UDAY PRATAP THAKUR AND ANR.

v.

THE STATE OF BIHAR AND ORS.

(Civil Appeal No. 3155 of 2023)

APRIL 28, 2023

[M. R. SHAH* AND C. T. RAVIKUMAR, JJ.]

Service Law : Work Charged Establishment Revised Service Conditions (Repealing) Rules, 2013 : r. 5(v) – Pensionary benefits – Computation of, of work charged employees, whose services were subsequently regularized – Counting of the period of work charged services – Entire service rendered as work charged under the work charged establishment, if to be counted and/or considered for the determination of the amount of pension – Held: Work charged employees are not appointed on a substantive post – They are not appointed after due process of selection and as per the recruitment rules – Thus, the services rendered as work charged cannot be counted for the purpose of pension / quantum of pension – However, at the same time, after rendering of service as work charged for number of years and thereafter when their services have been regularized, they cannot be denied the pension on the ground that they have not completed the qualifying service for pension – Thus, the service rendered as work charged after their services have been regularized under the regularization scheme, would be counted for the purpose of qualifying service for pension only as per r. 5(v) of the 2013 Rules.

Dismissing the appeals, the Court

HELD:

1.1 Rule 5(v) of the Work Charged Establishment Revised Service Conditions (Repealing) Rules, 2013 as such can be said to be beneficial to such work charged employees, whose services have been regularized subsequently. As per Rule 5(v), even if the minimum requirement of 10 years of service (qualifying service) for pension is not met, in that case also, the service rendered as a work charged to be added for qualifying service for pension. Therefore, the efforts have been made by the State Government to see that after rendering services for number

* Author

of years as work charged, and thereafter, their services have been regularized, they may not be denied the pension on the ground that they have not completed the qualifying service for pension. It also further provides that the benefits like pension & gratuity shall be counted by giving one year advantage against the five years services as work–charged employee. Therefore, Rule 5(v) is beneficial also in favour of such work charged employees, whose services have been regularized subsequently, and they may not be deprived of the pension on the ground that they have not completed the qualifying service for pension. The denying of pension after rendering service as work charged for number of years on the ground that they have not completed the qualifying service can be said to be unfair and illegal and can be said to be exploitation. Therefore, to make such work charged employees eligible for pension, Rule 5(v) provides that if any work charged employee, whose services have been regularized under the Rules, 2013, is short of qualifying service, to the extent of such shortage of qualifying service, the services rendered as work charged to be counted for the purpose of qualifying service for pension. Under the circumstances, the Larger Bench of the High Court rightly held that for the purpose of pension, only such period from the work charged tenure would be added for making the service of an employee, who has been regularized to qualify him for pension. [Para 6.1]

1.2 The submission that their entire services rendered as work charged should be considered and/or counted for the purpose of pension/quantum of pension is concerned, the same cannot be accepted. If the same is accepted, in that case, it would tantamount to regularizing their services from the initial appointment as work charged. There is always a difference and distinction between a regular employee appointed on a substantive post and a work charged employee working under work charged establishment. The work charged employees are not appointed on a substantive post. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered as work charged cannot be counted for the purpose of pension/quantum of pension. However, at the same time, after rendering of service as work charged for number of years and thereafter when their services have been regularized, they cannot be denied the pension

on the ground that they have not completed the qualifying service for pension. That is why, the service rendered as work charged after their services have been regularized under the regularization scheme, namely, the Rules, 2013 and the Circular shall be counted for the purpose of qualifying service for pension only as per Rule 5(v) of the Rules, 2013. [Para 6.2, 7]

Prem Singh v. State of Uttar Pradesh and Ors. **(2019) 10 SCC 516 : [2019] 11 SCR 1075 – held inapplicable.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3155 of 2023.

From the Judgment and Order dated 04.01.2018 of the High Court of Judicature at Patna in CWJC No. 8283 of 2016.

With

Civil Appeal Nos. 3156, 3155, 3157 and 3158-3159 of 2023.

