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(2016) 02 AHC CK 0207

In the Allahabad High Court

Case No : Special Appeal Defective No. 23 of 2016

Satya Prakash Kulshrestha APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Citation : (2016) 3 ADJ 161 : (2016) 2 AllLJ 498 : (2016) 2 AllWC 1939 : (2016) 115 ALR 679 : (2016) 3 CLR 1077 : (2016) 150 FLR 53 : (2016) 3 LLJ 596 : (2016) 2 UPLBEC 1404

Hon'ble Judges : Dr. D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Sheshadri Trivedi and Sunil Kumar Misra, for the Appellant; C.S.C. and Rahul Agarwal, for the Respondent

Final Decision : Disposed off

Judgement

1. The special appeal has arisen from a judgment of the learned Single Judge dated 7 July 2014 by which, a batch of matters including the writ petition filed by the appellant has been dismissed. The relief which the appellant sought in his writ petition, besides challenging an order of the General Manager of Uttar Pradesh State Road Transport Corporation1 dated 31 July 2013, was a direction to grant him monthly pension together with arrears from the date of retirement on 30 June 2009. The writ petition stands dismissed by the judgment of the learned Single Judge.

2. The appellant was appointed in the erstwhile Uttar Pradesh Government Roadways as a daily wager on 14 July 1972. On 1 June 1972, Uttar Pradesh Government Roadways was converted into Uttar Pradesh State Road Transport Corporation. The appellant was thereafter appointed on 18 July 1972 on the post of Office Assistant Grade-II (Hindi Typist). On 19 June 1981, UPSRTC Employees (Other Than Officers) Service Regulations, 1981 were brought into force. Regulation 39 governs matters relating to pension. On 25 July 1985, the appellant was promoted as Office Assistant Grade-I and on 2 December 1999, as

Head Clerk. On 7 January 2003, the appellant was promoted as Office Superintendent, which was a pensionable post.

3. On 20 October 2004, a Government Order was issued under which the benefit of pension was allowed to all UPSRTC employees who had been appointed between 1 June 1972 and 18 June 1981 on pensionable posts of the erstwhile Uttar Pradesh Government Roadways. By a further circular dated 26 December 2005, a scheme was formulated for allowing pensionary benefits to employees retiring before 20 October 2004. The scheme provided (i) deposit of benefits received under EPF along with interest and payment of pension with effect from 20 October 2004; and (ii) that options would be called for from employees to be governed either by EPF or by regular pension and these options shall be treated as final and binding.

4. The appellant was in service when the circular dated 26 December 2005 came into force. The circular also made provisions in respect of persons who had been appointed on pensionable posts between 1 June 1972 and 18 June 1981 and were members of the EPF scheme but who would retire after 20 October 2004. The circular contemplated that such employees, who refunded the EPF benefits together with compound interest, would be allowed pension. However, those employees who had already retired on 26 December 2005 and were getting EPF pension were to be excluded from the benefit of the circular. Moreover, it was stated that the option which has been submitted by the employee would be regarded as final and binding.

5. Now, insofar as the appellant is concerned, on 30 August 2005, he opted for regular pension and submitted his papers to the Regional Office at Etawah. On 12 June 2007, nearly two years thereafter, the Regional Office forwarded the pension papers of twelve employees to the headquarters at Lucknow in which the name of the appellant was mentioned at serial No. 4. On 23 June 2007, the papers were returned to the Regional Office by the headquarters for supplying certain additional details. On 19 September 2008, a circular was issued by the Managing Director of UPSRTC in terms of the Government Order dated 20 October 2004 and the circular dated 26 December 2005, calling for options from the retired employees, for one last time. At this stage, on 29 June 2009, the appellant opted for EPF. The appellant retired from service immediately thereafter on 30 June 2009 and was granted his EPF contribution.

6. On 22 February 2010, the Regional Office re-submitted the pension papers of nine other persons to the headquarters (as directed on 23 June 2007) but left the appellant and another employee who had retired in 2008, out of the list. On 23 December 2011 and subsequently, the appellant represented to UPSRTC for the purpose of claiming pension. Eventually, in a writ petition2 filed by the appellant, a direction was issued by this Court on 3 May 2013 to UPSRTC to decide the grievance of the appellant. In pursuance thereof, an order was passed on the representation, rejecting the claim of the appellant on 31 July 2013. The order rejecting the claim of the appellant noted the following aspects:

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"(i) The appellant was appointed on a pensionable post on 18 July 1972 and retired from a pensionable post on 30 June 2009;

(ii) Other similarly placed employees had been granted pension under the Government Order dated 18 May 1999, which provided for payment of gratuity and pension after adjustment of contribution, interest and gratuity on a non-pensionable post;

(iii) Those employees who are obtaining EPF benefits are not eligible for pension under the Government Order dated 20 October 2004 and the circular dated 26 December 2005; and

(iv) The appellant had opted for EPF pension and gratuity applicable to non-pensionable posts and could not be granted regular pension."

7. The writ petition filed by the appellant was connected to a bunch of writ petitions, the leading writ petition being Writ Petition No. 63469 of 2012. The learned Single Judge, while deciding the batch of cases, recorded findings that:

"(i) The post of the appellant did not fall in the category of a pensionable post;

(ii) The appellant had neither pleaded nor brought any material on the record to establish that he was working on a pensionable post; and

(iii) All the petitioners in the batch of petitions were temporary employees."

