ij vFkok fdlh vU; in ij iquZLFkkfir dj fn;k x;k gks vFkok ftl ljdkh lsod dh e`R;q gks x;h rks vFkok ljdkh lsod dks fuyEcu dh vof/k esa vfuok;Z :i ls lsokfuo`fRr dj fn;k x;k gks vFkok lsokfuo`fRr ds vuqefr iznku dj nh x;ha gks]

4- ljdkh lsod dks ----- esa l{ke izkf/kdkjh }kjk fdlh ,sls vf/k"Bku esa fu;qDr dj fn;k x;k gks tks ljdkh lsok esa u vkrh gksa]

5- ,d in ls nwljs in ij gq, LFkkukUrj.k ds QyLo:i fy;k dk;ZHkkj xzg.k dkyA

2- mijksDr izkfo/kkuksa ds cktwn fu;qfDr izkf/kdkjh fcuk vodk" k dh ,slh vuqifLFkfr dh vof/k;ksa dks vlk/kkj.k vodk" k esa iwoZxkeh frFk ls ifjofrZr dj ldrs gS vkSj ,slh n"kk esa vlk/kkj.k vodk" k ls iwoZ dh lsok vof/k dks vgZdkjh lsok ekuk tk ldrk gSA

N& vodk" k dk izHkko%&

flfoy lfoZl jsxqys" kUl ds vuqPNsn 400] 419ch rFkk 487 ds vUrjZr losru vodk" k dh vof/k vgZdkjh lsok ekuk tkrh gS fdUrq ;fn lsokdky esa dqN vof/k vlk/kkj.k vodk" k vFkkZr fcuk isa"ku dh gks rks mls vgZdkjh lsok esa lfEefyr ugha ekuk tk;sxk tc rd vlk/kkj.k vodk" k fuEu dkj.kksa ds vk/kkj ij Lohd`r u fd;k x;k gks%&

1- l{ke fpfdRlk vf/kdkjh }kjk fn;s x;s fpfdRlk izek.k i= ds vk/kkj ij]

2- ukxfjd v"kkfUr ds dkj.k M~;wVh ij vkus vFkok iqu% tkus esa vleFkZrk ds dkj.k]

3- mPp rdudh vkSj oSKkfud v/;uksa esa vuq"khyu ds dkj.k]

4- vU; vk/kkjksa ij fy;k x;k vlk/kkj.k vodk" k vgZdkjh Isok ugha ekuk tk;sxx vkSj ml vof/k ds IEcU/k esa Isok iqfLrdk esa rnuqlkj izfof"V dj nh tk;sxhA

t& O;o/kkuksa dk Hk" kZ.k

flfoy lfoZl jsxqys" kUl ds vuqPNsn 422 ds vuqlkj ;fn Isok dh nks vof/k;ksa ds e/; mRiUu gq, O;o/kku@O;o/kkuksa dk Hk" kZ.k ugha fd;k x;k gS rks O;o/kku Is iwoZ dh Isok vof/k vgZdkjh Isok ugha ekuh tkrh gSA bl IEcU/k esa mifjysf[kr "kklukns" k fnukad 13-12-1977 esa ;g fu.kZ; fy;k x;k gS fd Isok vfHkys[k esa dksbZ fo"ks" k ladsr u gksus ij jkT; ljdkj ds vUrxZr dh x;h Isok dh tks vof/k;ksa ds chp gq;s O;o/kku@O;o/kkuksa dks dsoy ,sls ekeyksa dks NksM+dj tgkWa vU;Fkk ;g tkudkj gks fd O;o/kku Isok Is R;kxi= nsus] c[kkZLr fd;s tkus] fudky fn;s tkus vfkok gM+rky esa Hkkx ysus ds dkj.k gqvk gS] Lor% Hkf" kZr eku fy;k tk;sxA"

11. Once the policy decision in question clearly provides that for the period for which one has not functioned and has not received salary, the said period would be included in service, then the Authorities, on the spot, are absolutely right at the point of time when they have proceeded to refuse to club the said period in service. Judgement in the case of Bhagmaniya Devi v. State of U.P., will not at all come to the rescue or reprieve of petitioner, as the said judgement does not take care of the Government Order dated 20.07.1989 holding the field.

12. With the above, Special Appeal is dismissed.