

(2014) 01 AHC CK 0220

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 23055 of 2013

Paresh Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Citation : (2014) 3 ADJ 558 : (2014) 4 AWC 3767

Hon'ble Judges : Surya Prakash Kesarwani, J; Arun Tandon, J

Bench : Division Bench

Advocate : Bhagwati Prasad Singh, Vivek Srivastava and Vivek Kumar Singh,
Advocate for the Appellant

Judgement

1. Heard Shri B.P. Singh, Senior Advocate assisted by Shri V.K. Singh, Advocate on behalf of the petitioner and the learned Standing Counsel on behalf of the State. Petitioners, who are seven in number, claim that they were appointed as Passenger Tax Officer/Superintendent in the transport department of the State of U.P. They were asked to work on officiating basis as Assistant Regional Transport Officer (A.R.T.O.) during different periods between the year 1996 to 2003. It is further their case that in the year 2003 they have all been regularly selected for appointment as A.R.T.O. For the period of officiation as A.R.T.O. i.e. between 1996 to 2003, the petitioners set up a claim for payment of salary admissible to the post of A.R.T.O. inasmuch as it is their case that they were required to hold two posts at the same time and to discharge duties of two posts namely Passenger Tax Officer/Superintendent and Assistant Regional Transport Officer, simultaneously. It is the case of the petitioners that in accordance with Para 49(1) of Chapter VI of the Financial Handbook, Vol. II, Part 2 to 4, they are entitled to payment of salary of the higher post while holding dual charge.

2. Some of the petitioners had filed Civil Misc. Writ Petition No. 51469 of 2012 and others filed Civil Misc. Writ Petition No. 55030 of 2012 alleging therein that their request for grant of salary of the higher post of A.R.T.O. for the period they were holding charge of two posts has not been considered.

3. The writ petitions were decided vide order dated 4.10.2012 and dated 17.10.2012 requiring the state Government to examine the grievance of the petitioners individually in light of the judgment of the High Court in the case of Subhash Chandra Kushwaha v. State of U.P. 2009 (1) ADJ 155 (DB)(LB).

4. The State Government under the order impugned dated 16.1.2013 passed in individual case of all the petitioners separately has rejected the request of the petitioners.

5. Under the order impugned, it has been recorded that the claim of the petitioners for salary of the higher post for having discharged duties of two posts is not covered by Para 49 of Chapter VI of the Financial Handbook, Vol. II (Part II to IV), on the ground that they have not been initially appointed to higher post and they have only been asked to look after the work of the higher post. It has further been recorded that the petitioners did not raise any grievance in the matter of payment of salary during the relevant period. It has, therefore, been held that it is too late in the day to accept the request of the petitioners for grant of salary of the higher post i.e. A.R.T.O. for the period they had held the charge of the said post i.e. between 1996 to 2003. The representations have accordingly been rejected.

6. Shri B.P. Singh submitted before us that the order of the State Government is in teeth of the Division Bench judgment of this Court in the Prem Chand Srivastava v. State of U.P. and others (Writ Petition No. 563 of 2012 (S/B), decided on 24.5.2013 which in turn had noticed the judgment of another Division Bench in the case of Subhash Chandra Kushwaha (Supra) and had further taken note of Para 49 of Chapter VI the Financial Handbook Vol. II. He submits that for the reasons which have been recorded in the judgment of Division Bench in the case of Prem Chand Srivastava (Supra), the petitioners are also entitled to the same relief for payment of salary for the post of A.R.T.O. for the period they had held the charge of the said post. He further points out that against the order of the Division Bench dated 24.5.2013, an SLP was filed before the Apex Court. Leave was granted but the Special Leave to Appeal has been dismissed on 4.9.2013 by means of the following order:

Leave granted.

Upon hearing the learned counsel for the appellants and looking to the facts of the case, in our opinion, the cost awarded by the High Court is quite excessive. We reduce the amount of Rs. 2 lacs to Rs. 10,000/-, which shall be paid to the present respondent within two months from today.

Subject to above observations, the appeal is dismissed with no order as to costs.

7. It is also stated that the order of the Division Bench in the case of Prem Chand Srivastava and in the case of Subhash Chandra Kushwaha have since been implemented by the State Government. It is the case of the petitioners that this Court may also follow the judgment of the Division Bench in the case of Prem

Chand Srivastava and in the case of Subhash Chandra Kushwaha (Supras).

8. Having heard learned counsel for the parties and having examined the records, we find that the proviso to para 49 which requires that if a Government servant holds charge of another post or posts then approval of the financial department for payment of additional pay beyond the period of 90 days has to be obtained.

9. It is worthwhile to reproduce Chapter VI of Financial Handbook Vol II, relevant for our purposes which reads as follows:

Chapter VI-Combination of Appointments

49. The Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the State Government. In such cases, his pay is regulated as follows:

(I) where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he were appointed to officiate in the higher post, unless his officiating pay is reduced under Rule 35 but no additional pay shall be allowed for performing the duties of a lower post.

(ii) where a Government servant is formally appointed to hold dual charge of two posts in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge;

Provided that if the Government servant is appointed to an additional post which carries special pay, he shall be allowed such special pay,

(iii) where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post, or the highest post if he holds charge of more than two posts, in addition to ten percent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding thirty days but not exceeding ninety days:

Provided that if in any particular case, it is considered necessary that the Government servant should hold charge of another post or posts for a period exceeding ninety days, the concurrence of the State Government in the Finance Department shall be obtained for the payment of the additional pay beyond the period of ninety days.

(iv) No additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge.

(v) if compensatory or sumptuary allowances are attached to one or more of the posts the Government servant shall draw such compensatory or sumptuary allowances as the State Government may fix:

Provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts.

10. This proviso to para 49 has not been taken note of in the judgment in the case of Prem Chand Srivastava as well as in the case of Subhash Chandra Kushwaha (Supra). In our opinion, the proviso put an embargo upon the State Government to continue a person with charge of one or more than one post beyond 90 days except with the concurrence of the Finance Department.

11. It is not the case of the petitioners that any such concurrence from the finance department was obtained for payment of additional pay beyond 90 days. We find it difficult to agree to the Division Bench judgments in the case of Prem Chand Srivastava and in the case of Subhash Chandra Kushwaha (Supras).

12. Counsel for the petitioners would contend before this Court that proviso referred to herein above by us would be applicable only in respect of matters covered para 49(iii) and would not apply to officiating appointment covered by para 49(i). This aspect of the matter has not been examined by any of the aforesaid two Benches in the case of Prem Chand Srivastava and in the case of Subhash Chandra Kushwaha (Supras).

13. In our opinion the following substantial questions of law needs to be examined by a Larger Bench:

(a) whether the proviso to para 49 of Chapter VI of Financial Hand Book Vol. II (Para II to IV) which requires the concurrence of the finance department, if officiating appointment is to be continued beyond 90 days would be applicable in respect of appointments covered by Clause I and III of para 49 or the said proviso would be applicable to appointments under Clause III only.

(b) whether the law laid down by the Division Bench of the High Court in the case of Prem Chand Srivastava which direct that merely on holding additional charge of an additional post, the incumbent would become entitled to salary of higher post even in absence of sanction from the finance department lays down the correct law or not.

Let the papers be placed before the Hon''ble The Chief Justice for constituting a Larger Bench for answer to the said questions.