
(2011) 02 AHC CK 0128
In the Allahabad High Court
Case No : Writ C No. 19451 of 1991

Sabhajeet Mishra

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Citation : (2011) 02 AHC CK 0128

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties. Petitioner (who has since died and has been substituted by his legal representative) was appointed as Panchayat Mantri, on 01.08.1949. In para 2 of the writ petition it is stated that through an order issued by District Panchayat Raj Officer Azamgarh on 18.07.1990, Petitioner was confirmed on the post of Panchayat Sevak w.e.f. 01.10.1971. There does not appear to be any reason for passing such an order after 20 years more so when Petitioner had retired either on 30.09.1971 according to the Respondents or on 30.09.1972 according to his own case. Annexure 1 is the copy of the order dated 18.07.1990 which refers to some G.O. dated 04.01.1989. Annexure 1 itself mentions that Petitioner retired on 30.09.1972. As there is absolutely no explanation as to why such order was issued after 19 years hence no reliance can be placed thereupon.

2. The only argument raised by learned Counsel for the Petitioner is that original Petitioner's case was squarely covered by a division Bench judgment of this Court delivered on 31.08.1987 in writ petition No. 10106 of 1987 copy of which is Annexure 5 to the writ petition. In the said judgment it is mentioned that a G.O. was issued on 24.02.1972 in which it was stated that w.e.f. 01.10.1971 Panchayat Mantries in the state were declared as Government Employees and they were to be known as Panchayat Sevakas. Ultimately, through the said judgment it was held that the services of Panchayat Mantries prior to 01.10.1971

would also be counted for calculating the pension. Through the said writ petition 19 Panchayat sevakas had prayed for payment of pension to them. It is mentioned in the said judgment that all had retired between 1972 and 1973.

3. As Panchayat mantries were made Government employees w.e.f. 01.10.1971 hence unless a Panchayat mantri was in service on 01.10.1971 he can not claim benefit of pension etc. or that he became Government employee.

4. In para 4 and 5 of the counter affidavit it has categorically been stated that Petitioner stood retired on attaining the age of 58 years which was age of superannuation on 30.09.1971 and somehow due to connivance of higher officers, Petitioner illegally continued in service for one more year i.e. from 01.10.1971 to 30.09.1972. Learned Counsel for the Petitioner has not disputed that at that time 58 years was age of superannuation and the original Petitioner attained the said age in the month of September 1971. However, learned Counsel for the Petitioner has argued with great force that for whatever reason, the fact is that Petitioner remained in service from 01.10.1971 to 30.09.1972 hence he must be given benefit of the G.O. as interpreted by the aforesaid Division Bench authority. I do not agree with the contention. Unauthorised continuance can not confer any right.

5. Accordingly, as Petitioner legally stood retired one day before the 01.10.1971 w.e.f. which date , according to G.O. dated 24.02.1972 Panchayat Mantries in the State were declared as Government employees and entitled to pension hence Petitioner could not claim benefit of the Government Order dated 24.2.1972 and the pension thereunder.

6. Accordingly, there is no force in the writ petition hence it is dismissed.