



2026:AHC:33216

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 11891 of 2024

Ram Bahore

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Anil Kumar Srivastava
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Anil Kumar Srivastava, learned counsel for the writ petitioner as well as Sri S.K. Pal, learned Additional Chief Standing Counsel for the State.
2. Since counter and rejoinder affidavits have been exchanged between the parties and they do not propose to file any further affidavit, with the consent of parties, the writ petition is being decided at the admission stage.
3. The case of the writ petitioner is that he was working as a Class-IV employee since 1981 as a gardener, however he was not considered for regularization. Thus, the writ petitioner preferred Writ Petition No. 22522 of 1995, which came to be disposed of vide order dated 29.04.1999 directing the respondents therein to consider the case of the writ petitioner. The said order was subject matter of challenge in Special Leave Petition No. 336 of 2000 before the Hon'ble Apex Court, which came to be dismissed on 31.01.2000 according liberty to the petitioner to prefer an intra court appeal before this court. Thereafter, an intra court appeal came to be preferred by the respondents herein being Special Appeal No. 217 of 2000, which was rejected on 02.04.2003 on delay. As per the writ petitioner, an order came to be passed on 26.06.2021 regularizing the services of the writ petitioner. Since, according to the writ petitioner, he was entitled for the benefits from the date when he was initially engaged as a daily wager i.e. since 1981 and the benefits are being accorded from the date of regularization i.e. 02.09.2003. So the writ petitioner along with others preferred Writ A No. 17061 of 2010 (Ram Bahore and others Vs. State of U.P. and others) in which on 09.12.2020 following orders have been passed:

"1. The present writ petition has been filed seeking following reliefs:-

i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay to the petitioners the arrears of salary treating their appointment in the year 1981 and 1990 respectively which was approved by the then Chief Development Officer after re-fixing their salary on the basis of 6th Pay Commission and also to pay the arrears of salary for the period from 1995 till the year 2003 after re-fixing their salary on the basis of 6th Pay Commission;

(ii) Issue any other and further writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. Briefly stated facts of the case are that petitioners were appointed as Chowkidar on daily wages (Class IV post) in the year 1981 and 1990 respectively. Their services were orally terminated in the year 1995. Against the said order of termination, petitioners preferred Civil Misc Writ Petition No. 22522 of 1995, which was finally disposed off vide order dated 29.4.1999 with the direction to the respondents to regularise the services of the petitioners on Class IV post. Petitioners accordingly, made their representation for their regularisation and also for payment of balance salary. It is further alleged that the respondents against the order dated 29.4.1999 preferred Special Leave to Appeal (civil) No. 336 of 2000, which was dismissed as withdrawn vide order dated 31.1.2000. Thereafter, respondents is said to have preferred Special Appeal against the judgement and order dated 29.4.1999, which was also dismissed vide order dated 2.4.2003. Thereafter, an order for regularisation of the services of the petitioners was passed by the respondents on 2.9.2003. After regularisation of their services, petitioners demanded salary as well as seniority since 1981 to 1990 respectively. It is further submitted that the petitioner no. 1 has been superannuated from service on 30.4.2017 and petitioner no. 2 has died during pendency of the writ petition. Hence this writ petition.

3. Submission of learned counsel for the petitioners is that at the time of regularisation i.e. 2.9.2003, they have completed 22 and 13 years of their services respectively and as such their seniority may be counted from the date of their initial appointment i.e. 1981 and 1990 respectively. They also demanded the arrears of salary of balance from the above respective dates of their appointments. Further submission is that due to the non actions of respondents, the petitioners are made to suffer recurring financial loss for no fault on the part of the petitioners. In support of his arguments, petitioners relied upon the various judgements of this Court as well as of Apex Court, viz. Writ Petition No. 11630 of 2018, (Dr

Ramakant Tiwari Vs State of UP and others) decided on 14.05.2018; Writ A No. 18117 of 2018, (Muneshwer Dutt Mishra Vs State of UP and 4 others) decided on 6.9.2018; 2019(12) ADJ, 547 (Gulaichi Devi Vs State of UP and others); Civil Appeal No. (5) 10806 of 2017 (Habib Khan Vs State of UP and others) decided on 23.08.2017; and Civil Appeal No. 3348 of 2015, Secretary, Minor Irrigation Deptt and RES Vs Narendra Kumar Tripathi decided on 7.4.2015.

