
(2015) 12 AHC CK 0031

In the Allahabad High Court

Case No : Service Single Nos. 6997, 6236, 6400, 6343 of 2015 and Review
Petition Defective No. 527 of 2015

Sudhir Kumar Bajpai and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-12-2015

Acts Referred:

Citation : (2015) 12 AHC CK 0031

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Rakesh Kumar Nigam, for the Appellant; Amar Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

Rajan Roy, J.—Heard learned counsel for the parties and perused the entire record.

2. As the issues involved have already been adjudicated in the earlier proceedings and as the purport and application of Regulation of 33 of "the Regulations 2010" alone is required to be considered in these proceedings and pleadings between the parties have already been exchanged in one of the Writ Petition No. 6400(SS) of 2015, no opportunity is required to be given to the opposite parties for exchanging the pleadings etc. in other writ petitions.

3. Since, the controversy involved in all the aforesaid writ petitions including the review petition is similar, therefore, they are being decided by a common order.

4. It is not in dispute that all the petitioners including the respondents in the review petition are the employees of the Pradeshik Cooperative Dairy Federation (hereinafter referred to as "the PCDF") which is an Apex Cooperative Society, registered under the provisions of the U.P. Cooperative Societies Act, 1965 and its units.

5. It is also not in dispute that a Government order dated 02.12.2000 was issued for government servants prescribing a scheme for grant of selection grade, time scale, first promotional pay scale, second promotional pay scale etc. based on completion of a particular period of regular and satisfactory service. It is not in dispute that the Board of Directors of "the PCDF" vide resolution dated 27.11.2006 adopted the said Government order dated 02.12.2000 verbatim so as to extend the said benefits to its employees also. Under the aforesaid scheme, if a person has been working on the same post for a period of 8 years then he was entitled to get one additional increment as selection grade in his pay scale in which he was working. On completion of 14 years of regular and satisfactory service including 6 years in the selection grade he was entitled to the first promotional pay scale even though he may not have been actually promoted. On completion of 19 years regular and satisfactory service including 5 years in the first promotional pay scale he was entitled to one additional increment in the first promotional pay scale. On completion of 24 years of regular and satisfactory service, such a person was entitled to second promotional pay scale. As per requirement of law the resolution dated 27.11.2006 was sent to the Registrar for his approval which was granted on 28.01.2009 and this fact is also not in dispute. It appears that "the PCDF" and its units were facing financial crisis, therefore, the matter was again referred to the Board of Directors which took a decision on 27.07.2007 re-affirming the benefits admissible under the scheme but restricting its implementation with effect from 27.07.2007 i.e. the arrears of due amount were not to be paid. Even this decision was not implemented by "the PCDF" and the matter was again sent to the Registrar on 28.01.2009 who approved the extension of the said benefit, however, with the condition that the same would be given effect from 27.07.2007 i.e. no arrears would be paid for the period prior to it. Except this no other change was made and this is not in dispute.

6. Consequent to the aforesaid approval of Registrar executive orders were issued by the Managing Director on 31.01.2009, in terms of aforesaid approval for extending the benefit accordingly. In spite of the same the pay of the petitioners was not fixed after extending the aforesaid benefits of one additional increment and second promotional pay scale, though, they had already completed the requisite period of 19 years and 24 years regular and satisfactory service. The benefits admissible on completion of 8 years and 14 years of regular and satisfactory service had already been given to them in the earlier years and the said benefits are not in question in this petition. The only question is with regard to the benefits admissible on completion of 19 years and 24 years, as such.

7. Some of the similarly situated employees filed Writ Petition No. 7486 (SS) of 2013 based on the aforesaid decision of the Registrar dated 28.01.2009 and other resolutions and orders of "the PCDF" this Court disposed of the said writ petition vide order dated 12.12.2013 with the following observations:-

"In view of the above, the Managing Director, Pradeshik Co-op. Dairy Federation Ltd., Lucknow is hereby directed to examine the grievance of the petitioners and pass appropriate orders on the same in accordance with law. He will also ensure that the petitioners be given at least current salary in pursuance of the decision dated 31.01.2009 (Annexure No. 10 to this writ petition). As far as arrears is concerned, the same may be paid to the petitioners in phased manner."

8. Against the aforesaid decision Special Appeal (Defective) No. 255 of 2014 was filed by "the PCDF" which was dismissed vide order dated 02.08.2014 with the following observations:-

"We have gone through the impugned judgment. The learned Single Judge has recorded findings of fact on the basis of cogent material on records, which, in our view, are sound reasons for disposing of the writ petition. Therefore, it cannot be said that the findings recorded by the learned Single Judge are perverse or contrary to the material on record. It is settled law that the findings of fact cannot be upset unless perversity is shown.

Learned Counsel for the appellants has failed to show any perversity in the impugned judgment and order passed by the learned Single Judge.

