(2015) 01 AHC CK 0103

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28679 of 2009

Krishna Prasad Yadav and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Citation : (2015) 2 ADJ 663 : (2015) 4 ALJ 76 : (2015) 110 ALR 721 : (2015) 2 AWC 1207 : (2015) 2 ESC 842 : (2015) 1 UPLBEC 513

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

Advocate : Ashok Khare and Siddharth Khare, for the Appellant; Ashok Kumar Shukla and K.K.M. Tripathi, Advocates for the Respondent

Final Decision : Allowed

Judgement

Yashwant Varma, J.—This petition has been preferred seeking the following primary relief:

"a writ, order or direction of suitable nature commanding the respondents to take into account the entire length of service of the petitioners computed from the date of their initial appointment for purposes of computation of the retiral benefits of the petitioners and not to limit such consideration to length of service either subsequent to 1.10.1989 alone or subsequent to 28.4.2004 alone." Briefly stated the dispute arises in the following backdrop. All the petitioners were appointed as Assistant Teachers in the Primary Sections of the Educational Institutions represented by their respective Committees of Management. The Primary Sections of these colleges came on to the grant-in-aid list issued by the State Government on 6.9.1989. As is evident from the said list and the orders of the Government, the effective date for these colleges and their Primary Sections coming on to the grant-in-aid list was 1.10.1989. All the petitioners herein were in fact, working in these Institutions much prior to that starting from 1964-72. It would be apposite to notice here that while the petitioner Nos. 1, 2 and 3 have attained the age of superannuation and retired in 2006-07-08, the petitioner

Nos. 1, 2, 3, 8 and 9 retired on different dates between 2006-2013, the petitioner No. 4 retired from service on 30.6.2014 while remaining petitioners are to retire in 2015 and 2016. These facts which are stated by the petitioners in Paragraphs 8, 10 and 11 of the writ petition are not disputed by the contesting State-respondents. The grievance of all these petitioners is the non-payment of pension under the provisions of the U.P. State Aided Educational Institution Employees'' Contributory Provident Fund-Insurance-Pension Rules, 1964. These Rules admittedly came into force on 1.10.1964 and in terms thereof the employees were entitled to be provided pension computed on the basis of the total length of service put in by them. The dispute itself arises pursuant to a Government Order dated 20.1.2004 and the stand of the State that the benefit under the Rules aforementioned would be permissible to be sanctioned and paid to these teachers only from the date of promulgation of the said Government Order. Resultantly, the total length of qualifying service which forms the basis for computation and grant of family pension becomes effected and it is in view of the same that the petitioners have approached this Court.

2. Sri Siddharatha Khare, learned Counsel for the petitioners has submitted that all the petitioners were in service in the Primary Section of the Institutions in question much prior to the date of promulgation of the Government Order. He submitted that the Primary Section being taken on to the grant-in-aid list w.e.f. 1.10.1989 clearly made the petitioners eligible to obtain benefits falling under the Rules 1964. He submitted that the benefit of the statutory Rule could not be negated or curtailed in any manner by the Government Order dated 20.1.2004. Elaborating his submissions Shri Khare has further relied upon the judgment rendered by a learned Single Judge of this Court in Writ Petition No. 17819 of 2007, Mangali Prasad Varma v. State of U.P. and Others. Considering a similar issue the learned Single Judge was pleased to hold that the benefit of past service rendered by the petitioners could not be curtailed by the Government Order dated 20.11.2004. It was held that the so called cut off date could not be kept as 20.1.2004 inasmuch as pension was not being granted by virtue of the Government Order but that the same was a right which flowed from the provisions of the Rules 1964.

3. Learned Standing Counsel, on the other hand, relying upon the Affidavit filed in opposition to this petition has submitted that the Primary Sections came on to the grant-in-aid list only w.e.f. 1.10.1989 and that the provisions for payment of pension to teachers employed in such Primary Sections was provision for only vide Government Order dated 20.1.2004. He has further contended that the provisions of the 1964 Rules themselves became applicable to the petitioners only once the Institutions came on to the grant-in-aid list i.e. from 1.10.1989 and therefore, the pension could not have been paid to the petitioners computing their services rendered prior thereto.

4. It would be relevant to point out here, before proceeding to the merits of the rival contentions raised by the parties, that the Committees of Management were

put to notice by an order of this Court but have failed to file any Affidavits in opposition to this petition. The Government Order around which centers the present controversy is mentioned in the Affidavits of parties as dated 28.1.2004. However, parties were agreed that the same was a typographical error and that the correct date of the Government Order was 20.1.2004. I proceed now to consider the contentions of parties.