The review petition filed by the appellant was dismissed by the learned Single Judge on 8 December 2015, which has given rise to the filing of a special appeal.

8. Now, at the outset, it would be necessary to note that the basic finding of the learned Single Judge to the effect that the post of the appellant did not fall in the category of a pensionable post is contrary to the material on the record. In fact, the order which was passed on 31 July 2013 by the General Manager of UPSRTC, specifically records that the appellant was appointed on a pensionable post on 18 July 1972 and retired as an Office Superintendent from a pensionable post on 30 June 2009. The relevant part of the order which we extract hereinbelow also adverts to the fact that the appellant had, in fact, submitted his option for the grant of pension on 30 August 2005:

9. Thus, it cannot be in dispute and is not in dispute before this Court that the appellant was appointed on a pensionable post on 18 July 1972 and retired from a pensionable post on 30 June 2009.

10. The Government Order dated 20 October 2004 granted the benefit of pension to all UPSRTC employees who had been appointed between 1 June 1972 (the date on which UPSRTC was set up) and 18 June 1981 (immediately before the Service Regulations, 1981 came into force). The State Government approved the grant of pensionary benefits to employees who had been appointed between the aforesaid dates, but clarified that no approval would exist for appointments made after 18 June 1981.

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11. On 26 December 2005, the Managing Director of UPSRTC issued a circular. The circular, inter alia, deals with the cases of those employees who had been appointed on pensionable posts between 1 June 1972 and 18 June 1981 and who had retired before the enforcement of the Government Order dated 20 October 2004. The circular also deals with the cases of those employees who had been appointed between 1 June 1972 and 18 June 1981 on pensionable posts and who are members of the EPF scheme but who had retired after 20 October 2004. Paragraph 3 of the circular provides that those employees, who had already retired on 26 December 2005 and were in receipt of pensionary benefits under the EPF scheme, would not be eligible for the grant of regular pension. It is necessary to advert to this aspect because in rejecting the claim of the appellant for the grant of pensionary benefits, the Managing Director was conceivably weighed by paragraph 3 of the circular dated 26 December 2005. Evidently, paragraph 3 would have no application to the appellant for the simple reason that he had not already retired on 26 December 2005. There was no occasion for him to be in receipt of pensionary benefits under the EPF scheme prior thereto since the appellant retired only on 30 June 2009. The circular dealt with the cases of those employees who had been appointed between 1 June 1972 and 18 June 1981, but who would retire from a pensionable post after the date of the circular. What the circular requires is that such persons would have to furnish an option and once an option was furnished, it would be binding and irreversible. Moreover, the employee concerned would have to refund all benefits received under EPF scheme together with interest as prescribed in the event of opting for regular pension.

12. The appellant clearly fulfilled each of the requirements specified in the circular dated 26 December 2005. Firstly, the appellant was appointed on 18 July 1972 which fell within the prescribed dates of 1 June 1972 and 18 June 1981. Secondly, the appellant was on a pensionable post of Office Superintendent from which he retired on 30 June 2009. Thirdly, once the appellant had furnished his option on 30 August 2005 for regular pension, that option was, in terms of the Government Order dated 20 October 2004, binding and irrevocable. Hence, the subsequent option which was submitted by the appellant on 29 June 2009, one day before his retirement, would have to be disregarded in terms of the Government Order dated 20 October 2004. From the record, what has transpired is that the appellant submitted his option nearly four years prior to the date of his retirement on 30 August 2005. He waited long years. One day prior to his retirement, the appellant decided to opt for benefits under the EPF scheme. In view of the fact that the option once furnished was to be final and binding, the option which was re-submitted on 29 June 2009, would have no existence in the eyes of law. The appellant would necessarily have to comply with the terms of the Government Order dated 20 October 2004 and the circular dated 26 December 2005 by refunding the benefits of EPF pension together with interest as prescribed in law. The appellant specifically undertook to do so in his writ petition.

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13. From the record, it transpires that in the batch of writ petitions, the specific facts of the appellant''s case have not been considered by the learned Single Judge. The appellant then filed a review petition, which was also dismissed.

14. For these reasons, we are of the view that the special appeal has substance and merit and should be allowed.

15. We, accordingly, allow the special appeal by setting aside the judgment of the learned Single Judge dated 7 July 2014, dismissing the writ petition filed by the appellant. We clarify that we are setting aside the judgment of the learned Single Judge only insofar as it relates to the appellant. The writ petition filed by the appellant shall stand allowed in terms of the direction that the appellant shall be granted regular pension, subject to his refunding all benefits, including pension which has been received by him under EPF scheme together with such interest as is payable in accordance with law, within a period of three months of the receipt of a certified copy of this order. The pensionary dues inclusive of arrears shall be paid to the appellant from the date of his retirement on 30 June 2009.

16. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

17. The delay in filing the special appeal has been occasioned as a result of the fact that the appellant had filed a review petition before the learned Single Judge within the period of limitation. The review petition was dismissed on 8 December 2015.

18. Since sufficient cause has been shown in the affidavit in support, the delay in filing the special appeal is condoned. The delay condonation application stands disposed of. There shall be no order as to costs.

1UPSRTC

2Writ Petition No. 24906 of 2013

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