(2010) 11 AHC CK 0207

In the Allahabad High Court

Case No : Special Appeal No. 813 of 2010

U.P.State Road Transport Corp., Lucknow & Ann — APPELLANT

Vs

Mirza Athar Beg & Ors. — RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Road Transport Corporations Act, 1950 — Section 45

Citation : (2010) 11 AHC CK 0207

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Dismissed

Judgement

Ritu Raj Awasthi, J.

Heard Sri Mahesh Chandra for the appellants and Sri Ghaus Beg for the private respondent.

The special appeal has been filed with a delay of one month and twenty six day. Sri Ghaus Beg has no objection in condoning the delay.

We also feel that the delay is not such so as to deprive the appellant of hearing on merits. The delay is, therefore, condoned.

The U.P. State Road Transport Corporation (hereinafter referred to as the Corporation) has preferred this special appeal against the judgement and order dated 25.8.2010 passed by the learned Single Judge, by means of which the writ petition filed by the private respondent (hereinafter referred to as the respondent) claiming pension has been allowed, with a direction that he shall return the amount of Contributory Fund, received by him.

The brief facts of the case are that the respondent was appointed on the post of Conductor on 1.11.51 in the erstwhile U.P. Government Roadways (hereinafter referred to as the Roadways). He was promoted on the post of Junior Clerk w.e.f. 7.9.58 in the office of the Assistant General Manager at Charbagh Depot. His promotion was regularised on 16.4.60, as is evident from the office order dated

3.3.61.

On 29.5.62, the State of Uttar Pradesh took preliminary steps to constitute a statutory Corporation under Section 50 of the Road Transport Corporation Act, 1950 and consequently the U.P. State Road Transport Corporation was constituted with effect from 1.6.72.

The respondent was promoted as Senior Clerk on 8.4.86 and was posted at City Bus Service Depot, Lucknow in the office of the Assistant Regional Manager (previously designated as Assistant General Manager). He retired while working on the post of Senior Clerk on 31.10.91.

The respondent did accept the Employees'' Provident Fund (EPF) amount on retirement but claimed that he was entitled to pension, as he was sent on deputation from the erstwhile Roadways, where his post was pensionable and, therefore, in terms of Government order of 5.7.72, his conditions of service cannot be inferior to the conditions, which were in force and applicable to him, when he was working as a Government servant.

Not being able to get the desired relief, the respondent preferred the present writ petition claiming the aforesaid relief of pension. Counter affidavit was filed by the Corporation, wherein his claim was denied.

The learned Single Judge after considering the pleadings and the specific case of the parties, has allowed the writ petition, holding that the respondent was entitled for pension. Taking note of the fact that the respondent had already received the EPF amount, the learned Single Judge issued a further direction that this award and payment of pension would be subject to refund of the money received under the EPF account.

Sri Mahesh Chandra, learned counsel for the Corporation mainly argued that by virtue of the Government order dated 16.9.60, the benefit of pension, which was otherwise available to the employees who were working in the Roadways, was taken away, therefore, on the date of transfer of the respondent to the Corporation i.e. when he was sent on deputation, since he was not working on a pensionable post, he was not entitled for pensionary benefits.

In furtherance of the aforesaid plea, it has also been urged that by virtue of the Government order dated 5.7.72, the only requirement was that the service conditions of the employees who are sent on deputation from the Roadways to the Corporation, would not be inferior to the one which they were enjoying as Government servants and since respondent was not having the benefit of pension in the Roadways, he cannot claim any pension.

We have gone through the Government order dated 16.9.60 and we find force in the argument of the learned counsel for the respondent Sri Ghaus Beg that the aforesaid Government order firstly cannot be made applicable retrospectively and secondly it does not apply to the erstwhile Roadways'' employees, who were permanent.

Learned Single Judge has considered the Government order dated 28.10.60, as the Government order dated 16.9.60 was notified on the said date. The contents of the aforesaid two Government orders are the same.

Learned Single Judge has held that the aforesaid Government order cannot be given retrospective effect and that it was meant for future employees.

Sri Ghaus Beg in response to the aforesaid argument, submits that the respondent being a permanent Government servant on the date of issuance of the aforesaid Government order, was not covered by the same and that the view taken by the learned Single Judge does not call for any interference.

The Government order dated 16.9.60 which was notified on 28.10.60, takes into account the nature of service, which the Roadways employees were performing and treating it to be a nationalised commercial undertaking, it was decided to change the service conditions of the existing temporary Government employees, which were made applicable to the future entrants also. The Government order does not create any ambiguity that it was applicable on all temporary employees except those who were referred to in Para 2 of the same order.