Accordingly, the special appeal is dismissed."

9. Against the said judgment of the Division Bench, Special Leave Petition (C) CC Nos. 10783 of 2015 was filed by "the PCDF" and the official opposite parties which was dismissed vide order dated 10.07.2015 by saying "Special Leave Petition is dismissed".

10. Being aggrieved a Review Petition was filed by "the PCDF" for reviewing the judgment and order dated 10.07.2015, which also came to be dismissed on 15.09.2015 with the following observations:-

"We have perused the Review Petition and record of the Special Leave Petition and are convinced that the order of which review has been sought does not suffer from any error apparent warranting its reconsideration.

The Review Petition is, accordingly, dismissed."

11. Thus, the matter attained finality upto the Supreme Court.

12. In these circumstances one of the connected Writ Petition i.e. Writ Petition No. 6263(SS) of 2015 was filed before this Court. As the issues had already been decided in the earlier proceedings which had attained finality upto the Supreme Court, therefore, the said writ petition was disposed of vide order dated 28.10.2015 which reads as under:-

"Heard learned counsel for the parties.

The petitioners, one of whom has retired from services, are claiming one additional pay scale on completion of 19 years and time scale/promotion on completion of 24 years of services in terms of Government Order dated

02.12.2000 and the order of the opposite party 3 dated 31.01.2009 in the light of the judgment and order dated 12.12.2013 passed by this Court in Writ Petition No. 7486(SS) of 2013 which is said to be affirmed by the Hon'ble Supreme Court in Leave Petition (C) No. 10783 of 2015 vide order dated 10.07.2015.

Be that as it may, without adjudicating the claims of the petitioners on merits, the writ petition is disposed of with liberty to the petitioners to file a detailed representation before the opposite party No. 3-Managing Director, Pradeshik Coop. Dairy Federation, 29, Park Road Lucknow raising their grievance as has been raised in this writ petition within a period of two weeks from today. In such an eventuality, the opposite party No. 3 shall look into the matter to ascertain the factual position with regard to the petitioners and their entitlement to the relief claimed keeping in mind the judgment of this Court dated 12.12.2013 passed in Writ Petition No. 7486(SS) of 2013 including its applicability to the petitioners and shall take a considered decision within a period of next two months. The decision so taken shall be communicated to the petitioners forthwith.

If the petitioners are found eligible and entitled for the relief claimed then they shall be provided the relief without unnecessary delay.

This exercise shall be done without prejudice to the rights of the petitioners for applying for V.R.S. subject to the conditions of V.R.S.

With the aforesaid observations, the writ petition is finally disposed of."

13. Being aggrieved, "the PCDF" has filed a review petition being Review Petition (Defective) No. 527 of 2015 seeking review of the aforesaid decision dated 28.10.2015 which is also under consideration.

14. As far as the petitioners are concerned they have relied upon the decision of the Board of Directors, the Registrar and the Managing Director in support of their claim for grant of one additional increment in the first promotional pay scale on completion of 19 years of regular and satisfactory service and also for grant of second promotional pay scale on completion of 24 years of regular and satisfactory service.

15. Sri Lalit Shukla, learned counsel learned counsel has opposed the writ petitions and prays for reviewing the aforesaid order dated 28.10.2015 on the ground that the provisions contained in Regulation 33 of the U.P. Co-operative Dairy Federation Employees Service Regulations, 2010 (hereinafter referred to as "the Regulations, 2010") could not be brought to the notice of the Court in the earlier proceedings whether it be Writ Petition No. 7486(SS) of 2013 or Writ Petition No. 6236(SS) of 2015. "The PCDF" and its units were facing grave financial crisis and were not in a position to pay such a huge amount to its employees. It has had to take loans from the State Government for running the units, though, not for payment of salaries to its employee. The contention was that once "the Regulations, 2010" came into force with effect from 08.11.2010 i.e. the date of its publication in Government Gazette then it was not open for

the petitioner to claim any benefit under the Government order dated 02.12.2000 nor under the decisions of the Board of Directors and the Registrar taken prior to 08.11.2010. The earlier decisions of this Court and the Supreme Court were rendered per-incuriam as the provisions contained in Regulation 33 of "the Regulations, 2010" was not taken into consideration. In this regard he relied upon the case of Municipal Corporation of Delhi Vs. Gurnam Kaur, , Ram Chandra vs. State of U.P. and others reported in 2001 (3) HVD 223 , Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, and Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal, . He also contended that payment has to be made by "the PCDF"/Milk Unions, as the case may be, as was ordered by the Registrar vide order dated 29.01.2010.

16. A pointed query was put to the learned counsel for the "the PCDF" as to whether any of the petitioners before the Court including petitioners of Writ Petition 6236(SS) of 2015 had completed requisite 19 and 24 years of regular and satisfactory service after 08.11.2010, Sri Shukla very fairly and candidly submitted that it was not so. All of them completed the said period of service prior to 08.11.2010.

