

Ram Kumar vs State Of U.P. Thru. Prin. Addl. Chief ... on 28 February, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12356

Court No. - 6

Case :- WRIT - A No. - 2382 of 2025

Petitioner :- Ram Kumar

Respondent :- State Of U.P. Thru. Prin. Addl. Chief Secy. Deptt. Women Welfare Govt. Of

Counsel for Petitioner :- Anamika Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Anamika Tiwari, learned counsel for the petitioner and learned Standing Counsel for the respondents.
2. The petitioner was appointed as a Chaukidar on adhoc basis by the State Government on 11.10.1985 in the Harijan and Social Welfare Department. His services came to be regularized on 05.05.2015. The regularization order has attained finality. The petitioner has also superannuated on 31.03.2024 as Chaukidar.

3. A claim was raised before the authorities for inclusion of their services rendered as adhoc employees relying upon Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, which is reproduced hereinafter:

"Rule 3(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-changed 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 post paid form 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."

4. The claim was not considered and this writ petition accordingly has come to be filed stating that the petitioner is entitled to full pension and gratuity and its denial by the authorities is arbitrary, relying upon the provisions contained in Rule 3(8) of the Rules of 1961 as well as series of orders passed by this Court in similar matters.

5. Learned counsel for the State submits that the petitioner was not appointed strictly in accordance with the rules of recruitment and, therefore, the previous adhoc services rendered by them ought not to be added towards qualifying service in view of U.P. Act No.1 of 2021.

6. It is admitted that U.P. Act No.1 of 2021 has come into existence on 05.03.2021. An ordinance prior to it was issued on similar lines on 21.10.2020 providing that adhoc appointment offered contrary to recruitment rules was not liable to be counted towards qualifying service.

7. So far as the U.P. Act No.1 of 2021 as well as ordinance issued prior thereto on 21.10.2020 are concerned, though these provisions would apply retrospectively from the date of introduction of the U.P. Retirement Benefit Rules, 1961, but the amended provisions cannot be pressed into service in respect of such retired employees in whose favour entitlement had already stood crystallised prior to the incorporation of amending provisions vide ordinance or U.P. Act No.1 of 2021. The issue in that regard has been settled by a Constitution Bench in Chairman Railway Board versus C.R. Rangadhamaiah, AIR (SC) 1997 o 3828. The Constitution Bench judgment has been relied upon by the Supreme Court in Punjab State Cooperative Agricultural Development Bank Ltd versus

Registrar, Cooperative Societies, AIR (SC) 2022 O 1349. In Para 44, the Supreme Court has referred to the Constitution Bench judgment in Chairman Railway Board (supra) and expounded the law in para 47 to 50 of the judgment which are reproduced hereinafter:

"47. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

48. In the instant case, the Bank pension scheme was introduced from 1st April 1989 and options were called from the employees and those who had given their option became member of the pension scheme and accordingly pension was continuously paid to them without fail and only in the year 2010, when the Bank failed in discharging its obligations, respondent employees approached the High Court by filing the writ petitions. The Bank later on withdrawn the scheme of pension by deleting clause 15(ii) by an amendment dated 11th March, 2014 which was introduced with effect from 1st April, 1989 and the employees who availed the benefit of pension under the scheme, indeed their rights stood vested and accrued to them and any amendment to the contrary, which has been made with retrospective operation to take away the right accrued to the retired employee under the existing rule certainly is not only violative of Article 14 but also of Article 21 of the Constitution.

49. It may also be noticed that there is a distinction between the legitimate expectation and a vested/accrued right in favour of the employees. The rule which classifies such employee for promotional, seniority, age of retirement purposes undoubtedly operates on those who entered service before framing of the rules but it operates in futuro. In a sense, it governs the future right of seniority, promotion or age of retirement of those who are already in service.

50. For the sake of illustration, if a person while entering into service, has a legitimate expectation that as per the then existing scheme of rules, he may be considered for promotion after certain years of qualifying service or with the age of retirement which is being prescribed under the scheme of rules but at a later stage, if there is any amendment made either in the scheme of promotion or the age of superannuation, it may alter other conditions of service such scheme of rules operates in futuro. But at the same time, if the employee who had already been promoted or fixed in a particular pay scale, if that is being taken away by the impugned scheme of rules retrospectively, that certainly will take away the vested/accrued right of the incumbent which may not be permissible and may be violative of Article 14 and 16 of the Constitution."

8. Since the right to receive pension had accrued in favour of the petitioner on the date of his superannuation, I find that such accrued and vested right cannot be taken away by retrospective

application of the Pension Rules, as is sought to be pressed by the State.

9. The rights which have already accrued to a retiring employee, thus, cannot be taken away on account of a retrospective application of the rule introduced later in point of time. In the present case, the petitioner had retired on 31.03.2024. His right to receive pension would have to be examined with reference to the applicable provision on the date of superannuation. Rule 3(8) of the unamended Rules of 1961 were applicable on 28.02.2019. Merely because the U.P. Retirement Benefit Rules have been amended subsequently in March, 2021 or by ordinance w.e.f. 21.10.2020, it would not mean that the rights which have already accrued in favour of the retiring employee, the petitioner can be retrospectively withdrawn. I, therefore, find myself in respectful agreement with the view taken by the learned Division Bench in Special Appeal (Defective) No. 217 of 2024 in allowing the claim of the private respondent and I issue a direction to compute the services rendered as adhoc employee by the petitioner for the purpose of determination of qualifying service for payment of full gratuity and pension. The view is otherwise consistent with the Division Bench judgment in Dr. Amrendra Narain Srivastava versus State of U.P. and others, passed in Writ- A No. 61974 of 2011, decided on 01.03.2012.

10. The writ petition stands allowed.

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