
(2016) 04 AHC CK 0042
In the Allahabad High Court
Case No : Misc. Bench No. 6783 of 2016.

Ram Kishan & 71 Others	Vs	APPELLANT
State of U.P. Thru. Prin.Secy.,Lok Nirman Vibhag & 3 Others		RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Constitution of India, 1950 — Article 16, 309
Uttar Pradesh Civil Service Regulations, 1930 — Regulation 370

Citation : (2016) 3 AILLJ 590

Hon'ble Judges : Amreshwar Pratap Sahi;Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Pradeep Kumar Singh and Awadhesh Kumar Pal, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

1. This writ petition, inter alia, seeks to challenge the validity of Regulation 370 (I) of the U.P. Civil Service Regulations and a further prayer for computation of past services rendered in work charge establishment has been made for the purpose of payment of pension. In so far as the validity of Regulation 370 is concerned, it is to be noted that the same has been questioned on the touchstone of Article 14 of the Constitution of India.

2. At the very outset we may note that the position of law and the view expressed in a Full Bench judgment of this Court rendered in Writ-A No. 60352 of 2015 : Reported in 2016 (2) ALJ 571 as regards the computation of past services rendered by an employee in a work charge establishment is already settled and the opinion so expressed for ready reference may be extracted as under:

"We accordingly conclude that the judgments of this Court which proceeded to follow Narata Singh failed to bear in mind the distinguishing features of the statutory regime in the backdrop of which it came to be delivered. As noted above, Rule 3.17(ii) of the Punjab Civil Service Rules had been struck down. The absence of Rule 3.17(ii) from the statute book formed the bedrock upon which

Narata Singh was decided. Significantly, Regulation 370 continues to govern the field and in clear and unambiguous terms provides that the period of service rendered in a work charged establishment is liable to be excluded while computing qualifying service.

We therefore hold that the period of service spent in a work charged establishment is not liable to be countenanced for the purposes of computing qualifying service. The law in this regard stands correctly declared and elucidated in *Jai Prakash*, *Navrang Lal Srivastava* and *Ram Nagina*. The decision in *Panchu* and the other judgments of this Court which have followed the line of reasoning adopted therein shall accordingly stand overruled.

Before concluding, we may only refer to three judgments cited before us in support of the contention that the period of service rendered in a work-charged establishment was liable to be counted while computing qualifying service. These were (a) *Dakshin Haryana Bijli Vitran Nigam and Others v. Bachan Singh* ((AIR) 2009 SC 2745); (b) *Amkant Rai v. State of Bihar and Others* ((AIR) 2015 SC (Supp) 1229); and (c) *Secretary, Minor Irrigation Deptt. and R.E.S. v. Narendra Kumar Tripathi*, (2015 (3) Serv LJ 16). *Dakshin Haryana Bijli Vitran Nigam* was a matter which arose from a judgment rendered by the Punjab and Haryana High Court and was again based upon the judgment rendered by the Full Bench of that High Court in *Kesar Chand*. *Amkant Rai* dealt with the regularisation of the appellant who was working on daily wages. It obviously has no relevance to the issue which falls for our consideration. Similarly, *Narendra Kumar Tripathi* was dealing with an issue as to whether the period of service as rendered on ad hoc basis was liable to be counted for the purposes of seniority. This judgment too has no application to the issue which stands referred to this Full Bench.

We accordingly answer the reference by holding that the period of service spent by a person in a work charged establishment is not liable to be counted for the purposes of computing qualifying service. Regulation 370 of the Civil Service Regulations continues to govern and hold the field. The factual backdrop in which *Narata Singh* came to be rendered escaped the attention of the various Division Benches which followed it despite the existence of the unambiguous command of Regulation 370. *Jai Prakash* and the subsequent pronouncements following it and referred to above represent the correct position in law. The matter shall now be placed before the learned Single Judge for a decision on the writ petition in the light of what has been held above."

3. Once this Court dealing with the issue in relation to the services rendered in work charge establishment, has held that the same are not liable to qualify for the payment of pension, it is difficult for us to take a different view on principle.

4. However, validity of Regulation 370 (2) deserves to be considered within the parameters of law.

5. We may refer to the relevant regulations i.e. Regulation 361, 368 and 370 of the U.P. Civil Service Regulations and the same are extracted below:

"361 - The service of an officer does not qualify for pension unless it confirms to the following three conditions:-

(A) The service must be under Government

(B) The employment must be substantive and permanent.

