

**AFR**

**Reserved.**

**Court No. - 75**

**Case :-** WRIT - A No. - 17061 of 2010

**Petitioner :-** Ram Bahore And Another

**Respondent :-** State of U.P. and Others

**Counsel for Petitioner :-** Swarn Kumar Srivastava, Anil Kumar Srivastava

**Counsel for Respondent :-** C.S.C.

**Hon'ble Shekhar Kumar Yadav,J.**

1. The present writ petition has been filed seeking following reliefs:-

i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay to the petitioners the arrears of salary treating their appointment in the year 1981 and 1990 respectively which was approved by the then Chief Development Officer after re-fixing their salary on the basis of 6<sup>th</sup> Pay Commission and also to pay the arrears of salary for the period from 1995 till the year 2003 after re-fixing their salary on the basis of 6<sup>th</sup> Pay Commission;

(ii) Issue any other and further writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. Briefly stated facts of the case are that petitioners were appointed as Chowkidar on daily wages (Class IV post) in the year 1981 and 1990 respectively. Their services were orally terminated in the year 1995. Against the said order of termination, petitioners preferred Civil Misc Writ Petition No. 22522 of 1995, which was finally disposed off vide order dated 29.4.1999 with the direction to the respondents to regularise the services of the petitioners on Class IV post. Petitioners accordingly, made their representation for their regularisation and also for payment of balance salary. It is further alleged that the respondents against the order dated 29.4.1999 preferred Special Leave to Appeal (civil) No. 336 of 2000, which was dismissed as withdrawn vide order dated

31.1.2000. Thereafter, respondents is said to have preferred Special Appeal against the judgement and order dated 29.4.1999, which was also dismissed vide order dated 2.4.2003. Thereafter, an order for regularisation of the services of the petitioners was passed by the respondents on 2.9.2003. After regularisation of their services, petitioners demanded salary as well as seniority since 1981 to 1990 respectively. It is further submitted that the petitioner no. 1 has been superannuated from service on 30.4.2017 and petitioner no. 2 has died during pendency of the writ petition. Hence this writ petition.

3. Submission of learned counsel for the petitioners is that at the time of regularisation i.e. 2.9.2003, they have completed 22 and 13 years of their services respectively and as such their seniority may be counted from the date of their initial appointment i.e. 1981 and 1990 respectively. They also demanded the arrears of salary of balance from the above respective dates of their appointments. Further submission is that due to the non actions of respondents, the petitioners are made to suffer recurring financial loss for no fault on the part of the petitioners. In support of his arguments, petitioners relied upon the various judgements of this Court as well as of Apex Court, viz. **Writ Petition No. 11630 of 2018, (Dr Ramakant Tiwari Vs State of UP and others) decided on 14.05.2018; Writ A No. 18117 of 2018, (Muneshwer Dutt Mishra Vs State of UP and 4 others) decided on 6.9.2018; 2019(12) ADJ, 547 (Gulaichi Devi Vs State of UP and others); Civil Appeal No. (5) 10806 of 2017 (Habib Khan Vs State of UP and others) decided on 23.08.2017; and Civil Appeal No. 3348 of 2015, Secretary, Minor Irrigation Deptt and RES Vs Narendra Kumar Tripathi decided on 7.4.2015.**

4. Learned Standing Counsel for the State on the other hand submitted that in pursuance of the order passed by this Court, services of the petitioners were regularised w.e.f. 2.9.2003 on the class IV posts and they were made payment admissible to the regular employees and thereafter they were also made payment of revised pay scales and also the payment of arrears of Rs. 48650/- and Rs. 49033/- respectively, vide Annexure CA-6 & 7 filed by the State in regard to the payment of arrears made vide letter dated 13.01.2009 passed by Chief Development Officer, Basti.

5. The petitioners have submitted that they are entitled for payment from their initial appointments as daily wagers i.e. from 1981 and 1990 respectively, thereafter they are entitled for regular pay scales since 1981 and 1990.

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

7. It is admitted fact that the petitioners were appointed as daily wagers and their services were regularised on 2.9.2003 and since then they were getting regular pay-scales as admissible to a regular employee and also they have received their arrears of the balance from the date of their regularisation. In support of their claim, petitioners have relied on various judgements as noted above in preceding paragraphs and also contended that their case is squarely covered with the judgement of this Court passed in **Writ A No. no. 25623 of 2018 Naval Kishore Rai Vs State of UP and 3 others, decided on 30.9.2020**, in which this Court having relied upon the decision of Prem Sing Vs State of UP and others decided on 2.9.2019 allowed the writ petition in the following terms:-

“Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

The petitioner by means of the present writ petition has prayed for the following main relief:-

"(i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to consider and decide the petitioner's representation dated 06.02.2018 (Annexure-1 to the writ petition) and pay entire retiral dues including his pension and other consequential benefits after calculating his services rendered by him on work charge basis i.e. 01.04.1978, in the light of the judgment of Hon'ble Supreme Court in the case of Habib Khan Vs. State of Uttaranchal"

As per the pleadings in the petition, the petitioner was initially appointed as Helper on 01.04.1978 on work charge basis in the Irrigation Department, Varanasi and his services was regularized with effect from 01.05.2006. The petitioner has retired on 01.06.2018. The petitioner is not being paid retiral dues and in the aforesaid backdrop, the petitioner has prayed for the relief inserted above.

