
(2004) 08 UK CK 0073

In the Uttarakhand High Court

Case No : Writ Petition No. 1377 (S/S) of 2003

Umapati Bhatt

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 06-08-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2004) 3 AWC 2577

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : I.P. Gairola, for the Appellant; Seema Sirohi, for the Respondent

Final Decision : Allowed

Judgement

P. C. Pant, J.—This writ petition has been moved under Article 226 of Constitution of India for mandamus directing the respondents to give the benefit of service rendered by the petitioner with M/s. Teletronix Limited, Bhimtal for the purposes of calculation of pension, etc.

2. Brief facts of the case are that petitioner had been in service with M/s. Teletronix Limited, Bhimtal, a Government undertaking upto 31.3.1996, i.e. the cut off date to relieve the employees under the retrenchment scheme formulated in implementation of Government order dated 30.12.1995. The retrenched employees including the petitioner were re-employed/readjusted in various posts lying in various departments of the State Government. The petitioner was appointed as lower division clerk with District Education and Training Institute, Bhimtal, Nainital under said scheme. The conditions of re-employment are contained in Government order dated 30.12.1995 and that of 26.2.1996. Para 6 of the Government order dated 26.2.1996 provides that the last pay drawn by the employee in the service rendered by him with M/s. Teletronix Limited will be protected. The other employees, namely, Sri Gyan Chandra Joshi and Pradeep Kumar Joshi have been given benefit of fixation on the basis of said Government order dated 26.2.1996. The petitioner also sought benefit of pay fixation on the

basis of the last salary drawn in M/s. Teletronix Limited and forwarded his representation to Principal, District Education and Training Institute, Bhimtal which was forwarded to the Joint Director Education Kumaon Division vide letter dated 30.3.2001 for consideration. In its turn, the Joint Director Education also forwarded the same to the higher authorities but the Government has not issued any orders in this regard in favour of the petitioner. The inaction on the part of the Government is alleged to be violation of Articles 14 and 16 of Constitution of India. The petitioner earlier moved a Writ Petition No. 3367 (S/S)/2001 before this Court which was disposed of on 22.9.2003 and a direction was given to the respondents to decide the representation of the petitioner by a speaking order in the light of the Government order dated 12.6.1998 but the respondents even after being served with the copy of the judgment have failed to decide the representation. Hence, the writ petition.

3. Respondent Nos. 3, 4 and 5 have filed their joint counter-affidavit and contested the claim of the petitioner. In said counter-affidavit it has been stated that the representation of the petitioner has been disposed of on 10.11.2003 passed in Writ Petition No. 3367 (S/S)/2001. It is further stated in the counter-affidavit that the petitioner has already been given all the post retirement benefits due to him. Since there was no such pay scale as was available to the petitioner with the Teletronix Limited department, as such the benefit of the same cannot be given to him. At the end of the counter-affidavit it has further been stated that the cases of the other employees mentioned in the writ petition there was consent from the Finance Department while for the petitioner no such consent has been obtained.

4. I heard learned counsel for the parties and perused the record.

5. The short question for consideration before this Court is whether the respondents have disposed of the representation of the petitioner in compliance of this Court's order dated 22.9.2003 passed in Civil Misc. Writ Petition No. 3367(S/S)/2001 and is the petitioner entitled to the benefit of the services rendered by him with the Teletronix Limited for the purposes of his pensionary benefits, etc.

6. Admittedly before 31.3.1996 the petitioner was employee of M/s. Teletronix Limited, Bhimtal, a sick unit of the State Government and like other retrenched employees he was also re-employed in other Government Departments under the scheme of the Government. It is also not disputed that now the employee has already attained the age of superannuation. The actual dispute is as to the fixation of pay of the petitioner which is affecting his pensionary benefits. As far as the disposal of the representation of the petitioner in compliance of the order passed by this Court on 22.9.2003 in Writ Petition No. 3367 (S/S)/2001 is concerned, the same appears to have been complied which is evident from Annexure CA-1 to the counter-affidavit. The letter dated 4/10th of November, 2003 (Annexure CA-1) addressed to the petitioner from the Principal, District Education and Training Institute, Bhimtal shows that the petitioner has been

informed that in response to his letter dated 29.9.2003 he is not entitled to the pay protection and service benefits under the Government order dated 12.6.1998. Now this Court has to see if the petitioner is really entitled to pay fixation as desired by him. A copy of Government order dated 26.2.1996 is Annexure-2 to the writ petition. In para 6 of said Government order it is categorically mentioned that the last pay drawn by the employee from M/s. Teletronix Limited shall be protected and with the consent of Finance Department orders will be issued separately. Annexure-3 and Annexure-4 to the writ petition clearly shows that the pay scale of other employees, namely Gyan Chandra Joshi and Pradeep Kumar Joshi have been revised. In Annexure-4 while giving the benefit the reliance has been placed on the same Government order dated 26.2.1996. In the counter-affidavit it has been stated that in the case of petitioner the consent of Finance Department was not "obtained", as such, he is not entitled to the fixation of pay scale by him. The stand taken by the respondents is arbitrary and misconceived. It is not the duty of the petitioner to obtain the consent of the Finance Department in the matter. Rather, the responsibility lies on the concerned department where the petitioner was employed to get his pay fixed according to the Government orders after obtaining the necessary consent, if any, from the Finance Department. As such, petitioner is entitled to the relief claimed by him.

7. Accordingly the writ petition is allowed. No order as to costs.