The Government order says that in view of the special service conditions of the employees of the Roadways it seems necessary to evolve a new set of service conditions for the employees which may be compatible with the nature of work and functions of the organisation. It made clear, that the revised terms and conditions of service shall be applicable to all further entrants in the Roadways Organisation and shall be enforced in the manner mentioned therein. These service conditions were to be applicable to all existing temporary employees, except those mentioned in Para 2 of the Government order.

Para 7 of the Government order further made it clear that the revised terms and conditions of services mentioned in Para 1 shall not apply to the following categories of employees:

a) All employees working in the officeestablishment of the Asstt. General Manager, General Manager, Service Manager, Chief Mechanical Engineers, Roadways Central workshop, Kanpur.

b) Supervisory staff of the rank of Junior Station Incharge and above of the Traffic side.

c) Technical staff of the rank of Junior Foreman and above on Engineering side.

Learned counsel for the appellants submitted that the respondent did not fall in any of the categories aforesaid, namely, subclauses (a), (b) and (c) of Para 7 and, therefore, he was not covered by the aforesaid exception.

Subclause (a) of Para 7 includes the employees who were working in the officeestablishment of the Assistant General Manager and the respondent was working in the office of Assistant General Manager, when in the Roadways, therefore, it cannot be said that he was not an employee covered by the said exclusion clause.

Apart from this the last paragraph of the Government order pronounced in unequivocal terms that these orders shall come into force with effect from October, 1960 and shall apply to all future entrants in the service of the Roadways organisation and also to the existing temporary employees who opt to continue to work on the revised terms and conditions of service. It further clarifies that the status of Roadways employees already made permanent shall remain unaffected. It further says that all existing temporary employees except those mentioned in Para 2 may be asked to indicate in writing if the new service conditions mentioned in the said order are acceptable and those who accept the new terms and conditions of service will be required to fill in a separate acceptance form which will be kept with their service record.

The last paragraph of the Government order, which clarifies that it was not applicable nor could be made applicable to the employees of erstwhile Roadways, who were permanent, reads as under:

"These orders shall come into force with effect from October, 1960 and shall apply to all future entrants in the service of the Roadways organisation and also the existing temporary employee who accept to continue to work on the revised terms and conditions of service. The status of Roadway employee already made permanent remains unaffected. All existing temporary employees except those mentioned in Para 2 above may be asked to indicate in writing if the new service conditions mentioned above are acceptable to those who accept the new terms and conditions of service will be required to fill in a separate acceptance form which will be kept with their service record. If, however, any of the employees do not accept the new terms their services are to be terminated in accordance with terms of their services with a term of employment. I am to suggest that the implications by the Engg. and that necessary action may please be initiated forthwith in order to implement above orders."

It is not the case of the appellants that the respondent was not a permanent employee of the Roadways. It is also not being disputed by the Corporation that the status of Roadways employees, who were permanent, remained unaffected under the said Government order dated 16.9.60. It is also not the case of the appellants that the respondent was ever treated as temporary employee and that he was asked to indicate his option in writing, if he was agreeable to new service conditions mentioned in the aforesaid Government order and if so, he has filled the prescribed form.

There was no occasion for the respondent to fill in any such form of acceptance of new service conditions nor any such option appears to have been asked for, for the obvious reason that he was a permanent staff on the date of issuance of the Government order and, therefore, his status was not affected by the aforesaid Government order, meaning thereby that the pensionary benefits of those employees, who were covered by that Government order might have been taken away, but such a condition would not be applicable to the respondent.

Counsel for the appellants also made an attempt to assail the finding of the learned Single Judge on the interpretation of Regulation 39 of the Regulations known as U.P. State Road Transport Corporation Employees (Other than officers) Service Regulations, 1981, which provides as under:

"Pension and other retirement benefits.(1) (i) Subject to the provisions of Clause (ii) of this subregulation, an employee of the corporation shall not be entitled to pension, but he shall be entitled to the retirement benefits mentioned in subregulation (2).

(ii) A person, who was the employee of the State Government in the erstwhile U.P. Government Roadways and has opted for the service of the Corporation shall be entitled to pension and other retirement benefits in terms of the G.O. No. 3414/302170N72, dated July 5, 1972.