A counter affidavit has been filed by respondent nos. 2 to 4, wherein, it is stated that the petitioner had worked since 01.04.1978 to 30.04.2006 in work charge establishment and thereafter since 01.05.2006 to 31.01.2018 in regular department. The petitioner has retired on 31.01.2018, but in view of the letter dated 01.08.2005 which provides that the services rendered in work charge establishment shall not be included for the purposes of pension and gratuity as has been provided in Civil Services Regulation 370.

Learned counsel for the petitioner has contended that the Apex Court in the case of Prem Singh vs. State of U.P. & Ors. decided on 02.09.2019 has held that the work charge period rendered by an employee shall be included for the purposes of pension and, therefore, the ground on which the pension of the petitioner has been denied is not sustainable.

Learned Standing Counsel submits that the letter dated 01.08.2005 provides that the period rendered as work charge employee shall not be counted for the purposes of service, therefore, the petitioner is not entitled for the same.

I have heard the rival submissions of the parties and perused the record.

It is admitted by the respondents the the petitioner was initially appointed as Helper employee on 01.04.1978 and had continued to work as work charge employee till 03.04.2006. The services of the petitioner was regularized on 01.05.2006 and he retired on 01.06.2018.

In view of the aforesaid fact that the petitioner has worked as work charge employee since 01.04.1978, the judgment of the Apex Court in the case of Prem Sing (supra) is applicable and the controversy as in the present case is concluded by the judgment of Apex Court in the case of Prem Singh (supra). Consequently, the services rendered by the

petitioner in work charge employee are liable to be counted for the purposes of pension.

Considering the facts and circumstances of the case, the writ petition is allowed and a mandamus is issued to the respondent no.4-The Executive Engineer, Tube-well Construction Division, Irrigation Department Varanasi to add the service rendered as work charge employee in the services rendered by the petitioner as regular employee and pay the pension and other retiral dues to the petitioner which the petitioner is entitled as per law.

For the reasons given above, the writ petition is allowed. No order as to costs.”.

8. The issue as to whether the petitioners are entitled to any benefits of the period rendered by them as a daily wagers till his regularisation has been set at rest by the Supreme Court.

9. Hon'ble the Apex Court in the case of **Netram Sahu Versus State of Chhattisgarh reported in 2018 (2) PLJR 284 SC** has already decided that after regularisation the entire period of service shall be counted for purpose of fixation of pensionary benefits.

10. Hon'ble the Apex Court in the case of **Prem Singh Versus State of Uttar Pradesh & Ors. passed on 2 September, 2019 in Civil Appeal No. 6798 of 2019** and other analogous appeals has also reiterated the same principle as laid down in the case of Netram Sahu (supra). The Apex Court in paragraph 36 has held as under:-

"In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

11. In **Punjab State Electricity Board & Anr. v. Narata Singh and Anr., (2010)**, the apex court had held that the period

of work-charged service should be counted for computation of qualifying service for grant of pension.

12. Thus, it is obvious from the decisions cited on behalf of the petitioners that the Hon'ble Apex court has already set at rest the above stated dispute holding that the services rendered in work charged establishment shall be counted for purpose of pension and gratuity after regularisation of the service.

13. Further, Hon'ble Apex Court in the case of **Civil Appeal No. 3348 of 2015, Secretary, Minor Irrigation Deptt. and RES Vs Narendra Kumar Tripathi, decided on 07.04.2015**, has allowed all the benefits of ad-hoc services rendered for the purposes of reckoning his seniority and other consequential benefits.

14. In the aforesaid facts and circumstances of the case, admittedly, services of the petitioners have already been regularised on 2.9.2003 and they were getting their salary of regular employee from the date of their regularisation w.e.f. 2.9.2003 and prior to their regularisation they were getting payment as admissible to the daily wager employees.

15. Claim of the petitioners for arrears of balance as regular employees from the date of their initial appointments could not be accepted because they have already been made payment as daily wagers and now they have been regularised and after that they were getting regular pay scales, therefore, services of the petitioners as daily wagers could only be counted as qualified service only for the benefit of pension because prior to their regularisations they were working in the capacity of work-charge employees.

16. Having considered the facts and circumstances of the case, and also keeping in view the mandate of the judgements

in preceding paragraphs, I am of the considered opinion that the petitioners are entitled to get all the pensionary benefits after taking into the consideration the services rendered by them as daily wagers, prior to their regularisation, as also the seniority from the date of engagements as daily wagers; but they shall not be entitled for the arrears of balance from the date of their appointments on daily wage posts since they have already been paid wages of such period.

17. In the circumstances, the writ petition is finally disposed off with the direction to the respondents to make pensionary benefits to the petitioners after taking into the consideration the services rendered by the petitioners as daily wagers, prior to regularisation, in the light of the judgements of **Prem Singh** (Supra) and shall also count the services rendered by the petitioners as daily wagers for the purpose of seniority. Respondents are further directed to ensure the payments of arrears of pension, if any, within three months from the date of receipt/production of a copy of this judgment.

**Order Date :- 09.12.2020**

RavindraKSingh

**Justice Shekhar Kumar Yadav**