

Court No. - 40

Case :- SPECIAL APPEAL No. - 445 of 2023

Appellant :- Ved Prakash Mittal and 20 others

Respondent :- State of U.P. and 6 Others

Counsel for Appellant :- Satyendra Singh, Sr. Advocate

Counsel for Respondent :- C.S.C., Shrish Kumar

Jaiswal, Sriprakash Singh

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Sri Sameer Sharma, learned Senior Advocate assisted by Sri Satyendra Singh for the petitioners-appellants.

2. Ved Prakash Mittal and 20 others are before this Court assailing the validity of the judgement and order dated 27.03.2023 passed in Writ A No.11593 of 2021 (Ved Prakash Mittal & 24 others vs. State of UP & 2 others) alongwith six other writ petitions, by which learned Single Judge has proceeded to partly allow the writ petition with following observations:-

"79. Having considered the record produced before the Court relating to the decision making and also relevant and binding precedents as above; this Court is of the considered opinion that the formula and procedure for computation of pension as given in the Government Orders dated 18.07.2017 modifying the earlier decision for Government employees who retired before 01.01.2006 shall be applicable to the petitioners as well as the Concordance Tables issued from time to time for determination of their pension/ family pension including the ones appended to the Government Order dated 04.09.2017. The Government Order dated 01.05.2018 also shall apply to the petitioners in view of the judgment of this Court in Shakuntala Singh.

With regard to retrospective operation of revised pension with effect from 01.01.2016 and arrears to be paid, this Court has found nothing on record to show that question of payment of arrears with effect from 01.01.2016 to 24.02.2021 was deliberated upon seriously. It is evident from the fact that information in prepared formats continued to be collected by the Administrative Department even after issuance of the impugned office memo. It is therefore directed that the Respondent No.1 shall collect all necessary information and also determine the availability of finances and issue appropriate orders within a period of three months from the date a copy of this order is produced before it, taking into account also the observations made by this Court hereinabove.

Consequently, the writ petitions stand party allowed with respect to the relief claimed regarding method of computation of pension/ family pension. With regard to denial of arrears, the matter is remitted to the Respondent no.1 to take an appropriate decision as aforesaid.

The relief claimed in Writ-A No.11020 of 2021: Ratan Kumar Nigam Vs. State of U.P. & Another, cannot be granted at this stage as the State Government has not yet decided the issue of applicability of entire recommendations of the Seventh Pay Commission to employees of Development Authorities."

3. Brief background of the case is that the Development Authorities in the State of U.P. are created under the provisions of "Uttar Pradesh Urban Planning and Development Act, 1973" (in short, the Act, 1973), which came into force w.e.f. 12.06.1973. After creation of the development authorities, the State Government had issued Government orders dated 17.03.1983 and 29.09.1983 providing that until Model Retirement Benefit Rules are framed by the State Government under Section 56 (2) (c) of the Act, 1973, the employees of development authorities would be entitled for pension/family pension in accordance with "U.P. Palika Centralized Services Retirement Benefit Rules, 1981" (in short, Rules, 1981), which provides pension and family pension at par with the servants of State Government. Subsequently, the State Government vide notification dated 25.06.1985 notified "The Uttar Pradesh Development Authorities Centralized Services Rules, 1985" (hereinafter referred to as Rules, 1985). Again the State Government issued Government order dated 05.04.1999, which provides that since decision has not yet been taken for payment of pension to the employees of development authorities, therefore, they are not entitled for payment of pension/family pension. In pursuance thereof, the pension/family pension of the retired employees of the development authorities was stopped. Meanwhile, some of the petitioners, who were holding various posts, retired before 01.01.2016 from different development authorities and they were denied the benefit of regular monthly pension/family pension.

4. It also appears from the record that the Government order dated 05.04.1999 was challenged before Lucknow Bench of this Court in Service Bench Nos.876 of 2004 and 556 of 2009 (**Praveen Kumar Agarwal vs. State of UP and others**), which were allowed on 20.11.2010 and the Government orders dated 05.04.1999 and 09.11.2004 were quashed. In compliance of the aforesaid judgement dated 20.11.2010, the State Government notified "Uttar Pradesh Development Authorities Centralized Services Retirement Benefits Rules, 2011" (hereinafter referred to as Rules, 2011) on 11.11.2011 providing pension/family pension to all employees of Centralized Services of the development authorities in U.P., who were appointed prior to 01.04.2005. Thereafter, the State Government had issued Government order

dated 22.12.2011, which provides that all the members of Centralised Services, who retired prior to commencement of the Rules, 2011 i.e. 11.11.2011, are also covered by the Rules, 2011. Thereafter, the pension payment orders of the appellants were prepared and sanctioned by the concerned development authorities and sent to the Finance Controller, Lucknow Development authority for payment of the arrears and regular monthly pension/family pension to the appellants. The pension of the appellants, who retired prior to 01.01.2006, was revised w.e.f. 01.01.2006 on the basis of Government order dated 08.12.2008.

