



2026:AHC-LKO:13871-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL DEFECTIVE No. - 155 of 2016

State Of U.P.Thru Prin.Secy.Minority Welfare Deptt.And Ors.

.....Appellant(s)

Versus

Mohd. Baseer Khan 6511s/S2014

.....Respondent(s)

Counsel for Appellant(s)	: C.S.C.
Counsel for Respondent(s)	: Arun Kumar Pandey, K.R.Pandey

Along with :

1. Special Appeal Defective No. 135 of 2016:

State of U.P.Throu Prin.Secy.Labour Training and Ors.

Versus

Shiv Shankar 357S/S2015

2. Writ - A No. 6511 of 2014:

Mohd. Baseer Khan

Versus

State of U.P. Thru its Prin.Secy.Minority Welfare Deptt.Andors

3. Writ - A No. 357 of 2015:

Shiv Shankar

Versus

State of U.P. Through Secy. Technical Edu. Deptt. Lko. and Ors

Court No. - 1

HON'BLE RAJAN ROY, J.

HON'BLE MANISH KUMAR, J.

**(Order on C.M.Application No.41408 of 2016; Application for
Condonation of Delay)**

1. Heard.

2. This is an application seeking condonation of delay in filing the special appeal which is supported with an affidavit.

3. Though there is a delay of one year four months and seven days in filing the special appeal but the Counsel for the respondent has no objection, if the delay is condoned and the appeal is heard finally on merit.

4. The cause shown and explanations offered in the affidavit filed in support of the application for condonation of delay are sufficient and satisfactory, especially as learned Counsel for the respondent has no objection.

5. The application for condonation of delay is **allowed**. The delay in filing the special appeal is condoned.

(Order on Memo of Appeal)

1. Heard Shri Badrish Tripathi, learned Additional Chief Standing Counsel for the State and Shri Arun Kumar Pandey, learned Counsel for the respondent.

2. This is an appeal against the judgment and order dated 14.11.2014 passed by the Writ Court in Writ Petition No.6511 (S/S) of 2014 (Mohd. Baseer Khan vs. State of U.P. and Others).

3. The respondent herein filed a writ petition bearing Writ Petition No.6511 (S/S) of 2014 seeking the following reliefs:-

"I. Issue a writ, order or direction in the nature of Mandamus commanding the opp. parties to allow the benefits of pay protection to the petitioner and also calculate his previous service rendered in ATL from 11.03.1981 to 20.11.1990 for pensionary benefit in the light of the judgment/order dated 04.04.2012 in writ petition No.410/SB/2010 'Hridayesh Dayal Srivastava vs. State of U.P. & Others' passed by this Hon'ble Court and the amount of gratuity due to the petitioner and to release the arrears of salary, gratuity, pensionary benefit along with the interest as per the market rate to be compounded periodically from the due date till the date of actual payment within a short reasonable period to be prescribed by this

Hon'ble Court.

II. Issue any other suitable writ, order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the case as also in the interest of justice.

III. Allow this writ petition with costs."

4. The said writ petition has been allowed on 14.11.2014 in the following terms:-

"Heard learned counsel for the parties.

This writ petition has been filed for writ in the nature of mandamus commanding the opposite parties to take into account the past service of the petitioner rendered in the Auto Tractors Ltd., Pratapgarh, for the purpose of qualifying him to post-retiral benefits.

Briefly stated facts are that petitioner was appointed as Junior Assistant on 11.03.1981 in Auto Tractors Ltd. at Pratapgarh, an Undertaking of State Government. Petitioner was given promotion on the post of Office Assistant in pay scale of Rs.490-760 and his basic pay was Rs.720/- as revised to Rs.1230-2080 w.e.f 01.01.1986. Since petitioner's industry was declared as sick and was closed on 20.11.1990, entire Staff was compelled to be retrenched.

State Government had taken a decision to absorb the retrenched employees. Petitioner was absorbed as Senior Clerk vide letter dated 16.07.1996, on the lower salary post. Petitioner joined on the said post, performed his duties and retired on 31st December 2005 after attaining the age of superannuation. However, no steps were taken to give retiral benefits to the petitioner.

Controversy is squarely covered by decision of a Division Bench of this Court given in the case of Hridayesh Dayal Srivastava Vs. State of U.P. And others [Writ Petition No. 410 of 2010 (SB)]. In

Para 21 of the judgment it is said that with regard to the pay scale and the actual pay to which petitioner was entitled could have been sanctioned as personal pay to protect the last salary drawn. Division Bench has relied upon the judgment of Hon'ble Apex Court given in the case of Chittaranjan Sharma and others Vs. State of Himachal Pradesh and another [1996(3) ESC 622 (SC)] wherein direction to maintain the pay scales and to make adjustment and absorption, was found to be correct. Division Bench took the view that past service of the petitioner are liable to be considered for time bound pay scales and other benefits. SLP against the order of Division Bench was dismissed.

In the case of Chandra Bhushan Pathak Vs. State of U.P. And others [Writ Petition No. 8568 of 2010(SS)], this Court was of the view that respondents are found to give all the consequential benefits admissible to the petitioner by taking into account the service rendered in M/s Auto Tractors Limited.

The learned standing counsel does not dispute the aforesaid legal position.

In view of the above, writ petition succeeds and is allowed. Respondents are directed to give all the consequential benefits taking into account the service rendered by petitioner in Auto Tractors Ltd., Pratapgarh for the purpose of retiral benefits. Interest @ 8% per annum shall also be paid for unpaid post-retiral dues including pension."