4. Learned Standing Counsel for the State on the other hand submitted that in pursuance of the order passed by this Court, services of the petitioners were regularised w.e.f. 2.9.2003 on the class IV posts and they were made payment admissible to the regular employees and thereafter they were also made payment of revised pay scales and also the payment of arrears of Rs. 48650/- and Rs. 49033/- respectively, vide Annexure CA-6 & 7 filed by the State in regard to the payment of arrears made vide letter dated 13.01.2009 passed by Chief Development Officer, Basti.

5. The petitioners have submitted that they are entitled for payment from their initial appointments as daily wagers i.e. from 1981 and 1990 respectively, thereafter they are entitled for regular pay scales since 1981 and 1990.

6. Heard learned counsel for the parties and perused the material on record.

7. It is admitted fact that the petitioners were appointed as daily wagers and their services were regularised on 2.9.2003 and since then they were getting regular pay-scales as admissible to a regular employee and also they have received their arrears of the balance from the date of their regularisation. In support of their claim, petitioners have relied on various judgements as noted above in preceding paragraphs and also contended that their case is squarely covered with the judgement of this Court passed in Writ A No. no. 25623 of 2018 Naval Kishore Rai Vs State of UP and 3 others, decided on 30.9.2020, in which this Court having relied upon the decision of Prem Sing Vs State of UP and others decided on 2.9.2019 allowed the writ petition in the following terms:-

"Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

The petitioner by means of the present writ petition has prayed for the following main relief:-

"(i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to consider and decide the petitioner's

representation dated 06.02.2018 (Annexure-1 to the writ petition) and pay entire retiral dues including his pension and other consequential benefits after calculating his services rendered by him on work charge basis i.e. 01.04.1978, in the light of the judgment of Hon'ble Supreme Court in the case of Habib Khan Vs. State of Uttaranchal"

As per the pleadings in the petition, the petitioner was initially appointed as Helper on 01.04.1978 on work charge basis in the Irrigation Department, Varanasi and his services was regularized with effect from 01.05.2006. The petitioner has retired on 01.06.2018. The petitioner is not being paid retiral dues and in the aforesaid backdrop, the petitioner has prayed for the relief inserted above.

A counter affidavit has been filed by respondent nos. 2 to 4, wherein, it is stated that the petitioner had worked since 01.04.1978 to 30.04.2006 in work charge establishment and thereafter since 01.05.2006 to 31.01.2018 in regular department. The petitioner has retired on 31.01.2018, but in view of the letter dated 01.08.2005 which provides that the services rendered in work charge establishment shall not be included for the purposes of pension and gratuity as has been provided in Civil Services Regulation 370.

Learned counsel for the petitioner has contended that the Apex Court in the case of Prem Singh vs. State of U.P. & Ors. decided on 02.09.2019 has held that the work charge period rendered by an employee shall be included for the purposes of pension and, therefore, the ground on which the pension of the petitioner has been denied is not sustainable.

Learned Standing Counsel submits that the letter dated 01.08.2005 provides that the period rendered as work charge employee shall not be counted for the purposes of service, therefore, the petitioner is not entitled for the same.

I have heard the rival submissions of the parties and perused the record.

It is admitted by the respondents the the petitioner was initially appointed as Helper employee on 01.04.1978 and had continued to work as work charge employee till 03.04.2006. The services of the petitioner was regularized on 01.05.2006 and he retired on 01.06.2018.