(C) The service must be paid by Government."

"368 - The service does not qualify unless the officer holds a substantive office on a permanent establishment."

"370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruptions by confirmation in the same or any other post shall qualify except-

(i) periods of temporary or officiating service in nonpensionable establishment;

(ii) periods of service in work charged establishment; and

(iii) periods of service in a post paid form contingencies."

6. In the context of statutory rules noted above, firstly, it is to be understood as to what is the true import of the rules having regard to the various modes in which appointments are made and secondly, as to which mode of appointment would entitle an employee for the payment of pension within the scope of Regulation 370. Thirdly, whether classification set out in Regulation 370 is violative of Article 14 of the Constitution of India or not requires to be dealt with by reading the entire scheme of the relevant rules and regulations.

7. According to the averments made in the writ petition, the petitioners, were initially engaged as daily wage employees, were subsequently placed in work charge establishment and have been regularised in service on various dates ranging from the year 1999 to 2011. The contention of the petitioners is that the entire service period rendered on daily wage as well as in work charge establishment deserves to be included and computed for the purposes of payment of pension but the provisions of Regulation 370 (2) coming in the way of their claim, deserves to be declared as ultra vires being violative of Article 14 of the Constitution of India.

8. It is an admitted position that the petitioners, who were regularised in service from the respective dates, have not assailed their regularisation orders at any point of time, claiming benefit of such regularisation from a retrospective date and it is only for the purposes of payment of pension that the petitioners have come up to raise a grievance against the validity of rule according to which the services rendered in work charge establishment cannot be counted towards the payment of pensionary benefits.

9. The benefit of pension is a condition of service. It is clear from the scheme of regulations that an employee would qualify for pension provided he meets the requirements envisaged under the Civil Service Regulations. It is well settled that

the conditions of recruitment cannot be relaxed and recruitment resorted to dehors the statutory rules is a nullity. The authoritative decision in this regard rendered by the apex court in case of *State of Karnataka v. Uma Devi* (2006) 4 SCC 1 : AIR 2006 SC 1806 lays down the law. When we analyse the petitioners' argument from this standpoint, a work charge employee, in our considered opinion, cannot be equated with a regularly selected person. The apex court in a catena of judgments has spelt out the distinction, therefore, the classification based on the recruitment by following due procedure under the rules and through backdoor entry is well recognised. Once the classification in the matter of recruitment is recognised distinguishably, any challenge to a provision which grants protection of pension to the requisite length of substantive service alone, would be misconceived and contrary to the spirit of Article 16 of the Constitution of India. We may safely observe that any challenge to the validity of Regulation 370 which leads to diminish the distinction between the valid recruitment as per rules and backdoor entry is clearly an attempt to equate two unequal and distinguishable situations which have rightly been classified under Regulation 370. For achieving the goal of Article 16 of the Constitution of India, it is essential to draw such a distinction and the same would not impinge upon any fundamental right available to the petitioners under Article 14 of the Constitution of India, as such, challenge to the validity of Regulation 370 fails.

10. The petitioners in the instant case have not offered any justification as to how a work charge employee can be equated with the employees who are recruited in service by following the stringent process of recruitment. The services rendered by a regular employee for that matter can neither be equalised in terms of financial implications nor treated at par with the services of a work charge employee unless the rules so permit. Now coming to the judgment placed reliance upon by the petitioners, suffice it to say that the case of the petitioners is governed under a different set of rules. The petitioners have also not laid any foundation for establishing equivalence of their work charge services to be at par with the services of a regularly recruited confirmed employee. Even the right to hold the post prior to the date of their regularisation in a substantive capacity is not established or construed in the light of any statutory rule; and it is also not made out as to how payment made to the petitioners out of contingencies may be treated as regular salary.

11. In the facts and circumstances of the case, we would not like to go into the aspect of drawing equivalence between the services rendered by the petitioners as work charge employees to be taken at par with the services of a regular employee, and the authority of granting any such equivalence lies purely within the domain of the employer alone. The petitioners may be well advised to take up the matter with the employer for any such benevolent benefit which we do not find to be within the scope of existing rules. It is well settled that a plea which is unfounded deserves to be rejected, however, we leave it open to the employer to come out with any such beneficial scheme as may govern the cases of the like nature.

12. In view of above, the writ petition fails and is hereby dismissed.