17. Regulation 33 of the Regulations 2010 reads as under:

"On approval of Milk Commissioner/Registrar, the employee of P.C.D.F. and Milk Unions shall be allowed one increment selection grade on satisfactory completion of 8 years service, first promotional pay scale on satisfactory completion of 14 years service, one increment as selection grade on satisfactory completion of 19 years and second next pay scale on satisfactory completion of 24 years of service.

Provided that the said benefits shall be payable to employees when the federation/Milk Union is financially able to bear the additional expenditure."

18. As already stated earlier, the Regulations 2010 came into force on 08.11.2010. The Government order dated 02.12.2000, the resolution of the Board of Directors of "the PCDF" dated 27.11.2006, its approval by the Registrar dated 28.01.2009, the subsequent decision of the Board of Directors dated 27.07.2007 its approval by the Registrar Cooperative Societies dated 28.09.2009, issuance of consequential orders by the Managing Director on 31.01.2009 and also the completion of requisite 19 years and 24 years of regular and satisfactory service by the petitioners, all this had taken place prior to 08.11.2010. The rights of the petitioner under the Government order dated 02.12.2000, as adopted by "the PCDF" on 27.12.2006, accrued and crystallized in their favour much prior to 08.11.2010, therefore, their entitlement and enforcement of their rights has to be considered in the light of factual and legal position as existing prior to 08.11.2010. By no stretch of imagination "the Regulations, 2010" can be made applicable to the case of the petitioners. There is nothing in these Regulations to show that they have been given retrospective effect. In fact in Regulation (1)(3) of "the Regulations, 2010" it has clearly been stated that these regulations shall come into force from the date of publication in

the gazette. Indisputably, the publication has been made on 08.11.2010. In view of this, reliance placed by the opposite parties-applicants seeking review, on the basis of the said Regulations 2010 to defeat the claim of the petitioners, is misconceived and the same is rejected.

19. Though, the question of application of Regulation 33 loses its significance in view of consideration made hereinabove, however, to give a quietus to the matter it is put on record and also proved from the record that a specific plea was raised by "the PCDF" and its official before the Division Bench in the Special Appeal (Defective) No. 255 of 2014 with respect to Regulation 33 of "the Regulations, 2010". Likewise a specific plea was raised in the Special Leave Petition before the Supreme Court but the same also did not find favour, a review application before the Supreme Court specifically raising the aforesaid plea had been filed stating the Supreme Court had failed to consider the provisions contained in Regulation 33 of "the Regulations, 2010". While dismissing the Special Leave Petition on 10.07.2015 the Supreme Court after considering the same, dismissed the review petition vide its order dated 15.09.2015 which has already been quoted hereinabove and a perusal of the same leaves no room for doubt that the Supreme Court did consider the said plea even though the Regulation may not have been referred specifically in the order. Obviously the said plea was not accepted in the earlier proceedings as the rights of litigants had accrued prior to 08.11.2010 i.e. the date of coming into force the Regulation 33 of "the Regulations, 2010", therefore, the contention that the said plea was not considered in the earlier proceedings is rejected. Even otherwise for the reasons stated hereinabove as Regulation 33 of "the Regulations, 2010" is not applicable to the case of the petitioner which relates to a period prior to 08.11.2010, reliance placed thereon and the judgments cited by the learned counsel for "the PCDF" on the issue of per-incuriam is misconceived, the plea raised in this regard is rejected.

20. It is also not in dispute that the resolution of the Board of Directors, approval of the Registrar and the letter of the Managing Director dated 31.01.2009 have not been cancelled, rescinded or nullified by any authority or Court. In these circumstances there appears to be no reason whatsoever for the opposite parties not to fix the pay of the petitioners in the light of the decision already taken keeping in mind the judgment of this Court dated 12.12.2013 in Writ Petition No. 7486(SS) of 2013 which has been upheld by the Supreme Court. The petitioners herein being similarly situated cannot be treated differently.

21. No other plea was raised by the counsel for either of the parties.

22. For the reasons aforesaid the writ petition Nos. Service Single No. - 6997 of 2015, Service Single No. - 6236 of 2015, Service Single No. - 6400 of 2015 and Service Single No. - 6343 of 2015 stand allowed in terms of the judgment dated 12.12.2013 passed in Writ Petition No. 7486(SS) of 2013 and the Review Petition Defective No. - 527 of 2015 stands dismissed as there is no valid ground for reviewing the judgment dated 28.10.2015 passed in Writ Petition No. 6263(SS)

of 2015. The actions consequential to the aforesaid shall be taken by the opposite parties 2 and 3 within a period of three months from the date a certified copy of this order is produced before them.