

(2015) 08 AHC CK 0251

In the Allahabad High Court

Case No : Special Appeal Defective No. 497 of 2015

State of U.P. and Others

APPELLANT

Vs

Ram Ngina Lal Srivastava

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Citation : (2015) 6 AWC 5653

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

Bench : Division Bench

Advocate : A.K. Roy and S.C., for the Appellant; Vivek Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Dr. D.Y. Chandrachud, C.J. and Yashwant Varma, J.—The right of a person to have the period of service spent in a work charged establishment included in the total length of service for the purposes of computation of pension stood considered and authoritatively ruled upon by two Division Benches of this Court in Jai Prakash Vs. State of U.P. and Others, and in Navrang Lal Srivastava v. State of U.P. and 2 others, Special Appeal No. 1306 of 2013, decided on 16 July, 2015. The court in Jai Prakash (supra) and Navrang Lal Srivastava (supra) extensively noted the judgments rendered on the subject by the Hon'ble Supreme Court and by various Benches of this Court and ultimately held that the services rendered by an employee in a work charged establishment cannot be counted for the purposes of computing the ten years qualifying service for payment of pension. The State however, is in appeal against a judgment rendered by a learned single Judge on 11th February, 2015 in terms of which the writ petition preferred by the sole respondent (original petitioner) has come to be allowed and a writ issued to the appellants herein to compute his pension and other retrial benefits after counting the service of the petitioner rendered in a work charged establishment. The learned single Judge has directed the inclusion of the period of service rendered by the petitioner as a work charged employee

to be added to his regular service for the purposes of determination of qualifying service and for a consequential consideration of his claim for pension. Insofar as the State of U.P. is concerned, the provision which governs the field is Regulation 370 of the Civil Services Regulations (Regulations) which in unambiguous terms excludes the period of service rendered by an employee in a work charged establishment while computing continuous, temporary or officiating service. The issue was dealt with in a judgment rendered by the Supreme Court in *Punjab State Electricity Board and others v. Naratha Singh*, (2010) 4 SCC 417. In *Naratha Singh (supra)*, the Supreme Court dealt with a claim for pension consequent to the striking down of Rule 3.17(ii) of the Punjab Civil Services Rules by a Full Bench of the Punjab and Haryana High Court, which excluded the period of service rendered in a work charged establishment for the purposes of determining qualifying service. A Full Bench of the Punjab and Haryana High Court in *Kesar Chand v. State of Punjab and others*, had struck down Rule 3.17(ii) of the Rules aforementioned, *Kesar Chand Vs. State of Punjab and Others*. The special leave petition preferred against the aforesaid judgment of the Full Bench came to be dismissed by the Supreme Court. It was in the above backdrop and the situation as prevailing insofar as the State of Punjab and Haryana was concerned that the service rendered by an employee in a work charged establishment was held to be added for the purposes of computing qualifying service.

2. These distinguishing features and the factual backdrop in which *Naratha Singh* was decided appear to have escaped the attention of earlier Benches of this Court which purported to follow *Naratha Singh* to hold that the period of service rendered in a work charged establishment was liable to be included for the purposes of computing qualifying service. Following the above dictum, this Court in *Thakur Prasad v. State of U.P. through Principal Secretary Food and others*, Writ-A No. 36803 of 2008, decided on 24th August, 2009; *Jawahar Prasad Tripathi v. State of U.P. and others*, Writ-A No. 68515 of 2006, decided on 29.11.2011; *The Board of Revenue Vs. Prasidh Narain Upadhyay (Late)*, ; *Chhedi Ram Maurya Vs. Uttar Pradesh Basic Education Board and Others*, ; *State of U.P. and others v. Panchu*, Special Appeal Defective No. 842 of 2013 and *Raj Dularey Dubey v. Public Service Tribunal, Lucknow and others*, S.B. No. 316 of 2011, decided on 18.4.2013 proceeded to hold that the period of service spent in a work charged establishment was liable to be included.

