(2003) 11 UK CK 0025

In the Uttarakhand High Court

Case No : Writ Petition No. 1313 (S/S) of 2001

Prem Singh APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 01-11-2003

Acts Referred:

Road Transport Corporations Act, 1950 — Section 45

Citation : (2004) 1 UC 481 : (2004) 1 UPLBEC 1

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : S.N. Babulkar, for the Appellant;

Judgement

Rajesh Tandon, J.—By the present writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding the respondents to grant pension to the petitioner.

2. Brief facts rise to the present writ petition are that the petitioner was appointed in U.P. Government, Roadways, which was later on converted in to U.P. State Road Transport Corporation from 1st June, 1972. Originally, the petitioner was appointed as a Cleaner/Conductor in the erstwhile U.P. Government Roadways vide order dated 11th April, 1958. Subsequently, on 31.12.58 the petitioner was promoted on the post of Conductor in the pay scale of Rs. 60-4-80-EB-4-100. The petitioner thereafter was confirmed on 1st April, 1972 on the post of Conductor.

3. The petitioner has stated that the employees who were earlier employees of the U.P. Government Roadways were being treated as a Government Servant after the creation of the U.P. State Road Transport Corporation from 1st June, 1972 and the petitioner was sent for deputation in the U.P. State Road Transport Corporation in pursuance of the G.O. dated 7th June, 1972 and 5th July, 1972.

4. The grievance of the petitioner is that although the employees of the U.P. Government Roadways were sent for deputation after 1st June, 1972 after the

creation of U.P. State Road Transport Corporation, but the pensionary benefits have not been allowed inspite of the fact that the petitioner was confirmed while he was in service in the U.P. Government Roadways. From time to time the petitioner has brought to the notice of the authorities but of no response. Hence, the present writ petition has been filed.

5. The petitioner was presented in the year 1996 for getting the pensionary benefits but no counter-affidavit has been filed by the State of U.P. till today.

6. A counter-affidavit has been filed by the U.P. State Road Transport Corporation. Heard Shri S.N. Babulkar, Counsel for the petitioner as well as the Standing Counsel for the U.P. Ms. Beena Pandey. The Counsel for the petitioner has referred Regulation 39, which provides the pension and other retirement benefits. Regulation 39 reads as under :--

"Pension and other retirement benefits.--(1) (i) Subject to the provisions of Clause (ii) of this sub-regulation, an employee of the corporation shall not be entitled to pension, but he shall be entitled to the retirement benefits mentioned in sub-regulation (2).

(ii) A person, who was the employee of the State Government in the erstwhile U.P. Government Roadways and has opted for the service of the Corporation shall be entitled to pension and other retirement benefits in terms of the G.O. No. 3414/302-170-N-72, dated July 5, 1972.

(2) Without prejudice to the provisions of sub-regulation (1) an employee (including an employee who was in the service of the State Government in the erstwhile U.P. Government Roadways Department), shall be entitled to the following retirement benefits :--

(i) Employees Provident Fund or the General Provident Fund, as the case may be;

(ii) Gratuity in accordance with the Payment of Gratuity Act, 1972 or the relevant Government Rules, as may be applicable;

(iii) Amount due under Group Insurance Scheme, 1972;

(iv) One free family pass in a year for Journey within the State;

(v) A free family pass for his return to his home from the place of posting at the time of retirement in case he does not accept railway fare;

(vi) Any other benefit that may be allowed by the Corporation from time to time."

7. As will appear from sub-regulation (2) of Regulation 39, it provides the benefits of Provident Fund, Gratuity, Group Insurance and other benefits to an employee who was in the services of the State Government in the erstwhile U.P. Government Roadways Department.

8. So far as the G.O. dated 5th July, 1972 is concerned, the said Annexure has been filed as Annexure 8, page 47. Clause 1 and 2 of the G.O. provides that the

petitioner will be treated on deputation. Relevant paragraph one is quoted below :--

"1. Under the provision contained in Para 1(1)(a) of the above G.O. services of all the permanent and temporary employees who were in the service of State Roadways the Constitution of the State Road Transport Corporation shall be considered on deputation with the Corporation. For this deputation no period has so far been decided."