In view of the aforesaid fact that the petitioner has worked as work charge employee since 01.04.1978, the judgment of the Apex Court in the case of Prem Sing (supra) is applicable and the controversy as in the present case is concluded by the judgment of Apex Court in the case of Prem Singh (supra). Consequently, the services rendered by the petitioner in work

charge employee are liable to be counted for the purposes of pension.

Considering the facts and circumstances of the case, the writ petition is allowed and a mandamus is issued to the respondent no.4-The Executive Engineer, Tube-well Construction Division, Irrigation Department Varanasi to add the service rendered as work charge employee in the services rendered by the petitioner as regular employee and pay the pension and other retiral dues to the petitioner which the petitioner is entitled as per law.

For the reasons given above, the writ petition is allowed. No order as to costs."

8. The issue as to whether the petitioners are entitled to any benefits of the period rendered by them as a daily wagers till his regularisation has been set at rest by the Supreme Court.

9. Hon'ble the Apex Court in the case of Netram Sahu Versus State of Chhattisgarh reported in 2018 (2) PLJR 284 SC has already decided that after regularisation the entire period of service shall be counted for purpose of fixation of pensionary benefits.

10. Hon'ble the Apex Court in the case of Prem Singh Versus State of Uttar Pradesh & Ors. passed on 2 September, 2019 in Civil Appeal No. 6798 of 2019 and other analogous appeals has also reiterated the same principle as laid down in the case of Netram Sahu (supra). The Apex Court in paragraph 36 has held as under:-

"In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

11. In Punjab State Electricity Board & Anr. v. Narata Singh and Anr., (2010), the apex court had held that the period of work-charged service should be counted for computation of qualifying service for grant of pension.

12. Thus, it is obvious from the decisions cited on behalf of the petitioners that the Hon'ble Apex court has already set at rest the above stated dispute holding that the services rendered in work charged establishment shall be counted for purpose of pension and gratuity after regularisation of the

service.

13. Further, Hon'ble Apex Court in the case of Civil Appeal No. 3348 of 2015, Secretary, Minor Irrigation Deptt. and RES Vs Narendra Kumar Tripathi, decided on 07.04.2015, has allowed all the benefits of ad-hoc services rendered for the purposes of reckoning his seniority and other consequential benefits.

14. In the aforesaid facts and circumstances of the case, admittedly, services of the petitioners have already been regularised on 2.9.2003 and they were getting their salary of regular employee from the date of their regularisation w.e.f. 2.9.2003 and prior to their regularisation they were getting payment as admissible to the daily wager employees.

15. Claim of the petitioners for arrears of balance as regular employees from the date of their initial appointments could not be accepted because they have already been made payment as daily wagers and now they have been regularised and after that they were getting regular pay scales, therefore, services of the petitioners as daily wagers could only be counted as qualified service only for the benefit of pension because prior to their regularisations they were working in the capacity of work-charge employees.

16. Having considered the facts and circumstances of the case, and also keeping in view the mandate of the judgements in preceding paragraphs, I am of the considered opinion that the petitioners are entitled to get all the pensionary benefits after taking into the consideration the services rendered by them as daily wagers, prior to their regularisation, as also the seniority from the date of engagements as daily wagers; but they shall not be entitled for the arrears of balance from the date of their appointments on daily wage posts since they have already been paid wages of such period.

17. In the circumstances, the writ petition is finally disposed off with the direction to the respondents to make pensionary benefits to the petitioners after taking into the consideration the services rendered by the petitioners as daily wagers, prior to regularisation, in the light of the judgements of Prem Singh (Supra) and and shall also count the services rendered by the petitioners as daily wagers for the purpose of seniority. Respondents are further directed to ensure the payments of arrears of pension, if any, within three months from the date of receipt/production of a copy of this judgment. "