3. A Full Bench of this Court in *Pawan Kumar Yadav Vs. State of U.P. and Others*, , held as follows:

"20. In respect of the employees the State Government in Irrigation Department, Public Works Department, Minor Irrigation, Rural Engineering Services, Grounds Water Department has provided for employment in the regular establishment and workcharge establishment. The person appointed in regular establishment are appointed against a post, after following due procedure prescribed under the rules. In work charge establishment the employees are not appointed by

following any procedure or looking into their qualification. They do not work against any post or regular vacancy. They only get consolidated salary under the limits of sanction provided by Government Order dated 6th April, 1929. The conditions of their employment is provided in paragraphs 667, 668 and 669 of Chapter XXI under the Head of Establishment in Financial Hand Book Volume IV. Their payments are provided to be made in same Financial Hand Book Volume IV in Paragraph Nos. 458, 459, 460, 461, 462 and 463.

21. Shri M.C. Chaturvedi, learned Chief Standing Counsel submits that by Government Order dated 1.1.2000 Paragraphs 667, 668 and 669 of Financial Hand Book Volume 4 have been deleted and that thereafter the payments are not being made to them from the budget allotted from the regular establishment, and they are not entitled to any allowance or pensionary benefits. They are paid from contingencies and are required to work until the work is available. The services of workcharge employees are regularised only when regular vacancy is available. Until then they cannot be treated as Government servants."

(Emphasis supplied)

4. Significantly, the Supreme Court in Punjab State Electricity Board and Others Vs. Jagjiwan Ram and Others, ; Jaswant Singh and Others Vs. Union of India (UOI) and Others, and State of Rajasthan Vs. Kunji Raman, , considered the issue again in the context of a claim of work charged employees for grant of time bound promotional scale and promotional increments. Following what was held in Jaswant Singh (supra) and Kunji Raman (supra), the Supreme Court in Jagjiwan Ram (supra), laid down the law in the following terms:

"9. We have considered the respective submissions. Generally speaking, a work charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work charged employees are engaged for execution of a specified work or project and their engagement comes to an end on completion of the work or project. The source and mode of engagement/recruitment of work charged employees, their pay and conditions of employment are altogether different from the persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or Rules and their duties and responsibilities are also substantially different than those of regular employees.

10. The work charged employees can claim protection under the Industrial Disputes Act or the rights flowing from any particular statute but they cannot be treated at par with the employees of regular establishment. They can neither claim regularization of service as of right nor they can claim pay scales and other financial benefits at par with regular employees. If the service of a work charged employee is regularized under any statute or a scheme framed by the employer, then he becomes member of regular establishment from the date of

regularization. His service in the work charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute or the scheme of regularization. In other words, if the statute or scheme under which service of work charged employee is regularized does not provide for counting of past service, the work charged employee cannot claim benefit of such service for the purpose of fixation of seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scales, grant of increments etc.

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21. For the reasons mentioned above, we hold that the respondents were not entitled to the benefit of time bound promotional scales/promotional increments on a date prior to completion of 9/16/23 years regular service and the High Court committed serious error by directing the appellants to give them benefit of the scheme by counting their work charged service."

(Emphasis supplied)

5. Noticing the law as laid down by the Full Bench of this Court in Pavan Kumar Yadav (supra) and the subsequent judgments of the Supreme Court in Jagjiwan Ram (supra), Jaswant Singh (supra) and Kunji Raman (supra), a Division Bench of this Court in Jai Prakash (supra), held as follows:

"It, therefore, follows from the aforesaid judgments of the Supreme Court that the work charged employees constitute a distinct class and they cannot be equated with regular employees and that the work charged employees are not entitled to the service benefits which are admissible to regular employees under the relevant rules.

We are conscious that in Special Appeal Defective No. 842 of 2013, State of U.P. and others v. Panchu, that was decided on 2nd December, 2013, a Division Bench, after taking notice of the judgment of the Supreme Court in Narata Singh (supra), observed that the rationale which weighed with the Supreme Court should also govern the provisions of the Civil Service Regulations, but what we find from a perusal of the aforesaid judgment of the Division Bench is that the decisions of the Supreme Court in Jagjiwan Ram (supra), Jaswant Singh (supra), and Kunji Raman (supra), as also the Full Bench judgment of this Court in Pavan Kumar Yadav (supra), had not been placed before the court. These decisions of the Supreme Court and the Full Bench of this Court leave no manner of doubt that in view of the material difference between an employee working in a work charged establishment and an employee working in a regular establishment, the service rendered in a work charged establishment cannot be clubbed with service in a regular establishment unless there is a specific provision to that effect in the relevant Statutes. Article 370(ii) of the Civil Service Regulations specifically, on the contrary, excludes the period of service rendered in a work charged

establishment for the purposes of payment of pension and we have in the earlier part of this judgment held that the decision of the Supreme Court in *Narata Singh (supra)*, which relates to Rule 3.17(i) of the Punjab Electricity Rules, does not advance the case of the appellant. In this view of the matter, the appellant is not justified in contending that the period of service rendered from 1st October, 1982 to 5th January, 1996 as a work charged employee should be added for the purpose of computing the qualifying service for payment of pension."

