
(2010) 04 UK CK 0132

In the Uttarakhand High Court

Case No : Special Appeal No. 225 of 2008

State of U.P. and Another

APPELLANT

Vs

Pitamber Dutt Sanwal

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Citation : (2011) 2 UC 1101

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Advocate : Beena Pande, for the Appellant; Lalit Belwal, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—The Respondent remained employed as a Driver in the Army Service Corps (Military Transport) from 7.11.1962 to 20.4.1969.

2. After his discharge from Army service, according to the learned Counsel for the Appellants, the Respondent was inducted as a Driver in the Department of Irrigation on work charge basis with effect from 4.10.1977. He continued to render service as such till 27.5.1995. According to the learned Counsel for the Appellants, on 27.5.1995 the Respondent was brought on the regular establishment. While on the regular establishment, the Respondent retired on attaining the age of superannuation on 31.5.2000.

3. Based on the facts depicted in the foregoing paragraph, the Respondent approached this Court by filing Writ Petition (S/S) No. 843 of 2003 seeking retiral benefits. A learned Single Judge of this Court allowed the aforesaid Writ Petition on 24.7.2008.

4. Through the instant special appeal, the Appellants have assailed the order passed by the learned Single Judge on 24.7.2008 disposing of Writ Petition (S/S) No. 843 of 2003.

5. The solitary contention advanced by the learned Counsel for the Appellants is

based on a Government Order issued by the composite State of Uttar Pradesh dated 1.7.1989. Relevant part of the aforesaid order is being reproduced hereunder:

Based on the extracted part of the order dated 1.7.1989, it is the vehement contention of the learned Counsel for the Appellants, that the Respondent had not rendered 10 years" service on the regular establishment, and as such, was not entitled to retiral benefits. According to the learned Counsel for the Appellants, the service rendered by the Respondent from 27.5.1995 to 31.5.2000 alone was liable to be taken into consideration for the release of the retiral benefits to the Respondent.

6. We have considered the solitary contention of the learned Counsel for the Appellants. It is not possible for us to accept the interpretation placed by the learned Counsel for the Appellants on the Government Order dated 1.7.1989. Not only the subject of the aforesaid Government Order, but also, paragraph 1 thereof is clear and unambiguous to the effect that the aforesaid Government Order is applicable for grant/release of retiral benefits including pension to temporary employees, who were not regular prior to attaining the age of superannuation. It is, therefore, apparent that temporary service rendered by an employee under the aforesaid Government Order dated 1.7.1989 was liable to be taken into consideration while determining the right of an employee to pensionary and other post-retiral benefits.

Thus viewed, it is apparent that the service rendered by the Respondent from 4.10.1977 to 31.5.2000 had to be taken into consideration to determine whether or not the Respondent was entitled to retiral benefits. A perusal of paragraph 2 of the Government Order dated 1.7.1989 leaves no manner of doubt, in our mind, that a temporary employee who had rendered more than 10 years" service, is entitled to pensionary benefits. The facts narrated hereinabove reveal that the Respondent had indeed rendered more than 10 years" of service on a temporary basis prior to attaining the age of superannuation on 31.5.2000. Thus viewed, we are satisfied that the Respondent was entitled to retiral benefits including pension under the Government Order dated 1.7.1989.

7. For the reasons recorded hereinabove, we find no infirmity in the order passed by the learned Single Judge dated 24.7.2008 disposing of Writ Petition (S/S) No. 843 of 2003. Accordingly We find no merit in the instant special appeal and the same is hereby dismissed.

8. Since the Respondent was entitled to pensionary benefits when he attained the age of superannuation on 31.5.2000 and since he has been wrongly deprived of the same over the last decade, we consider it just and appropriate to direct the Appellants to pay the Respondent all remaining retiral benefits, including pension within a period of one month from the date of receipt of a certified copy of this order. The Respondent shall be also entitled to interest on the aforesaid arrears payable to him at the rate of 8 per cent from the date the same became

due to him till the date the same are paid to him.