
(2016) 05 AHC CK 0051
In the Allahabad High Court
Case No : Special Appeal No. 2127 of 2012

Narayan Dutt Joshi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 AILLJ 172 : (2016) LIC 4426

Hon'ble Judges : V.K. Shukla and Umesh Chandra Srivastava, JJ.

Bench : Division Bench

Advocate : Brijesh Chandra Tripathi and Praveen Kumar Shukla, Advocates, for the Appellant; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Appellant retired from the post of Assistant Teacher on 30.06.1994 and he preferred Civil Misc. Writ Petition No. 27066 of 1993 before this Court praying for following relief.

(i) to issue a writ of order or direction in the nature of mandamus commanding the opposite parties to correctly make the fixation of the petitioner in the L.T. Grade w.e.f. 1.1.1996 treating the petitioner to be in the selection C.T. grade w.e.f. 1.9.1980 and pay the entire arrears of salary for which the petitioner is entitled to be paid under law.

(ii) to issue a writ order or direction in the nature of mandamus commanding the opposite parties to treat the petitioner in C.T. Grade since 1.9.1964 and count the period from 1964 in the C.T. Grade service of the petitioner and grant him selection grade w.e.f. 1.9.1980 on account of his having completed 16 years of service in the C.T. Grade.

(iii) to issue a writ order or direction in the nature of mandamus directing the opposite parties to calculate the post retiral benefits of the petitioner on the basis of his service from 7.8.1963 to 30.6.1994 and to pay the same with arrears and

interest and to refix his pension on the basis of his service from 7.8.1963 to 30.6.1994 and further to pay the difference of pension and other post retiral benefits to the petitioner.

(iv) to issue a writ order or direction in the nature of mandamus directing the opposite parties to pay the leave encashment and the difference of the C.T. pay-scale for the period from 17.7.1973 to 31.10.1976.

(v) to issue a writ order or direction in the nature of mandamus commanding the opposite parties to pay the arrears of the L.T. Grade for the period from 1.11.1976 to 1.1.1986 and the arrears of selection grade of L.T. Grade for the period from 1.1.1986 to 30.6.1994 of Rs. 48,255/- and further to pay the medical leave arrears of Rs. 7061/- to the petitioner.

(vi) to issue a writ order or direction in the nature of mandamus commanding the opposite parties to pay the difference of arrears of the gratuity for the period from 7.8.1963 to 30.6.1994 and the period for which the gratuity has been paid i.e. from 17.7.1973 to 30.6.1994.

2. Learned Single Judge of this Court partly allowed the writ petition, granting arrears of L.T. Grade w.e.f. 01.11.1976 to 01.01.1986, as well as Rs. 7161/- towards medical leave encashment. Aggrieved petitioner/appellant preferred Special Appeal No. 2127 of 2012 and same has been dismissed.

3. Against the said order passed by the Special Appeal Bench, Civil Appeal (S) No.2105 of 2015 had been preferred before the Apex Court and Apex Court in its turn on 20.02.2015 has proceeded to pass following order:-

"When the matter initially came up before us for preliminary hearing on 20th January, 2014, learned counsel for the appellant submitted, on instruction, that the appellant sought to pursue the present proceedings limited to para (iii) of the prayer, extracted earlier. We have accordingly issue notice to the respondents-state limited to that prayer.

Having hear learned counsel for the parties at some length we are of the view that the prayer made by the appellant in para (iii) for a mandamus directing the respondents to calculate the post retiral benefits of the appellant on the basis of his service from 07.08.1963 to 30.06.1994 and to pay the arrears based on the same and also to refix his pension, could have been ignored or declined on the ground that the said prayer sought to agitate stale claim. That is because the writ petition itself was filed in the year 1993 i.e. much before the date of retirement of the appellant. One could understand if the appellant came to the court long against his retirement. But that was not the position in the case at hand. We, therefore, find it difficult to support the view taken by the Division Bench of the High Court that the claim was stale or the grievance belated. Having said that, we do not purpose to go into the validity of the claim itself. That is a matter which we leave to the High Court to determine. We are also of the view that since the appellant has retired as early as in the year 1994 and is

fairly old, instead of remanding the matter back to the Single Judge it would be more appropriate to request the Division Bench of the High Court to examine prayer (iii), reproduced above, on its merit.

