

Court No. - 8

(1)Case :- WRIT - A No. - 5008 of 2024

Petitioner :- Satya Prakash Srivastava

Respondent :- State Of U.P. Thru. Its Prin. Secy.
Administration Deptt. And 3 Others

Counsel for Petitioner :- Abhinav Bhattacharya, Divya Singh, Harish Pandey, Rajendra Kumar Dwivedi, Sagun Chandra Rastogi, Sheikh Wali Uz Zaman, Sheikh Wali Uz Zaman (Amicus)

Counsel for Respondent :- C.S.C.

AND

(2)Case :- WRIT - A No. - 10643 of 2020

Petitioner :- Satya Prakash Srivastava

Respondent :- State Of U.P. Thru Addl. Chief Secy.
Administration Lko. And anr

Counsel for Petitioner :- Meenakshi Singh Parihar, Rajendra Kumar Dwivedi, Sagun Chandra Rastogi, Sheikh Wali Uz Zaman

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Sheikh Wali Uz Zaman, learned Amicus curiae on behalf of petitioner and Mr. Sandeep Sharma, learned State Counsel for opposite parties.

2. Present petitions have been filed primarily for regularization on the post of Review Officer with all consequential service benefits and for his consideration for promotion to higher posts in pursuance thereof. Further prayer for grant of retiral benefits alongwith arrears and interest as well as salary for the suspension period from 15.05.2006 till 20.07.2007 and salary from August, 2008 till January, 2011 has been sought. Writ A No.5008 of 2024 has been filed challenging order dated 29.07.2014 and 14.08.2020 rejecting petitioner's representation for the aforesaid benefits. Prayers in the nature of mandamus have been sought for the concomitant benefits as indicated in the earlier writ petition.

3. It has been submitted that petitioner was initially appointed as Typist in the year 1979 after

participation in Competitive Examination and was promoted as Assistant Review Officer on 23.07.1990 and thereafter on the post of Review Officer on ad hoc basis on 10.09.1991 whereafter he was regularized on the lower post of Assistant Review Officer on 23.07.1990.

4. It is submitted that in the year 2000, Selection Committee Meeting was held on 20.12.2000 for purposes of regularization on the post of Review Officer and also for further promotion. It is submitted that a Selection Committee was thereafter held some time in December 2000 for purposes of regularization on the post of Review Officer, but petitioner's name was not considered only on account of the fact that his service book was unavailable/ misplaced by the Departmental Authorities. It is also submitted that due to the aforesaid misplacement of petitioner's service-book, the time period in service by petitioner from 09.09.1999 till 06.12.2004 has not been considered by opposite parties as being in service. It is also submitted that subsequently petitioner was transferred vide order dated 03.01.2008 from the staff of the Hon'ble Minister concerned to Revenue Secretary Branch of the Secretariat Administration but in view of the fact that he was not granted relieving by the Hon'ble Minister, he was unable to join at the transferred place till January, 2011 and due to that fact his salary from August, 2008 till January 2011 was not paid. It is also submitted that taking benefit of their own wrong, the opposite parties treating the aforesaid period as a break in service, have refused to sanction pension to petitioner holding that he has not completed the qualifying service required.

5. It is submitted that by means of impugned order, petitioner's representation with regard to such benefits have been incorrectly rejected with primary aspect being misplacement of his service records. It is therefore submitted that opposite parties are taking benefits of their own wrong.

6. Learned State counsel on the basis of counter affidavit filed in both petitions has refuted submissions advanced by learned Amicus Curiae and submits that petitioner was earlier appointed

on ad hoc basis on the post of Review Officer and for the purposes of regularization of services of all such Assistant Review Officers on the post of Review Officers, a Selection Committee of the U.P. Public Service Commission were held on 23.11.2000 and 24.11.2000 but the name of petitioner was not considered since it was not recommended in view of the fact that petitioner was not found suitable by the Selection Committee. It is also stated that a number of such persons who although were junior to petitioner but were found eligible and suitable for such regularization, were regularized in such service leaving out the petitioner.

7. Learned State counsel has also adverted to paragraph 4(II) of counter affidavit filed in Writ Petition No.10643 (S/S) of 2020 to submit that in view of difficulties being faced due to non-availability of confidential report/service records of petitioner efforts were made to contact him personally but since such details were not forthcoming at the behest of petitioner and with such service record being non-available with opposite parties, his name was not considered for regularization.

8. It is further submitted that subsequently petitioner was found involved in allegations of embezzlement and corruption due to which first information report was lodged against him as Case Crime No.77 of 2012 in which charge-sheet was also filed. He further submits that due to the aforesaid facts, departmental inquiry was also instituted against petitioner in terms of U.P. Government Servant (Discipline and Appeal) Rules 1999 and in which inquiry report was also submitted and vide letter dated 10.02.2020, the Public Service Commission, Prayag Raj gave his consent to the proposed penalty of demotion of petitioner to the post of Assistant Review Officer from the post of Review Officer but the said punishment could not be implemented since petitioner superannuated prior to that on 31.12.2019. He further submits that while considering retirement dues and pension payment to petitioner, the department issued order dated 29.07.2020 that the period August 2008 till

January 2011 would be treated as no work no pay in view of his unauthorized absence after transfer and it is in view of such interruptions in service that pensionary benefits could not be paid to petitioner since he has not completed 10 years of qualifying service for pension.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material available on record, it is thus evident and admitted that petitioner was substantively promoted on the post of Assistant Review Officer and subsequently on ad hoc basis on the post of Review Officer. A Selection Committee was constituted in November 2000 and meeting was held on 23-24-11.2000 for consideration of regularization of all such persons employed on ad hoc basis on the post of Review Officer, such as the petitioner. It is also borne out from record that several persons including persons junior to the petitioner were thereafter regularized in service as per recommendations made in the said meetings but petitioner's name was omitted from consideration since his service entries were either misplaced or unavailable.

