Neutral Citation No. - 2024:AHC:59546-DB

A.F.R.

Court No. - 40

Case :- SPECIAL APPEAL DEFECTIVE No. - 62 of 2024
Appellant :- State of UP and 3 others
Respondent :- Arun Kumar Srivastava
Counsel for Appellant :- Chandan Kumar
Counsel for Respondent :- Anand Kumar Srivastava,Pratibha Asthana

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Anish Kumar Gupta,J.

Civil Misc. Delay Condonation Application No.2 of 2024

1. Learned counsel for the opposite party-petitioner states that he is not inclined to file an objection to the delay condonation application and he has no objection in case delay condonation application is allowed.

2. For the reasons stated in affidavit filed in support of delay condonation application, as the same constitutes sufficient cause for condoning delay in filing Special Appeal, the delay condonation application is allowed. The Special Appeal is treated to have been filed well within time.

Special Appeal

3. Heard Sri Chandan Kumar, learned Standing Counsel for the appellant-State respondents and Sri Anand Kumar Srivastava, learned counsel for the opposite party-petitioner.

4. Present Special Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 has been preferred against the judgment and order dated 16.05.2023 passed by learned Single Judge of this Court in Writ A No.8095 of 2023 (Arun Kumar Srivastava vs. State of Uttar Pradesh & 3 others) by which he has proceeded to allow the writ petition.

5. In brief, the facts of the case are that the opposite party-petitioner was initially engaged on 09.02.1984 as daily wager on the

post of Meth in Provincial Division, Public Works Department[1], Varanasi. Subsequently, in compliance of the letters of the Chief Engineer dated 13.4.1989 and 18.11.192, he was accorded posting in the work charge establishment with effect from 01.11.1992. Finally, his services were regularized on 01.07.2003. After attaining the age of superannuation, the petitioner was retired from the service on 31.05.2019. After retirement, he had made several representations before the respondent authorities for payment of revised pension, arrears with interest and other consequential benefits including counting the services of the petitioner rendered by him in work charge establishment in regular service. Lastly, he had submitted an application dated 20.07.2021 before Executive Engineer, Provincial Division, PWD, Varanasi and the said application was rejected on 29.10.2021. Aggrieved with the aforesaid order, the petitioner had filed the aforesaid writ petition seeking following reliefs:-

> "I. Issue a writ, order or direction in the nature of certiorari to quash the order dated 29.10.2021 passed by Respondent No. 4, i.e. Executive Engineer, Prantiya Khand, Public Works Department, Varanasi, by which the representation/claim of the petitioner dated 12.10.2020 and 20.07.2021, has been rejected.
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> II. Issue a writ, order or direction in the nature of mandamus directing the Respondent Authorities to revise the pension of the petitioner and pay him the revised pension, arrear with interest and other consequential benefits, counting the services of the petitioner rendered by him in work charge establishment (From 01.11.1992 to 30.06.2003) in regular service."

6. It further appears from the record that the aforesaid writ petition was allowed by learned Single Judge on 16.5.2023, relying upon the judgement of Apex Court in the case of **Prem Singh vs. State of Uttar Pradesh and others**[2]. The relevant portion of the judgement is reproduced herein below:-

> "8. The record reflects that petitioner has been engaged as daily wager on 09.02.1984. It also transpires from the record that since the date of engagement of petitioner as daily wager, he was continuously working till his services was regularized on 01.07.2003, therefore, in view of the judgement of Apex Court in the case of Prem Singh (supra), the services rendered as daily wager are liable to be counted for the purpose of grant of pensionary benefit after retirement. Moreover, the initial appointment of the petitioner was as Meth and the post on which he was regularized was in the pay-scale of 2610-60-3150-65-3520.
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> 9. In view of the aforesaid facts and circumstances, the order dated 29.10.2021 is hereby quashed and set aside. The respondent no.4 is directed to add the services rendered by the petitioner as daily wager in regular services of the petitioner for the purposes of pension and pay the same in terms of the judgement of Apex

1. P.W.D.
2. 2019 (10) SCC 516

Court in the case of Prem Singh (supra) within a period of three months from the date of production of certified copy of this order before him."