4. As the order passed by the Writ Court dated 09.12.2020 in Writ A No. 17061 of 2010 (Ram Bahore and another Vs. State of U.P. and others) was

not complied with, so the writ petitioner preferred a contempt application (Civil) No. 1757 of 2021 in which notices were issued. Thereafter, an order came to be passed on 22.06.2021 denying the grant of benefits of ACP as per the Government Order dated 02.12.2000 and also benefits of 5th, 6th and 7th Pay Commission after counting the services of the writ petitioner as daily basis in that regard. The same was subject matter of challenge at the instance of the writ petitioner in Writ A No. 11138 of 2021 (Ram Bahore Vs. State of U.P.), which came to be dismissed on 21.10.2021, order whereof is quoted herein below:

"1. Heard Sri Anil Kumar Srivastava, learned counsel for the petitioner and Sri R.S. Umrao, learned Standing Counsel for State-respondents.

2. The petitioner by means of the present writ petition has prayed for the following main relief:-

"i. Issue a writ, order or direction in the nature of certiorari to quash the order dated 26.06.2021 passed by the Respondents, the copy whereof is contained in Annexure-1 to the writ petition to the extent it relates to grant benefits of ACP and benefits according to the Government Order dated 02.12.2000 and also that of 5th, 6th and 7th Pay Commission after counting the services of the petitioner on daily wages basis and direct the respondents to revise the pensions of the petitioner as per the Government Order dated 02.12.2000 and after giving ACP benefits to the petitioner on completion of 14 years, 24 years and 26 years services according to ACP Scheme dated 04.05.2010 and 22.12.2011 as well as giving the benefits of the 5th, 6th and 7th pay commission."

3. The petitioner had been engaged as Chowkidar on daily wages basis and he was disengaged in the year 1995. The petitioner preferred Civil Misc. Writ Petition No.22522 of 1995 which was allowed by this Court by judgement dated 29.04.1999 directing the respondents to regularise the services of the petitioner as he had been continuously working for the last ten years. The judgement of this Court dated 29.04.1999 was challenged by the respondents in Special Leave Petition No.336 of 2000 before the Apex Court which was withdrawn by the respondents with liberty to file Special Appeal. Thereafter, respondents preferred Special Appeal No.217 of 2000 against the judgement dated 29.04.1999 which was dismissed by this Court by judgement dated 02.04.2003. Thereafter, services of the petitioner was regularised by order dated 02.09.2003.

4. Thereafter, petitioner alongwith other similarly situated employee preferred Civil Misc. Writ Petition No.17061 of 2010 praying for the following reliefs:-

"i. Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay to the petitioners the arrears of salary treating their appointment in the year 1981 and 1990 respectively which was approved by the then Chief Development Officer after re-fixing their salary on the basis of 6th Pay Commission and also to pay the arrears of salary for the period from 1995 till the year 2003 after re-fixing their salary on the basis of 6th Pay Commission;

ii. Issue any other and further writ, order or direction as this Hon'ble Court may deem fit and proper, in the facts and circumstances of the case;

iii. Award the costs to the petitioners".

5. The aforesaid writ petition was disposed off by this Court by judgement dated 09.12.2020 whereby this Court directed the respondents to grant pensionary benefits to the petitioners after taking into consideration the services rendered by the petitioners as daily wagers prior to regularisation in the light of judgement of Apex Court in the case of Prem Singh Vs. State of Uttar Pradesh and Others 2019 (10) SCC 516 and also count the services rendered by the petitioners as daily wagers for the purpose of seniority.

6. Pursuant to the judgement of this Court dated 09.12.2020, respondents passed an order on 26.06.2021 granting the petitioner benefit of service rendered as daily wager and sanctioned arrears of pension of three years prior to the date of his retirement w.e.f. 09.12.2017.

