

Court No. - 34

Case :- WRIT - A No. - 37974 of 2015

Petitioner :- Ram Narayan Kashyap

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- A.A. Siddiqui

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri A.A. Siddiqui, counsel representing the petitioner, the learned Standing Counsel for the State-respondents and perused the records.

2. Petitioner before this Court namely Ram Narayn Kashyap was initially appointed as 'Auto/Motor Mechanic' in Government Polytechnic, Sri Nagar, Garhwal. He continued as such there, until he was offered a fresh appointment on the post of Anudeshak Motor Mechanic in Government Polytechnic, Jhansi in the same capacity, on the basis of the recommendation of the Public Service Commission. He continuously discharged his duties until he finally retired on 31.1.2015 from the Government Polytechnic, Shahjahanpur. After attaining the age of superannuation, petitioner claimed for retiral dues including pensionary benefits, which was withheld, according to the petitioner for no justifiable reason.

3. It appears from the record, for the Financial Year 1988-89, petitioner was awarded adverse entry in his character role, however, upon representation being made, the said adverse entry was expunged by the order of the competent authority namely the Joint Director of Education dated 22.8.2006.

4. Counsel for the petitioner submits that in such circumstances, his ten years satisfactory service period could not have been ignored for qualifying service for pension and yet the respondent no. 3 - Additional Director, Treasury and Pension Bareilly Division, Bareilly vide letter dated 27.3.2015, addressed to the respondent no. 5 - Chief/Senior Treasury Officer, Treasury Office, Shahjahanpur, did not recommend for pension of the petitioner on the ground that he did not have ten years of satisfactory service to his credit. In support of his argument, petitioner's counsel has relied upon a Government Order dated 30.6.1993 which clearly demonstrates that after the adverse entry is recorded in the character role of an employee, even by way of punishment, however, if during next five years, no such adverse entry is recorded, then such adverse entry would be ignored for the purposes of future benefits. Learned counsel for the petitioner has also relied upon Clause 2(C) of the Government Order dated 30.6.2023.

5. Learned Standing Counsel has sought to justify the order impugned for reasons assigned therein, but could not dispute the two facts emerging from the counter affidavit filed on behalf of the respondents that the adverse entry awarded to the petitioner in the financial year 1988-89 was already expunged and that there existed a Government Order which provided for ignoring such adverse entry, after five year lapse of time, if there has been no further adverse entry in the character role.

6. Having heard counsel for the petitioner, the learned Standing Counsel and having perused the record, I find that the petitioner's service is required to be considered for the purposes of qualifying period for pension, as the adverse entry of the petitioner itself had got expunged by the order dated 22.8.2006 passed by the authority

competent in the matter and which became final. Since, the petitioner's service as Motor Mechanic was duly recognized, approved and later on confirmed by the order passed by the competent authority on 29.3.2008, the entire period of his service was liable to be taken into account towards qualifying service for pension.

7. State Government should have recognized the period of service rendered by the petitioner under the State Government of Uttrakhand/Utranchal as the petitioner had been appointed in the year 1997 in the Government Polytechnic, Sri Nagar, Garhwal, when the said Polytechnic was within the State of Uttar Pradesh before its division in two States in the year 1999. The said period, accordingly, is held liable to be counted towards continuity of service for the purposes of post-retirement dues especially pension.

8. Accordingly, the pension amount shall be finalized within the time prescribed as above. The petitioner is also held entitled to interest at the rate of 8 percent from the date, the pension became due and until the actual payment is made to him, as his pension was wholly and illegally denied and withheld by the respondent no.3.

9. In view of the above, the writ petition succeeds and is allowed. The letter/order dated 27.3.2015 (Annexure-7) passed by respondent no.3 - Additional Director, Treasury and Pension Bareilly Region, Bareilly, insofar as it denies claim of petitioner for pension, is, *hereby*, quashed.

10. The respondents are directed to calculate the pension taking the entire service period of the petitioner for the purposes of pensionary benefits and pass appropriate orders in the form of final pension payment order within 30 days from the date of production

of certified copy of this order. Petitioner shall also be entitled to further penal interest at the rate of 18 percent from the date of expiry of the aforesaid period prescribed by this Court, until the actual payment is made.

Order Date :- 7.2.2024

CS/-