

Mahavir vs State Of U.P. Thru. Secy. Irrigation ... on 28 February, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12366

Court No. - 6

Case :- WRIT - A No. - 2388 of 2025

Petitioner :- Mahavir

Respondent :- State Of U.P. Thru. Secy. Irrigation Deptt. Lko. And 2 Others

Counsel for Petitioner :- Ram Ji Trivedi, Shraddha Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Ram Ji Trivedi, learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. The petitioner was appointed on a Class IV post as work charge in the department of Rural Engineering Department at Bahraich. His services were regularized w.e.f. 16.12.1996. The petitioner retired on 30.06.2012. The grievance of the petitioner is that his pension has not been paid.

3. In the aforesaid backdrop, the petitioner has prayed for following main reliefs:-

"I. Issue a writ, order or direction in the nature of Mandamus commanding the opposite party no. 2 to consider the case of the petitioner, and to calculate the services rendered by the petitioner from the date of initial appointment 06.08.1982, till date of regularization dated 16.12.1996, on the post of Government Tubewell Operator, along with the interest thereupon for pensionary benefit and other retiral dues in light of judgment and order passed by this Hon'ble Court reported in (2023) 3 UPLBEC 1790 (Chaman Singh Vs. State of U.P.).

4. The Apex Court has settled the controversy in Appeal No. 6798 of 2019 (Prem Singh vs. State of U.P. and others), AIR 2019 SC 4390 & connected petitions wherein the Apex Court has held that the services rendered as work-charge employee are liable to counted for the purposes of counting qualifying service for pension. In Prem Singh (supra), the Apex Court has held :-

"36. 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."

5. The exception to impugned order is taken on the ground that with the promulgation of Uttar Pradesh Qualifying Service for Pension and Validation Ordinance (Ordinance No.19 of 2020) published in Uttar Pradesh Gazette (Extraordinary) dated 21.10.2020. It is urged that in view of newly promulgated Ordinance, particularly the non obstinate clauses Sections 2, 3 and 4, the petitioner/non-appellant is not entitled to claim the period of service from 1980 to 2006 as qualifying service for the pension. It is urged that the payment for said period and thereafter from the date of regularization was from the Contingencies fund.

6. The Ordinance 2020 is reproduced for ready reference:

"NO. 1877(2)/LXXIX-V-1-2020-2(ka)20-2020 Dated Lucknow, October 21,2020.

In pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Pension Hetu Aharkari Sewa Tatha Vidhimanyakaran Adhyadesh, 2020 (Uttar Pradesh Adhyadesh Sankhya 19 of 2020) promulgated by the Governor. The Vitta (Sammanya) Anubhag-3 is administratively concerned with the said Ordinance.

THE UTTAR PRADESH QUALIFYING SERVICE FOR PENSION AND VALIDATION ORDINANCE, 2020 (U.P. Ordinance no. 19 of 2020) (Promulgated by the Governor in the Seventy-first Year of the Republic of India).

AN ORDINANCE to provide for qualifying service for pension and to validate certain actions taken in this behalf and for matters connected therewith or incidental thereto.

WHEREAS, the State legislature is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor is pleased to promulgate the following Ordinance:-

1.(1) This Ordinance may be called the Uttar Pradesh Qualifying Service for Pension and Validation Ordinance, 2020.

(2) It shall extend to the whole of the State of Uttar Pradesh.

(3) it shall be deemed to have come into force on April 1, 1961.

2. Notwithstanding anything contained in any rule, regulation or Government order for the purposes of entitlement of pension to an officer, "Qualifying Service" means the services rendered by an officer appointed on a temporary or permanent post in accordance with the provisions of the service rules prescribed by the Government for the post.

3. Notwithstanding any judgment, decree or order of any Court, anything done or purporting to have been done and may action taken or purporting to have been taken under or in relation to sub-rule (8) of rule 3 of the Uttar Pradesh Retirement Benefit Rules, 1961 before the commencement of this Ordinance, shall be deemed to be and always to have been done or taken under the provisions of this Ordinance and to be and always to have been valid as if the provisions of this Ordinance were in force at all material times with effect from April 1, 1961.

4. Save as otherwise provided, the provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Ordinance.

ANANDIBEN PATEL Governor, Uttar Pradesh By order U.P. Singh-II, Pramukh Sachiv"

7. It is informed that this Ordinance has been enacted by U.P. Act No.1 of 2021 on 05.03.2021 as the Uttar Pradesh Qualifying Service for Pension and Validation Act, 2021.

8. It is clear from the perusal of Section 2 of the Act of 2021 that it would have effect notwithstanding anything contained in U.P. Retirement Benefit Rules, 1961 or Regulation 361 and 370 of the Civil Service Regulation. Careful reading thereof, however, reveals that "Qualifying Service" has been defined to mean the services rendered by an officer appointed on a temporary or permanent post in accordance

with the provisions of the service rules prescribed by the Government for the post.

9. Admittedly, the petitioner was appointed on 03.05.1983 as work charge employee at Pratapgarh. His services were however regularised on 12.05.2011 and retired on 30.11.2022. The regularisation of service was against the permanent post and it is not that his initial appointment was not in accordance to service Rules.

10. In light of the aforesaid, period spent in service may be on temporary basis while working as a work charge employee, proceeded with regularisation, benefit of past services cannot be denied.

11. In this view of the fact, the plea taken by the respondents that the services rendered by the petitioner as work charge employee are not liable to be counted for the pension is misconceived and not sustainable.

12. Thus, for the reasons given above, the writ petition is allowed and mandamus is issued upon the respondent No. 2-Engineer in Chief, Nalkup Madhya, Irrigation Department, Lucknow to pay all the pensionary benefits to the petitioner in terms of the judgment of Apex Court in the case of Prem Singh (supra) within a period of four months from the date of filing of copy of the order.

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(Alok Mathur, J.) Order Date :- 28.2.2025 Virendra