7. In the aforesaid backdrop, petitioner has prayed for the aforesaid relief.

8. Challenging the aforesaid order, learned counsel for the petitioner has contended that petitioner is entitled to the benefit of Government Order dated 02.12.2000 as well as A.C.P. benefits under the A.C.P. Scheme dated 04.05.2010 and 22.12.2011 as well as pay fixation on the basis of 5th, 6th and 7th Pay Commission, and accordingly, he submits that appropriate direction be issued to respondents to calculate arrears of pension after giving the benefit of Government Order dated 02.12.2000 and A.C.P. benefits under the A.C.P. Scheme dated 04.05.2010 and 22.12.2011 as well as pay fixation on the basis of 5th, 6th and 7th Pay Commission.

9. He submits that impugned order is in the teeth of judgement of this Court in Writ Petition No. 17061 of 2010, as this Court has intended to extend aforesaid benefits to petitioner.

10. Per contra, learned counsel for the respondents would contend that writ petition is not maintainable as the same relief has been claimed by

the petitioner in Writ Petition No.17061 of 2010 wherein this Court had refused to grant the said relief and had only directed to include the service rendered by the petitioner as daily wager prior to regularisation in the light of judgement Apex Court in the case of Prem Singh (supra), and pay arrears of pension. Thus, he submits that for the same cause of action, second writ petition is not maintainable.

11. He further submits that judgement of Apex Court in the case of Prem Singh (supra) provides that service rendered as daily wager prior to the date of regularisation is to be counted for the purpose of computing the qualifying service for pension and confined arrears of pension for three years. He submits that the competent authority has passed the order impugned in compliance of the judgement of this Court dated 09.12.2020 sanctioning him arrears of pension after calculating the pension and included the service rendered by the petitioner as daily wager prior to regularisation for computing the pension and has sanctioned three years arrears of pension prior to three years from the date of judgement. Accordingly, he submits that writ petition is misconceived and deserves to be dismissed.

12. I have considered the rival submissions of the parties and perused the record.

13. The petitioner was engaged as daily wager in the year 1981 and his services were regularized by order dated 02.09.2003. The petitioner, thereafter, preferred Writ Petition No.17061 of 2010 and the relief claimed in the said writ petition is extracted above. This Court by judgement dated 09.12.2020 disposed off the aforesaid writ petition with a direction to respondents to include the services rendered by the petitioner as daily wager prior to regularisation for computing the pension in the light of judgement of Apex Court in the case of Prem Singh (supra), and further directed to pay arrears of pension. By the said judgement, this Court also held that services rendered by the petitioner as daily wager shall also be counted for the purpose of seniority.

14. At this point, it is pertinent to have a glance at paragraphs 14 to 16 of judgement dated 09.12.2020 wherein this Court held that petitioners shall not be entitled for arrears of salary from the date of their appointment on daily wager since they have already been paid wages for the said period. Paragraphs 14 to 16 of the said judgement are being reproduced herein below:-

"14. In the aforesaid facts and circumstances of the case, admittedly, services of the petitioners have already been regularised on 2.9.2003 and

they were getting their salary of regular employee from the date of their regularisation w.e.f. 2.9.2003 and prior to their regularisation they were getting payment as admissible to the daily wagger employees.

15. Claim of the petitioners for arrears of balance as regular employees from the date of their initial appointments could not be accepted because they have already been made payment as daily wagers and now they have been regularised and after that they were getting regular pay scales, therefore, services of the petitioners as daily wagers could only be counted as qualified service only for the benefit of pension because prior to their regularisations they were working in the capacity of work-charge employees.

16. Having considered the facts and circumstances of the case, and also keeping in view the mandate of the judgements in preceding paragraphs, I am of the considered opinion that the petitioners are entitled to get all the pensionary benefits after taking into the consideration the services rendered by them as daily wagers, prior to their regularisation, as also the seniority from the date of engagements as daily wagers; but they shall not be entitled for the arrears of balance from the date of their appointments on daily wage posts since they have already been paid wages of such period."

15. The judgement of this Court dated 09.12.2020 has attained finality.

16. Since, relief claimed in the present writ petition has already been denied to petitioner, therefore, in the opinion of the Court, the present writ petition for the same cause of action is not maintainable.

