

Ram Narain Pathak Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-31-2005

Reported in : 2005(3)ESC1734

Judge : Vineet Saran, J.

Appeal No. : C.M.W.P. No. 14874 of 2005

Appellant : Ram Narain Pathak

Respondent : State of U.P. and ors.

Advocate for Def. : A.K. Saxena, Adv.

Advocate for Pet/Ap. : B.P. Yadav, Adv.

Disposition : Petition allowed

Judgement :

Vineet Saran, J.

1. Heard Sri B.P. Yadav, learned Counsel appearing for the petitioner as well as learned Standing Counsel appearing for respondent No. 1 and Sri A.K. Saxena, learned Counsel appearing for respondent Nos. 2, 3 and 4. Counter and rejoinder affidavits have been exchanged. With consent of learned Counsel for the parties this writ petition is being disposed of at the admission stage itself.

2. The petitioner is a Class IV employee working with the respondent. Jal Nigam. The admitted facts are that the petitioner was initially appointed on Class IV post on 1.1.1985. However, he was confirmed in service on the said post with effect from 1.4.1990. At the time of his appointment on 1.1.1985, the age of retirement of Class IV employees in the U.P. Jal Nigam was 60 years. By Government Order dated 5.11.1985 it was provided that even on those Class IV posts on which the age of retirement was 60 years, for the new appointments which were to be made, the age of retirement would be 58 years, meaning thereby that those employees who had already been appointed prior to 5.11.1985 would not be covered by the said Government Order and their age of retirement would continue to be 60 years, instead of 58 years. The petitioner thus contends that since he was appointed on 1.1.1985, his age of retirement would be 60 years and not 58 years, which has illegally been interpreted by the Jal Nigam.

3. Sri A.K. Saxena, learned Counsel for the contesting respondents, has placed reliance on an office order dated 18.8.2001 issued by the Chief Engineer, U.P. Jal Nigam, Lucknow (filed as Annexure C.A. 2), wherein it has been stated that those employees who had been regularised in service on or before 5.11.1985 would get the benefit of Government Order dated 5.11.1985 and those employees who have been regularised in service after 5.11.1985 would retire at the age of 58 years. From the Government Order dated 5.11.1985, Sri A.K. Saxena, learned Counsel for the contesting respondents could not point out that the regularisation in service on 5.11.1985 was necessary for availing the benefit of retirement, age of 60 years. The provisions of the Government Order are absolutely clear that those employees who were appointed/recruited prior to 5.11.1985 would continue to get the benefit of retirement age of 60 years and it was only those employees who are appointed after 5.11.1985 that their age of retirement would be 58 years. The respondent-Jal Nigam cannot be permitted to interpret the Government Order in its own manner so as to provide that the benefit of age of retirement of 60 years would be only for those who had been regularised in service prior to 5.11.1985. The respondents do not dispute the fact that the petitioner was appointed as a Pump Operator (Class IV post) on 1.1.1985. His regularisation on the said post on a date subsequent to 5.11.1985 would not be relevant as long as the date of his appointment prior to 5.11.1985 is not disputed. Thus in terms of the Government

Order dated 5.11.1985, the petitioner would be entitled to continue in service up to the age of 60 years. The impugned notice dated 3.7.2004 intimating the petitioner that he would retire on 31.3.2005 on attaining the age of 58 years is thus liable to be set aside and is hereby quashed. The petitioner shall be allowed to continue in service till he attains the age of 60 years.

4. This writ petition stands allowed. No order as to costs.

A certified copy of this order may be supplied to the learned Counsel for the parties within two days on payment of usual charges.

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