(2) Without prejudice to the provisions of subregulation (1) an employee (including an employee who was in the service of the State Government in the erstwhile U.P. Government Roadways Department), shall be entitled to the following retirement benefits :

(i) Employees Provident Fund or the General Provident Fund, as the case may be;

(ii) Gratuity in accordance with the Payment of Gratuity Act, 1972 or the relevant Government Rules, as may be applicable;

(iii) Amount due under Group Insurance Scheme, 1972;

(iv) One free family pass in a year for Journey within the State;

(v) A free family pass for his return to his home from the place of posting at the time of retirement in case he does not accept railway fare;

(vi) Any other benefit that may be allowed by the Corporation from time to time."

Learned Single Judge has considered the aforesaid Regulation and relying upon the judgement of the Uttarakhand High Court in the case of Prem Singh vs. State of U.P. and others [Writ Petition No. 1313 (SS) of 2001] decided on 1.11.03, has observed that the said Regulation itself provide for the benefit of pension to the employees working in the Roadways, after they were sent on deputation to the Corporation.

This judgement became the subject matter of challenge before the apex court, where the Special Leave Petition was later on dismissed as withdrawn.

Subclause 1 (ii) of Regulation 39 makes it clear that an employee of the State Government in the erstwhile U.P. Government Roadways who has opted for the service of the Corporation, shall be entitled to pension and other retiral benefits in terms of Government order dated 5.7.72. The Government order dated 5.7.72 protects all benefits including pensionary and retiral benefits, which were available to the employees of the erstwhile Roadways, even after being sent on deputation in the Corporation.

The finding recorded by the learned Single Judge with regard to the aforesaid Regulation 39 does not call for any interference by us.

Learned Single Judge has also considered the case of Harbansh Pathak vs. State of U.P. and others (Writ Petition No. 1226 of 1987) but has not relied upon the same, in view of the judgement in the case of U.P.S.R.T.C. Vs. S.M. Fazil and others [Writ Petition No. 544 (SB) of 2000], wherein a distinction has been drawn that at the time when the case of Harbansh Pathak was decided, the Regulations had not come into force and, therefore, it could not be a binding law, with respect to the employees who stand covered by the Regulations.

The appellants thus, could not establish that in what manner, the respondent was not entitled to the benefit of pension, when not only the Regulations framed (Regulation 39) protected the said benefit as it was available to him as an employee of the erstwhile Roadways but the Government order of 1972 also protected the aforesaid benefit.

Learned counsel for the Corporation could not otherwise prove nor, as a matter of fact, urge that the respondent was not entitled to pension on the post on which he was working in the erstwhile Roadways, prior to the issuance of Government order dated 16.9.60.

Thus, the respondent was working on a pensionable post with the erstwhile Roadways, when he was sent on deputation to the Corporation and he being a permanent employee of the erstwhile Roadways, his conditions of service remain unaffected and unchanged even on the issuance of the Government order dated 16.9.60, notified on 28.10.60. Therefore, the respondent was fully entitled to the benefit of pension which has been granted by the learned Single Judge.

The last plea of the appellants that once the respondent had accepted the Provident Fund amount, he was not entitled to claim pension, can also not be accepted for the reason that there cannot be any estoppel against law, as the pension is not a charity or bounty and moreso when the learned Single Judge has issued a direction for refund of the amount so received by the appellants before paying amount of pension.

We thus, uphold the order passed by the learned Single Judge.

Considering the fact that 19 years have elapsed since the respondent retired and the prayer of the respondent''s counsel that the amount of EPF already received, may be adjusted towards the arrears of pension, we provide that the pension shall be fixed as per rules within a maximum period of two months from the date of receipt of a certified copy of this order and the same shall be paid regularly with effect from the current month. The arrears of pension shall be paid within a maximum period of one month from its determination, after adjusting the amount of EPF (contribution of the employer), which has already been received by the respondent. It would also be open to the respondent to deposit the amount of EPF (contribution of the employer), already received and if such a deposit is made, there would not be occasion for deducting the said amount.

This direction shall be complied with by all concerned departments and the pension is to be paid within the time frame prescribed.

In regard to the apprehension of the respondent that the Corporation will charge interest on the contribution of the employer towards the EPF, suffice would be to mention that, in such an event the respondent would also be entitled to the interest on the delayed payment of pension.

We, therefore, provide that no interest be charged on the EPF amount, as the respondent also says that he will not claim any interest on the amount of pension.

With the aforesaid directions/observations, the special appeal is dismissed.