17. The argument of the learned counsel for the petitioner that relief claimed in the present writ petition was not claimed in the earlier writ petition, therefore, present writ petition is maintainable is misconceived for the reason that relief claimed in the present writ petition could have easily been claimed by the petitioner in the earlier writ petition, and therefore, applying the principles of constructive res judicata, this Court is of the opinion that this writ petition is not maintainable.

18. Thus, for the reasons given above, the writ petition lacks merit and is accordingly, dismissed with no order as to costs."

5. The writ petitioner being aggrieved against the same preferred Special Appeal Defective No. 970 of 2021 (Ram Bahore Vs. State of U.P. and 3 others), which came to be allowed on 05.03.2024, order whereof is quoted hereinbelow:

"Ref:- Civil Misc. Delay Condonation Application No. Nil of 2021

1. This application has been filed for condoning the delay in filing the special appeal.
2. We have gone through the affidavit filed in support of the delay condonation application.
3. The delay in filing the special appeal has satisfactorily been explained.
4. Cause shown is sufficient.
5. The delay in filing the special appeal is condoned and the delay condonation application is allowed.
6. The special appeal shall be treated to be filed well within time.
7. Office is directed to allot regular number to this special appeal.

Order on Second Appeal.

1. This appeal is directed against the judgment and order dated 21st of October, 2021 passed in Writ Petition No. 11138 of 2021, whereby the learned Single Judge has rejected the claim of appellant for inclusion of his services rendered in the capacity of daily-wage employee prior to his regularization.
2. Learned Single Judge has opined that since in the previous writ petition filed by the same petitioner No. 17061 of 2010 this relief has not been granted, as such, the subsequent claim in that regard would be barred by principles of constructive res-judicata.
3. Record reveals that the appellant was initially appointed as Class-IV employee in 1981, though he was allowed to continue, but his claim for regularization was not considered. The appellant in such circumstances approached this Court by filing writ petition No. 22522 of 1995, which was allowed on 29.4.1999 and a direction was issued to the respondents to consider the appellants claim for regularization within a period of three months.
4. The order passed by the Writ Court on 29.4.1999 was initially challenged before the Supreme Court, but the State's S.L.P. was withdrawn on the ground of remedy available before the High Court to prefer special appeal. A belated special appeal No. 217 of 2000 was filed, which was dismissed after noticing as under:-

"In the facts and circumstances of the case we are of the view that the writ

petitioner respondent has been continuing to serve the State Government as gardener for the last more than 25 years, therefore, we are not inclined to interfere with the order impugned in this special appeal."

5. The services of the appellant was thereafter regularized on 2nd of September, 2003. The appellant then filed writ petition No. 17061 of 2010 stating that he is entitled to salary from the date of initial appointment in the year 1981. This writ petition has been disposed of on 9.12.2020 vide following orders:-

"16. Having considered the facts and circumstances of the case, and also keeping in view the mandate of the judgements in preceding paragraphs, I am of the considered opinion that the petitioners are entitled to get all the pensionary benefits after taking into the consideration the services rendered by them as daily wagers, prior to their regularisation, as also the seniority from the date of engagements as daily wagers; but they shall not be entitled for the arrears of balance from the date of their appointments on daily wage posts since they have already been paid wages of such period.

17. In the circumstances, the writ petition is finally disposed off with the direction to the respondents to make pensionary benefits to the petitioners after taking into the consideration the services rendered by the petitioners as daily wagers, prior to regularisation, in the light of the judgements of Prem Singh (Supra) and shall also count the services rendered by the petitioners as daily wagers for the purpose of seniority. Respondents are further directed to ensure the payments of arrears of pension, if any, within three months from the date of receipt/production of a copy of this judgment."

