

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION (C) NO. 500 OF 2000@@
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PRABHU NARAIN & ORS. ...PETITIONERS

VERSUS

STATE OF U.P. & ORS. ...RESPONDENTS
(With appln.(s) for directions)

Date : 12/03/2003 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s) Mr. Anis Suhrawardy, Adv.

For Respondent (s) Mr. Ashok K. Srivastava, Adv.

UPON hearing counsel the Court made the following
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Heard learned counsel for the petitioners for 15 minutes. Learned counsel for the respondents made his submissions in reply for 5 minutes.

The writ petition is dismissed with no order as to costs. I.A. for directions is disposed of accordingly.

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Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 500 OF 2000@@
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In this Writ Petition filed under Article 32 of the Constitution of India the petitioners have sought for issuance of an appropriate writ, direction and order in the nature of Mandamus inter-alia commanding the respondents to grant the petitioners all the pensionary/retiral benefits consequent upon attaining the age of superannuation and for any other appropriate direction as considered suitable in the given circumstances of the case. The petitioners claim that they had been the work-charged employees of the respondents; they had put in a very long service and attained the age of superannuation. In the light of earlier judgment of this Court in the case of Raj Narain Prasad &@@
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Ors. vs. State of U.P. & Ors. [(1998) 8 SCC 473] the@@
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petitioners claim they were entitled to be regularised in service as they have satisfied all the requirements to come
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within the scheme approved by this Court. They contend that because the respondents failed to implement the judgment and order afore-mentioned in the letter and spirit, their services were not regularised. Had the respondents followed the directions given in the said judgment, they could have been regularised and consequently, they would have been entitled for grant of pension by taking their length of service into consideration. The respondents have filed a detailed counter affidavit resisting the claim made by the petitioners in the Writ Petition. In the counter affidavit it is pointed out that about 7744 employees were work-charged employees abd 5516 muster roll employees; pursuant to the direction given by this Court and in terms of the schemes, the services of more than 5000 work-charged employees have been regularised since the year 1997 to 2000. In paragraph (D) of the counter affidavit in regard to the pensionary benefits, it is stated thus :

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"(D) As regards to the pensionary benefits the work charged Employees are not entitled for the same because their services are different from the services of the regular employees. The services of work charged Employees are governed by provisions of para 669 of Financial Hand Book read with Article 361 and 370 of Civil Services regulations and as such the work charged employees are not entitled to the pensionary benefits. The

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Petitioners are not entitled for any pensionary benefits. From a perusal of the above mentioned provisions it is evident that the petitioners are not entitled for any pensionary benefits and in these circumstances, no relief can be granted to the petitioners as regards pensionary benefits. it may be pointed out that the provisions of Financial Handbook and Civil Services regulations have not been challenged by the petitioners in these writ petitions.

A true and correct copy of relevant paras of U.P. Financial Handbook is annexed and marked as ANNEXURE : R-2.@@

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The gravity amount is being paid on completing superannuation age by work charged employees."

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In the said paragraph it is also stated that work-charged employees are entitled for gratuity and the same is being paid to them on their attaining the age of superannuation. It is again pointed out in paragraph 11 of the counter affidavit that the services of work-charged employees are some what different from the services of the regular employees. The services of the work-charged employees are governed by Financial Handbook Vol.VI paras 458 to 463 and 667 to 669, read with Article 361 and 370 of Civil Services Regulations. In their reply, the stand of the respondents is that the petitioners are not entitled for any pensionary benefits.

Learned counsel for the petitioners strongly contended that having regard to the judgment of this Court ..4/-

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in Raj Narain's case afore-mentioned, the petitioners were@@
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certainly entitled for regularisation of their services having regard to the length of their services and taking note that they had satisfied the requirement of the scheme; merely because the respondent slept over or delayed regularisation of their services, they cannot be denied the pensionary benefits. He further urged that the principles of 'last come must first go' should have been considered by the respondents. In the case of the petitioners the respondents have discriminated in not regularising their services.

In opposition, the learned counsel for the respondents pointed out to the averments made in the Writ Petition that it is not shown as to what fundamental right or Rules were breached by the respondents in relation to the petitioners; it is also not shown under what Rules the petitioners are entitled for pension. The learned counsel added that the respondents, pursuant to the directions given and observations made in Raj Narain's case (supra), taken@@

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steps and services of more than 5000 work-charged employees have been regularised in that regard; it is not shown by any specific instance if the services of juniors to the

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petitioners have been regularised ignoring their claims. Under the circumstances, without showing any foundation for the claim for pension no relief can be granted to the petitioners.

We have considered the submissions made by the learned counsel for the parties. It is clear from the averments made in the Writ Petition that the petitioners have not shown as to what is the basis for their claim of pension. There are two things: one is the claim for the regularisation of their services and the other is claim for grant of pension. The earlier judgment of this Court in the case of Raj Narain afore-mentioned relates only to@@
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regularisation of services. If the petitioners had any grievance regarding regularisation of their services and if their services were not regularised early or ignoring their claim services of any juniors were considered, it was open to them to seek appropriate relief based on the judgment of this Court claiming regularisation of their services from a particular date. That is not the claim made in the Writ Petition. No details or particulars are given as to who are those juniors whose services were regularised in preference to the services of the petitioners. No doubt pension is not

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a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled to pension under a particular Rule or the Scheme, as the case may be. In spite of the fact that in the counter affidavit it is stated that no Rule is quoted by the petitioners to say that under a particular Rule they are entitled for grant of pension. In the rejoinder filed the petitioners have also not stated as to under what Rules they are entitled to pension. Some of the petitioners, as we are told, have already attained the age of superannuation. We do not have material before us to say that under what scheme the respondents could consider the petitioners for regularisation of their services and if so, from what date. It is stated that more than 5000 work-charged employees have already been regularised. If the petitioners had any grievance of non-regularisation of their services, as already observed, it was/is open for them to claim the appropriate relief, but, one thing is clear that unless the petitioners' services are regularised in the first place, we find it difficult as to how they can claim pension.

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Under these circumstances, from any angle we do not find any merit in this writ petition, as a result the writ petition is dismissed with no order as to costs.

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.....J.
(Shivaraj V. Patil)

New Delhi,
March 12, 2003.

.....J.
(Arijit Pasayat)