
(2010) 11 AHC CK 0335
In the Allahabad High Court
Case No : Special Appeal No. 796 of 2005

State of U.P. and Another

APPELLANT

Vs

Maqsood Mahmood and Another

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Citation : (2011) 1 ADJ 668 : (2011) 3 AWC 2620 : (2011) 129 FLR 672

Hon'ble Judges : Y.C. Gupta, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Shri J.K. Tiwari, learned Standing Counsel for the State Appellant. Shri M. Islam and Shri N.I. Zafri appear for the Petitioner-Respondent.
2. The State of U.P. has filed this special appeal against the judgment of learned Single Judge dated 5.8.1997 in Writ Petition No. 24805 of 1997, by which relying upon the opinion of the Division Bench of this Court in Jagat Prakash Chaturvedi v. State of U.P. and Ors., 1993 (3) UPLBEC 1767 a direction has been issued to the Director of Technical Education, Government of U.P. to take immediate steps for release of the capitalised value of the pension of the Petitioner for the period during which he had served under the State Government and to remit the same to the Aligarh Muslim University
3. Learned Standing Counsel submits that in the present case the Petitioner-Respondent was neither transferred nor absorbed in Aligarh Muslim University. He had resigned from the State Government on 30.9.1972. His resignation was accepted by the Governor of U.P. on 19.1.1973. There was no continuity in employment between the State Government and employment in Aligarh Muslim University, which is an autonomous university funded by the Central Government.
4. Shri J.K. Tiwari submits that the Petitioner had served in the State Government as Workcharge- Superintendent from 8.5.1962 to 1973. According to the Petitioner the post of Workcharge Superintendent was advertised in

Aligarh Muslim University. The Petitioner applied for appointment after giving information to the State Government. He was selected and was required by the Registrar of the University to submit documents in proof of relieving him by the State Government. His application for leave dated 28.11.1972 was not accepted. Instead of applying for being relieved, the Petitioner for reasons, which have not been explained submitted resignation, which was accepted by the Governor of Uttar Pradesh on 19.1.1973. The order accepting his resignation was communicated to him on 19.1.1973.

5. The Petitioner's employment with the State Government came to an end before joining the service in the Aligarh Muslim University funded by the Central Government.

6. Shri J.K. Tiwari, learned Standing Counsel submits that reliance place by learned Single Judge on Circular Letter dated 7.2.1988 issued by the Central Government in consultation with the State Government, for counting the period of service rendered in the State Government, for calculation of pension, is applicable, where the employee after rendering service in the State Government is absorbed in the central autonomous body. The Petitioner's services was neither transferred nor was he relieved by the State Government to join in Aligarh Muslim University. He had in fact applied for appointment to the University with information to the State Government, and had subsequently tendered resignation to be relieved. His resignation was accepted and thus he ceased to be employee of the State Government, with effect from the date of acceptance of the resignation.

7. Shri M. Islam, learned Counsel for the Petitioner submits that the Petitioner had applied through proper channel. His application was forwarded by the State Government. He was asked to tender resignation for joining to another assignment. After accepting his resignation the Secretary to Government of U.P. addressed to the Director, Technical Education U.P. that the Governor of U.P. has accepted the resignation of the Petitioner and the Petitioner was ordered to be released forthwith. After the Petitioner's retirement he was also recommended for release of capitalised value by letter of the Registrar of the Aligarh Muslim University on 8.12.1995. Shri M. Islam submits that the provisions of circular letter issued by the Central Government on 7.2.1988, the judgment in Jag Prakash Chaturvedi's case as well as the opinion of the Court expressed by one of us (Hon. Sunil Ambwani, J.) in Hafiz Ali Khan v. The Vice Chancellor Aligarh Muslim University, Aligarh and Ors. allowed on 25.1.2002 entitles him to count the period of service rendered by him, in the State Government.

8. In Jagat Prakash Chaturvedi (Supra) the Division Bench of this Court, relied upon circular letter dated 7.2.1988, providing that if person is absorbed in central autonomous body after rendering service in the State Government, he will be allowed the same benefits as have been extended to the State Government servant, for counting his past services and vice versa. Para 12 of the judgment in Jagat Prakash Chaturvedi's case relying upon para 2 of the Circular

Letter dated 7.2.1988 is quoted as below:

12. It appears that a representation was made to the Central Government by the State Government employees for extending the benefit of the above Government order to the State Government employees moving to central autonomous or statutory bodies. The Central Government consulted the State Government and thereafter issued a circular letter dated 7th February, 1988 to the Chief Secretaries of all the State Governments. A copy of this Circular letter is Annexure "11". In paragraph 2 of this letter it is mentioned:

In the circumstances explained above, it was felt that reciprocal arrangements may be entered into with the various State Governments to the effect that where employees of the State Governments State Autonomous Bodies/ State Statutory Bodies, have been absorbed in the Central autonomous Bodies, they may be allowed the same benefits as have been extended to the Central Government Servants and vice-versa." In paragraph 1 of this letter a reference has been made to the Union Government Order dated 20th August, 1984. In paragraph 3 it is stated:

