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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

CHAMAN SINGH SHARMA — Appellant

Vs.

STATE OF U.P. THROUGH PRINCIPAL SECRETARY, TRANSPORT
DEPARTMENT, CIVIL SECRETARIAT, LUCKNOW — Respondent

(Before : Shri Narayan Shukla and Husain Khan, JJ.)

Civil Misc Writ Petition No.973 (S/B) of 2012

Decided on : 15-09-2015

A. Service Law Pension Entitlement Uttar Pradesh State Road Transport Corporation (UPSRTC) Employee initially appointed as Junior Accountant (a pensionable post) in 1980, continued on Public Relation Officer post after successful challenge to reversion, and retired in 2010 Claim for pension from 2011. Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981, Regulation 39 Interpretation Regulation 39(2) states that only erstwhile employees of U.P. Government Roadways who opted to join UPSRTC service are entitled to pension Petitioner was appointed directly in 1980 by UPSRTC, not an erstwhile U.P. Government Roadways employee Therefore, not entitled to pension under Regulation 39. Contributory Provident Fund Scheme (CPFS) Option and benefit received Petitioner opted for CPFS and received retirement benefits under it This also disentitles him from claiming pension, as confirmed by Supreme Court precedent in State of Orissa and another v. Prativa Ghosh and another (2001) 10 SCC 587. Precedent High Court Division Bench judgment dated 20.12.2010 in similar cases (Ishtiaq Ahmad, Saran Kumar, Surendra Kumar Tyagi) also denied pension claims to similarly situated UPSRTC employees based on Regulation 39 and acceptance of CPFS. Government/Corporation Discretion While current regulations do not permit pension for the petitioner, the UPSRTC is at

liberty to amend its regulations to grant pension to its employees, especially considering that the initial appointed post was pensionable and government communication indicated no objection to pension for pre-19.06.1981 pensionable posts. (Paras 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19)

Counsel for Appearing Parties

Mr. S.K. Kalia and Mr. Prashant Kumar Singh, Advocates, for the Appellant; C.S.C. and Mr. Alok Kumar Sinha, Advocates, for the Respondent

Cases Referred

- [State of Orissa Vs. Prativa Ghosh, \(2001\) 10 SCC 587](#)

JUDGMENT

1. We have heard Mr. S.K. Kalia, learned Senior Advocate, assisted by Mr. Prashant Kumar Singh, Advocate for petitioner as well as learned Standing Counsel for opposite party no.2 and Mr. Alok Kumar Sinha, learned counsel for opposite parties no.2 to 4.

2. Petitioner Chaman Singh Sharma is a retired employee of U.P. State Road Transport Corporation (in short 'UPSRTC'). He has retired on 31.12.2010 from the post of Public Relation Officer in UPSRTC. He has filed this writ petition under Article 226 of the Constitution of India with following prayers:

"(A) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to pay the pension of the petitioner regularly including the arrears thereof from 01.01.2011 with interest at the current market rate, within a period of two months.

(B) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to sanction the time scale of pay of Rs.10000-15200 with effect from 01.08.2005 in terms of Government Order dated 27.02.2009 and pay the consequential arrears of difference in salary and revise the post retirement benefit claims and pay the same with interest at the current market rate within a period of two months."

3. Learned counsel for the petitioner conceded that during pendency of this writ petition, petitioner has been granted by opposite parties pay scale claimed in prayer B. Now prayer B is infructuous.

4. In view of above, now the sole question for determination in this writ petition is as to whether the petitioner is entitled to pension as claimed in prayer A.

