IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No. 196 of 2022
Reserved on: 28.09.2023
Date of Decision: 11.10.2023

Roop Lal .....Appellant.

Versus

State of H.P. & Others .....Respondents.

Coram
Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?[1]

For the appellant : Mr. A.K.Gupta and Ms. Babita, Advocates.

For the respondents : Mr. Anup Rattan, Advocate General with Mr. Ramakant Sharma, Additional Advocate General, for respondents No.1 to 4/State.

Mr. Chitranjan Sharma, Advocate, for respondent No.5-Accountant General.

Bipin Chander Negi, Judge

In the present appeal a challenge has been laid to the judgment dated 21.10.2022, passed in ***CWP No. 3385 of 2019*** titled as **Roop Lal vs. State of H.P. & others**, whereby the claim of the appellant/petitioner (a retired Class-III employee), seeking counting of service rendered on daily waged basis before regularization/grant of work charged status towards qualifying service for grant of pension under CCS (Pension Rules, 1972), has been denied.

2. We have heard counsel for the parties and perused the record.

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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3. The brief facts of the case are that the petitioner was engaged as a Fitter on daily wage basis in the Irrigation & Public Health (IPH) Department on 11.02.1991. His services were regularized w.e.f. 01.02.2002. He superannuated on 31.10.2010. From the aforesaid it is evident that he has served for 8 years on a regular basis. It is an admitted position that the minimum requisite qualifying period of service for grant of pension is 10 years regular service. Besides it is pertinent to mentioned that the Writ Petition was filed 12 years after his retirement on 08.11.2019.

4. The question whether services rendered on daily waged basis by the employees before their regularization/grant of work charge status are to be taken into consideration for the purpose of counting their qualifying service for grant of pension under the CCS (Pension Rules, 1972) came up for consideration before a Division Bench of this Court in ***CWP No. 180 of 2001***, titled as ***State of H.P. and others Vs. Ram Lal & others.*** *Co*nnected with the aforesaid lead case was ***CWP No. 3496 of 2011***, titled as ***Sunder Singh Vs. State of H.P.***

5. The Division Bench of this Court decided all the companion Writ Petitions by a common judgment dated 31.05.2012. The Division Bench held that under the applicable

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Rules daily wage service cannot be counted towards qualifying service for pension.

6. Some of the petitioners whose writ petitions were disposed of vide the Division Bench's Judgment dated 31.05.2012 chose to assail the said judgment before the Hon'ble Apex Court by filing Special Leave Petitions. The SLPs were connected and decided on 08.03.2018 under the lead case ***Civil Appeal No. 6309 of 2017***, titled as ***Sunder Singh vs. State of H.P. and others***. It would be pertinent to mention herein that the appellant in the aforesaid case were all retired regular Class-IV employees seeking to count the daily wage service, rendered by them prior to their regularization, towards qualifying service for pension. The Hon'ble Apex Court disposed of the petition with the following order:

> *"1. Heard learned counsel for the parties.*
>
> *2. The appellants represent class of Class-IV employees who were recruited initially as daily wagers such as Peon/ Chowkidar/ Sweeper/ Farrash/ Malis/Rasoia etc. Their services, thereafter, were regularized pursuant to the decision of this Court in Mool Raj Upadhyaya Vs. State of H.P. and Ors. 1994 Supp(2) SCC 316 under a Scheme. Regularization was after 10 years of service.*
>
> *3. It is undisputed that the post-regularization an employee who had served for 10 years is entitled to pension for which work charge service is counted. Earlier, in terms of O.M. dated 14.05.1998, 50% of*

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daily-wage service was also counted for pension after regularization but the rules have undergone change.

4. Since the appellants have not rendered the requisite 10 years of service they have been denied pension.

5. Even though strictly construing the Rules, the appellants may not be entitled to pension. However, reading the rules consistent with Articles 14, 38 and 39 of the Constitution of India and applying the doctrine of proportionate equality, we are of the view that they are entitled to weightage of service rendered as daily wagers towards regular service for the purpose of pension.

6. Accordingly, we direct that w.e.f 01.01.2018, the appellants or other similarly placed Class-IV employees will be entitled to pension if they have been duly regularized and have been completed total eligible service for more than 10 years. Daily wage service of 5 years will be treated equal to one year of regular service for pension. If on that basis, their services are more than 8 years but less than 10 years, their service will be reckoned as ten years.

7. The appeal as well as special leave petitions are disposed of in above terms."

7. The Hon'ble Supreme Court in Civil Appeal No. 4792 of 2022, titled ***Balo Devi vs. State of H.P. and others*** reported in ***Latest HLJ 2022(HP)(2)(817)*** has further clarified the judgment rendered in Sunder **Singh's case** as under:-

" The intent of this Court was quite clear that:-

(a) The services rendered as a regular employee may first be computed.

(b) To the service as rendered to above, the component at the rate of one year of regular service for every five years of service as daily wager, be added.