The question of extension of various benefits like counting of service etc. in the case of (i) employees of Central Government absorbed in State Autonomous Bodies and (ii) employees of Central Autonomous Bodies absorbed in State Government and State Autonomous Bodies and vice-versa has been considered in consultation with the State Governments. After carefully consideration the President has now been pleased to decide that these cases may be decided in accordance with the principles as laid down in the Department of Personnel and Administrative Reforms O.M. No. 28.10.1984. Pension Unit dated 29.8.1984 (Copy enclosed). The case of Central Government Servants appointed in State Governments and vice-versa will continue to be decided as hitherto." In paragraph 5 are enumerated the States to which the order applies. The State of Uttar Pradesh is mentioned at SI. No. (VIII). At the bottom it is mentioned that the orders shall be extended to the employees of other state Governments as and when they agree to similar reciprocal arrangements. It is not the case of the State that it has not accepted the policy laid down in the Central Governments Orders dated 29th August, 1984 and 27th February, 1988. In view of this policy the State Government is liable to make one-time payment of pensionary benefits which accrued to the Petitioner on the basis of the service rendered by him to the State Government. The denial of liability by the State Government is entirely arbitrary.

9. Shri M. Islam has also relied upon Para 6 of the Office Memorandum dated 29th August, 1984, which provides as follows:

These orders will be applicable only where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier including cases where the individual had secured employment directly on his own violation provided he had applied through proper

channel/ with proper permission of the administrative authority concerned.

10. Shri M. Islam submits that in this case the Petitioner had applied through proper channel, and with prior permission, and thus the Office Memorandum dated 29th August, 1984 of the Central Government will be equally applicable to him.

11. We have considered the submissions made by learned Counsel for the parties, and find that in the present case no material has been produced by the Petitioner to show that his application was made through the State Government. The Petitioner-Respondent had in fact applied for his appointment to the Aligarh Muslim University, Aligarh directly with intimation to the State Government and not through the State Government. Further instead of being relieved by the State Government for joining in Aligarh Muslim University, the Petitioner had preferred to resign. He was permitted to join only after his resignation was accepted. Although there is reference of the letter of the Registrar of Aligarh Muslim University dated 25th November, 1972 of the order of the State Government dated 19th January, 1973 accepting the Petitioner's resignation, it will not be treated to be an order relieving him to join in the Aligarh Muslim University. The effect of the resignation is to sever the employment with the employer. Once resignation is accepted, the employees are not left with any relation with the employer except the statutory conditions of pensionary benefits, if any, as an ex-employee. He cannot claim any other benefits. His ex-employer, thereafter, is no longer required to relieve him. His joining in the new organisation will not be treated as transfer, or absorption.

12. In Jagat Prakash Chaturvedi's case the application was made through the State Government and that the State Government had relieved Shri Jagat Prakash Chaturvedi to join the Central Government on deputation by State Government's order dated 26th December, 1989 (para 5 of the judgment). The terms of deputation were to be prescribed later. Similarly in Hafiz Ali Khan's case the Petitioner had not resigned. The facts and circumstances in which Hafiz Ali Khan was permitted to be relieved and was employed by Aligarh Muslim University, are not given in the judgment. The State Government did not object in that case to count his services rendered by him, for the purposes of calculation of the pension. Infact the Aligarh Muslim University had resisted his claim, he did not complete the qualifying service of 10 years in the Aligarh Muslim University for getting the pensionary benefits.

13. In the Government Order dated 13.9.1982, such employees were divided in three categories: (1) those who are retrenched by Central/ State Government, and without any break between retrenchment and new appointment, accepted appointment in Central/ State Government, voluntarily; (2) those who while working as temporary Central/ State Government, employees, apply to the posts in Central / State Government, with the permission of the concerned administrative officer, through proper channel and (3) those who while working as temporary employees in Central/ State Government, apply directly for

appointment on the posts in Central / State Government, without permission of the concerned administrative officer, and tender resignation on the previous posts, for joining on the new posts. In Category (1) and (2), if resignation is necessary, the authority accepting resignation were to certify that the resignation was accepted only for fulfilling the condition technically after maintaining the record for such certification. The employees falling in Category (3) were not made entitled to count their past services for calculation of pension. The Petitioner's case squarely falls in Category (3). By Government Order dated 9.5.1985 this benefit was also made available to employees joining new post after competitive examinations, with same conditions.

14. In the present case, learned Single Judge did not even discussed the facts of the case in giving benefit to the Petitioner for counting his past services for the purposes of calculation of pension by the Aligarh Muslim University. The directions to remit the capitalised value of the pension was given following the judgment in Jagat Prakash Chaturvedi's case, whereas in Jagat Prakash Chaturvedi's case the facts were entirely different.

15. The special appeal is allowed. The judgment of learned Single Judge dated 5.8.1997 is set aside.