6. Learned Single Judge while disposing of the matter categorically acknowledged the right of the appellant to get pensionary benefits after taking into consideration the services rendered by the appellant as daily-wager. It was only the arrears of salary, which was denied by learned Single Judge. It is, therefore, clear that the prayer made by the appellant for counting of his previous services towards the qualifying services was allowed, keeping in view the provisions contained under Rule 3 (8) of the U.P. Retirement Benefits Rules, 1960. A further direction was issued to consider the case of appellant for payment of arrears of pension etc. within three months. It is pursuant to this direction that the respondents have rejected the appellant's claim vide order impugned in the writ petition dated 26.6.2021. The District Development Officer, Basti has rejected the claim of the appellant on the ground that his prior services as daily-wager ought to be counted only for a period of 5 years, 6 months

and 19 days.

7. The order by the District Development Officer was assailed on the ground that appellant although had worked from 1981, but his service book etc. was maintained since 1984, and therefore, period from 1984 ought to be treated towards qualifying service for fixation of pension. It was urged that no reasons have been stipulated as to why the previous working only for 5 years 6 months and 19 days is being counted towards qualifying service.

8. Aggrieved by the order of District Development Officer, the appellant filed writ petition, which has been dismissed on the ground that in the earlier writ since such claim was not allowed by the Writ Court, as such, the subsequent writ would be barred by principles of constructive res-judicata.

9. In the facts of the case, we find that in the earlier writ filed by the appellant a direction had already been issued for consideration of services rendered by the appellant as daily-wager, prior to his regularization for the purposes of grant of pensionary benefits. Once, such a direction was already issued, we find that learned Single Judge was not justified in dismissing the writ petition only on the ground that such a relief was denied in the earlier writ or that the claim was barred by principles of constructive res-judicata.

10. Since, the claim of the appellant had already been allowed insofar as the relief of counting of previous services for pension was concerned, as such, learned Single Judge erred in holding the previous writ to have been dismissed, whereas, in fact such petition was allowed.

11. In such circumstances, principles of constructive res-judicata had no applicability for rejecting the claim of the appellant. The District Development Officer, Basti has also not clarified as to why the previous working of the appellant as daily-wager would not be counted towards qualifying services for regularization of pension payable to the appellant.

12. Having considered the matter in its entirety, we are of the view that this appeal is liable to succeed, as the claim of the appellant has not been tested on correct legal and factual parameters. The judgment of learned Single Judge dated 21.10.2021 consequently is set aside. The order passed by the District Development Officer, Basti dated 26.6.2021 is also set aside. The matter stands remitted to the concerned officer for redetermination of appellant's claim for determination of his services rendered by him as daily-wage employee for the purposes of counting of

his previous services towards qualifying services. The benefits, which have already been granted to the appellant in the form of pension etc. shall continue to be extended to him and shall remain subject to the fresh order to be passed by the officer concerned. In terms of the above direction, a required consideration shall be made within a period of four months from the date of production of a certified copy of this order. The limited issue before the authority is the determination of quantum of pension, which would be dependent upon the length of services rendered by the appellant. "

6. Post passing of the order in the Intra Court Appeal, now the order impugned have been passed by the District Development Officer, Basti on 18.07.2024.

7. Questioning the same, the present writ petition has been preferred. A counter affidavit has been filed on behalf of the respondent nos. 2, 3 and 4 sworn by Block Development Officer, Parshurampur, District Basti dated 28.08.2024 to which rejoinder affidavit has been filed, which is available on record.

8. Learned counsel for the writ petitioner has submitted that the order impugned cannot be sustained in the eyes of law for the simple reason that the same is contemptuous particularly when once the stands of the writ petitioner for consideration of payment for grant of pensionary benefits from the date of his initial appointment came to be endorsed in the order dated 09.12.2020 passed in Writ A no. 17061 of 2010 and an order came to be passed negating the claim of the writ petitioner on 26.06.2021 against the Writ A No. 1113 of 2021 came to be preferred by the writ petitioner, which was dismissed on 21.10.2021 against which Special Appeal Defective No. 970 of 2021 came to be allowed, then the respondents cannot in any manner whatsoever seek to ignore the judgment and to circumvent the same according to their whims by deluding the writ petitioners of the pensionary benefits prior to regularization. Submission is that the order passed in Writ A No. 17061 of 2010 decided on 09.12.2010 and the order in Special Appeal Defective No. 970 of 2021 has attained finality, which is inter se binding upon the writ petitioner.

