

(2018) 10 UK CK 0098
In the Uttarakhand High Court
Case No : Writ Petition (S/S) No. 40 Of 2018

Gopal Singh Bisht

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 27-10-2018

Acts Referred:

Citation : (2018) 10 UK CK 0098

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Ghanshyam Joshi, N.P. Sah

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.

Petitioner before this Court has admittedly put in more than 40 years of service as a Class IV employee ostensibly under a project known as "Antar Gramin Sadak Nirman Yojna", English translation of which will read as "Inter Rural Road Construction Project" which comes under the Commissioner of the Department of Cane and Sugar. Admittedly the appointment of the petitioner was made by the Joint Cane Commissioner, Kashipur. The petitioner after reaching the age of his superannuation retired from service on 30.11.2016. Petitioner after his retirement received the gratuity and other post-retiral benefits, but he has not been given the pension. It is for his pension that he has filed the present writ petition.

The principal argument of the petitioner is based upon a judgment of the Hon'ble Apex Court which has been annexed as Annexure No. 6 to the writ petition which was rendered on 10.1.2014 in the case of Vinod Kumar Goel v. State of Uttarakhand & Others. In that case, the writ petition of Mr. Vinod Kumar Goel, who was a Junior Engineer under the Cane Commissioner in the same project, for grant of similar relief of pension was rejected by the Uttarakhand High Court against which an appeal was filed which was allowed by the Hon'ble Apex Court

holding that the employee is entitled for the pension. Relevant portion of the judgment of the Hon'ble Apex Court reads as under:

"The very same issue was earlier raised before this Court by the respondents against the appellant in Civil Appeal No. 2511 of 2004. In the said case, while allowing the appeal preferred by the appellant, this Court by order dated 16th April, 2004 noticed that the Cane Commissioner was the appointing authority of the appellant and the appellant was working under the cane commissioner in the Antar Gramin Sadak Nirman Yojna and held as follows:

"Learned counsel for the Cane Commissioner and State Submitted that the Rules regarding the retirement would only apply to the government employees and the appellant being not a government employee these Rules are not applicable. We are not inclined to accept the contention and from Ext. P-1, order of the Cane Commissioner, we find rules applicable to the government employees have been adopted for the Cane Development Department.

In view of Annexure P-1, appellant was entitled to continue till 60 years. Appellant was made to retire at the age of 58 years illegally and as the appellant should have been made to retire only on completion of the age of 60 years, he is entitled to get all consequential benefits.

The appeal is disposed of accordingly." In the earlier case, between the same parties, this Court has not accepted the stand taken by the respondent-state that the appellant is not a Government employee. This Court noticed that the Rules applicable to the Government employees have been adopted for the Cane Department and held the Rules of the State is applicable to the appellant for the purpose of superannuation and other consequential benefits. The decision aforesaid being binding on both the parties, the respondents cannot deny the retiral benefits including pension to the appellant."

Petitioner admittedly was a Class IV employee in the same project in which Mr. Vinod Kumar Goel was the Junior Engineer. There is a finding of Hon'ble Apex Court based upon the earlier decision of the Court that the Rules applicable to the government employees have been adopted for the Cane Department and therefore the Rules of the State are applicable to the employees working in the said project for the purpose of superannuation and other consequential benefits. The aforesaid decision is binding on both the parties, the respondents therefore cannot deny the retiral benefits to the petitioner, including his pension.

Learned State Counsel could not show any ruling or advance any argument to rebut the contention of the petitioner.

In view thereof, writ petition is allowed. Mandamus is issued to the respondent authorities to give the pensionary benefits to the petitioner forthwith and calculate the arrears of the pension and release the same in favour of the petitioner within a period of two months from the day a certified copy of this order is produced. In case the arrears of the pension are released after a period

of two months from the date a certified copy of this order is produced, interest @ seven per cent per annum shall be payable on the outstanding amount to the petitioner to be calculated from a period after two months, as stated above.