7. Learned Standing Counsel appearing for the appellant vehemently submits that admittedly, the services of the petitioner as work charge employee has already been computed for extending the benefits of pension and the pension has been paid to him. He submits that the services rendered by the petitioner as work charge employee are only available to the petitioner for computing the qualifying service for pension. The entire services of the petitioner rendered as work charge employee cannot be considered or counted for the purpose of pension/quantum of pension and the petitioner cannot be regularized from his initial appointment as work charged employee. There is a difference between a regular employee appointed on the substantive post and a work charged employee working under the work charge establishment. The work charge employees are not appointed on the substantive posts. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered by the petitioner as work charge employee cannot be counted for the purpose of pension/quantum of pension and as such, the claim of the petitioner for adding the services of the work charge employee in the regular establishment is unsustainable.

8. Learned Standing Counsel further submits that as per Clause (b) of Article 361 of the Civil Service Regulations[3], part-time services cannot be treated as substantive and permanent for qualifying for pension. Article 368 of the CSR clearly postulates that service does not qualify unless the officer holds a substantive post on a permanent establishment. The word "qualifying service" means service, which qualifies for pension in accordance with the provisions of Article 368 of the CSR. It means that the employment must be substantive and permanent for qualifying service and the period of appointment cannot be counted for grant of pensionary benefits unless it is substantive and permanent, hence part-time services rendered in work charge establishment cannot be treated as regular service. It is submitted that both CSR and Uttar Pradesh Retirement Benefits

3. CSR

Rules, 1961[4] refer only to temporary or officiating service and they do not at all mention part-time service. The part-time service cannot be treated/counted as qualifying service for grant of pensionary benefits. The provision of engagement under the work charge establishment is provided under Paragraphs 667, 678 and 669 of the Financial Hand Book, Volume 6 Part-1 and the expenses of the same were charged on the said particular work. The petitioner is not entitled to get the benefit of the judgement of the Apex Court in **Prem Singh** (supra).

9. Learned counsel for the appellant further submits that the judgment in case of Prem Singh (supra) is passed on the basis of CSR as existed at that time. The same stands superseded by the U.P. Ordinance No.19 of 2020 (The U.P. Qualifying Services for Pension and Validation Ordinance, 2020) published in extraordinary gazette of Government of U.P. on 21.10.2020 followed by the U.P. Qualifying Service for Pension and Validation Act, 2021[5] (for short 'the Act of 2021'). As per Section 2 of the Act of 2021, the term 'qualifying service' means services rendered by an officer appointed on temporary or permanent post in accordance with the service Rules prescribed for the post. Since the petitioner was not appointed on any post, but was working as work charge employee, hence, the said services cannot be counted and, thus, he is not entitled for pensionary benefits for such period. Learned Single Judge has erred in appreciating the correct facts in the matter and wrongly equated the services rendered by the petitioner on work charge establishment. The petitioner himself in the relief claimed for counting of services rendered by him in work charge establishment, whereas, learned Single Judge treated him as daily wager. The said fact is contrary to record. Learned Single Judge has also failed to consider the provision of Regulation 352 of CSR and allowed the writ petition ex-parte without calling counter affidavit from the appellant. He has failed to appreciate the definition of 'qualifying service' as defined in Rules, 1961, which was retrospectively amended by Act, 2021. Learned Single Judge while allowing the writ petition preferred by the petitioner had not

4. Rules, 1961

5. Act, 2021

considered the relevant statutory rules and provisions and as such, the judgement passed by learned Single Judge is wholly illegal, arbitrary and without any justification.

10. Learned Standing Counsel has placed reliance on the judgement of this Court in the case of **State of U.P. vs. Dukh Haran Singh**[6] in which the Division Bench of this Court has held that service rendered prior to regularisation does not qualify for grant of pension in terms of Regulations 361 and 370 of the Regulations as services rendered prior to that are neither substantive, permanent nor temporary. The said judgement has been affirmed by Hon'ble Apex Court in **Dukh Haran Singh vs. State of UP & others**[7]. He has also placed reliance on the judgement of this Court in **Brahamanand Singh & others vs. State of UP & others**[8] and the judgement and order of Hon'ble Apex Court in **Udai Pratap Thakur & another vs. the State of Bihar & others**[9]. He submits that learned Single judge while adjudicating the present controversy has over sighted the decision of Hon'ble Supreme Court in the case of **Udai Pratap Thakur** (supra).