We accordingly allow this appeal, set aside the order passed by the High Court and remit the matter back to the Division Bench of the High Court to examine the claim made by the appellant, limited to prayer (iii) extracted above. The High Court is also requested to make an endeavour to dispose of the appeal on merits as early as possible preferably within six months from the date a copy of this order is received by it.

No. Costs.

4. Pursuant to the order passed by Apex Court, matter is now before us wherein issue i.e. required to looked into by us is as to whether prayer No.3 of the appellant can be allowed or not in the facts of case, as it exists on record.

5. Apex Court has given direction to decide the matter within the time frame provided for and record in question reflects that matter was taken up on 04.05.2015 and appeal was dismissed for want of prosecution and thereafter, restoration application has been moved on 15.01.2016 and same has been allowed on 16.03.2016 with the direction that matter be listed before the appropriate bench for hearing and this is how the matter has been before us now.

6. Narayan Dutt Joshi had appeared in person and looking to his old age and physical condition we proceeded to ask him as to whether he requires any assistance of any lawyer and on such suggestion of Court, he submitted that he has no trust in any lawyer and he also submitted before us that he is not at all in a position to hear, as he is hard of hearing and virtually cannot hear anything and he in his turn after addressing the Court for same time, proceeded to mention before us that his earlier services are liable to be clubbed and not only this he also passed on copy of some papers that can be looked into by us while considering his request.

7. Learned Standing Counsel on the other hand also looked into the matter and tried to assist the Court on the basis of record available.

8. The core issue that is to be answered by us is as to whether period spend by the appellant on duty from 07.08.1963 to 16.07.1973 is also liable to be clubbed for the purposes of fixing his pension and other benefit.

9. The benefit of appellant has been computed on the basis of services rendered by him from 17.07.1973 to 30.06.1994 and services rendered from 07.08.1963 upto 16.07.1973 has been left out and appellant's grievance is that said services should have been clubbed for ensuring payment of pension and others post retiral benefit to the appellant.

10. Before us categorical mention has been made that from 07.08.1963 in whatever institution appellant has served in whatever capacity, same has been

against the sanctioned post, against which maintenance grant has been paid by the State Government, and in view of this, said services cannot be excluded and whatever minor breaks are there, same be condoned, as said breaks were not at all in control of the appellant. Petitioner has given details of the fact that on 07.08.1963 he joined as a Junior High Sanskrit Teacher in D.A.V. Inter College Budhana, Muzaffarnagar in J.T.C. Grade. In September, 1964, his salary was fixed in C.T. Grade as he used to teach upto VIII class only. Petitioner has given details that after resignation from the said college on 12.07.1970, he joined at National Inter College (Ranikhet) Almora on 13.07.1970 for teaching junior classes under three language formula teacher without any break in his services and further submit that his services were illegally done away with and thereafter he has been appointed at S.S.V. Inter College, Hapur (Ghaziabad) as an Assistant Teacher on temporary basis and he served from 05.08.1971 till 30.06.1971 and thereafter after summer vacation he was permitted to serve till 30.06.1972 and thereafter he has served there till 30.06.1973. With effect from 17.07.1973 at R.R. Inter College Weajheelpur (Ghaziabad). In pith and substance petitioner submits that at all point of time he has proceeded to render his service, and said services have been against the sanctioned post against which maintenance grant was being paid by the State Government and said services could not have been ignored for the purposes of commutating pension and other post retiral benefit. Short breaks in service for the purposes of computing continuous service be ignored.

11. Once such is the factual situation that has been stated and there is nothing contrary before us that appellant has not at all functioned against sanctioned post against which maintenance grant was paid by the State Government, then in our considered opinion it would be too harsh, if said period is not clubbed with the services that have been rendered from 07.08.1963 to the period prior to 17.07.1973.

12. In view of the peculiar characteristics of the case that appointment of appellant though made in temporary capacity has always been made against sanctioned post against which grant has been released by the State Government and there has been some break in appellant's services, and as breaks in question are insignificant as compared to length of service rendered, in view of this we proceed to pass order to that extent the services rendered by appellant from 07.08.1963 to the period prior to 17.07.1973 be also clubbed and based on the same his revised pension be ensured and further consequential action be taken in accordance with law within the time as fixed. For this purpose four months time be accorded from the date of receipt of certified copy of this order. In case there are legal impediments in implementation of the order, then petitioner be informed accordingly.

13. With the above, Special Appeal stands allowed.