6. More recently a Division Bench of this Court in *Navrang Lal Srivastava (supra)*, tracing the various judgments rendered from time to time on this issue, explained the position in law as under:

"Thus, there is no manner of doubt that the service rendered by an employee in a work charged establishment cannot be counted for the purpose of computing the qualifying service of ten years for payment of pension. The submission of learned counsel for the petitioner that Article 370(ii) of the Regulations should be read down to include the service rendered in a work charged establishment for payment of pension, therefore, cannot be accepted."

7. It would not be out of place to note here that against the judgment rendered in *Raj Dularey Dubey (supra)*, a special leave petition was carried to the Supreme Court in *Engineer in Chief, Lok Nirman Vibhag and others v. Raj Dularey Dubey*, Special Leave Petition No. 36919 of 2013, and the same came to be dismissed on 19th January, 2015 in the following terms:

"Having heard the parties, we are not inclined to interfere with the impugned order. The special leave petition is dismissed. However, petitioners are directed to pay the respondent consequential benefit including arrears of salary, post retirement benefits including pension with statutory interest to which the respondent is entitled pursuant to the High Court's order within two months."

8. The above order of 19th January, 2015 indicates that the special leave petition was dismissed without the law as laid down by this Court in *Raj Dularey Dubey (supra)*, being affirmed.

9. The judgment rendered by this Court in *Jai Prakash (supra)*, and which reviewed the entire body of precedent on the subject was also taken in appeal. Special Leave to Appeal (C) No. 12648/2014, before the Supreme Court where the special leave petition came to be dismissed on 5th September, 2014 with the following observations:

"There is nothing on the record to suggest that any Rule or Scheme framed by the State to count the work-charge period for the purpose of pension in the regular establishment. In absence, of any such Rule or Scheme, we find no merit to interfere with the impugned judgment.

The special leave petition is dismissed."

10. The last judgment of this Court which struck a discordant note and which

must be noticed is that rendered by the Division Bench in Panchu (supra). It is apposite to note here that Panchu was also taken in appeal to the Supreme Court where the special leave petition Special Leave to Appeal (Civil) Nos. 7222/2014, came to be dismissed on 28th March, 2014 in the following terms:

"The special leave petition is dismissed. The question of law relating to counting the period of work charge establishment is left open for determination in an appropriate case. The impugned judgment passed by the High Court cannot be cited as a precedent in any other case."

11. From the above narration of facts and the various judgments rendered on the issue, it is apparent that the judgments of this Court which held that the service rendered by a person in a work charged establishment was eligible for inclusion in the period of qualifying service proceeded on the basis that the judgment rendered in Naratha Singh applied and failed to notice the distinguishing features upon which it came to be rendered. The law subsequently has been authoritatively pronounced and ruled upon in both Jai Prakash and Navrang Lal Srivastava, and in judgments of the Hon"ble Supreme Court noticed earlier.

12. In light of the above, this Court reiterates and holds that the service rendered by an employee in a work charged establishment stands on a completely different and distinct footing and bearing in mind the provision made in Regulation 370 the same cannot stand added for the purposes of computing qualifying service.

13. In view of the above it is evident that the conclusions and directions issued by the learned single Judge and impugned before us in this appeal are rendered unsustainable. Accordingly, the instant special appeal shall stand allowed and the judgment and order rendered by the learned single Judge shall stand set aside. It is further declared that the claim as laid in the writ petition by the first respondent for inclusion of service rendered in a work charged establishment for the purposes of computation of qualifying service could not have been accepted in law and therefore, the writ petition as preferred by him was liable to be and is accordingly dismissed.

14. There shall be no order as to costs.

15. The delay of 112 days in filing the special appeal is condoned since sufficient cause has been shown in the affidavit filed in support of the application for condonation of delay. The application stands disposed of. There shall be no order as to costs.