

(2019) 11 CHH CK 0034
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 9264 Of 2019

Uttam Kumar Pandey

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Employees Recruitment And Conditions Of Service Rules, 1977 — Rule 4(2), 4(2)(b)

Citation : (2019) 11 CHH CK 0034

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Hemant Kesharwani, Alok Bakshi

Final Decision : Allowed

Judgement

1. The contention of the petitioner is that the petitioner has joined his services on 01.04.1982 thereafter he was regularized on 14.08.2008 and subsequently retired on 30.09.2017. It is contended that he was a daily wage labour and his service from 1982 to 2008 has not been considered for counting of retiral dues. It is further contended that the Division Bench of this Court in WA No. 88 of 2019 by order dated 01.04.2019 has passed the following orders:-

5. Petitioner's services during his posting in the Contingency Paid Establishment were governed under the Madhya Pradesh Irrigation Department Work Charged and Contingency Paid Employees Recruitment and Conditions of Service Rules, 1977. Under Rule 4 (2) (b) of the said Rules, a contingency paid employee is accorded temporary status immediately upon completion of 5 years service. On representation by the Employees Union, the State Government issued a circular on 02.03.2005, which reads as follows:

"छत्तीसगढ़ शासन

वित्त एवं योजना विभाग

मंत्रालय, दाउ कल्याण सिंह भवन, रायपुर

क्रमांक 81/1056/वि/नि/04 रायपुर,

दिनांक 2 मार्च, 2005

प्रति,

शासन के समस्त विभाग

अध्यक्ष, राजस्व मंडल, बिलासपुर,

समस्त विभागाध्यक्ष,

समस्त जिलाध्यक्ष,

छत्तीसगढ़ ।

विशय: कार्यभारित/आकस्मिक निधि से वेतन पाने वाले कर्मचारियों की नियमित स्थापना में नियुक्ति होने पर अर्हतादायी सेवा का निर्धारण ।

छत्तीसगढ़ (कार्यभारित तथा आकस्मिकता से वेतन पाने वाले कर्मचारी) पेंशन नियम, 1979 के नियम 6(3) में यह प्रावधान है कि किसी अस्थायी कर्मचारी के, बिना किसी व्यवधान के किसी भी नियमित पेंशन योग्य पद संविलियन किये जाने पर, 1 जनवरी, 1974 से आगे की गई सेवा, बशर्ते कि ऐसी सेवा 6 वर्ष से कम की न हो, पेंशन के लिय गिनी जायेगी मानों कि ऐसी सेवा किसी नियमित पद पर की गई हो।"

लघुवेतन कर्मचारी संघों द्वारा राज्य शासन के ध्यान में लाया गया है कि कुछ विभागों द्वारा अर्हताकारी सेवा की गणना हेतु उक्त नियमों के तहत अस्थाई सेवा को शामिल नहीं किया जा रहा है ।

समस्त विभागों से अनुरोध है कि वे उक्त प्रावधानों को अपने अधीनस्थ कार्यालयों के ध्यान में लावें तथा इनके आधार पर अर्हताकारी सेवा की गणना करते हुए लंबित पेंशन प्रकरणों का तत्काल निराकरण करने हेतु निर्देशित करें ।

हस्ता/-

(सतीश पाण्डेय)

उपसचिव,

छत्तीसगढ़ शासन, वित्त विभाग"

6. In the above quoted circular, the State Government clearly directed that for counting the pensionable service, the period spent as temporary employee shall also be counted. The Division Bench of Madhya Pradesh High Court has also held in the matter of Shrikrishna Shrivastava vs State of M. P. and others, reported in (2003) 4 MPLJ 376, that period of temporary service rendered by a contingency paid employee shall be counted in the pensionable service.

7. In view of the circular issued by the State Government and the law laid down by the Division Bench of the M. P. High Court in Shrikrishna Shrivastava (supra), we are of the considered opinion that the petitioner's pensionable service should be counted from the date he completed 5 years service from the date of initial appointment, as immediately upon completion of 5 years service in the Contingency Paid Establishment, the petitioner had acquired temporary status

under Rule 4 (2) (b) of the Rules, 1977. It is ordered accordingly. Consequently, it is directed that the respondents shall recalculate the petitioner's pensionable service in accordance with this order and pay him the entire consequential benefits within a period of 3 months from the date of receipt of the certified copy of the order. There shall be no order as to interest on the arrears.

8. The writ appeal is allowed in the above stated terms.

2. It is ordered accordingly. The judgment passed in case supra shall also be applicable in this case amending the service rendered by the petitioner as daily wage prior to his regularization shall also be counted for retiral dues. However, the State shall be at liberty to comply with the order after verification of the facts.

3. Accordingly the writ petition stands allowed.