(2009) 09 AHC CK 0089

In the Allahabad High Court

Case No : Civil MiscellaneousWrit Petition No. 48704 of 2009

Visheshwar Dayal Tripathi APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Pension Rules, 1964 — Rule 17, 21

Citation : (2009) 09 AHC CK 0089

Hon'ble Judges : Arun Tandon, J

Judgement

Arun Tandon, J.—Heard Sri Vashistha Tiwari, learned counsel for the petitioner, and Sri Mahesh Chandra Chaturvedi, learned Chief Standing Counsel for the Staterespondents.

2. Petitioner before this Court Is stated to have been appointed in M.B.K.J.S. Intermediate College, Basarehar, Etawah on 16th July, 1968. He is stated to have functioned there till 30th November, 1977. Again petitioner is stated to have been appointed as Principal in Bhartiya Pathshala Intermediate College, Farrukhabad, where he joined on 1st December, 1977 and he worked upto 11th November, 1986. On the basis of his working for the aforesaid period between 1968 to 1986 in aided and recognised intermediate colleges, petitioner with reference to the provisions of Pension Rules, 1964 has set up a claim for payment of pension from the State exchequer.

3. In 1986 petitioner was appointed in Jawahar Navodaya Vidyalaya, Jhansi, where he was confirmed in the year 1991. He is stated to have retired from the said Navodaya Vidyalaya.

4. It is stated that no pension is payable to the teachers who retire from Navodaya Vidyalaya and therefore, length of service rendered by petitioner in aided Intermediate Colleges cannot be added/computed for determination of pension. Independent of his working in Navodaya Vidyalaya, he prays that a mandamus be issued to the Stateauthorities to pay pension to the petitioner with reference to his working in intermediate colleges between 1968 to 1986 in terms

of the rules applicable.

5. The application made by the petitioner for the purpose has been rejected by the office of the Director of Education (Madhyamik) vide order dated 1st December, 2008 on the ground that under the provisions of Pension Rules, a person who tenders resignation is not entitled to pension.

6. On behalf of the petitioner reliance has been placed upon the judgment of this Court in the case of Laxmi Narain Upadhayaya v. State of U.P. and another passed in Civil Misc. Writ Petition No. 37676 of 2003 decided on 14th October, 2004. Learned counsel for the petitioner has specifically referred to Chapter 5 of U.P, State AidedEducational Institution Employee''s Contributory Provident FundInsurance Pension Rules, 1964 (hereinafter referred to as the Rules, 1964) specially Rules 17 to 21 and 34, which are being quoted herein below:

"ChapterV

Pension

17. An employee shall be eligible for pension on

(1) retirement on attaining the age of superannuation or on the expiry of extension granted beyond the superannuation age.

(ii) Voluntary retirement after completing 25 years of qualifying service,

(iii) Retirement before the age of superannuation under a medical certificate of permanent incapacity for further service, and

(iv) Discharge due to abolition of post or closure of an institution due to withdrawal of recognition or other valid causes.

Notes.(1) The age of compulsory retirement of an employee shall be such as prescribed in the relevant rules applicable to him.

The date of superannuation shall be reckoned from the date of birth of an employee as entered in his Service Book or other records. In case the year of birth only is known, but not the month, the first July of the year shall be taken as the date of Birth. Similarly when both the year and the month of birth are known, but not the date, the 16th of the month shall be taken as the date of birth.

(2) An employee may retire from service voluntarily any time after completing 25 years of qualifying service, provided that he shall give in this behalf a notice in writing to the management at least three months before the date on which he wishes to retire.

18. The amount of pension that may be granted shall be determined by the length of qualifying service, vide Rule 31 below. Fractions of a year shall not be taken into account in the calculation of pension under these rules. Pension shall be calculated to the nearest multiple of 5 paisa.

(a) The full pension admissible under these rules will not be sanctioned unless the service rendered has been considered satisfactory and is approved by the Controlling Authority.

(b) If the service has not been thoroughly satisfactory the authority sanctioning the pension may order such reduction in the amount as it thinks proper.

19. (a) Service will not count for pension unless the employee holds a substantive post on a permanent establishment.

(b) Continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service.

(c) Leave without allowance, suspension allowed to stand as a specific penalty, over stayal of joining time or leave not subsequently regularized, and period of breaks in service shall be reckoned as qualifying service.

(d) Period of breaks between two periods of service due to termination of service, for no fault of the employee shall not be treated as interruption involving forfeiture of past qualifying service. In the other cases breaks due to other causes shall result in forfeiture of past service unless condoned by the Government.

(e) Time passed on earned leave shall fully count as qualifying service, but time passed on other kinds of leave with allowances shall countas qualifying service as follows:

(1) If the total service is not less than 13 years, but less that 30 years, one year of such leave shall count as qualifying service;

(ii) If the total service is not less that 30 years, two years of such leave shall count as qualifying service.

Notes.(1) the term "Earned Leave" means leave on full average pay.

(2) In case a married woman employee time passed on maternity leave may be allowed to count as qualifying service, provided that the period covered by such leave and also earned leave shall not exceed what would have been admissible had she availed of the whole of the earned leave to which she was entitled under the rule.

