
(2014) 07 AHC CK 0222
In the Allahabad High Court
Case No : Service Single No. 3793 of 2014

Manphool

APPELLANT

Vs

U.P. Jal Nigam

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Citation : (2014) 7 ADJ 517 : (2015) 1 AWC 457

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Savita Jain, Advocate for the Appellant; I.P. Singh, Advocate for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—Heard Ms. Savita Jain, learned counsel for the petitioner and Sri I.P. Singh, learned counsel for the respondents. The petitioner in this writ petition is seeking a direction to the respondents to calculate his retiral dues treating his retirement age as 60 years and also to pay him arrears of pension and other dues.

2. According to the averments made in the writ petition, the petitioner was a Class IV employee in the U.P. Jal Nigam. It is stated that earlier the age of retirement was 58 years but subsequently by G.O. dated 28.11.2001 it was enhanced to 60 years by the State Government in all the departments of the State Government. A query was raised by the Jal Nigam as to whether the age of retirement of the employees of the Nigam would be 58 years or 60 years. The State Government through its letter dated 22.1.2002 informed the Nigam that age of the employees of the Nigam would be 58 years and not 60 years and that the G.O. enhancing the age to 60 years would be applicable in the State Government and not in the Nigam. Certain employees raised their grievance with regard to age of retirement. The matter went upto the Supreme Court in the case of Harwindra Kumar Vs. Chief Engineer, Karmik and Others, and the Supreme Court by order dated 18.11.2005 directed the Nigam to continue the

petitioner therein till he attains the age of 60 years i.e. on 30.8.2005. The State Government issued G.O. dated 8.12.2005 and 30.8.2005 enhancing the age of retirement from 58 years to 60 years for the employees, who were employed in the Local Self Government Engineering Department and were transferred to the U.P. Jal Nigam but so far as the employees, who were directly appointed in the U.P. Jal Nigam were concerned, the age of retirement would be 58 years. In the judgment of Harwindra Kumar (supra) the Supreme Court has held that the age of retirement of Government Servants employed under the State of U.P. and who were transferred in the Nigam would remain 60 years and so far as the employees of the Nigam were concerned, liberty was given to the Nigam to make suitable amendment in Regulation 31 of Uttar Pradesh Jal Nigam Employees (Retirement on the age of Superannuation) Regulations 2005.

3. Another dispute relating to age of retirement of the employees of the Jal Nigam came up before the Supreme Court in the case of Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, and the Supreme Court allowed the benefits of arrears of salary only to those employees of the Nigam, who had filed writ petition but denied the same to others, who had not moved before any Court of law.

4. Thereafter another Bench matter came up before the Supreme Court in the Civil Appeal No. 5527 of 2012, State of U.P. v. Dayanand Chakrawarty and others and other connected Civil Appeals wherein the directions given in the case of Jaswant Singh were considered by the Supreme Court. Para 38 of the said judgment reads as follows:

38. In these cases as we have already held that Regulation 31 shall be applicable and the age of superannuation of employees of the Nigam shall be 60 years; we are of the view that following consequential and pecuniary benefits should be allowed to different sets of employees who were ordered to retire at the age of 58 years:

(a) The employees including respondents who moved before a Court of law irrespective of fact whether interim order was passed in their favour or not, shall be entitled for full salary up to the age of 60 years. The arrears of salary shall be paid to them after adjusting the amount if any paid.

(b) The employees, who never moved before any Court of law and had to retire on attaining the age of superannuation, they shall not be entitled for arrears of salary. However, in view of Regulation 31 they will deem to have continued in service up to the age of 60 years. In their case, the appellants shall treat the age of superannuation at 60 years, fix the pay accordingly and re-fix the retirement benefits like pension, gratuity etc. On such calculation, they shall be entitled for arrears of retirement benefits after adjusting the amount already paid.

5. Sri LP, Singh, however, does not dispute the factual matrix of the case but he submits that the petitioner had retired in 2009 and admittedly he had not filed any writ petition or approached any Court of law and, therefore, directions in the

judgment of Jaswant Singh would wholly prevail and no relief can be granted to the petitioner. He has referred to the judgment of the Supreme Court in the case of Brijesh Kumar and others v. State of Haryana and others, SLP Nos. 6609-6613 of 2014, which matter arose out of an award under the Land Acquisition Act and the Supreme Court relying upon its earlier decisions in the cases of State of Karnataka and Others Vs. S.M. Kotrayya and Others, , Jagdish Lal and others Vs. State of Haryana and others, and Rup Diamonds and Others Vs. Union of India and Others, has rejected the claim of the petitioners on the ground that they had never agitated their matter before any Court of law and had approached the Court only after the decision rendered by the Court in other cases, therefore, the claim was time barred and no relief could be granted.

6. I have considered the rival submissions- of the learned counsel for the parties.

7. The only question in the present case is whether the claim of the petitioner was barred by laches and no relief could be granted by this Court in view of the judgment in the case of Jaswant Singh (supra). However, the judgment of Jaswant Singh has already been considered by the Supreme Court in the case of Dayanand Chakrawarty (supra) which was a case relating to the employees of the Jal Nigam and it is only thereafter that the Supreme Court has given directions in para-38 of that judgment.

8. In this view of the matter, it is not in dispute between the parties that the case of the petitioner squarely falls in category (b) of para 38 of the directions given by the Supreme Court in the case of Dayanand Chakrawarty (supra).

9. This writ petition is, therefore, allowed in the light of the directions given by the Supreme Court in paragraph 38 (b) of the judgment in the case of Dayanand Chakrawarty (supra). There shall be no order as to costs.