
(2014) 09 AHC CK 0067

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3219 of 2011

Shiv Sagar Singh Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Citation : (2015) 2 ADJ 647 : (2015) 5 ALJ 597 : (2015) 2 ESC 717 : (2015) 1 UPLBEC 806

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : R.S. Chauhan, for the Appellant

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J. Heard learned counsel for the parties. With their consent, this writ petition is disposed of finally at the admission stage itself.

The undisputed facts are that the petitioner joined as Godown Chaukidar on 9.4.1982 on temporary basis, against a temporary post in the pay scale of 305-5-350-EB-6-360-EB-6-390. He crossed the efficiency bar and was granted regular increments. By order dated 1.2.2001, his services were regularised in the pay scale of 2550-55-2660-60-3200. He retired on 30.4.2010 and after retirement the petitioner claimed pension and other retiral benefits. These were denied to him on the ground that he had not completed the qualifying service of 10 years.

A counter affidavit has been filed by the respondents, in which it is contended that there was no post of Chaukidar till 23.9.1982. Prior to that the petitioner was being paid his salary from contingency fund. However, it is admitted that by G.O. dated 23.9.1982, the State Government sanctioned 265 temporary posts of Godown Chaukidar. Paragraph 3 of the G.O. provided that the persons working for last 10 years be provided appointment against these posts according to their seniority. Thereafter, another G.O. dated 19.9.1983 accorded sanction to 150

more temporary posts, thus increasing the strength of such posts to 415. It is also admitted that by the G.O. dated 11.4.1990, these temporary posts were converted into permanent post w.e.f. 1.3.1990. It has not been disputed that by order dated 1.2.2001, the service of petitioner was regularised.

2. Learned counsel for the petitioner submitted mere fact that the service of the petitioner were regularised on 1.2.2001, is wholly immaterial. As per Rule 3(8) of the Uttar Pradesh Retirement Benefit Rules, 1961 (hereinafter referred as the Rules"), the petitioner had completed 10 years of qualifying service and is, thus, entitled to pensionary benefits. He has placed reliance on the judgment of this Court reported in 2006 (8) ADJ 371 , Beni Prasad Vs. State of U.P. and Others, and Division Bench judgment of this Court dated 1.3.2012, in writ petition No. 61974 of 2011. On the other hand, learned standing counsel submitted that since the petitioner had not completed 10 years of service from the date of regularisation, i.e., 1.2.2001, and therefore, he was rightly not paid pension and other retiral benefits.

3. I have considered the submissions made by learned counsel for the parties and perused the record.

Indisputably, the respondents have sanctioned temporary posts on 23.9.1982. These posts were converted to permanent post w.e.f. 1.3.1990 by G.O. dated 11.4.1990. Services of the petitioner were regularised by order dated 1.2.2001. Rule 3(8) of the Rules, defines "qualifying service" as under:

"Rule 3(8)-"Qualifying service" means service which qualifies for pension in accordance with the provisions of Article 368 of the Civil Services Regulations:

Provided that 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 non-pensionable establishment.

(ii) periods of service in a work-charged establishment, and

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

shall also count as qualifying service.

Note--If service rendered in a non-pensionable establishment, work-charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service."

Regulation 368 and 369 of the Civil Services Regulations reads as under:

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

369. An establishment, the duties of which are not continuous but are limited to certain fixed periods in each year, is not a temporary establishment. Service in such an establishment, including the period during which the establishment is not employed qualifies but the concession of counting as service the period during while the establishment is not employed does not apply to an officer who was not on actual duty when the establishment was discharged, after completion of its work, or to an officer who was not on actual duty on the first day on which the establishment was again re-employed."

4. It is noticeable that after the post was sanctioned, as temporary post on 23.9.1982 and thereafter, converted to permanent post w.e.f. 1.3.1990 by G.O. dated 12.4.1990, it cannot be said that the working of the petitioner against such post was in a non-pensionable establishment. The service of the petitioner does not come under any of the exceptions prescribed under Rule 3(8) of the Rules and Civil Services Regulations. The respondents themselves have admitted in the counter affidavit that since 23.9.1982, temporary post came into existence and it was made permanent w.e.f. 1.3.1990. Thus, on the date of his retirement on 30.4.2010, the petitioner had completed much more than 10 years of service on a permanent establishment. In 2006 (8) ADJ 371 , this Court had held that temporary services rendered by an employee in permanent establishment, followed by regularisation, shall count as qualifying service. It is not material that he should have completed 10 years of service since after the date of his regularisation. In Beni Prasad Vs. State of U.P. and Others, , it is held that even fixed monthly salary paid to an employee working against a permanent post shall count towards qualifying service. Proviso to Rule 3(8) itself prescribes that continuous temporary service without interruption followed by confirmation shall count as qualifying service. Thus, it is wholly immaterial that the service of the petitioner was regularised on 1.2.2001, as he was continuously working since the date of initial appointment. Though earlier his working was against a temporary establishment, as there was no sanctioned post but after temporary post was sanctioned and later on converted into permanent post, the service so rendered, fully qualifies for being counted for purpose of payment of pension and retiral benefits.

In view of the discussion made above, writ petition is allowed. The respondents are directed to quantify the retiral benefits payable to the petitioner and pay the same to him within three months from the date of production of certified copy of this order before respondent No. 3, alongwith simple interest @ 8% per annum, till date of actual payment.