

# **Smt. Pushpa Devi vs State Of U P And 3 Others on 1 May, 2025**

**Author: Ajit Kumar**

**Bench: Ajit Kumar**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:70747

Court No. - 4

Case :- WRIT - A No. - 11480 of 2022

Petitioner :- Smt. Pushpa Devi

Respondent :- State Of U P And 3 Others

Counsel for Petitioner :- Jitendra Nath Sharma,Pratik Kumar Sharma

Counsel for Respondent :- Bala Nath Mishra,C.S.C.,M.N. Singh

Hon'ble Ajit Kumar,J.

Learned Standing Counsel has obtained instructions and placed the same before this Court, which is taken on record.

Heard Sri P.K.Sharma, learned counsel for the petitioner and Sri B.N.Mishra, learned counsel for respondent / U.P.Public Service Commission Petitioner who is a widow of Late Kamlesh Narayan an ex employee of Public Service Commission has approached this Court by invoking extra ordinary jurisdiction under Article 226 of the Constitution for a relief in the nature of writ of mandamus commanding respondents to pay arrears of pension and other dues including family pension as per provision contained under U.P. Act No. 1 of 2021.

It is argued on behalf of the petitioner that since husband of the petitioner suffered from long ailments and ultimately died in Kamla Nehru Memorial Hospital, Prayagraj, he would not file petition before this Court. This pleading has been raised in paragraph 17 of the petition, which is reproduced hereunder:

"That petitioner's husband died on 6.10.2021 after the prolong illness in Kamla Nehru Memorial Hospital Prayagraj and he could not be able to file Writ Petition during his life time for payment of post requirement benefits after enactment of the U.p. Act No. 1 of 2021 due to Covid-19 lockout before his death. Photostate copy of the death certificate of her husband Late Kamlesh Narayan is being filed herewith and marked as Annexure No. 12 to this petition. "

According to learned counsel for the petitioner, petitioner's husband was entitled to pension computing the ad hoc service rendered by him in the respondent establishment w.e.f. 5th January, 1989 until he came to be regularized on 30th April, 2012 as typist and at the time of retirement he was working as review officer. Thus, it is contended that petitioner's husband was wrongly denied post retirement dues to which he was entitled as per qualifying service of ten years rendered by him computing ad hoc period to make pension admissible.

Meeting the above submission, learned counsel appearing for the respondent Commission Mr. Mishra submits that petitioner's husband was paid his post retirement dues and he was also paid gratuity amount as per Civil Service Regulations as he continued in regular employment for more than five years. It is further submitted that petitioner's husband was not entitled to pensionary benefits as his service came to be regularized in the year 2012 only against substantive vacancy and he submits that in view of amendment carried out in U.P. Retirement Benefits Rules, 1961 vide U.P. Act No. 1 of 2021, with retrospective effect such ad hoc/temporary services are not to be counted towards qualifying service of pension.

Learned Standing Counsel also submits before this Court that in matters of claim for old pension benefits the amending act is already sub judice before the Supreme court as well as coordinate benches of this Court in special appeal no. 797 of 2023. Thus as on date, it is argued, that amending act shall prevail and petitioner would not entitled to such benefits as claimed in the present petition.

Having heard learned counsel for the respective parties and having perused the records, I find there to be specific stand taken by the respondent that petitioner's husband has been paid all the post retirement dues including gratuity. From the pleadings raised, this fact is not denied in the petition and pleading raised is only that petitioner's husband was entitled to pensionary benefits under old pension scheme taking into account past service rendered as ad hoc employment with respondent establishment since 1989.

I have perused the relevant provisions as contained under 3(8) of the U.P. Retirement Benefits Rules, 1961 as well as amending provision brought into old act with retrospective effect by U.P. Act No. 1 of 2021. Both the provisions are reproduced hereunder:

"3. In these rules, unless is anything repugnant in the subject or context (8) Qualifying service means service which qualifies for pension in accordance with the provisions of Article 368 of the Civil Services Regulations:

Provided that continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post except

(i) periods of temporary or officiating service in a non-pensionable establishment;

(ii) periods of service in a work-charged establishment; and

(iii) periods of service in a post paid from contingencies shall also count as qualifying service.

Note. If service rendered in a non-pensionable establishment work-charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service. "

Upon bare reading of the aforesaid provisions, it is clear that State legislature has completely denied the service period rendered in temporary or officiating capacity in a non pensionable establishment and work-charged establishment to be counted towards qualifying service for pension. It is though stated that matter is engaging attention of the Supreme court and even special appellate bench of this Court, the law is well settled that a mere reference to a larger bench or merely because matter is pending before a court of law, the effect of existing provision on statute will not get obliterated.

In view of above, therefore, the claim as set up by the petitioner cannot be allowed. Besides this, I find that paragraph 17 there is averment that husband of the petitioner was ill and hence could not approach this Court earlier. In service jurisprudence contract of employment makes rules binding upon the employer and employee. Petitioner's husband was only entitled to the benefit incidental to the service rendered by him as employee and if employee himself failed not approach this Court praying for relief for pension even though he had retired in the year 2019, it would be taken that he remained satisfied with whatever dues were paid to him. Since petitioner's husband was not entitled to pension, petitioner automatically does not become entitled to family pension.

In view of above, I do not find force in this petition. Petition fails and is accordingly rejected.

Order Date :- 1.5.2025 Sanjeev