5. We have perused affidavits filed by parties.

6. It has been contended on behalf of petitioner that initially petitioner was appointed on the post of Junior Accountant in UPSRTC on 04.07.1980 and joined on 11.07.1980. This

post of Junior Accountant was pensionable. After having served for 17 years on this post, he was appointed on the post of Public Relation Officer in the pay scale of Rs.2200-4000 by changing designation of the post of Assistant Architect on 01.08.1997 and was relieved from the post of Accountant on the same day. Thereafter vide Office Order No.124MD/PS/98 dated 10.06.1998, the petitioner's appointment on the post of Public Relation Officer was cancelled and he was reverted to the post of Accountant. Feeling aggrieved, petitioner filed Writ Petition No.917 (S/B) of 1998 before this High Court, wherein, interim order was passed on 18.11.1998 and operation of order dated 10.06.1998 was stayed. Petitioner continued on the post of Public Relation Officer and retired therefrom on 31.12.2010. After retirement of petitioner, said Writ Petition No.917 (S/B) of 1998 was allowed by Division Bench of this Court vide order dated 01.10.2012 and reversion of petitioner vide order dated 10.06.1998 was quashed.

7. It has further been contended on behalf of petitioner that the post of Junior Accountant, on which petitioner was appointed initially, was pensionable post in year 1980 at the time of his appointment. The post of Assistant Architect which has been converted into post of Public Relation Officer was also pensionable. Therefore, petitioner is entitled to pension after retirement.

8. It has been contended on behalf of opposite parties that post of Public Relation Officer in UPSRTC is not pensionable.

9. It has further been contended on behalf of opposite parties that petitioner had opted Contributory Provident Fund Scheme and has already taken retiral benefits. Therefore, he cannot claim pension. Reliance has been placed by opposite parties on the pronouncement of Hon'ble Apex Court rendered in the case of **State of Orissa and another v. Prativa Ghosh and another reported in (2001) 10 SCC 587**.

10. In paragraph 21 of counter affidavit filed on behalf of opposite parties no.2 to 4, it has been stated that Corporation (UPSRTC) was created on 01.06.1972 by State Government and prior to that date all the posts in erstwhile U.P. Government Roadways were pensionable. Officers and employees posted between 01.06.1972 to 18.06.1981 were pensionable but the post created in the Corporation after 01.06.1972 as PRO/ Architect is not pensionable. As such, question of providing pension does not arise.

11. In paragraph 23 of rejoinder affidavit, petitioner has stated that contents of paragraph 21 of counter affidavit are not correctly stated with further statement that since the initial appointment of petitioner was made during the period from 01.06.1972 to 18.06.1981 on the post which was admittedly pensionable, his continuance on higher post of Public Relation Officer cannot disentitle him to get pension.

12. After having gone through counter affidavit and rejoinder affidavit, it is apparent that it has been admitted by both the parties that the post of Junior Accountant, on which petitioner was initially appointed, was a pensionable post.

13. Appointment letter, Annexure-1 of the writ petition, whereby, petitioner was appointed on the post of Junior Accountant on 04.07.1980 in UPSRTC, shows that this appointment was made subject to Rules to be made under Section 45 of The Road Transport Corporation Act, 1950 and U.P. State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 have been framed in pursuance of powers under Section 45(2)(c) of The Road Transport Corporation Act, 1950. Thus, U.P. State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 is applicable on services of petitioner.

14. Regulation 39 of Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 (in short 'Regulation, 1981) reads as follows:

"39- 1 & ,d bl mifofu;e ds [k.M nks ds micU/kksa ds v/khu jgrs gq, fuxe dks dksbZ deZpkjh isa'ku dk gdnkj ugha gksxk] fdUrq og mifofu;e nks esa mfYyf[kr Isok fuo`Rr ykHk dk gdnkj gksxkA

nks& ,slk deZpkjh tks HkwriwoZ mRrj izns'k jktdh; jksMost esa jkT; ljdkj dk deZpkjh jgk gks vkSj ftlus fuxe dh Isok dk fodYi fn;k gks] 'kklukns'k la[k; 3414@302&170 ,u&72] fnukad 5 tqykbZ 1972 ds vUrxZr isa'ku vkSj Iso fuo`Rr ykHk dk gdnkj gksxkA