11. Per contra, learned counsel for the opposite party-petitioner has vehemently opposed the appeal and precisely submits that the services of the petitioner rendered in the work charge establishment are liable to be counted for the purpose of granting pensionary benefit after retirement. Learned Single Judge has rightly allowed the writ petition, relying upon the judgement in case of **Prem Singh** (supra) and directed the respondent no.4 to add the services rendered by the petitioner as daily wager in his regular services for the purposes of pension and pay the same in terms of judgement in the case of **Prem Singh** (supra) within three months. As such, there is no illegality or infirmity in the order of learned Single Judge and the Special Appeal is liable to be dismissed.

6. 2009 (7) ADJ 743

7. Special Leave Petition (C) No.27713 of 2009 decided on 25.09.2013

8. 2017 (11) ADJ 49 (LB)

9. AIR 2023 SC 2971

12. Having heard learned counsel for the respective parties and having perused the records in question, we find that the learned Single Judge has observed that the petitioner was initially engaged as Meth on daily wage basis in the concerned department in February, 1984 and his services were regularized on 01.07.2003. He has retired from the service on 31.05.2019. Thereafter, the petitioner preferred his claim before the respondent authorities for extension of the retiral benefits and pension including his daily wage service rendered before regularization. The representation filed by the petitioner was rejected by the respondent no.3 on 29.10.2021. The said order was subjected to challenge in Writ A No.8095 of 2023 and learned Single Judge vide impugned judgement and order dated 16.05.2023 has allowed the writ petition, relying upon the judgement of the Apex Court in the case of **Prem Singh** (supra), which has been subjected to challenge in the present Special Appeal.

13. We have occasion to peruse the judgement dated 16.05.2023 passed by the learned Single Judge and the relief claimed by the petitioner in the writ petition. The petitioner himself pleaded that his services rendered by him in work charge establishment (from 01.11.1992 to 30.06.2003) be counted in regular service, and accordingly, his pension may be revised and also be accorded consequential benefits. Nowhere he had pleaded for counting his previous services rendered as daily wager. The said finding of fact recorded by learned Single Judge is contrary to the record. We have also considered the judgment of Apex Court in the case of **Prem Singh** (supra), in which it has been categorically held that those persons, who have rendered their service on ad hoc/work charge basis cannot be denied the benefit of pension. This judgment discusses the provisions as was then existing under the CSR for denying benefit of old pension scheme to those, who have earlier rendered service as work charge employee, though such employees subsequently got placement under regular cadre. Hon'ble Supreme Court in **Prem Singh** case (supra) considered the applicability and validity of U.P. Retirement Benefit Rules, 1961 and CSR Regulations, which barred

payment of pension to persons working in work charge establishment and held as under:-

> "30. We are not impressed by the aforesaid submissions. The appointment of the work-charged employee in question had been made on monthly salary and they were required to cross the efficiency bar also. How their services are qualitatively different from regular employees? No material indicating qualitative difference has been pointed out except making bald statement. The appointment was not made for a particular project which is the basic concept of the work-charged employees. Rather, the very concept of work-charged employment has been misused by offering the employment on exploitative terms for the work which is regular and perennial in nature. The work-charged employees had been subjected to transfer from one place to another like regular employees as apparent from documents placed on record. In Narain Dutt Sharma v. State of U.P. [CA No. _____2019 arising out of SLP (C) No. 5775 of 2018] the appellants were allowed to cross efficiency bar, after '8' years of continuous service, even during the period of work-charged services. Narain Dutt Sharma, the appellant, was appointed as a work-charged employee as Gej Mapak with effect from 15-9-1978. Payment used to be made monthly but the appointment was made in the pay scale of Rs 200-320. Initially, he was appointed in the year 1978 on a fixed monthly salary of Rs 205 per month. They were allowed to cross efficiency bar also as the benefit of pay scale was granted to them during the period they served as work-charged employees they served for three to four decades and later on services have been regularised time to time by different orders. However, the services of some of the appellants in few petitions/appeals have not been regularised even though they had served for several decades and ultimately reached the age of superannuation.
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> 31. In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis. They ought to have resorted to an appointment on regular basis. The taking of work on the work-charged basis for long amounts to adopting the exploitative device. Later on, though their services have been regularised. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work-charged establishment but have also been deprived of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work-charged establishment.
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> 32. In view of the Note appended to Rule 3(8) of the 1961 Rules, there is a provision to count service spent on workcharged, contingencies or non-pensionable service, in case, a person has rendered such service in a given between period of two temporary appointments in the pensionable establishment or has rendered such service in the interregnum two periods of temporary and permanent employment. The work-charged service can be counted as qualifying service for pension in the aforesaid exigencies.
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> 33. The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularisation had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of workcharged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrationalbecause of the rider contained in the Note to Rule 3(8) of the 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of workcharged period in case it has been rendered before regularisation. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent

discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.

