(1997) 07 AHC CK 0115

In the Allahabad High Court

Case No : Writ Petition No. 3930 (S/S) of 1991

Syed Ahmad	APPELLANT
Vs	
State of U.P., Through Its Chief Secretary & Another	RESPONDENT

Date of Decision : 17-07-1997

Acts Referred:

Uttar Pradesh Fundamental Rules — Rule 56(J)

Citation : (1997) 07 AHC CK 0115

Hon'ble Judges : B.K.Singh, J

Final Decision : Allowed

Judgement

B.K. Singh, J.—The petitioner, by this writ petition, has prayed for issuance of a writ of mandamus commanding opposite parties to pay the petitioner pension and other retirement benefits with effect from the date of his retirement and further to direct the opposite parties to act in accordance with the Government Order dated 1.7.1989, contained in Annexure No. 1 to the writ petition.

2. A few relevant facts, necessary for the disposal of the writ petition, may be stated. The petitioner was selected and appointed as Area Rationing Officer in the Food and Civil Supplies Department in the year 1946. In a later selection by U.P. Public Service Commission, the petitioner was approved for promotion to the post of District Supply officer/Town Rationing Officer in the year 1948. There after the petitioner was posted as District Supply Officer/Town Rationing officer of Jhansi, Meerut, Gorakhpur and Saharanpur. The petitioner was also posted Liaison Officer at Calcutta. He also functioned as District Relief and Rehabilitation Officer and Rent Control and Eviction Officer. After having worked on the posts mentioned above for 26 years the petitioner was compulsorily retired after reaching the age of 55 years in 1970. The petitioner since then had been making representations to the State Government to grant him pension and other post retiral benefits but to no avail. The State Government issued Government Order No. 5 731152/10915/89 dated 1 July 1989 providing pension to temporary Government servants who had put in at least ten years'' service at the time of

their retirement. Thereafter the petitioner was desired by the State Government, in compliance of the aforesaid Government Order, to submit his pension papers vide letter No. Ra4173/29Anu11990 dated 16 January 1990. The petitioner promptly submitted his pension papers. It appears that in reply the State Government, through letter no. Ra11922911990 dated 19.7.1990 informed that the Government servants, who had been compulsorily retired, were not covered by the aforesaid Government Order dated 1.7.1989. The petitioner thereafter made several representations that his case was not to be excluded on the ground that he was compulsorily retired. The State Government, however, stuck to its stand and did not grant the petitioner the pensionary benefits. Hence the writ petition.

3. The petitioner has claimed that the pensionary benefits could not be withheld after the Government Order dated 1.7.1989 simply on the ground that the petitioner was compulsorily retired. The petitioner, under the Government Order was entitled to pensionary benefits because he had served the Government for more than ten years, may be in temporary capacity.

4. The writ petition has been contested on behalf of the State of U.P. A counter affidavit of the Under Secretary, Food and Civil Supplies Department has been filed. The stand of the State Government is that the benefits of the Government Order dated 1.7.1989 are not available in the case of a person who has been compulsorily retired and thus the petitioner has no right of post retirement benefit. According to the State Government, the petitioner was not confirmed by U.P. Public Service Commission because of the adverse entries in petitioner''s character roll. Explaining its stand the officer of the State Government has explained in his counter affidavit that the Government Order dated 1.7.1989 makes provisions for payment of pension to such temporary Government servant who had put in atleast ten years service and has attained the age of superannuation or has been retired on medical ground or has sought voluntary retirement after completing 20 years service. The Government Order makes no provision for payment of pension to a temporary Government servant who had been compulsorily retired under Fundamental Rule 56 (J).

5. I have heard the learned counsel of the petitioner and the learned Standing Counsel. They have respectively made submissions in the light of what has been stated above.

6. The short question, for consideration in this writ petition, is as to whether a temporary Government servant, who has been compulsorily retired, in exercise of power under Fundamental Rule 56 (J) stands debarred from getting pensionary benefits even though he had put in more than ten years long service. In this case, admittedly the petitioner had put in 26 years service before he was compulsorily retired in the year 1972. This question came up before the Hon''ble Supreme Court and has been thrashed out and answered in a case reported in 1995 U.P. Local Bodies and Educational Cases, 1842. A.P. Srivastava v. Union of India and others. It has been held that after completion of particular period of

service the employer has a right to compulsorily retire the employee in public interest and similarly the employee has a right to voluntarily retire on giving three months notice. The Court held that time and again it has been held that the pension is not a charity or bounty nor it is conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long service and is often described as deferred portion of payment for past services. It is in fact in the nature of social security plan provided for a superannuated Government servant. If temporary Government servant has rendered 20 years of service, he is entitled to pension if he voluntarily retires. There is no justification for denying such right when he was required to retire by the employer in public interest. In other words the condition precedent for being entitled to pension in case of a temporary Government servant is rendering 20 years of service. The Court held that an order of compulsory retirement is not a punishment and pension is a right of an employee for services rendered. The Court held that there is no justification for denying such right to a temporary Government servant merely on the ground that he was required to retire by the employer in exercise of power under Rule 56 (J) of the Fundamental Rules. The Court held that a temporary Government servant would be entitled to pension after he has completed more than 20 years of service even if he is required to retire by the employer in exercise of power under Rule 56 (J) of the Fundamental Rules. The Court found that compulsory retirement is not a punishment disentitling the temporary Government servant from pensionary benefits.

7. When I consider rationale and ratio of the above decision it cannot be said that in this case the stand taken by the State Government is quite different than has been decided in the above case of the Hon''ble Supreme Court. The petitioner, in this case, had put in 26 years of long service, may be in temporary capacity. In Government service confirmation is not in the hands of employee. Various factors may come into play where despite satisfactory or continuous service the government servant may continue as temporary. Nonethe less the State Government by its own Government Order had thought about desirability of granting pension to temporary Government servants. The aim and object of the Government Order dated 1.7.1989 also makes the position clear. It is a benefit which has been given as a kind of social security to the Government servant for rendering long service and it can only be said as deferred portion of payment of past services.

8. I am, therefore, of the view that withholding of the pensionary benefit to the petitioner by the State Government, only on the ground that he had been compulsorily retired before attainment of the age of superannuation is nothing but a capricious decision and violative of the benefit conferred by the State Government under Government Order dated 1.7.1989.

9. In view of the above, the writ petition is allowed. The State Government is directed to finalize the pensionary benefits admissible to the petitioner in accordance with the Government Order dated 1.7.2989 within a period of 90

days from the date a certified copy of this judgment is given to the head of the department, in the department of Food and Civil Supplies. In case pensionary benefits and post retiral benefits of the petitioner are not finalized within the period indicated above then the State Government shall have to pay interest at the rate of 18 percent on the consolidated amount of the benefits that may be payable to the petitioner with effect from 1.7.1989.