J.M. Sharma, Sr. Adv., Amit Pawan, Anand Nandan, Abhishek Amritanshu, Hassan Zubair Waris, Suchit Singh Rawat, Ms. Shivangi, Aakarsh, Amit Kumar, Kushagra Raj, Bankey Bihari Sharma, Atul Bandhu, Ajit Sharma, Akshat Sharma, Amrit Pradhan, Advs. for the Appellants.

Mrs. Madhvi Divan, A.S.G., Ranjit Kumar, Sr. Adv., Abhinav Mukerji, Akshay Shrivastava, Mrs. Bihu Sharma, Ms. Pratishtha Vij, Azmat Hayat Amanullah, Tirupati Gaurav Shahi, Mrs. Nachiketa Joshi, Amit Verma, Shiv Mangal Sharma, Mrs. Vaishali Verma, Raj Bahadur Yadav, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s)passed by the High Court of judicature at Patna in respective letters patent appeals, the respective original writ petitioners – work charged employees, whose services were subsequently regularized as per the Work Charged Establishment Revised Service Conditions (Repealing) Rules, 2013 (hereinafter referred to as "Rules, 2013"), have preferred the present appeals.

2. For the sake of convenience, Civil Appeal Nos. 3158-3159 of 2023 (Maheshwar Pandey Vs. State of Bihar and Ors.) is being treated as the lead matter.

2.1 The issue involved in the present appeals is with respect to the counting of the period of work charged services for the purpose of computing pensionary benefits and the length of pensionable service.

2.2 A Larger Bench of the High Court by the impugned judgment and order while upholding Rule 5(v) of the Rules, 2013 has held that the period spent in the work charged establishment would be counted only to the extent of the shortfall in the qualifying period of service for grant of pension, which shall be made up by adding that period spent under the work charged establishment and that the entire period spent under the work charged establishment would not be taken into account.

2.3 The respective original writ petitioners were initially appointed and working under the work charged establishment as work charged. The State Government came out with the Rules from time to time to regularize the services of the work charged employees and also how the work charged services to be counted/considered. Lastly, the State Government framed the Rules, 2013, under which the services of the original writ petitioners came to be regularized.

2.4 One of the clauses, namely, Clause 5(v) provided that old pension scheme will be applicable on these personnel. It further provided that granting the pension and gratuity benefits will be calculated with the recognition of regular service of one year for the work charged service of every five years and in spite of this, if the minimum pension paid service is not completed for pension acceptance under the old pension, the benefit of the pension will be given by adding minimum service to that extent.

2.5 Though the original writ petitioners were held to be entitled to the pension by taking into account the services rendered as work charged for the purpose of qualifying period of service for grant of pension, they challenged Rule 5(v) of the Rules, 2013 to the extent it provided that for the purpose of counting of pension, regular service of one year for the work charged service of every five years shall be taken into consideration. According to the original writ petitioners, the entire service rendered as work charged in the work charged establishment is required to be counted and/or considered for the purpose of pension.

2.6 There were differences of opinion in the two Division Bench judgments with respect to the counting of the period of work charged services for the purpose of computing pensionary benefits and the length of pensionable service, therefore, the matter was referred to the Larger Bench. The Larger Bench by the impugned judgment and order has answered the reference in following terms:-

"(a) With respect to addition of the number of years of service rendered in a work charged tenure to the service under regular establishment, for the purposes of making the service of such regular employees pensionable, there is practically no substantial difference in the pronouncements of the two Division Benches in the case of Sheela Devi (supra) and Binod Kumar (supra). (b) For the purposes of pension, only such period from the work-charged tenure would be added for making the service of an employee which has been regularized to qualify him for pension. (c) While adding such period of work-charged tenure, the modus would be of granting/counting one year for every five years of service rendered under work-charged establishment. If that also leaves some shortfall, then further number of years of work-charged tenure can be taken/added for making the service of the employee pensionable. (d) For the purposes of giving benefit to an employee for promotion on the selection grade and timebound promotion, the entire period of service rendered as work-charged employee can be counted. (e) The Rules and Circular of 2013 are valid as has been held in Binod Kumar (supra). (f) The Rules and Circular of 2013 are applicable to such work-charged employees who have been appointed after 22.10.1984 and prior to 11.12.1990."

