

AFR

Neutral Citation No. - 2025:AHC:115505

Reserved on 14.07.2025

Delivered on 17.07.2025

Court No. - 5

Case :- WRIT - A No. - 18067 of 2024

Petitioner :- Rambachan Yadav

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Ashok K Pandey, Shrish Kumar Jaiswal

Counsel for Respondent :- C.S.C., Santosh Kumar Singh

Hon'ble Saurabh Shyam Shamshery, J.

1. Petitioner was appointed on the post of Chowkidar as a Daily Wager with Gorakhpur Development Authority on 06.08.1988. He was retrenched by an order dated 10.03.1993, therefore, he filed Writ-A No. 25931 of 1993, which was disposed of vide order dated 19.05.1993 with liberty to represent before concerned authority against order of retrenchment with further direction that said representation be decided by a reasoned and speaking order.

2. It is the case of petitioner that thereafter he has filed an application against order of retrenchment, however, no decision was taken, therefore, he has filed a contempt petition which was disposed of to consider the case of petitioner. Still thereafter representation of petitioner was not considered, therefore, he has filed a fresh writ petition being Writ-A No. 26246 of 1994. Said writ petition was allowed vide order dated 17.05.1999 and impugned order dated 10.03.1993 as well as orders dated 10.11.1993 and 31.03.1994 were quashed and a direction was passed that petitioner be reinstated with all consequential benefits of service with payment of arrears of salary w.e.f. 10.03.1993. A further direction was passed to consider the services of petitioner for regularization.

3. Gorakhpur Development Authority again failed to follow the direction referred above, therefore, petitioner filed a contempt petition and finally the

order dated 17.05.1999 was complied on 22.09.2003 and petitioner joined after a decade of his order of retrenchment.

4. It is further case of petitioner that later on he has moved an application on 24.12.2010 to allow him to join as regular employee and he placed reliance on an Office Memorandum dated 24.12.2010. Said Office Memorandum is not annexed alongwith the writ petition.

5. Petitioner thereafter transferred from Gorakhpur Development Authority to Azamgarh Development Authority on 22.10.2014 and he joined at his transferred place and attained age of superannuation on 30.04.2024. During period of service, an Authority of Azamgarh Development Authority issued a communication dated 09.03.2015 to Branch Manager of State Bank of India, Azamgarh to allow petitioner and other employees to open their respective pension fund account.

6. In aforesaid circumstances, petitioner has approached this Court by way of filing present writ petition seeking following reliefs:

“1. Issue a writ, order or direction in the nature of mandamus directing to the respondent no. 2 & 3 to pay the retiral benefit of the petitioner including the pension and other consequential benefits in accordance to the Rule Uttar Pradesh Development Authorities Non-Centralized Services Retirement Benefits Rules, 2011.

2. Issue a writ, order or direction in the nature of mandamus commanding to the respondents-authority to count his services as daily wagers prior to his regularization and fix pension with consequential benefits accordingly the Rule Uttar Pradesh Development Authorities Non-Centralized Services Retirement Benefits Rules, 2011.

3. Issue a writ, order or direction in the nature of mandamus directing to the respondent no. 2 to decide the representation dated 22.07.2024 moved by the petitioner. (ANNEXURE NO. 7 to this Writ Petition).

4. Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstance of the case.

5. Award the cost of the petition in favour of the petitioners.”

7. This Court has passed following order on 19.11.2024:

“(Order on the memo of Writ Petition)

Learned Counsel for the petitioner has placed reliance upon a decision of mine in Ram Sewak Yadav v. State of U.P. and others, 2024:AHC:17407. On the other hand, learned Counsel appearing for the Azamgarh Development Authority has placed reliance upon an interim order passed by the Division Bench in Special Appeal No. 415 of 2024, Meerut Development Authority, Meerut v. Azad Singh and another, where, taking note of another order of mine, where I had made a reference to a larger Bench, to wit, Kanhai Ram and others v. State of U.P. and others, 2024:AHC:52835, the direction of the learned Single Judge to reckon ad hoc services rendered prior of regularization was stayed.