5. It would be apposite to refer to some of the salient provisions of the Rules 1964.

Rule 3 reads as under:

"3. These rules shall apply to permanent employees serving in State aided educational institutions of the following categories run either by a Local Body or by a Private Management and recognised by a competent authority as such for purposes of payment of grant-in-aid:

(1) Primary Schools;

(2) Junior High Schools;

(3) Higher Secondary Schools;

(4) Degree Colleges;

(5) Training Colleges."

Rule 17 reads as under:

"17. An employee shall be eligible for pension on--(i) retirement on attaining the age of superannuation or on the expiry of extension granted beyond the superannuation age;

(ii) voluntary retirement after completing 25 years of qualifying service;

(iii) retirement before the age of superannuation under a medical certificate of permanent incapacity for further service; and

(iv) discharge due to abolition of post or closure of an institution due to withdrawal of recognition or other valid causes.

Notes.--(1) The age of compulsory retirement of an employee shall be such as prescribed in the relevant rules applicable to him.

The date of superannuation shall be reckoned from the date of birth of an employee as entered in his Service Book or other records. In case of the year of birth only is known, but not the month, the first July of the year shall be taken as the date of birth. Similarly when both the year and the month of birth are known, but not the date, the 16th of the month shall be taken as the date of birth."

Rule 18 reads as under:

"18. The amount of pension that may be granted shall be determined by the length of qualifying service, vide Rule 31 below. Fractions of a year shall not be taken into account in the calculation of pension under these rules. Pension shall be calculated to the nearest multiple of 5 paisa:

(a) The full pension admissible under these rules will not be sanctioned unless the service rendered has been considered satisfactory and is approved by the Controlling Authority.

(b) If the service has not been thoroughly satisfactory the authority sanctioning the pension may order such reduction in the amount as it thinks proper."

Rule 19 reads as under:

"19. (a) Service will not count for pension unless the employee holds a substantive post on a permanent establishment.

(b) ....

(c) ....

(d) ....

(e) ...."

6. It is apparent that the grant of pension is squarely covered by the provisions of the statutory Rules referred to above. The said rules in unequivocal terms provide that they shall apply to the permanent employees serving in State Aided Educational Institutions run either by a Local Body or by a Private Management and recognized by a Competent Authority as such for purposes of payment of grant-in-aid.

7. The category of Institutions referred in Rule 3 clearly include Primary Sections. It is the undisputed position that the Institutions in which the petitioners were serving had Primary Sections and even though run by Private Management were recognized for the purposes of payment of grant-in-aid. These Rules did not prescribe a cut off date for the purposes of a person becoming eligible for grant of pension thereunder. In fact, Rule 4(b) clearly throws light on this aspect of the matter when it grants an option to existing members in permanent service to opt and elect to be governed by these Rules. The Rules themselves came into effect from 1.10.1964 and would, therefore, be applicable to all thereof. Insofar as the aspect of deposit of management contribution as envisaged under the said Rule is concerned, this Court had already struck down the cut of date of 31.3.2002 as prescribed by the Government Order dated 26.7.2001 in Smt. Shanti Solanki v. State of U.P. and Others, passed in W.P. No. 75746 of 2006 and the said decision has been consistently followed in various other cases decided by this Court including W.P. No. 17033 of 2012, Lal Chand Singh v. State of U.P. And Others. About the payment of pension being governed solely by the provisions of the Rules 1964, this Court is of the opinion that its applicability could not have been eclipsed or in any manner straddled over by the Government Order dated 20.1.2004. This Court is in agreement with the judgment rendered by a learned

Single Judge in Mangali Prasad (supra) on the issue that merely because there was delay in issuing appropriate clarifications with regard to the applicability of the Rules to Primary Sections, the same could not have denuded the petitioners of their right to claim pension under the Rules 1964. It is further relevant to note here that the Primary Section was an integral part of the Institution and the teachers attached thereto could not have been discriminated for the purposes of payment of pension merely because they came on to grant-in-aid list w.e.f. 1.10.1989. In the opinion of the Court, there is no provision under the Rules 1964 which curtails the computation of length of qualifying service to the time when the Primary Sections became or came under the grant-in-aid list.

8. Accordingly and in view of the above, this writ petition is allowed and it is accordingly held that the petitioners shall be entitled to pension under the provisions of the Rules 1964. The management contribution required to be deposited may be so made within a period of two months and thereafter the respondents shall proceed to compute the pension of the petitioners taking into account the total length of qualifying service rendered by them and in light of the observations made hereinabove. The pension so computed and becoming liable to be paid to the petitioners from their respective dates of superannuation will be paid within a period of two months from the date of deposit of management contribution and the arrears shall carry interest of 12 per cent per annum. The writ petition is accordingly allowed in terms indicated above.