5. Thereafter, the State Government issued another Government order dated 08.12.2008 for the employees, who retired after 01.01.2006 providing modified formula/method for calculation of pension and 20 years' qualifying service for entitlement of full pension. The State Government did not issue any separate Government order for revision of pension of the retired employees of the development authorities in 6th Pay Commission and the modified formula for full pension after completion of 20 years of qualifying services as provided in Government order dated 08.12.2008 were not made applicable to the employees of the development authorities, who retired after 01.01.2006, after commencement of 6th Pay Commission. Thereafter, the State Government accepted/approved the recommendation of the 7th Central Pay Commission for revised pay, dearness allowance/relief as well as pension/family pension and other post retiral benefits of the retired employees of Urban Local bodies, Zila Panchayat, Jal Sansthan and development authorities in accordance with 7th Pay Commission and consequently, a resolution was issued on 16.12.2016. Similarly, the Pay Committee, 2016 presented separate recommendations with regard to autonomous bodies and after acceptance/approval of the recommendations, the State Government issued separate resolution on 16.12.2016 with regard to the employees of the autonomous bodies. In furtherance of the said resolutions of the State Government, the Government order dated 23.12.2016 was issued providing therein that the pension and family pension of the employees, who retired/died prior to 01.01.2016 and getting the pension/family pension as per recommendation of the Pay Committee, 2008, will be revised by multiplying 2.57 into existing basic pension/family pension, which they were getting prior to 2016. Thereafter, the State Government issued another Government order on 18.07.2017 providing that the calculation of revision of pension/family pension will also be done by notional pay fixation. The State Government issued another Government order dated 4th September, 2017 providing

concordance tables on the basis of which the pension and family pension will be determined by the department. The State Government had issued the Office Memorandum dated 24.02.2021, which was impugned in the said writ petition and further the State Government vide Government order dated 04.01.2017 had implemented the recommendations of Pay Committee, 2016.

6. In this backdrop, Sri Sameer Sharma, learned Senior Advocate appearing for the petitioners-appellants submits that the petitioners-appellants had preferred the aforesaid writ petition with prayer to revise their pension in accordance with the Government Orders dated 23.12.2016, 18.07.2017 and 04.09.2017 and to grant 20% additional pension to them. In the connected writ petitions of 2021 the petitioners had also challenged the Office Memorandum dated 24.02.2021 and the same was partly allowed on 27.03.2023 with respect to the relief claimed regarding method of computation of pension/ family pension and with regard to denial of arrears, the matter has been remitted back to the respondent no.1 to take an appropriate decision in the matter. He submits that the retired employees of Centralized Services of the development authorities are entitled to pension at par with the employees of the State Government. Rules 4, 5 and 7 of Rules, 2011 provide for grant of the same post retiral benefits in accordance with the same formula and procedure, as applicable to the employees of the State Government. It is crystal clear from the judgements of this Court dated 20.11.2010 and 23.10.2019 that the Government orders dated 23.12.2016 & 18.07.2017 read with Government order dated 04.09.2017 are applicable to the petitioners without any modification and the respondents are bound to revise the pension/family pension of the petitioners strictly in accordance with the aforesaid Government orders. The retired employees of the development authorities are entitled to identical amounts of pensionary benefits with effect from the same date, which is available to retired employees of the State Government.

7. It is submitted that the effect of the Office Memorandum dated 24.02.2021 was to override the statutory provisions of the Rules, 2011 and to violate the judgements of this Court in **Praveen Kumar Agarwal & others vs. State of UP & others** reported in (2011) ILR 1 All 21 and **Shakuntala Singh vs. State of UP and others**) reported in 2019 (11) ADJ 495, which is impermissible under the law. In Shakuntala Singh's case the Division Bench of this Court, relying upon the judgement dated 16.03.2018 in Service Bench No.12645 of 2016 (**Chandra Pal Singh & others**

vs. State of UP & others) has held that the pension and family pension of the employees of the development authorities will be computed as per Government orders issued in that regard. The Office Memorandum dated 24.2.2021 has created three separate classes of the retirees of Centralized Services (pre-2016 retirees, post-2016 retirees & post 24.02.2021 retirees) within a homogeneous class of employees governed by same pension scheme vis-a-vis revised pension/family pension and gratuity solely on the ground of financial constraint, which is not sustainable in the eye of law. Even though learned Single Judge has not disagreed with the aforesaid judgements rendered by coordinate benches of this court in the case of Shakuntala Singh, Chandra Pal Singh and Praveen Kumar Agrawal, and in the operative portion of the judgement the Court had proceeded to adjudicate upon the decision making process, which formed the basis of issuance of the Office Memorandum dated 24.02.2021. Once learned Single Judge did not disagree with the judgements of the coordinate Benches of this Court rendered on the effect of Rules 4, 5 and 7 of Rules, 2011 then the Office Memorandum impugned in the writ petition was absolutely illegal and without jurisdiction. In case the said Office Memorandum was without jurisdiction, the learned Single Judge has erred in law in remitting the matter to the respondent no.1 to take a fresh decision regarding applicability of the Government orders upon the retirees of the development authorities. Learned Single Judge has proceeded to adjudicate upon the decision making process vis-a-vis the Office Memorandum dated 24.02.2021, which was never under challenge by way of any pleadings. It is a settled law that the Court cannot go beyond the pleadings to carve out a new case.

8. The matter requires consideration.

9. Shrish Kumar Jaiswal, Advocate and Sri Sriprakash Singh, Advocate have entered appearance on behalf of respondent nos.1 to 3. They may file response in the matter within two weeks. The petitioners-appellants will have one week thereafter to file rejoinder affidavit.

10. Put up this matter as fresh on 23.08.2023.

11. Meanwhile, the State Government may process in the matter in accordance with the observations made by learned Single Judge but no final order shall be passed without leave of the Court.

Order Date :- 20.7.2023

RKP