2 mi fu;e 1 ds micU/kksa ij dksbZ izfrdwy izHkko Mkys fcuk dksbZ deZpkjh ftlesa ,sls deZpkjh Hkh lfEefyr gSa tks HkwriwoZ m0iz0 jktdh; jksMost esa jkT; ljdkj dh Isok esa jgsa gksa fuEufyf[kr Isok fuo`Rr ykHk dk gdnkj gksxk%

,d & ;FkkfLFkfr deZpkjh Hkfo" k; fuf/k ;k lkekU; Hkfo"; fuf/k(

nks & minku lank; vf/kfu;e 1972(;k lqlaxr ljdkjh fu;eksa ds tks ykxw gksrs gks] vuqlkj minku xszP;qVh(

rhu & lkewfgd chek ;kstuk] 1976 ds v/khu ns; /kujkf'k(

pkj & jkT; ds Hkhrj ;k=k djus ds fy;s o"kZ esa ,d fu%'kqYd ikfjokfjd ikl(

ikap & IsokfuofRr ds le; mls rSukrh ds LFkku ls vius ?kj okil tkus ds fy, fu%'kqYd ikfjokfjd ikl] ;fn og jsy dk HkkM+k Lohdkj u djs(

N% dksbZ vU; ykHk tks fu;e }kjk IE;d ij Lohd`r fd;s tk;saA"

15. A reading of above Regulation 39(2) of Regulations of 1981 shows that only erstwhile employees of U.P. Government Roadways, who have opted to join service of UPSRTC shall be entitled to pension. It is an admitted fact that petitioner has been appointed in year 1980 by UPSRTC. He was not an employee of erstwhile U.P. Government Roadways. Therefore, in view of above Regulation 39 of Regulations of 1981, petitioner is not entitled to pension. Furthermore, it has been alleged by opposite parties that petitioner has opted Contributory Provident Fund Scheme and has already obtained its benefit after retirement.

This fact has been accepted by learned counsel for petitioner during course of argument. Petitioner is not entitled to pension on this ground also. This view expressed by us finds support from judgment of Hon'ble Apex Court rendered in the case of **State of Orissa and another v. Prativa Ghosh and another** (Supra).

16. The controversy raised by petitioner in this writ petition for pension was raised by other employees of UPSRTC standing on same footing also in **Civil Misc. Writ Petition No.28300 of 2010 (Ishtiaq Ahmad v. State of U.P. and others)** **Civil Misc. Writ Petition No.29327 of 2010 (Saran Kumar v. State of U.P. and others)** and **Civil Misc. Writ Petition No.58821 of 2010 (Surendra Kumar Tyagi v. State of U.P. and others)**. Said writ petitions were decided by Division Bench of High Court Allahabad vide common judgment dated 20.12.2010. The Division Bench of High Court Allahabad has also not accepted claim of pension made by employees of UPSRTC standing on similar footing in view of Regulation 39 of Regulations of 1981 and acceptance of Contributory Provident Fund Scheme by concerned employees.

17. In view of above, we are of considered opinion that petitioner is not entitled to pension as claimed.

18. It has been admitted by opposite parties that post of Junior Accountant, on which petitioner was initially appointed, was pensionable post. It has further been admitted by opposite parties in counter affidavit that posts of employees UPSRTC between 01.06.1972 to 18.06.1981 were pensionable post. Furthermore, letter No.1470/30-2-2004-218/95 dated 29.10.2004 (Annexure-S-5 to the supplementary affidavit filed by petitioner) issued by Mr. G.R. Baruwa, Secretary, U.P. Government to Managing Director, UPSRTC, Lucknow shows that Government has expressed no objection in allowing pension to employees of UPSRTC on posts existing prior to 19.06.1981 which were pensionable in U.P. Government Roadways before 01.06.1972.

19. We have considered this aspect also. In view of discussion made above, we are of considered opinion that petitioner is not entitled to get pension under existing Regulations but UPSRTC is at liberty to amend its Regulation to grant pension to its employee.

20. In view of above, writ petition is dismissed.