3. The learned counsel appearing on behalf of the appellants has vehemently submitted that in fact the respective appellants rendered services as work charged for approximately more than 30 to 35 years. It is submitted that they were also granted other benefits like MACP etc. while working as work charged under the work charged establishment. It is submitted that therefore, their earlier services rendered as work charged employees shall not be wiped out and/or at-least cannot be ignored for the purpose of pension.

3.1 It is submitted that the respective appellants were as such appointed not on a particular project but the appointment was for a work, which was regular and periodical in nature for a monthly salary and

they were working in the Government department. It is submitted that therefore, their services were not qualitatively different from regular employees.

3.2 It is submitted that it was unfair on the part of the State Government to take work from them for periods depriving them of their due emoluments. It is submitted that all the appellants were appointed after their names were called from the Employment Exchange.

3.3 It is submitted that as observed and held by this Court in the case of **Prem Singh Vs. State of Uttar Pradesh and Ors., (2019) 10 SCC 516**, the services rendered as work charged is to be counted for pensionary benefits. Learned counsel appearing on behalf of the appellants has heavily relied upon the paragraphs 29, 30, 31, 32 and 36 of the said decision.

4. Learned counsel appearing on behalf of the State while opposing the present appeals has vehemently submitted that in fact taking into consideration the fact that despite having worked for a longer period as work charged, thereafter when they were regularized and they were found short of qualifying service for pension and on that ground, they may not be denied the pension solely on the ground that they have not completed the qualifying service for pension, a conscious decision has been taken by the State in favour of such employees providing that for the purpose of qualifying service, the services rendered as work charged is to be counted to make them eligible for pension.

4.1 It is submitted that their services rendered as work charged cannot be counted for the purpose of actual pension, otherwise, there shall not be any difference between a regular employee and a work charged employee. It is submitted that till the work charged employee is regularized, he continues to be work charged employee. It is submitted that therefore, the Larger Bench of the High Court has rightly observed and held that for the purpose of pension, only such period from the work charged tenure would be added for making the service of an employee to qualify him for pension and while adding such period of work charged tenure, the modus operandi for counting would be one year for every five years of service rendered under work charged establishment and if that also leaves some shortfall, then further number of years of work charged tenure can be taken / added for making the service of

the employee pensionable. It is submitted that therefore, the High Court has rightly upheld the vires of Rules, 2013.

4.2 It is submitted that insofar as the reliance placed upon the decision of this Court in the case of **Prem Singh (supra)** relied upon on behalf of the appellants is concerned, it is submitted that the said decision shall not be applicable at all as the reliance placed upon the said decision is absolutely misplaced.

4.3 It is submitted that in the said decision, this Hon'ble Court was considering Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, which specifically provided that the period of servicein a work charged establishment shall not be counted for qualifying service for pension. It is submitted that to that this Hon'ble Court read down the said provision and has observed and held that service rendered as a work charged shall have to be counted as qualifying service for pension.

4.4 It is submitted that while considering the validity of Rule 3(8) of the said Rules, this Hon'ble Court observed that after rendering the service for number of years, they cannot be denied the pension on the ground that they have not rendered the qualifying service for pension and that the work charged service can be counted as qualifying service for pension. It is submitted that while considering the validity of Rule 3(8) of the aforesaid Rules, and denying total work charged service to be counted as qualifying service for pension, this Hon'ble Court has observed and held that it will be unfair, unjust and impermissible to deny them the pension and to that it is observed and held that the work charged service can be counted as qualifying service for pension.

4.5 It is submitted that in the said decision, this Hon'ble Court has not observed and held that their entire service rendered as a work charged shall be considered for the purpose of counting of the pension. It is submitted that the said decision shall be restricted to the period of service rendered as work charged to be counted as qualifying service for pension.

5. The short question, which is posed for consideration of this Court is:

"Whether the entire service rendered as work charged under the work charged establishment shall have to be counted and/or considered

for the determination of the amount of pension after the work charged employees are regularized under the Rules, 2013?

