
(2017) 01 AHC CK 0180
In the Allahabad High Court
Case No : Special Appeal No. 388 of 2011

Smt. Sarla Sharma

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Citation : (2017) 2 ADJ 194 : (2017) 3 AILLJ 39 : (2017) 2 AllWC 1428 : (2017) LIC 1523

Hon'ble Judges : V.K. Shukla and Mrs. Sangeeta Chandra, JJ.

Bench : Division Bench

Advocate : Vinod Kumar, Advocate, for the Appellant; B.P. Singh, C.S.C, for the Respondents

Final Decision : Allowed

Judgement

1. Appellant Smt. Sarla Sharma currently aged 90 years is before this Court assailing the validity of the Judgment and order dated 12.1.2011 passed by the learned Single Judge in Writ Petition No.34472 of 1996, Smt. Sarla Sharma v. U.P. Basic Shiksha Parishad, Allahabad wherein claim of the petitioner-appellant to revise her pension calculating her qualifying service as 33 years and pay interest thereon, has been turned down.

Factual matrix giving rise to the present special appeal in brief is that petitioner-appellant was appointed on 18.8.1951 and on attaining her age of superannuation, she retired on 31.1.1987. Thus, the petitioner has put in total 36 years of service and had an unblemished career. After her retirement, her pension and gratuity had been calculated and paid.

2. At the point of time, when she reached age of superannuation, her pension has been calculated on the qualifying service of 30 years and this much is reflected that thereafter the policy in question in this regard was amended, vide Government Order dated 25/26.8.1989 and therein, a resolve was taken that in respect of counting full qualifying service, 33 years would be computed in place

of 30 years with effect from 19.11.1988. Thus, the petitioner claimed that as she has completed 36 years of service, accordingly, on the parameters of the aforesaid Government Order, her claim in question may be considered. As her claim in question was not being considered and correct calculation was not being made and settled as per Rules for calculating full qualifying service, she came to this Court by filing Writ Petition No.34472 of 1996 wherein the learned Single Judge turned down the request of the petitioner and accordingly, present special appeal is before us.

Sri Vinod Kumar, learned counsel for the appellant, submitted with vehemence that once the appellant was entitled/eligible for pension at the time of her superannuation and she was surviving and the amendment in question has been brought into force in the pension scheme then she is fully entitled for enhanced pension/to get more pension in respect of new formulated pension. In the light of this amendment, the learned Single Judge ought not to have dismissed the writ petition in question and contrarily ought to have allowed the prayer of the petitioner and, as such the order passed by the learned single judge is liable to be set aside with a necessary directive to accept the claim of the petitioner-appellant.

3. Learned Standing Counsel, on the other hand, has contended that rightful view has been taken by the learned Single Judge and no any interference is called for therewith.

After respective arguments have been advanced, the factual situation which emerges is that there is no dispute that the appellant had put in 36 years of service starting with effect from 18.8.1951 and ending on 31.1.1987 and this much is also accepted position that, at the said point of time, when the appellant has attained her age of superannuation, the pension in question was being computed on the formula of full qualifying service of 30 years. The State Government thereafter took a policy decision on 25/26.8.1989 in respect of counting full qualifying service, i.e., 33 years with effect from 19.11.1988 and in this background, the appellant claims that as she has rendered services for more than 36 years and is still surviving, therefore, as of now, her full qualifying service should be accepted as 36 years and then out of 36 years, 33 years may be recognized and based on the same, calculation in question be made.

4. Learned counsel for the appellant submitted that correct calculation of her pension as per settled rules for full qualifying service would be as under:-

"Basic Pay Rs1534= $1534 \times 33 / 60 = 843.70$

But instead of the aforesaid, respondent had calculated her pension in following manner:-

Basic Pay of the appellant Rs. $1534 \times 30 / 60 = 767.00$."

Learned counsel for the appellant contended that in fact after publication of notification dated 25/26.8.1989 by the Government, amending the rules about

calculating full qualifying services up to 33 years in place of 30 years which has said to be effective w.e.f. 19.11.1988, therefore, the benefit of said amended government order should be allowed to her w.e.f. 19.11.1988 failing which there would be class amongst class inter se pensioners based on date of superannuation.

The learned Single Judge has proceeded to make a mention that as the said regulations in question were amended on 19.11.1988 and petitioner is said to have retired prior to it, as such, the benefit as claimed is not extendable to the appellant.

5. The Apex Court in the case of V.K. Kasturi v. Managing Director, State Bank of India 1988 (8) MHLJ 30 has held as follows:-

"If the persons retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a members of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decision tracing their roots to the ratio of Nakara case would cover this category of cases:-

"In the result we hold that paragraph 7 of the government order cannot be used against persons in position of the petitioner to deny them the benefit of the past service for purpose of computing the pension."

6. On the principles that have been settled by the Apex Court, in the facts of the case, we find that appellant was eligible for pension at the time of her retirement and as she at the said point of time had already completed 36 years of service and pension was computed on the qualifying service of 30 years as she has been surviving till the time of subsequent amendment that has been made in the relevant pension scheme whereby calculation was required to be made on the basis of 33 years of qualifying service and the said amendment in question has been made applicable with effect from 19.11.1988. Thus, once the appellant was surviving and she was falling within the zone of consideration of getting pension at the time of retirement and in the said Rules itself, amendment has been made by providing qualifying service for the purpose of pension as 33 years, then in our considered opinion, from the date the aforementioned amendment has been made effective, the petitioner was certainly entitled for calculation being made on her qualifying service of 33 years and being awarded additional benefit. In

view of this, we do not approve the order passed by the learned Single Judge dated 12.1.2011 as learned Single Judge has proceeded to non-suit the claim of the appellant by mentioning that petitioner-appellant has not proceeded to assail the validity of cut off date. We are of the considered view that once the amendment has been made and Rules in question have been applicable on 19.11.1998 then there was no requirement to assail the validity of the cut off date rather such relief would be allowed from with effect from 19.11.1998 onwards.

7. Consequently, present special appeal is allowed.

The order passed by the learned Single Judge is set aside and the respondents are directed to revise pension of the petitioner-appellant calculating her pension on qualifying service of 33 years with effect from 19.11.1998 on wards along with 6 per cent simple interest on the late payment for putting the petitioner-appellant to go for litigation. Entire payment be recalculated and paid within four months from the date of presentation of certified copy of the order.