9. So far as the pensionary benefits are concerned, Clause 2 deals with the leave and retirement benefits as they have continued in the Government service. Relevant Clause 2 is also quoted below :--

"2. State Road Transport Corporation has not yet framed Rules on conditions of service of its officers and staff under it u/s 45 of Road Transport Corporation Act. Therefore, except Article 1 (1) (a) of the Above G.O. dated 7th June, 1972, all other articles shall be taken as deleted. However, whenever Rules on the conditions of Services are framed by the Corporation the same would contain as assurance of the Government that the condition of service of the officers/staff under the Corporation shall in no case be inferior to those available under U.P. State Road Transport Corporation before their absorption and their service tenure under the Government shall be taken into account in respect of their entitlement of their seniority, promotion, pay fixation, leave and retirement benefits in the same manner as in the case when they would have continued in the Government Service."

10. The Counsel for the petitioner has also argued that the entire liability is the State of U.P. as he was a confirmed employee there. He has also referred the decision of Jawahar Lal Sazawal and Others Vs. State of Jammu and Kashmir and Others, . He has referred Paragraph 17, the same is quoted below :--

"On the merits we may start by reaffirming the statement of the law laid down by this Court in Roshan Lal Tandon v. Union of India, that:

Once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government."

11. It is settled law that pension and gratuity are the legal rights of the pensioner and it is no more bounty to be distributed by the Government to its employees on their retirement as held by the Apex Court in (1998) 1 Supreme Court Cases 429. The observations are quoted below:--

"Pension and gratuity are no longer any bounty to be distributed by the Government to their employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with penalty of interest at the current market rate till actual payment.

Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

12. Recently, in the case of Dr. Uma Agrawal Vs. State of U.P. and Another, , the Apex Court has also held that the pension papers should be ready before retirement. Here in the present case, the husband of the petitioner has expired and in spite of various representations, the retirement benefits have not been paid. The observations of the Apex Court are quoted below:

"We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefit. This we have done to remind the various Governmental Departments of their duties in initiating various steps at least two years in advance of he date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired Government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the Government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays arc occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case.

The case before us is a clear example of department delay which is not excusable. The petitioner retired on 30.4.93 when an interim order was passed in this writ petition that the respondents woke up and started work by sending a special messenger to various places where the petitioner had worked. Such an exercise should have started at least in 1991, two years before retirement. The amounts due to the petitioner were computed and the payments were made only during 1997-98. The petitioner was a cancer patient and was indeed put to great hardship. Even assuming that some letters were sent to the petitioner after her retirement on 30.3.93 seeking information from her, an allegation which is denied by the petitioner, that cannot be an excuse for the lethargy of the department in as much as the rules and instructions requires there actions to be taken long before retirement. The exercise which was to be completed long before retirement was in fact started long after the petitioner''s retirement.

Therefore, this is a fit case for awarding interest to the petitioner. We do not think that for the purpose of the computation of interest, the matter should go back. Instead, on the facts of this case, we quantity the interest payable at Rs. 1 lakh and direct that the same shall be paid to the petitioner within two months from today."

13. Counsel for the petitioner has undertaken that the petitioner will file a representation before the Secretary. Civil Secretariat, Lucknow bringing to the notice that since he was a confirmed employee and has serried as a Government Servant, therefore, he is entitled for the benefit of the Regulation 39.

14. After such a representation is filed, the State of U.P. shall consider the same after hearing the petitioner in accordance with law. The petitioner shall file the representation within three weeks of obtaining the certified copy of the order, the same shall be decided by the State of U.P. within a period of three weeks thereafter.

15. In the light of the aforesaid, writ petition is disposed of with the direction that the State of U.P. through Transport Secretary, Civil Secretariat, Lucknow shall pass a reasoned order after hearing the petitioner regarding the pensionary benefits available to the petitioner in pursuance of Regulation 39 as stated aforesaid.

