(2010) 09 AHC CK 0265

In the Allahabad High Court

Case No : Writ Petition No. 401 of 2005 (S/S) And Writ Petition 31 of 2006 (S/S) And Writ Petition No. 1294 of 2007 (S/S) And Writ Petition No. 1292 of 2007 (S/S)

Rameshwar Prasad S/o Sri Brahamanand — APPELLANT

Vs

State of Uttarakhand and others — RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Citation : (2010) 09 AHC CK 0265

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Mr. Pankaj Miglani, the learned counsel assisted by Mr. Lalit Miglani, the learned counsel for the petitioners and Mr. P. C. Bisht, the learned brief holder for the State.

2. This group of petitions raise a common question and, accordingly, all the petitions are being decided together.

3. In Writ Petition No.401 of 2005 (S/S), the petitioner contended that he was appointed initially in the year 1980 on a daily wage basis/muster roll basis in Jal Vighyan KhandI, Bahadrabad and worked in the capacity of a mate. After more than 17 years of continuous service, the petitioner was appointed in the work charge establishment on 08.12.1987 and, also worked continuously without any break in service. Subsequently, pursuant to the State Government''s policy to regularize the services of the workers working in the work charge establishment, the services of the petitioner was regularised by an order dated 07th August, 1998 and the petitioner was given a pay scale of Rs.26103540. Pursuant to the order of regularisation, the petitioner started working on a regular post and worked continuously till he retired on 30th June, 2005. Upon retirement, the petitioner made a representation for payment of pension on the ground that he had worked for more than 24 years of continuous service. The said representation was rejected by an order dated 01 st March, 2005 on the ground

that he was not entitled for pension and that the period spent on muster roll and in the work charge establishment could not be counted in the qualifying service. The petitioner, being aggrieved, has filed the writ petition for the quashing of the order dated 01 st March, 2005 and also prayed that his pension and other post retiral benefits be released alongwith interest @ 18 % per annum. The petitioner has also prayed for declaring Regulation 370 (ii) of the Civil Service Regulations (hereinafter referred to as ''C.S.R.'') as ultravires the Constitution of India.

4. In Writ Petition No.31 of 2006 (S/S), the petitioner contended that in March, 1967 he was appointed as a Nayab Munshi in the Irrigation Department and worked in the work charge establishment. By an order dated 22nd April, 1994, the petitioner was appointed in the regular establishment and, subsequently, by an order dated 31 st March, 1997, the services of the petitioner was regularised pursuant to the policy of the State Government to regularise the services of the employees working in the irrigation department. The petitioner was, accordingly, given a regular pay scale of Rs.9501500 and worked continuously without any break in service till he retired from service on 31 st January, 2000. The petitioner applied for payment of pension and other post retiral benefits alleging that he had worked for more than 34 years continuously without any break in service. The said application of the petitioner was rejected by an order dated 26th July, 2000 on the ground that there was no provision for giving pension as the petitioner had not completed 10 years of qualifying service in the regular establishment. The petitioner, being aggrieved, has filed the present writ petition praying for the quashing of the order dated 26th July, 2000 and further praying that he should be paid the pension and other post retiral benefits alongwith interest @ 18% per annum. The petitioner has also prayed for declaring Regulation 370 (ii) of the C.S.R. as ultravires the Constitution of India.

5. In Writ Petition No.1294 of 2007 (S/S), the petitioner contended that he was appointed in the year 1980 on daily wage/muster roll basis in the irrigation department and, after putting 17 years of continuous service, the petitioner was appointed on work charge establishment on 17th August, 1997. Pursuant to the government policy to regularise the services of the employees working in the work charge establishment in the irrigation department, the services of the petitioner was regularised by an order dated 20th December, 1999 and he was given pay scale of Rs.25503200/ and, since then, the petitioner had been working on a regular post. It is alleged that he would retire in the year 2009 and, accordingly, made a representation praying that the period spent on muster roll and in the work charge establishment should be added in his past services so that he would be entitled for pensionary benefits. The respondents, by an order dated 21.05.2007, rejected the representation of the petitioner contending that the period spent in muster roll and in the work charge establishment could not be counted in the qualifying service. The petitioner, being aggrieved, has filed the present writ petition praying for the quashing of the order dated 21.05.2007 and also praying that the period spent on muster roll and in the work charge establishment should be included in the qualifying service. The petitioner has

also prayed for declaring Regulation 370 (ii) of the C.S.R. as ultravires of the Constitution of India.

6. In Writ Petition No.1292 of 2005 (S/S), the petitioners alleged that they were appointed on various dates between 1975 to 1988 on daily wage basis and, subsequently, were appointed as work charge employees and, that between the period 1995 to 1999, their services were regularised. The petitioners contended that they have been working in the Public Works Department for more than 18 to 20 years and that the period of service rendered in muster roll and work charge establishment was not being taken into consideration for the purpose of pensionary benefits. The petitioners, therefore, filed the writ petition praying for a writ of mandamus commanding the respondents to calculate the length of service from the date of their initial appointments for the purpose of pensionary benefits and other post retiral benefits.

7. The respondents in their counter affidavit have taken a consistent stand that the petitioners had not put in 10 years of service in the regular establishment and, consequently, could not qualify for the grant of pension.

8. The learned brief holder for the State contended that it was essential that a government employee should work in the regular establishment for 10 years in order to qualify for payment of pension and other post retiral benefits. In support of his submission, the learned brief holder placed reliance upon a Government Order dated 01 st July, 1989, which provides that the employees who had worked in a temporary capacity for 10 years 5 and retired as temporary employees would be eligible for pensionary benefits, gratuity and family pension.