9. Sri Anil Srivastava, learned counsel for the writ petitioner, as per the instructions received from his client, now confines his relief for consideration of his claim for payment of pensionary benefits from the date

when the service records is available i.e. 1984 for the purposes of pension in that regard.

10. Sri S.K. Pal, learned Additional Chief Standing Counsel, who appears for the State though has defended the order in question but he could not dispute the fact that the order passed in Writ A No. 17061 of 2010 decided on 09.12.2020 as well as the order dated 05.03.2024 passed in Special Appeal Defective No. 970 of 2021 has attained finality. He submits that the matter needs to be revisited.

11. I have heard the submissions made on their behalf and perused the record. Facts are not in issue. It is not in dispute that the writ petitioner claimed that he was appointed as a daily wager in the years 1981. He preferred writ petition seeking regularization, which came to be disposed of with a direction to consider the claim of the writ petitioner for regularization against which directly an SLP came to be preferred, which was dismissed with liberty to approach the special appellate bench of the Court, and thereafter, on the ground of delay, the Intra Court Appeal was dismissed and the writ petitioner came to be regularized on 02.09.2023. Since according to the writ petitioner as the writ petition was not been accorded the benefits of salary and pay fixation from the date of his initial appointment i.e. 1981, so the writ petitioner preferred Writ A No. 17061 of 2010 along with the others being Ram Bahore and another Vs. State of U.P., which came to be disposed of directing the respondents to accord pensionary benefits to the writ petitioner while computing the period undergone prior to regularization as daily wager also in the light of judgment of the Hon'ble Apex Court in **Prem Singh Versus State of Uttar Pradesh & Ors. passed on 2 September, 2019 in Civil Appeal No. 6798 of 2019**. A contempt application was also preferred for compliance of the order of the Writ Court and thereafter an order came to be passed on 26.06.2021, which was subject matter of challenge in Writ A No. 11138 of 2001, which was dismissed on 21.10.2021, against which Intra Court Appeal being Special Appeal Defective No. 970 of 2021 came to be preferred by the writ petitioner, which was allowed on 05.03.2024. The aforesaid sequence of events do depict that there happens to be a positive direction in favour of the writ petitioner for counting of the services undergone as daily wager for payment of the pension. The District Development Officer in order impugned dated 18.07.2024 has not considered the said aspect of the matter though it has negated the claim of the writ petitioner on the ground that the writ petitioner

is not entitled to monetary benefits in that regard. Since, monetary benefits are not to be accorded to the writ petitioner, particularly when there happens to be a direction contained in the order dated 09.12.2020 passed in Writ A No. 10761 of 2010 regarding non payment of arrears of balance from the date of appointment on daily wage. Thus, the writ petitioner is only to be accorded benefits for counting of the period undergone as daily wager from the year 1984, when the service record was prepared though the writ petitioner claimed benefits from the year 1981 for payment of pension. Since the aforesaid direction has not been upset by any court of law, thus the District Development Officer had to bestow its consideration on the aforesaid aspect of the matter, which goes to the root of the matter. Since the said exercise is lacking, thus the order impugned cannot be sustainable.

12. Accordingly, the order dated 18.07.2024 passed by District Development Officer, Basti i.e. respondent no. 3 is set aside.

13. Matter stands remitted to the authority to pass a fresh order within a period of three months from the date of production of certified copy of this order.

14. The writ petition stands disposed of.

February 13, 2026
Aiman

(Vikas Budhwar,J.)