Prima facie, it appears that Kanhai Ram (supra) is a case relating to government servants, where the Uttar Pradesh Qualifying Service for Pension and Validation Act, 2021 ('Act of 2021' for short) squarely applies. Unless the vires of the said act is challenged, the provisions of the Act of 2021 can neither be struck down nor read down.

By contrast, prima facie, in case of local bodies like a Development Authority or a Nagar Nigam, the Act of 2021 does not apply. The following remarks of mine in Ram Sewak Yadav (supra) are very relevant :

15. Now, the definition of 'qualifying service' in Regulation 2(m) of the Regulations of 1984 is almost cast in the same terms as that in Rule 3(8) of the Rules of 1961, that were read down by the Supreme Court in Prem Singh to hold that services rendered in the work-charged establishment would be treated as 'qualifying service' under the last mentioned Rules for the purpose of grant of pension. The principle in Prem Singh, to reckon continuous service in the work-charged establishment as 'qualifying service' under Rule 3(8) of the Rules of 1961, has been extended in its application to continuous service of any kind, such as those rendered on daily-wages or ad hoc basis, followed by regularization, on the same post and in the same capacity. These principles have been adopted, particularly, in case of long retention in service on daily-wages or ad hoc basis or work-charged establishment, followed by regularization. Without reference to much authority on this point, it would suffice to refer to a decision of this Court in Kallu Ali v. State of U.P. and others, 2022 (4) AWC 3840, a case relating to an employee of a Development Authority, who had worked for a long time on daily-wages and then regularized in service. The issue had arisen in Kallu Ali (supra) in the context of his qualifying service for the purpose of entitlement to pension. After a copious review of authority on the point in Kallu Ali, it was held:

"28. The authorities referred to herein above and those of this Court clearly hold that if an employee has discharged duties whether temporarily or as a daily wager or on ad hoc basis on a post for

which requirement was there and services of such an employee have come to be regularized on the said post or in the same capacity, the period spent before regularization should be considered and added to pensionable services. The courts have not approved the act and conduct of the employer to deny pension to its employee if he has rendered a number of substantial year of continuous service in an establishment leading to his / her regularization if such an establishment holds a pensionable service. The State Government has been taken to be a model employer and a State being a welfare State, the courts have shown serious concern in the event an employee who has spent all his life in the service of such establishment, stands denied pension on his attaining the age of superannuation and being retired as such."

Therefore, prima facie, the issues that have arisen in Kanhai Ram would not, at all, be attracted to the case of a Development Authority.

Issue notice.

Notice on behalf of respondent No. 1 is accepted by Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel, whereas that on behalf of respondents Nos. 2 and 3, by Mr. Utkarsh Prakash Singh, Advocate holding brief of Mr. Santosh Kumar Singh, learned Counsel. Both the learned Counsel are granted two weeks' time to file a counter affidavit.

Adjourned to 03.12.2024.

To be taken up in the additional cause list for admission, along with a report regarding status of pleadings.

(Order on Civil Misc. Stay Application No. 1 of 2024)

Issue notice."

8. Sri Ashok Kumar Pandey, learned counsel for petitioner has reiterated the arguments noted in above referred order that petitioner's due retiral benefits be paid taking note of service prior to his regularization also and accordingly fix the pension in terms of U.P. Development Authorities Non-Centralized Services Retirement Benefits Rules, 2011 (*hereinafter referred to as "Rules, 2011"*). Learned counsel for petitioner has placed reliance on the judgments passed by Supreme Court in **Prem Singh vs. State of U.P. and others, 2019(10) SCC 516** and **Anand Prakash Mani Tripathi vs. State of U.P. and others (Civil Appeal No. 6118 of 2024)**, decided on 07.05.2024 as well as this Court's judgments in **Gorakhpur Development Authority and**

another vs. State of U.P. and others (Special Appeal No. 237 of 2023), decided on 18.07.2023 and Jai Prakash Tripathi vs. State of U.P. and others, 2023:AHC:57303.