34. As it would be unjust, illegal and impermissible to make aforesaid classification to make Rule 3(8) valid and nondiscriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularisation in the capacity of work-charged employees, contingency paid fund employees or non-pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.

35. In view of the Note appended to Rule 3(8), which we have read down, the provision contained in Regulation 370 of the Civil Services Regulations has to be struck down as also the instructions contained in Para 669 of the Financial Handbook.

36. There are some of the employees who have not been regularised in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularised under the Government instructions and even as per the decision of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one-time measure, the services be regularised of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularised. It would not be proper to regulate them for consideration of regularisation as others have been regularised,we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.

37. 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."

14. While deciding the writ petition, learned Single Judge has not considered the latest judgement of Hon'ble Apex Court in the case of **Uday Pratap Thakur** (supra) in which the principle and ratio laid down in the judgment of **Prem Singh** (supra) has been further explained and clarified, whereby observations are made to the effect that Prem Singh's judgment (supra) offers benefit to those employees, who have rendered their services on daily wage basis/temporary basis/ work charge basis only for the purposes of giving them benefit of pension under the old pension scheme and they were being offered appointment on regular basis for the service rendered by them on

adhoc basis/temporary basis/ work charge basis. In **Uday Pratap Thakur** (supra) Hon'ble Supreme Court, while dealing with the 'Work Charged Establishment Revised Service Conditions (Repealing) Rules, 2013[10]' of the State of Bihar, framed a specific question namely "**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**?...." Finally, the question was answered vide paragraph 6 of the judgement in **Uday Pratap Thakur** (supra), wherein, Hon'ble Supreme Court has clearly observed as under:-

> "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.
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> 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.
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> 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 decisions of this Court, 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.
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> 6.2 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

10. Rules, 2013

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 Court in 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."

(emphasis added)

15. Even otherwise, the law laid down by learned Single Judge is in teeth of the judgement of Hon'ble Apex Court in case of **Uday Pratap Thakur** (supra) as well as the Division Bench judgement of this Court in **State of U.P. and others vs. Raj Bahadur Pastor**[11] against which the Special Leave Petition filed before the Supreme Court has been dismissed while keeping the question of law open. In the case of **Raj Bahadur Pastor** (supra) the Division Bench has also observed that once U.P. Retirement Benefit Rules were amended, retrospectively, vide U.P. Act No.1 of 2021, it was not open for the learned Single Judge to have nullified its effect, particularly when there was no challenge to the amended provision. Relevant portion of the judgement in Raj Bahadur Pastor's case (supra) is reproduced hereinafter:-

"44. The fact that the above rule requires consideration for regularization against permanent or temporary vacancy, before any regular appointment is made in accordance with relevant service rule is of importance and cannot be ignored. The rule making authority was conscious that non consideration of claim for regularization notwithstanding the existence of rule for such purpose may adversely affect the adhoc employee, in the matter of determination of seniority

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etc. and, therefore, made a specific provision for such regularization under the rules to be considered prior to any regular appointment made in such vacancy in accordance with the relevant service rules. Denial of timely consideration in accordance with the rules for regularization may otherwise deny service and retiral benefits to adhoc employees only because of administrative lethargy on part of the department concerned in processing such claim.

45. No valid reasons have otherwise been disclosed for non consideration of claim of respondent/petitioner for regularization after 20.12.2001, particularly when the order dated 21.2.1997 already existed of this Court for regularizing his services. The only plea taken in the counter affidavit to justify belated consideration for regularization is that the State Government directed such claim to be considered only vide order 7.9.2018. This plea of the appellant to explain the delay in consideration of claim for regularization is noticed only to be rejected.

