

उत्तर प्रदेश शासन

वित्त ( सामान्य ) अनुभाग-3

संख्या:13/2017-सा-3-रिट-103/दस-2017-328(122)/2016

लखनऊ : दिनांक : 14 जून, 2017

कार्यालय-ज्ञाप

शासन को विभिन्न कर्मचारी संगठनों से इस आशय के प्रत्यावेदन समय-समय पर प्राप्त होते रहे हैं कि कार्य-प्रभारित अधिष्ठान में कार्यरत रहे ऐसे कर्मचारी जिन्हें विनियमित कर दिया गया है, के विनियमितिकरण के पूर्व की कार्य-प्रभारित अधिष्ठान की सेवाओं को सेवानैवृत्तिक लाभों के लिये अर्हकारी सेवा के रूप में जोड़ा जाये ।

2- उत्तर प्रदेश सिविल सर्विस रेग्युलेशन्स के अनुच्छेद-361, 368 एवं 370 में सेवानैवृत्तिक लाभों के लिये अर्हकारी सेवा के आगणन के संबंध में व्यवस्था दी गयी है। उक्त अनुच्छेद नीचे उद्धृत किये गये हैं :-

" 361. The service of an officer does not qualify for pension unless it conforms to the following three conditions:—

First— The service must be under Government.

Second— The employment must be substantive and permanent.

Third— The service must be paid by Government.

368. Service does not qualify unless the officer holds a substantive office on a permanent establishment.

370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post shall qualify except—

(i) periods of temporary or officiating service in non-pensionable establishment;

(ii) periods of service in work-charged establishment; and

(iii) periods of service in a post paid form contingencies. "

स्पष्टतः कार्य-प्रभारित अधिष्ठान में की गयी सेवायें अर्हकारी सेवा में आगणित नहीं की जाती ।

3- कार्य-प्रभारित अधिष्ठान में की गयी सेवाओं को सम्मिलित कर पेंशन एवं अन्य सेवानैवृत्तिक लाभ अनुमन्य किये जाने के प्रयोजन से मा0 उच्च न्यायालय में योजित रिट याचिका संख्या-24239(एमबी)/2016 नाहर सिंह बनाम उत्तर प्रदेश राज्य व अन्य मा0 उच्च न्यायालय, लखनऊ बेंच, लखनऊ के आदेश दिनांक 03-02-2017 द्वारा खारिज कर दी गयी है। उपर्युक्त रिट याचिका कई अन्य रिट याचिकाओं के साथ सम्बद्ध की गयी थी जिसमें मा0 उच्च न्यायालय द्वारा पारित आदेश का कार्यकारी अंश निम्नानुसार है -

**" No doubt pension is not 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.**

Thus, a similar claim was declined by the Supreme Court. In the present cases also the same deficiencies exist as noticed in Prabhu Narain's case (supra).

The claim of the petitioners is also unsustainable as this issue is squarely covered by the Full Bench decision of this Court in Babu Ram (supra) wherein a similar claim for counting work-charged services for pensionary benefits has already been turned down relying upon various decisions of the Supreme Court, some of which have been noticed by us also, herein above.

As far as the contention raised on behalf of the petitioners based on the alleged notification dated 01.01.2000 is concerned, the said Government Order, which is prospective, merely states that the Government had taken a decision to abolish the arrangement of appointments in the work-charged establishment under Para 667, 668, 669 of the Financial Handbook, Vol.-VI which does not mean that work-charged services rendered under such establishment were liable to be counted for service/ pensionary benefits, in respect of persons engaged prior to 01.01.2000. Para 669 referred herein above categorically barred the benefit of pension to members of work-charged establishment, consequently, also to the benefit of services rendered in the work-charged establishment for pensionary benefits. Even otherwise, for the reasons already discussed hereinabove the two establishments being distinct, the work-charged services are not liable to be counted for pensionary benefits in the regular establishment.

In this context, it is not out of place to refer to the order of the Supreme Court dated 05.09.2014 passed while dismissing the Special Leave Petition against the Division Bench judgment of this Court in Jai Prakash Singhs case (supra), wherein it observed as under:-

*"There is nothing on the record to suggest that any Rule or Scheme framed by the State to count the work-charge period for the purpose of pension in the regular establishment. In absence, of any such Rule or Scheme, we find no merit to interfere with the impugned judgment.*

*The special leave petition is dismissed."*

This order of the Supreme Court as also the judgment in Prabhu Narain (supra) and the Full Bench decision in Babu Ram (supra) veritably clinche the issue as far as question no. 2 is concerned.

- 1- यह शासनादेश इलेक्ट्रॉनिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नहीं है।
- 2- इस शासनादेश की प्रमाणिकता वेब साइट <http://shasanadesh.up.nic.in> से सत्यापित की जा सकती है।

As regards the claim for counting the said services for service benefits such as, promotional pay-scale/ financial upgradation under ACP Scheme is concerned, there are various Government Orders dated 02.12.2000 and those issued in 2010 and thereafter,

prescribing specified periods of 'regular satisfactory service as a pre-condition for grant of such benefits and as work-charged service is not regular service in regular establishment and as this issue is squarely covered by the judgment of the Supreme Court in Jaswant Singhs case (supra), therefore, in view of the said judgment and for the reasons already discussed hereinabove, this claim is also not tenable.

For the reasons aforesaid, questions no. 1, 2 and 3 as framed by us are answered in the negative. Consequently, the writ petitions fail and are accordingly, dismissed."

4- माननीय उच्च न्यायालय के उपर्युक्त आदेश में कार्य-प्रभारित अधिष्ठान में की गयी सेवाओं को सेवानैवृत्तिक लाभों के प्रयोजनार्थ अर्हकारी सेवा माने जाने संबंधी याचिका को पोषणीय नहीं पाते हुये याचिका निरस्त की गयी है।

5- शासन के समस्त ऐसे प्रशासकीय विभागों जिनके अधीन कार्य-प्रभारित अधिष्ठान कार्यरत हैं, से यह अपेक्षा की जाती है कि उ०प्र० सिविल सर्विस रेग्यूलेशन्स के अनुच्छेद 361, 368 तथा 370 एवं मा० उच्च न्यायालय के उपर्युक्त आदेश दिनांक 03.02.2017 के अनुसार कार्यवाही किये जाने हेतु अधीनस्थ विभागाध्यक्षों / कार्यालयाध्यक्षों को निर्देशित करने का कष्ट करें।

अजय अग्रवाल  
सचिव।

संख्या:13/2017-सा-3-रिट-103(1)/दस-2017, तद्दिनांक।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1- मुख्य स्थायी अधिवक्ता, मा० उच्च न्यायालय, लखनऊ बेंच, लखनऊ।
- 2- निबंधक, मा० उच्च न्यायालय, लखनऊ बेंच, लखनऊ।
- 3- समस्त अपर मुख्य सचिव/प्रमुख सचिव/सचिव, उत्तर प्रदेश शासन।
- 4- समस्त विभागाध्यक्ष/कार्यालयाध्यक्ष, उत्तर प्रदेश।
- 5- समस्त अपर निदेशक, कोषागार एवं पेंशन, उत्तर प्रदेश।

आज्ञा से,  
नील रतन कुमार  
विशेष सचिव।

- 1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नहीं है।
- 2- इस शासनादेश की प्रमाणिकता वेब साइट <http://shasanadesh.up.nic.in> से सत्यापित की जा सकती है।