(c) If both the components as detailed in Paras a & b herein above, take the length of service to a level of more than eight years but less than ten years, in terms of last sentence of paragraph 6 of the Order, the services shall be reckoned as ten years"

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8. The learned Single Judge after placing reliance on ***(2014) 8 SCC 883***, titled as ***State of Punjab & others vs. Rafiq Masih (Whitewasher)***; ***(2006) 5 SCC 72***, titled as ***Indian Bank vs. ABS Marine Products (P) Ltd***.; **(2021) 9 SCC 35,** titled as **Kaptan Singh vs. State of Utter Pradesh & others;** ***(2006) 8 SCC 381***, titled as ***Ram Pravesh Singh & others vs. State of Bihar & others*** has come to the conclusion that the judgment delivered in Sunder Singh's case by the Hon'ble Apex Court is a Judgment passed under Article 142 of the Constitution and hence not a binding precedent.

9. The first issue which arises for consideration in the case at hand is whether para 5 of the judgment of the Apex Court is a “Declaration of Law” as contemplated in Article 141 of the Constitution or is it a direction under Article 142 of the Constitution of India, whereby the application of law/ rigour of law has been relaxed in the peculiar facts and circumstances of the case and therefore, does not comprise the ratio *deci dendi*. Hence not making it a binding precedent.

10. A perusal of para 5 of the judgment delivered by the Apex Court in **Sunder Singh's case** reflects that though on an application of the relevant Rules the appellants therein were not entitled to pension, however, on reading the Rules consistent

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with Articles 14, 38, 39 of the constitution of India and applying the doctrine of proportionate equality it was held that appellants therein were entitled to weightage of service rendered as daily wagers towards regular service for the purpose of pension.

11. From the tenor of the judgment, it is evident that the grant of the benefit was based on reason, consideration of principle (doctrine of proportionate equality) and hence what is stated in para 5, in our considered view, is a " Declaration of Law" as contemplated in Article 141 of the Constitution of India making it a binding precedent. In this regard it would be appropriate to refer to ***(2006) 8 SCC 381***, titled as ***Ram Parvesh Singh & Others vs. State of Bihar & Others***, wherein it has been held that if an order passed by the Apex Court is not preceded by any reason or consideration of any principle then it is an order under Article 142 of the Constitution. Since what has been stated in para 5 of ***Sunder Singh's case*** supra is based on reasons and consideration of principle (doctrine of proportionate equality), hence, it is a binding precedent under Article 141 of the Constitution of India. The relevant extract of the aforesaid judgment of the Apex Court is reproduced as under:-

> "23. *The appellant next submitted that this Court, in some cases, has directed absorption in similar circumstances.*

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Reliance is placed on the decision in G. Govinda Rajulu v. A.P. State Construction Corpn. Ltd. We extract below the entire judgment: (SCC p. 651, paras 1-2)

> *"1. We have carefully considered the matter and after hearing learned counsel for the parties, we direct that the employees of the Andhra Pradesh State Construction Corporation Limited whose services were sought to be terminated on account of the closure of the Corporation shall be continued in service on the same terms and conditions either in the government departments or in the government corporations.*
> *2. The writ petition is disposed of accordingly. There is no order as to costs."*

The tenor of the said order, which is not preceded by any reasons or consideration of any principle, demonstrates that it was an order made under Article 142 of the Constitution on the peculiar facts of that case. Law declared by this Court is binding under Article 141. Any direction given on special facts , in exercise of jurisdiction under Article 142, is not a binding precedent. Therefore, the decision in Govinda Rajulu cannot be the basis for claiming relief similar to what was granted in that case. A similar contention was negatived by the Constitution Bench in Umadevi(3): (SCC p. 39, para 46).

"The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation."

12. Before we proceed further it would be appropriate to discuss the concept of pension. The concept of pension has been appropriately summed up in ***PEPSU RTC v. Mangal Singh, (2011) 11 SCC 702 as follows*** **:**

> *"To sum up, we state that the concept of pension has been considered by this Court time and again and in a catena of cases it has been observed that the pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for the past services. It is a social security plan consistent with the socio-economic requirements of the Constitution when the employer is State within the meaning of Article 12 of the Constitution rendering social justice to a*

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> *superannuated government servant. It is a right attached to the office and cannot be arbitrarily denied. (See A.P. Srivastava v. Union of India, Vasant Gangaramsa Chandan v. State of Maharashtra, Subrata Sen v. Union of India, Union of India* v. *P.D. Yadav*, *Grid Corpn. of Orissa* v. *Rasananda Das* and *All India Reserve Bank Retired Officers Assn.* v. *Union of India*.)"

13. In this respect it would also be appropriate to refer to ***V. Sukumaran v. State of Kerala, (2020) 8 SCC 106*, at page 107 :**

> *Pension is succour for post-retirement period. It is not a bounty payable at will, but a social welfare measure as a post-retirement entitlement to maintain the dignity of the employee.*

From the aforesaid, it is evident that pension is not a bounty. It is earned for rendering a long and satisfactory service. It is a social security plan (Social Welfare measure) consistent with the social-economic requirements of the Constitution. Pension is a succor for post-retirement period.