(3) "Total Service" means total service reckoning from the date of commencement of service qualifying for pension and includes periods of leave referred to above.

(4) The service put in by an employee before he has completed 18 years of age or after attaining the age of superannuation unless extended by competent or on reemployment after retirement shall not qualify for pension.

(5) The entry relating to confirmation of employee in the service book shall be countersigned by the Controlling Authority.

(6) In case not covered by these rules qualifying service be determined by Government and its decision shall be final.

20. The Controlling Authority may, at his discretion, condone a deficiency up to a month in the qualifying service on an employee if the qualifying service exceeds nine years, but falls short of ten years for grant of pension.

21. An employee shall be eligible for superannuation/retiring/invalid pension only after completing 10 years of qualifying service at 1/20 of his average emoluments of post three years for every completed year of service subject to the maximum of 30/120 of such emoluments or the Maximum fixed for the purpose, whichever is less. The appropriate amounts are noted below:

SI. No. Completed years of qualifying service Scale of pension Maximum limit of pension

1 2 3 4 5

1. 10 years 10/1 20th Of average emoluments of last three years I. For employment of primary and Junior High School Rs. 60 per month.

2. 11 years 11/1 20th Ditto II. (i) Head of Higher Secondary School Rs. 75 per month.

3. 12 years 12/120th Ditto (ii) For other employees of Higher Secondary School Rs. 60 per month.

4. 13 years 13/1 20th Ditto

5. 14 years 14/1 20th Ditto III. (i) Principals of Degree College Rs. 150 per month

6. 15 years 15/1 20th Ditto (ii) For Heads of Department of Degree College Rs. 100 per month

7. 16 years 16/1 20th Ditto (iii) For Lecturer of Degree College Rs. 75 per month

8. 17 years 17/1 20th Ditto IV. Other employees of Degree College Rs. 60 per month

9. 18 years 18/20th Ditto ?????.

10 19 years 19/20th Ditto ?????

11. 20 years 20/1 20th Ditto IV. (i) For Principals of Training College Rs. 75 per month

12. 21 years 21/1 20th Ditto (ii) For other employees of Training College Rs. 60 per month

13. 22 years 22/1 20th Ditto Ditto

14. 23 years 23/1 20th Ditto Ditto

15. 24 years 24/1 20th Ditto Ditto

16. 25 years 25/1 20th Ditto (i) For Principals of Training College Rs. 75 per month

17. 26 years 26/1 20th 27/1 20th Ditto (ii) For other employees of Training College Rs. 60 per month

18. 27 years 28/1 20th Ditto

19. 28 years 29/1 20th Ditto

20. 29 years 30/1 20th Ditto

21. 30 years Ditto

Rule 34 of the Rules.The matter concerning pension/family pension not provided for specifically in these rules, the corresponding procedure laid down in respect of State Government employees shall apply mutatis mutandis."

7. I have considered the submission made on behalf of the petitioner and have gone through the records of the present writ petition.

8. From a bare reading of Rule 17, it would be apparently clear that it declares the category of employees, who are eligible for pension. In the facts of the present case. Subrule (2) of Rule 17 of Rules, 1964 would apply because of voluntary retirement is said to have been tendered by the petitioner. It is admitted on record that the petitioner had not completed 25 years of qualifying service before tendering his voluntarily resignation and therefore, he is not eligible for pension under Rule 17 (2) of Rules, 1964. Subrule (1) (i) to subrule (1) (iv) will have no application in the facts of the present case.

9. This Court has no hesitation to record that the petitioner does not answer the description of an employee as per Rule 17 of Rules, 1964 eligible for pension. Reference may also be had to Rule17 (2), which provides that a person may retire from service voluntarily after completing 25 years of qualifying service provided that he shall give in this behalf a notice in writing to the Management, at least three months prior to the date he wishes to retire.

10. From the aforesaid what follows is that an employee will be eligible for pension on voluntarily retirement only after he completes 25 years of qualifying service and further after he gives a notice as required under the Rules. Any other method of leaving employment before expiry of 25 years of qualifying service would not lead to payment of pension and such resignation from service cannot be treated as voluntarily retirement for the purpose of being eligible to pension under Rule 17.

11. The authorities are justified in recording a finding that petitioner, who had completed 18/20 years of service on his own showing could not, be said to be voluntary retired for the purposes of Rule 17 nor could be treated to have voluntarily retired for being entitled for pension.

12. So far as Rule21 of Rules, 1964 is concerned, this Court may clarify that said

rule provides for the mode and manner for computation of pension, it will not in any way enlarge the scope of Rule17 which provides for the persons eligible for pension. Any person not covered within the category of person eligible for pension, cannot by reference to method of computation of person under Rule21 of Rules, 1964 claim pension, Rule 21 only lays down the mode and manner of calculation and the entitlement qua eligible persons and not in addition thereto.

13. So far as the judgment relied upon by the learned counsel for the petitioner in the case of Laxmi Narain Upadhayaya (supra) is concerned the same is clearly distinguishable in the facts of the present case.

14. The writ petition lacks merit and is accordingly dismissed.