
(2019) 06 UK CK 0101

In the Uttarakhand High Court

Case No : Writ Petition No. 355 Of 2019 (S/S)

Umrao Singh Bisht

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 24-06-2019

Acts Referred:

Citation : (2019) 06 UK CK 0101

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : U.S. Bhakuni, Anjali Bhargava, N.P. Sah

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. Petitioner has filed this writ petition seeking a writ of certiorari for quashing of order dated 22.12.2018 passed by respondent no.3. Further prayer has been made in the nature of mandamus commanding and directing the respondent no.3 to make payment of pensionary benefits to the petitioner.

2. Brief facts of the case are that petitioner was initially appointed as a Chowkidar (Van Rakshak) on 1. 09.1977 in Almora Forest Division (Civil Soil Sub Division) on daily wage basis. His services were regularized/confirmed w.e.f. 15.12.2003. He continuously worked in the Department for more than 35 years and retired from service on 31.10.2012. The petitioner is aggrieved by non-payment of pensionary benefits to him on account of the fact that he has not completed ten years of regular service in the Department. Earlier also, petitioner has approached this Court by filing WPSS No. 902 of 2018. The Coordinate Bench of this Court vide order dated 18.09.2019 disposed of the said writ petition by directing the respondent no.3 to consider and decide the issue of entitlement of the petitioner for grant of pensionary benefits and the retiral dues based on the judgment of the Coordinate Bench rendered in WPSS No. 722 of 2014 and other analogues petitions decided on 10.12.2015. By the impugned order dated

22.12.2018 respondent no.3 has vehemently rejected the claim of the pensionary benefit in respect of the petitioner vide impugned order dated 22.12.2018 mainly on the ground that he has not completed ten years regular service which is a manifest error and the clear violation of the order dated 10.12.2015, in as much as vide said order the barrier of ten years regular service has already been waived by this Court.

3. Heard learned counsel for the parties and perused the material available on record.

4. Learned counsel for the petitioner would submit that similar situated persons, those who have not completed ten years of services have been given the pensionary benefits by counting their previous service rendered in the Department.

5. The respondent has filed counter affidavit stating therein that none of the Rules provides that petitioner is entitled for pensionary benefits. It is contended that petitioner services were regularized on 15.12.2003 and he retired from service on 31.10.2012. As such he has not completed the ten years of service, which is a mandatory condition for getting the pensionary benefits.

6. Learned Standing Counsel relied upon the provisions of Uttarakhand Retirement Benefits Act 2018 (in short 'the Act'), which provides that ten years qualifying service is mandatory for pensionary benefits. The Act further provides as under:

4. Eligibility for pension.- The service shall be qualifying service for pension according to following conditions -

"(a) The service has been done substantively and regularly under the State Government;

(b) The service shall be taken as qualifying service for retirement benefits when the employee is substantively appointed on permanent/ temporary created post in any establishment."

7. Learned counsel for the petitioner relied upon the judgment passed in WPSS No. 722 of 2014 decided on 10.12.2015 wherein in identical issue the Single Judge has issued a mandamus to the respondent authorities to give pensionary benefits to the petitioners, treating that each of the petitioner has put in 10 years of qualifying service.

8. Learned counsel for the petitioner would further place reliance upon judgment rendered in Special Appeal No. 88 of 2013 "State of Uttarkahand & others Vs. Dan Singh Bisht decided on 11.10.2017, in which similar controversy has been decided by the Division Bench of this Court. Paragraph No. 15 of the said judgment is extracted below:

"15. The result of the aforesaid discussion is that the appeal must be partly allowed and it must be found that the writ petitioner is, indeed, entitled to

pension taking into consideration the period he has work from 1977; but, he is not entitled to get gratuity. In the facts of this Court, we would think that the submission of the learned Standing Counsel for the appellants for reduction of the cost from Rs. 50,000/- cannot be allowed entirely. The writ petitioner is a Chaukidar and this is the second round of litigation. Therefore, we would think that the amount of cost cannot be reduced below Rs. 30,000/-."

9. Having considered the fact that petitioner worked in the Department w.e.f. 01.09.1977 continuously and worked as regular employee for a period of approximately 9 years, thus, the petitioner is also entitled to get pensionary benefits.

10. The contention raised by learned counsel for the respondent that according to the Uttarakhand Retirement Benefits Act 2018, petitioner is not entitled to get the pensionary benefits, I do not find force in the contentions of learned Standing Counsel as the said Act come into the force in the year 2018 and the petitioner was retired in the year 2012, therefore, the provisions of the said Act are not applicable in the present case.

11. In view of the above, the writ petition is allowed. Impugned order dated 22.12.2018 is quashed. A mandamus is issued to the respondent no.3/ Competent Authority to pay the pensionary benefits to the petitioner within a period of six months from today.

12. No order as to costs.