

ITEM NO.1

COURT NO.11

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).19897/2004
(From the judgement and order dated 07/04/2003 in CMWP
No.20703/1997 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

STATE OF U.P. & ANR.

Petitioner(s)

VERSUS

NARENDRA BAHADUR SINGH & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP, exemption from filing
O.T., permission to place addl. documents on record, permission
for urging additional facts and office report)

Date: 06/09/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s) Mr. S. R. Singh, Sr. Adv.
Mr. Shail Kumar Dwivedi, AAG.
Ms. Malvika Trivedi, Adv.
Mr. Suraj Singh, Adv.
Mr. Pradeep Misra, Adv.

For Respondent(s)

For RR No. 1 Ms. Rachna Gupta, Adv.

For RR No. 4 Ms. Shobha Dikshit, Sr. Adv.
Mr. T. Mahipal, Adv.
Mr. Daleep Dhyani, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

For the reasons recorded in the signed order, the
appeal stands allowed to the extent indicated therein
leaving the parties to bear their own costs.

[KALYANI GUPTA]
COURT MASTER

[RENU DIWAN]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7662 OF 2011
ARISING OUT OF S.L.P. (C) NO. 19897 OF 2004

STATE OF U.P. & ANR.

.....

APPELLANTS

VERSUS

NARENDRA BAHADUR SINGH & ORS.

.....

RESPONDENTS

O R D E R

1. Delay condoned.
2. Leave granted.
3. The present appeal is directed against the judgment and order dated 7th April, 2003 passed by the Division Bench of the Allahabad High Court holding that respondent no. 1 herein would be entitled to get his past services effective from 1st September, 1970 to 10th September, 1973 rendered in the office of State Agricultural Marketing Officer and the service rendered by him in Mandi Parishad effective from 11th September, 1973 to 1st May, 1975 counted alongwith the service rendered as Judicial Officer for the purpose of pension, gratuity etc.
4. The appellant was appointed as Legal Assistant in

the office of the State Marketing Officer and worked in the said post from 1st September, 1970 to 10th September, 1973. The respondent no.1 thereafter submitted his application for his appointment to the post of Legal Assistant which was forwarded to the Director (Mandis) in the Krishi Utpadan Mandi Parishad. The said application of the respondent no.1 was forwarded by the State Agricultural Marketing Officer, his erstwhile office by letter dated 12th August, 1973. A copy of the said letter which was addressed to the Director (Agriculture) was also sent to the respondent no. 1 with an intimation that if he is selected to the post for which he has submitted the application in Krishi Utpadan Mandi Parishad, in that event, he would have to resign from the said post and his lien would not be maintained in the Department. Thereafter the respondent no. 1 was selected and was also appointed in Krishi Utpadan Mandi Parishad. He then resigned from his earlier post in State Agricultural Marketing Office and joined Krishi Utpadan Mandi Parishad on 11th September, 1973, wherein he worked till 1st May, 1975.

5. While working as Legal Assistant in the State Agricultural Marketing Office, certain vacancies for the post of Munsiff had arisen and therefore the respondent no. 1 submitted his application to one of the said posts

while working in the above-said post. He was selected and then appointed as a Munsiff in which post he joined on 2nd May, 1975 i.e. after resigning from the post of Legal Assistant of the Krishi Utpadan Mandi Parishad. The respondent no. 1 continued to work as a Judicial Officer till the date of his retirement.

6. He, however, submitted a representation on 11th May, 1992, praying for counting his past service that was rendered in State Agricultural Marketing Office and also in Krishi Utpadan Mandi Parishad for the purpose of computing his pension. The aforesaid representation of the respondent no. 1 was considered by the State Government and the same was rejected by letter dated 7th July, 1997. The Government of Uttar Pradesh informed the Registry of the High Court that since the respondent no. 1 resigned from the post of Legal Assistant of State Agricultural Marketing Officer and remained with Krishi Utpadan Mandi Parishad and thereafter again resigned to take up the Judicial Services it would not be possible to compute his past services rendered in Krishi Utpadan Mandi Parishad for the purpose of computing pension.

7. Being aggrieved by the aforesaid stand taken by the State Government, the respondent no. 1 filed a writ petition in the Allahabad High Court which was registered as Civil Miscellaneous Writ Petition No. 20703 of 1997.

The said writ petition was heard and was disposed of by the impugned judgment and order dated 7th April, 2003 rendered by the High Court. The High Court directed that the past service rendered by the appellant to the aforesaid extent be computed for the purpose of computation of his pension, gratuity etc. Being aggrieved by the said Judgment and order passed by the High Court, the present appeal has been preferred on which we have heard the learned counsel appearing for the parties.

8. The issue, therefore, which arises for our consideration in the present appeal is whether the service rendered by the respondent no. 1 on a non-pensionable post may be added to his continuous length of pensionable services for the purpose of calculating pension and gratuity.

9. It is revealed from the records placed before us that the respondent no. 1 was working as Legal Assistant from 1st September, 1970 to 10th September, 1973. He, however, submitted an application which was forwarded under letter dated 12th August, 1973. In the said letter, it was clearly indicated that if the respondent no. 1 was selected to the post for which he has submitted an application in that event he would have to resign from the post of Legal Assistant in the Agricultural Marketing

Section and that his lien would not be maintained in the Department. Therefore, clearly, as revealed from the records, the appointment of the respondent no.1 to the post of Legal Assistant in Krishi Utpadan Mandi Parishad was a fresh appointment in which post he joined on 9th November, 1973 and worked till 1st May, 1975. As soon as the resignation was accepted and he joined the new post for all practical purposes, the respondent no. 1 became an employee of the new employer namely, Krishi Utpadan Mandi Parishad and was guided by their service conditions. There is no dispute with regard to the fact that the post which he was holding in Krishi Utpadan Mandi Parishad was a non-pensionable post. Even thereafter the respondent no. 1 applied for appointment to the post of Munsiff. He appeared in the selection and thereafter joined the post of Munsiff which was again a fresh appointment. There is no documentary evidence placed on record to indicate that at the time of his appointment as Munsiff his past services were protected. That being the position, the respondent no. 1 would not be entitled to the benefit of the past services to be counted for the purpose of his pension. The judgment and order passed by the High Court therefore cannot be affirmed which is set aside and the contention of the respondent no. 1 in the writ petition is held to be

unsustainable and therefore rejected.

10. The appeal stands allowed to the aforesaid extent leaving the parties to bear their own costs.

.....J
[Dr. MUKUNDAKAM SHARMA]

.....J
[ANIL R. DAVE]

**NEW DELHI
SEPTEMBER 6, 2011.**



JUDGMENT