9. Per contra, Sri A.B. Paul, Advocate and Sri J.N. Maurya, learned Chief Standing Counsel, appearing for respondents have referred following paragraph of counter affidavit:

“4. That before proceeding to give para-wise reply to the various averments made in the writ petition, at the very outset, the answering-respondents crave to bring on record following relevant facts for proper adjudication of the controversy involved in the aforesaid writ petition:-

(1) In exercise of the powers under sub-section (7) of section 4 of the Uttar Pradesh Town Planning and Development Act, 1973 (President's Act No. 11 of 1973), as re-enacted and amended by the Uttar Pradesh 725 President's Act (Re-enactment with Modifications) Act, 1974 (Uttar Pradesh Act No. 30 of 1974) the Governor is hereby constituted an authority for the Azamgarh Development Area declared as such under Government Notification No. 1744/8-6-08-259 DA/90, dated the 20th June, 2008, from the date of publication of this notification in the Gazette, to be called the Azamgarh Development Authority, Azamgarh.

(ii) Any law pertaining to appointment or payment of salary or pension or retirement benefit etc., of the employees prevailing before or after constitution of the development authority doesn't automatically applies on it until and unless, the same is circulated by department of House & urban planning, Government of UP, to the development authorities and Development Authorities unless adopts its.

(iii) ADA is authorized to appoint such number of officers and employees as may be necessary for the efficient performance of its function. (Section 5 (2) of the Uttar Pradesh Urban Planning and Development Act, 1973).

(iv) In the Compliance of the Government order dated 21.10.2010 and letter dated 21.12.2010 issued by Uttar Pradesh Housing and Urban Planning Department for regularization of the petitioner and pursuant to that office Memorandum dated 24.12.2010 was issued by the Gorakhpur Development Authority and the finally petitioner offered his joining on 24.12.2010 before Vice Chairman GDA.

(v) After Appointment of the petitioner, a regulation named as Uttar Pradesh Development Authority Non-Centralized Retirement benefit

Rules, 2011 (now herein referred as Retirement Rules 2011) was promulgated by the Governor of Uttar Pradesh on 11.09.2011 for grant of retirement benefits to the Non-Centralized employees of the Development Authorities. The essential requirement which the present Retirement Rules 2011 requires for getting benefit retirement benefits are as following:

XXXX

Therefore as per the provision Retirement Rules 2011, the petitioner is not entitled to avail retirement benefits as:

1. He was appointed on the post of 'Chaukidar' in Non-Centralized Cadre on 24.12.2010 in the GDA after the Government order dated 21.10.2010. Therefore, as per the rule 1(3) proviso Retirement Rules 2011, he is barred to avail the benefit.

2. His total service which can be commuted after his appointment (24.12.2010) till superannuation (30.04.2024) is of total 13 year 04 months 06 days. Therefore, as per the proviso to Rule 2(Jha)(6) of Retirement Rules 2011, he did not qualify the criteria of 20 years of regular service in the ADA.”

10. Learned counsel for respondents have placed reliance on a judgment passed by Supreme Court in **Uday Pratap Thakur and another vs. The State of Bihar and others, 2023 INSC 461**.

11. I have heard learned counsel for parties and perused the material available on record.

12. The above referred facts are not under much dispute, except that order of regularization dated 24.10.2010, as claimed by petitioner, since it is not on record, though it has not been specifically denied by respondents that petitioner was treated as regular employee with effect from said date.

13. It is the case of both parties that petitioner’s pension will be determined in terms of Rules, 2011 and it would be applicable to the employees appointed on or order 1st April, 2005. For the purpose of present case, it would be appropriate to reproduced the definition of the terms “pensionable post” and “qualifying service”, as provided in Rules, 2011, hereinafter:

“(h) "Pensionable post" means a post which fulfills the following three conditions, namely-

(i) the post is in any cadre of the Uttar Pradesh Development Authorities Non-Centralized Services

(ii) the employment is substantive and permanent, and

(iii) the service is paid by any Authority,

(i) "Qualifying service" means the service of a member of service which conforms to the following conditions :-

(i) The service must be under an Authority,

(ii) The employment must be substantive /regular/ permanent.

