
(2004) 11 AHC CK 0196
In the Allahabad High Court
Case No : C.M.W.P. No. 6104 of 2003

Ram Singh

APPELLANT

Vs

U.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 18-11-2004

Acts Referred:

Citation : (2005) 5 AWC 4067 : (2005) 1 ESC 501 : (2005) 104 FLR 721

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : O.N. Tripathi and A.K. Verma, for the Appellant; M.P.S. Niranjana, C.P. Tripathi, Sameer Sharma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J.—I have heard Sri O.N. Tripathi, learned counsel for the petitioner as well as Sri Sameer Sharma, learned counsel appearing on behalf of the Respondents and have perused the record. Counter and rejoinder affidavits have been exchanged and with the consent of the learned counsel for the parties this writ petition has been heard and is being finally disposed of at this stage.

2. It is the admitted case that the petitioner retired from service in the year 1979. It was for the first time in the year 2001 he filed an application to the respondent-authorities for inclusion of the period during which he worked as a work-charge employee for the purposes of payment of pension. Thereafter he approached this Court by filing Civil Misc. Writ Petition No. 27784 of 2002 which was disposed of by this Court on 23.7.2002 with a direction to the respondent-Corporation to decide his representation dated 8.11.2001, in accordance with law. By the impugned order dated 30.11.2002 the representation of the petitioner has been disposed of by the Managing Director of the Corporation and the petitioner has been denied the relief of inclusion of the period during which he worked as work-charge employee for the purposes of payment of pension.

3. This writ petition has now been filed with a prayer to quash the order dated

30.11.2001 passed by Managing Director, U.P. State Road Transport Corporation, Lucknow, Respondent No. 2 and also for a direction to the respondents to compute the period of work-charge i.e. from 1.10.1947 to 31.3.1961 for the purposes of preparation of the pension of the petitioner and make payment of arrears along with interest to the petitioner.

4. Sri Tripathi, learned counsel for the petitioner, has not been able to point out any legal ground on the basis of which he claims that the said period should be included for the purposes of payment of pension to the petitioner. He merely relies on the decision of the Labour Court in the case of Jwala Dutt Tripathi where a direction had been issued to the respondent-Corporation to include the period during which said Jwala Dutt Tripathi worked as work-charge employee for the purposes of payment of pension.

5. Sri Sameer Sharma, learned counsel appearing on behalf of the respondents, submitted that the Corporation has only one scheme which is Employees Provident Fund Scheme. However, before the Corporation came into existence, the State Transport Department had two schemes, namely, Employees Provident Fund Scheme and the Pension Scheme. During the period when the petitioner worked as work-charge employee under the State Transport Department, he had opted for the Employees Provident Fund Scheme and had also received the provident fund for the said period. The said factual position is not denied by the learned counsel for the petitioner. He has only submitted that his client is prepared to refund the entire amount of provident fund which has been paid to him for the period 1.10.1947 to 31.3.1961 and he should be granted pension and the arrears along with interest after including the said period of 1.10.1947 to 31.3.1961 for the said purposes.

6. In the case of V.K. Ramamurthy Vs. Union of India, the Apex Court has held that once an employee has opted for the Employees Provident Fund Scheme and has withdrawn the entire amount, then such employee cannot be permitted to switch over to the pension scheme. The ratio of the said decision would squarely apply to the facts of this case. The petitioner herein having opted for the Employees Provident Fund Scheme and having accepted the amount under the said scheme, cannot now, specially in this case after more than two decades, be permitted to switch over to the pension scheme. The offer of refund of the amount already paid under the Employees Provident Fund Scheme also cannot be accepted.

7. For the foregoing reasons the petitioner is not entitled to any relief. This writ petition is, accordingly, dismissed. No order as to cost.