14. It is a well settled principle that "equality" is the essence of democracy and, accordingly a basic feature of the Constitution. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality can be found in Articles 14 to 18 contained in Part III of the Constitution of India, dealing with "fundamental rights". These articles of the Constitution, besides assuring equality before the law and equal protection of the laws (formal

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equality), also disallow discrimination with the object of achieving equality, in matters of employment.

15. The concept of “proportional equality” (egalitarian equality) as distinguished from “formal equality” (even referred to as *equality “in law”*) expects the States to take affirmative action in favour of disadvantaged sections of the society within the framework of liberal democracy. The principle of proportional equality is attained only when equals are treated equally and un-equals unequally. The principle of proportional equality therefore involves an appeal to some criterion in terms of which differential treatment is justified. If there is no significant respect in which persons concerned are distinguishable, differential treatment would be unjustified.

16. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39-A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the “directive principles of State policy”. These articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice—social, economic and political, by *inter alia* minimizing monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life. The afore

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stated Constitutional mandate has to be taken into account while dealing with matters pertaining to livelihood of the concerned.

17. In granting the benefit of counting service rendered on daily wage for the purpose of pension to class IV employees a standard of proportional equality, principles enunciated in the Directive Principles of State Policy were taken into account while considering conditions/circumstances of a class of employees which stood in the way of their access to the enjoyment of basic rights or claims of pension.

18. When it comes to granting the benefit of counting service rendered on daily wage for the purpose of pension to class III employees there is no significant respect in which persons concerned are distinguishable from Class IV employees. As has already been stated supra in the case of Class IV employees Articles 14,38,39 and the Concept of “proportional equality” (egalitarian equality) have been read into the relevant pension rules and only thereafter a benefit of counting service rendered on daily wage for the purpose of pension has been accorded to the Class IV employees. Non grant / non extension of benefit of counting service rendered on daily wage for the purpose of pension to Class III employees by not reading Articles 14, 38, 39, the Concept of “proportional equality”

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(egalitarian equality) into the relevant pension rules would lead to a differential treatment to persons who are in no manner significantly different hence in the facts and attending circumstances would be unjustified. The extension of the same benefit in our considered view cannot be denied. Moreso, especially in view of Rafiq Masih's case 2015 (8) 334 wherein, Class III and Class IV employees on equitable considerations have been treated at par with respect to the right of the State (employer) to recover from them amounts paid de-hors the applicable service rules.

19. The claim herein is with respect to counting of service as rendered on daily wage basis before Regularization/ grant of work charge status towards qualifying service for grant of pension. For the said adjudication what is relevant is the period rendered towards daily wage by the concerned employee irrespective of the status of the employee, Class-III/ Class IV.

20. The claim for pension is a recurring cause of action. The petitioner is an employee who belongs to a lower hierarchy in service. Delay in filing the present petition would dis-entitle the petitioner for grant of interest but he would definitely be entitled for monetary benefits prospectively. Further on account of delay in filing the present petition monetary benefits can be restricted

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to three years prior to the filing of the petition. In this respect it would be appropriate to refer to ***(2008) 8 Supreme Court Cases 648***, titled as ***Union of India and others vs. Tarsem Singh***, wherein it has been held that non-grant of pension is a continuing wrong which in spite of delay may be granted as it does not effect the rights of third-parties. In so far as the consequential relief of recovery of arrears for past service is concerned, it has been held therein that principle relating to recurring/successive wrongs would apply. However, the consequential relief relating to arrears shall normally be restricted to a period of three years prior to the date of filing of the writ petition.

21. In view of the aforesaid proposition of law, we are of the considered view that the purpose of pension, the Constitutional mandate contained in Articles 14, 38, 39 of the Constitution of India and the doctrine of proportionate equality would be required to be read into the Rules as has been held by the Apex Court in Sunder Singh's case supra in order to give weightage of service rendered as daily wager towards regular service for the purpose of pension even to Class-III employees.

22. In view of the above discussion, respondent- State is directed to extend benefit of Daily Wage service to the petitioner,

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in terms of Sunder Singh's case, as explained in Balo Devi's case, for calculating qualifying service for the purpose of pension, and to extend all benefits of pension to the petitioner within one month from today. However, the petitioner shall be entitled for monetary benefits three years prior to the date of filing of the petition. Benefits accruing beyond three years prior to filling of the petition, if any, shall be only on notional basis.

23. In view of what has said hereinabove, we allow this appeal and set aside the impugned judgment.

The appeal is accordingly disposed of, so also, the pending application, if any.

(Vivek Singh Thakur)
Judge

(Bipin Chander Negi)
Judge

11th October, 2023
(Nisha)

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