(iii) The service must be paid by an Authority excluding the following periods of:

(i) temporary or officiating service in a non-pensionable establishment under any Authority.

(ii) service in a work charged establishment, and

(iii) service in a post paid from contingencies:

Provided that the service of a member of service does not qualify for pension and gratuity, except compensation gratuity, until he has completed twenty years of age.

Provided further that period of continued temporary or officiating service under any Improvement Trust, Authority, Palika Board, Nigam, Central or State Government shall count as qualifying service if it is followed by confirmation on the same post or any other post without any interruption of service.

Note: If service rendered in a non-pensionable establishment, work charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service but shall not count towards qualifying service.” (Emphasis supplied)

14. The aforesaid definition of “qualifying service” has provisos and its first proviso says that the service of a member of service does not qualify for pension and gratuity, except compensation gratuity, until he has completed twenty years of age. Therefore, service of 20 years would fall within the meaning of “qualifying service” and facts of present case are tested accordingly.

15. In the present case petitioner was appointed on 06.08.1988 as a Daily Wager and he was retrenched vide order dated 10.03.1993. Much later, i.e.,

after a decade a writ petition filed by petitioner was allowed and retrenchment order was quashed with direction that he may be allowed to join w.e.f. 10.03.1993 and accordingly he was allowed to join. It is further case of petitioner that he was regularized on 24.12.2010 and got retired on 30.04.2024. Therefore, as per the case of petitioner, after regularization he has rendered service only for 13 years, 4 months and 6 days, i.e., much less than 20 years.

16. The interpretation of application of aforesaid Rules, 2011 were not considered by Coordinate Bench of this Court in **Ram Sewak Yadav vs. State of U.P. and others, 2024:AHC:17407** though it was considered by another Coordinate Bench in **Jai Prakash Tripathi (supra)** and relief was granted. However, as referred above, an off shoot of aforesaid order, i.e., a Reference to a Division Bench in **Kanhai Ram and others vs. State of U.P. and others, 2024:AHC:52835** is under consideration before a Division Bench of this Court and the question for reference is as follows:

"The moot question in this matter, therefore, is if in the absence of a challenge to the vires of a statute, can it be read down or virtually declared unconstitutional, without being formally struck down. Before embarking on the enterprise to find an answer to this question, it would be apposite to refer to a matter of determination and cognizance by Single Judges and Benches of this Court, where the issue of vires of a statute is involved."

17. The judgment passed by Supreme Court in **Prem Singh (supra)** is further clarified by Supreme Court in **Uday Pratap Thakur (supra)** and relevant paragraphs thereof are reproduced hereinafter:

"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. 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 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.”

18. In aforesaid circumstances, the relief sought by petitioner cannot be granted on following grounds:

(a) Admittedly petitioner has not completed qualifying service of 20 years, as required under Rules, 2011 after he got regularized, therefore, in strict interpretation of said Rules, no relief can be granted to petitioner.

(b) In **Prem Singh (supra)** the Supreme Court has considered the issue of qualifying service of Work-charged employees and it was further clarified in **Uday Pratap Thakur (supra)**, whereas admittedly petitioner was a Daily Wager. Otherwise also, interpretation of Rules, 2011 were not in issue in **Prem Singh (supra)** and an attempt made by

Coordinate Bench in **Jai Prakash Tripathi (supra)** has already taken note by a Division Bench considering a reference and question involve therein has already been reproduced in earlier paragraph of judgment. Therefore, when the issue is already before Larger Bench, any other interpretation would not be legally permissible.

19. In view of above, the prayer sought in this writ petition cannot be allowed. The writ petition is accordingly disposed of with an observation that on basis of outcome of reference pending in **Kanhai Ram (supra)** the petitioner will have a liberty to avail legally available remedy, if so advised.

Order Date :- 17.07.2025

AK