6. It is required to be noted that the respective appellants were working as work charged under the work charged establishment in the State. Their services have been regularized under the Rules, 2013 and the follow up notification of the Finance Department vide Circular No. 10710 dated 17.10.2013. Rule 5(v) of the Circular reads as under:-

"5(v} Old pension rules shall be applied on these employees. The benefit pension & gratuity shall be counted by giving one year advantage against the five years services as work-charged employee. Even then if the minimum requirement of 10 years of service for pension is not met under the old rules, then minimum service shall be added to give advantage thereof."

6.1 Rule 5(v) of the Rules, 2013 as such can be said to be beneficial to such work charged employees, whose services have been regularized subsequently. As per Rule 5(v), even if the minimum requirement of 10 years of service (qualifying service) for pension is not met, in that case also, the service rendered as a work charged to be added for qualifying service for pension. Therefore, the efforts have been made by the State Government to see that after rendering services for number of years as work charged, and thereafter, their services have been regularized, they may not be denied the pension on the ground that they have not completed the qualifying service for pension. It also further provides that the benefits like pension & gratuity shall be counted by giving one year advantage against the five years services as work-charged employee. Therefore, Rule 5(v) as observed hereinabove, is beneficial also in favour of such work charged employees, whose services have been regularized subsequently, and they may not be deprived of the pension on the ground that they have not completed the qualifying service for pension. The denying of pension after rendering service as work charged for number of years on the ground that they have not completed the qualifying service can be said to be unfair and illegal and can be said to be exploitation. Therefore, to make such work charged employees eligible for pension, Rule 5(v) provides that if any work charged employee, whose services have been regularized under the Rules, 2013, is short of qualifying service, to the extent of such shortage of qualifying service, the services rendered as

work charged to be counted for the purpose of qualifying service for pension. Under the circumstances, the Larger Bench of the High Court has rightly observed and held that for the purpose of pension, only such period from the work charged tenure would be added for making the service of an employee, who has been regularized to qualify him for pension.

6.2 Insofar as the submission on behalf of the appellants that their entire services rendered as work charged should be considered and/or counted for the purpose of pension/quantum of pension is concerned, the same cannot be accepted. If the same is accepted, in that case, it would tantamount to regularizing their services from the initial appointment as work charged. As per the catena of decisionsof this Court, there is always adifference and distinction between a regular employee appointed on a substantive post and a work charged employee working under work charged establishment. The work charged employees are not appointed on a substantive post. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered as work charged cannot be counted for the purpose of pension / quantum of pension. However, at the same time, after rendering of service as work charged for number of years and thereafter when their services have been regularized, they cannot be denied the pension on the ground that they have not completed the qualifying service for pension. That is why, the service rendered as work charged is to be counted and/or considered for the purpose of qualifying service for pension, which is provided under Rule 5(v) of the Rules, 2013.

6.3 Now, insofar as the reliance placed upon the decision of this Courtin the case of **Prem Singh (supra)** by the learned counsel appearing on behalf of the appellants is concerned, the reliance placed upon the said decision is absolutely misplaced. In the said case, this Court was considering the validity of Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, under which the entire service rendered as work charged was not to be counted for qualifying service for pension. To that, this Court has observed and held that after rendering service as work charged for number of years in the Government establishment / department, denying them the pension on the ground that they have not completed the qualifying service

for pension would be unjust, arbitrary and illegal. Therefore, this Court has observed and held that their services rendered as work charged shall be considered/counted for qualifying service. This Court has not observed and held that the entire service rendered as work charged shall be considered/counted for the quantum of pension/pension. The decision of this Court in the case of **Prem Singh (supra)**, therefore, would be restricted to the counting of service rendered as work charged for qualifying service for pension.

7. In view of the above and for the reasons stated above, present appeals lack merits and the same deserve to be dismissed and are accordingly dismissed. It is observed and held that the service rendered as work charged after their services have been regularized under the regularization scheme, namely, the Rules, 2013 and the Circular shall be counted for the purpose of qualifying service for pension only as per Rule 5(v) of the Rules, 2013.

Present appeals, thus, deserve to be dismissed and are accordingly dismissed. No costs.

Pending applications, if any, also stand disposed of.

Headnotes prepared by: Nidhi Jain (*Assisted by :* Abhishek Agnihotri and Tamana, LCRAs)

Result of the case: Appeals dismissed.