5. There are two appeals arising out of two different writ petitions but we have quoted the relief clause of only one of the writ petitions bearing Writ Petition No.6511 (S/S) of 2014 filed by the respondent-petitioner. The relief clause in the other petition is also similar.

6. Contention of the appellants' Counsel is that the question of granting benefit of past services to the erstwhile employees of Auto Tractors Limited while they were working in the said Company for calculation of pensionary benefits consequent to their absorption in a Government

Department or Corporation came up for consideration in another matter which was referred to a Larger Bench wherein the following questions came up for consideration:-

"(i) Whether the Division Bench judgments in the case of Shankatha Prasad Mishra (surpa); Hridayesh Dayal Srivastava (surpa); Mirtuyan Jay Prasad Singh (surpa); Keshav Ram Pandey (supra) and State of U.P. and others versus Amar Pal Singh, [Special Appeal (Defective) No.646 of 2016 decided on 25.10.2016] have correctly held that the benefit of past services rendered by retrenched employees of Auto Tractors Limited, who have been subsequently absorbed in government service, such as the petitioner, would count towards their qualifying service for purposes of calculation of retiral dues payable by the State Government?

(ii) Whether a retrenched employee of Auto Tractors Limited such as the petitioner, who got absorbed in State Government Service subsequently as per the relevant rules known as the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules 1991 are entitled to count their previous services rendered by them under the erstwhile employer i.e. the Auto Tractors Limited, for calculation of qualifying service for purposes of retirement benefits under the U.P. Retirement Benefit Rules 1961 and other ancillary rules and Government Orders in this regard as also Government Orders dated 11.11.1993 and 10.07.1998 as modified vide Government Order dated 28.12.2001?"

7. Correctness of the decisions relying upon which the learned Single Judge has allowed the writ petition of the respondent, was also in issue before the Larger Bench. The aforesaid questions were answered by the Larger Bench as under:-

"In view of the above discussion, we answer the questions rephrased/reframed by us as under:

(i) The Division Bench judgments in the cases of Shankatha Prasad Mishra (surpa); Hridayesh Dayal Srivastava (surpa); Mirtuyanjay Prasad Singh (surpa); Keshav Ram Pandey (supra) and State of U.P. and others versus Amar Pal Singh do not lay down the law correctly on the question of counting of past services rendered by retrenched employees of ATL who have been subsequently absorbed in Government service, for the purposes of qualifying service for calculation of retiral dues payable by the State Government. They are not good law.

(ii) Retrenched employees of ATL such as the petitioner who got absorbed in the Government service subsequently as per the Rules known as Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 are not entitled to count their previous services rendered by them under the erstwhile employer i.e., Auto Tractors Limited for computation of qualifying service for purposes of retirement benefits under the U.P. Retirement Benefits Rules 1961 and other ancillary rules and Government Orders in this regard as also the Government Order dated 11.1.1993 and in fact the Government Order dated 10.07.1998 as modified on 28.12.2001 is not applicable to such employees.

(iii) The Division Bench judgment in the case of Ram Shanker Gupta (supra) is in conflict with the earlier decisions by Coordinate Benches in the cases of Shankatha Prasad Mishra (surpa); Hridayesh Dayal Srivastava (surpa); Mirtuyanjay Prasad Singh (surpa); Keshav Ram Pandey (supra) and State of U.P. and others versus Amar Pal Singh. It is the decision in Ram Shanker Gupta (supra) which lays down the law correctly and for the reasons already discussed, the other decisions do not lay down the law correctly on the subject with regard to question no. (ii)."

8. On being confronted, learned Counsel for the respondent submitted that there are two issues involved; one is with regard to pay protection to be extended to such employees as the respondent; and the other is the benefit

of counting their past services. The Larger Bench's decision only relates to the later part and not the former. As regards pay protection, the erstwhile employees were entitled to the same.

9. We have perused the Larger Bench judgment rendered in the case of ***Anukul Prakash vs. State of U.P. and others; 2023 (6) ADJ 562***. In paragraph No.32, after considering the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules 1991 (hereinafter referred to as 'Rules, 1991') as amended/rescinded by subsequent rules, it has been observed that only two things were protected; one the benefit of absorption already granted and secondly the last pay protection in that very context. It has also been noticed that while rescinded the Rules, 1991 by the Act, 2009 with retrospective effect from 09.05.1991 again two things were protected; one the benefit of absorption already granted prior to 08.03.2003 and secondly the last pay drawn by such retrenched employee who had been absorbed. These were observations were made in the context of the conclusion arrived at that by none of the said rules provision was made for counting of past services rendered by the retrenched employees of the Auto Tractors Limited after their absorption in a Government Service for pensionary benefits, but the fact remains that pay protection was granted. We find from the relief clause of the writ petition that this was also prayed for by the respondent-petitioner.

10. In view of the aforesaid, we, **allow this appeal in part** with the following direction/observation:-

'The claim of the respondent-petitioner shall be considered only with regard to grant of pay protection in the light of the relevant rules and Government Orders applicable and the Larger Bench decision in the case of ***Anukul Prakash (supra)*** but not with regard to grant of benefit of past services for calculation of pensionary benefits'

11. The writ petition of the respondent-petitioner is disposed of in the light of the aforesaid. The impugned judgment stands modified,

accordingly.

12. A decision in the light of the aforesaid shall now be taken by the competent authority within three months from the date of receipt of a certified copy of this order.

February 20, 2026
-Piyush-

(Manish Kumar,J.) (Rajan Roy,J.)