9. On the other hand, the learned counsel for the petitioners contended that the petitioners had put in more than 20 years of continuous service without any break in service and, consequently, the noninclusion of the period spent on muster roll or in work charge establishment was wholly arbitrary and violative of Article 14 of the Constitution of India and, consequently, prayed for declaring Regulation 370 (ii) of the C.S.R. as ultravires the Constitution of India. The learned counsel for the petitioners submitted that having spent so much time on muster roll or in the work charge establishment was indicative of the fact that the employment of the petitioners was perennial in nature and was not subject to exigency of work and, consequently, the petitioners were deemed to have been working substantively on a permanent post. The petitioners, consequently, submitted that the period spent on muster roll or in work charge establishment should be counted in the qualifying service for the purpose of calculating pension and post retiral dues.

10. In order to appreciate the submissions of the learned counsel for the parties, it is essential to peruse a few provisions of the C.S.R., which are applicable on the service conditions of the petitioners. Pension is payable under Regulation 361 of the C.S.R., which is quoted hereunder:

?361. The service of an officer does not qualify for pension unless it conforms to the following three conditions:

First The service must be under Government. Second The employment must be substantive and permanent.

Third The service must be paid by Government.?

11. The aforesaid provision indicates that an employee will qualify for pension if he is in service under Government, if his employment is substantive and permanent, and that his service is paid by the Government. Regulation 370 of the C.S.R. provides as under :

?370. An officer may count continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post except

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

(ii) periods of service in a workcharged establishment, and

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

Note If service rendered in a nonpensionable establishment, workcharged establishment or in a post paid from contingencies, falls between two periods of temporary service in a pensionable establishment or between periods of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service.?

12. A perusal of the aforesaid provision indicates that the period spent in continuous temporary or officiating service under the government authority without interruption by confirmation shall qualify except the period spent in temporary or officiating service in a nonpensionable establishment or period of service spent in a work charged establishment and, the period of service on a post paid from contingencies.

13. In the light of the aforesaid provision, the Government Order dated 01 st July, 1989 was issued to the effect that the temporary employees would also be eligible for pension and other post retiral benefits where temporary employees had spent 7 10 years or more as temporary employees and had retired without being confirmed.

14. In the light of the aforesaid provision, the respondents have taken a stand that since the petitioners did not work for 10 years in the regular establishment, they are not entitled for any pensionary benefits.

15. On the other hand, the learned counsel for the petitioners submitted that Regulation 370 (ii) of the C.S.R. is arbitrary and violative of Article 14 of the Constitution and the same should be declared ultravires the Constitution. In support of his submission, the learned counsel for the petitioners placed reliance upon a decision of the Full Bench of the Punjab and Haryana High Court in Kesar Chand Vs. State of Punjab & others 1988 (5) S.L.R. 27, wherein a similar

provision relating to work charge employees was held to be ultravires the Constitution. The said decision was affirmed by the Supreme Court and, subsequently, reiterated by the Supreme Court in Punjab State Electricity Board & another Vs. Narata Singh & another J.T. 2010 (2) SC 434.

16. The issue is, who is entitled for pension? The provision relating to pension is Regulation 361 of the C.S.R., which provides that in order to be eligible for pension, three conditions must be fulfilled, namely, that the service must be under the Government, secondly, the service must be permanent and, thirdly, the service must be paid by the Government. Admittedly, the first and the third conditions are met, namely, that the petitioners were in the service of the Government and were being paid by the Government. These facts are not disputed by the respondents. The question, which has to be answered now is, whether the employment of the petitioners was substantive and permanent? Admittedly, the services of the petitioners had been regularised and they were given a regular pay scale. This fact is 8 not disputed by the respondents. The regularisation of the services of the petitioners is against a substantive post. Once an employee is regularised on a substantive post, he would be deemed to have been made permanent on the post against which his services has been regularised. Consequently, the second condition enumerated under Regulation 361 of the C.S.R. has been met by the petitioners, namely, that their employment is substantive and permanent.

17. Pension is payable to an employee under Regulation 361 of the C.S.R. on the date of his retirement. In the present case, the petitioners were eligible for payment of pension and other post retiral benefits.

18. The contention of the respondents that the petitioners must work for 10 years in the regular establishment in order to get eligible for pension and other post retiral benefits is patently erroneous and has no legs to stand. Regulation 361 of the C.S.R. does not indicate that a Government employee must work for 10 years on a substantive and permanent post in order to be eligible for pension and other post retirement dues. The respondents are trying to take strength of their submissions from the Government Order dated 01 st July, 1989, which in the opinion of the Court has no application. The Government Order dated 01 st July,1989 is applicable only to temporary employees, who had worked for 10 years and had retired from government service. The government felt that temporary employees who had worked for 10 years or more as temporary employees were eligible for pensionary benefits. This G.O. is not applicable for those employees, who had been made permanent pursuant to the order of regularisation. In the opinion of the court, even if, an employee was made permanent for a single day and, thereafter, retired from service, he would be eligible for pension under Regulation 361 of the C.S.R.

19. The Government Order dated 01 st July, 1989 is applicable to only temporary employees and is not applicable to permanent employees holding a substantive post.

20. In view of the aforesaid, this court is of the opinion that it is not necessary to go into the question as to whether subclause (ii) of Regulation 370 of the C.S.R. is ultravires Article 14 of the Constitution of India. All the aforesaid writ petitions are allowed. The impugned orders are quashed. The petitioners, having retired, after regularisation, from a substantive and permanent post, are eligible for pension and other post retiral benefits. The respondents are directed to release the pension and other post retiral dues within three months from the date of production of the certified copy of this order, failing which the respondents would be liable to pay interest @ 8% per annum. It is further held that those employees, who have not retired as yet, but, have been regularised and are working on a substantive and permanent post would also be eligible for pension and other post retiral dues upon their superannuation from the service.