46. The regularization rules notified on 20.12.2001 were applicable in respect of all adhoc appointments made prior to 30.6.1998 on posts falling within the purview of the Public Service Commission which included the department of minor irrigation as well and there existed no specific need of any further Administrative/Government order to be issued for the rules of regularization to be given effect to. The post of Junior Engineer in the Department of Minor Irrigation was clearly a post covered by the notification dated 20.12.2001 and issuance of the direction contained in the government order dated 7.9.2018 was not essential and at best reminded the authorities to act as per the notification dated 20.12.2001. Services of various other persons such as Prabhu Nath Singh, Shailendra Pratap Singh, etc. were otherwise regularized much prior to 7.9.2018. The argument that this was done in compliance of the court's order does not inspire confidence as the direction of court existed in favour of respondent/petitioner to be considered for regularization from 1997 itself. The authorities cannot be permitted to pick and choose in the matter of consideration of case for regularization under the orders of court. The authorities of the State, therefore, are not justified in denying consideration to the case of respondent appellant for regularization soon after issuance of notification dated 20.12.2001 and in any view before making any regular appointment in accordance with the relevant service rules by virtue of amended rule 2 (iii).

47. Viewed from such intendment in the rules of regularization notified on 20.12.2001 the action of appellant authorities in not considering petitioner's claim for regularization within a reasonable period despite an order of the competent court cannot be approved.

48. We are, therefore, of the view that the claim of respondent/petitioner to be regularized w.e.f. 20.12.2001 in light of the order of the writ court dated 21.2.1997 or in any event prior to regular appointment made in permanent or temporary vacancy in accordance with relevant service rules is liable to be considered by the Chief Engineer concerned in light of our above observations within a period of two months from the date of presentation of a copy of this order. The order of regularization dated 31.12.2018 shall stand amended in terms of the order to be passed by the Chief Engineer. The authorities shall be at liberty to determine the date on which regular appointment on the post in the cadre was made after 20.12.2001, since the benefit of regularization in any event will have to be extended from a date prior to such regular appointment. The appellants, therefore, are commanded to extend all service and retiral benefits, which are found due and payable to the respondent/petitioner within a further period of six weeks, thereafter. The instant special appeal, is therefore, disposed off in the above terms. Parties to bear their own costs."

16. In **State of U.P. and others vs. Lallan Ram**[12], the Division Bench had considered the judgement passed in **Prem Singh** (supra) as well as the judgement passed in **Raj Bahadur Pastor** (supra) and

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partly allowed the Special Appeal on 14.02.2023 with following observations:-

> "Considering the facts and circumstances of the case, we are of the considered opinion that while pressing the writ petition, the counsel, who represents the petitioner-respondent and learned Standing Counsel for the State respondents, have failed to place on record the Act known as "Uttar Pradesh Qualifying Service For Pension and Validation Act, 2021" (U.P. Act No. 1 of 2021) and aforementioned judgements passed by the Division Bench and therefore, learned Single Judge has not erred in law and proceeded to decide the claim.
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> In view of the aforesaid factual aspect of the matter and with the consent of parties, we set aside the order dated 02.09.2022 passed by the learned Single Judge and relegate the matter back to learned Single Judge to decide the matter after exchange of affidavits between the parties. It is being assured to us that the State would file objection/counter affidavit in the said proceeding within a period of three weeks."

17. The principle and ratio for awarding pensionary benefits has been explained and clarified in the case of **Uday Pratap Thakur** (supra) in which vide paragraph 6 it has been categorically held that ratio of the judgment is to be considered for giving benefit of old pension scheme by taking into account such period of ad hoc/work charge service, which will make good the shortfall towards qualifying period for making pension admissible. If the argument as is advanced by the opposite party-petitioner that earlier period rendered in work charge establishment is to be reckoned with the purpose of qualifying service and in case it is accepted in its entirety, the effect would be that regular appointment stands offered to such person/employee from the date of his initial inception in the department as temporary/ad hoc/ work charge appointment in service. This is neither the object of the rules, nor spirit of the judgment in Prem Singh's case.

18. In view of above and the latest legal proposition laid down by the Apex Court in the case of **Uday Pratap Thakur** (supra) with regard to admissibility of pension and counting of period towards service, we are of the considered opinion that the petitioner's services rendered as a daily wager employee cannot be counted for the purpose of pension/quantum of pension. However, at the same time, after rendering of service as work charge employee for number of years and thereafter, when his service has been regularized, he cannot be denied the pension on the ground that he has not completed the qualifying service for pension. Admittedly, the services of the

petitioner as work charge employee has already been computed for extending the benefits of pension and the pension has also been extended to him.

19. In view of the law laid down by the Apex Court, as discussed above, the order impugned dated 16.5.2023 passed by the learned Single Judge cannot sustain and is accordingly set aside. The Special Appeal is allowed.

Order Date :- 5.4.2024
RKP