10. In the considered opinion of this Court, the rights of petitioner for regularization on the post of Review Officer thus stood crystallized as on the date of the Selection Committee Meetings held on 23-24.11.2000. The only ground of unsuitability of petitioner indicated in the counter affidavit is that his service records for the period 09.09.1999 till 06.12.2004 were unavailable.

11. It is trite that the responsibility of safe keeping and upkeep of service records of an employee is upon the department itself and not the employee and in case such service records are missing or misplaced, onus is upon the department itself to complete such service details of an employee. In the absence of any such service records, the department cannot take benefit of such an omission nor such burden can be shifted upon the employee so as to deny him benefits to which he is justifiably expected.

12. Since the counter affidavit does not indicate any other ground of unsuitability of petitioner for

being considered for regularization on the post of Review Officer in the meetings held on 23-24.11.2000, this Court is of the considered opinion that opposite parties cannot take benefit of such a wrong at their own behest and that petitioner is required to be granted service benefits in parity with persons who are not only similarly situated as him but were admittedly junior to him.

13. In such circumstances, the impugned orders dated 29.07.2020 and 14.08.2020 as well as 25.07.2022 so far as they denying the benefit to petitioner for regularization on the post of Review Officer are hereby found to be unsustainable.

14. This is particularly so since subsequently as well, petitioner's case has been omitted for consideration for regularization only on account of pendency of criminal proceedings. However the opposite parties have ignored the aspect that departmental proceedings were also initiated against petitioner which were subsequently continued in terms of Article 351(A) of Civil Service Regulations and although the a punishment of demotion to the post of Assistant Review Officer was proposed but was never implemented by the admission of opposite parties themselves.

15. It is also relevant that no disciplinary proceedings were either initiated or pending as on 23.11.2000 or 24.11.2000.

16. So far as the aspect of petitioner not being found eligible for pensionary benefits is concerned, a perusal of counter affidavit clearly indicates the aspect that petitioner has not rendered 10 years of qualifying service for grant of such benefits. It is also evident however that service period from 09.09.1999 till 06.12.2004 has been excluded from service period of petitioner only on the ground that his service book was unavailable. As has been held herein above, unavailability of service book of an employee cannot be a ground to deny him just benefits of his service and the opposite parties have clearly erred in law in not counting the said time period for purposes of qualifying service of pension of petitioner. Taking that aspect into account, it is evident that the aforesaid time

period of almost five years was required to be taken into account for services rendered by petitioner for qualifying for pensionary benefits.

17. It is also evident that the period from August 2008 till January 2011 has been regularized by the opposite parties themselves vide order dated 29.07.2020 on the principle of no work no pay. Evidently the aforesaid service period has been regularized as leave without pay since it is not the case of opposite parties that his services were dispensed with or terminated on account of his not joining in terms of the transfer order. In view thereof, the said time period was also required to be taken into account as service of petitioner for purposes of qualifying for pension and other pensionary benefits.

18. Since admittedly, petitioner did not join at the transferred place in terms of transfer order dated 03.01.2008 nor raised any grievance with regard to same, benefit thereof cannot be granted to petitioner and in such circumstances, this Court does not find any occasion to interfere with the order dated 29.07.2020 on that score regarding payment of salary.

19. In view of aforesaid discussion, the impugned orders dated 29.07.2020, 14.08.2020 and 25.07.2022 so far as they deny benefits of regularization to petitioner on the post of Review Officer with effect from 2000 and for denial of pensionary benefits to petitioner are hereby quashed by issuance of a writ in the nature of Certiorari. A further writ in the nature of Mandamus is issued commanding the concerned authority to consider petitioner regularized in service with effect from the date persons junior to him recommended for and regularized in terms of Meeting of the Selection Committee held on 23-24.11.2020. Opposite parties shall also grant pension and other pensionary benefits to petitioner treating the entire length of service of petitioner from 1979 till 2019 as being in service for qualifying purposes of pensionary benefits. Appropriate orders with regard to same shall be passed by the competent authority within a period of eight weeks' from the date a certified copy of

this order is served upon him.

20. Resultantly, the petitions succeeds and are **allowed**. Parties to bear their own costs.

21. This Court indicates its appreciation to Mr. Sheikh Wali Uz Zaman, learned Amicus Curiae for his assistance in the matter. Registry shall ensure communication of this order to the appropriate authority for payment of fee to learned Amicus Curiae.

Order Date :- 4.8.2025

Subodh/-