

of the emoluments, to which he was entitled for the period of his absence from duties on account of his incarceration, followed by dismissal from service.

23. In the circumstances, this writ petition **succeeds** and is **allowed**. The impugned order dated 28.12.2023, passed by the Secretary/ Chief Executive Officer of the Bank, is hereby **quashed**. The petitioner shall be reinstated in service forthwith with consequential benefits of continuity and seniority. He will be paid his current salary forthwith. The petitioner will be entitled to receive 50% of his emoluments since the date his emoluments have not been paid until reinstatement in service.

24. There shall be no order as to costs.

25. Let a copy of this judgment be communicated to the Secretary/ Chief Executive Officer, Agra District Cooperative Bank Limited, Mahatma Gandhi Marg, Agra, the Chairman, Agra District Cooperative Bank Limited, Mahatma Gandhi Marg, Agra and the Secretary, U.P. Cooperative Institutional Service Board, Lucknow by the Registrar (Compliance).

(2025) 5 ILRA 525
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.05.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 46867 of 2014

Suresh Chandra Shukla **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:

Sri Srinath Dwivedi, Ms. Harshita Raghuvanshi

Counsel for the Respondents:

Sri Harsh Vardhan Gupta, Sri Vivek Varma, Sri Sharad Chandra Upadhyay (S.C.)

Service Law - Pension - U.P. Nagar Palika Non-Centralised Services Retirement Benefit Regulations, 1984 - U.P. Qualifying Services for Pension and Validation Act, 2021 - Reckoning of service rendered as Daily Wager towards qualifying service for pension. Petitioner, appointed as a daily wager in Nagar Nigam, in 1985, was illegally terminated in 1986. By award of Labour Court termination was set aside and his services were directed to be treated as continuous. He was reinstated, later regularized in 2006, and retired in 2019. His claim that entire service from 1985 be reckoned for seniority, pension and retiral benefits was rejected. *Held* : Only issue surviving post-retirement is whether entire service rendered by the petitioner as a Daily Wager is to be credited to his account to work out his pension or that period of time is to be reckoned towards his qualifying service alone in order to enable him to pension and other post-retiral benefits. *Court held that service rendered outside the regular establishment can only be accorded weightage to the extent that it entitles the petitioner to grant pension and other post-retiral benefits. It cannot be added to his regular service to work out his pension and other post-retiral entitlement. Mandamus issued directing respondents to reckon petitioner's daily wage service from 19.02.1985 to 26.01.2006 as a Daily Wager for the purpose of qualifying service, though not counting those services for quantifying the entitlement either to pension or other post-retiral benefits for qualifying service towards pension; arrears with 6% interest directed to be paid within three months. (Para 15, 16)*

Allowed. (E-5)

(Delivered by Hon'ble J.J. Munir, J.)

This writ petition is directed against an order passed by the Apar Nagar Ayukt, Nagar Nigam, Allahabad (now Prayagraj) dated 28.07.2014, rejecting the petitioner's claim for reckoning his services, rendered as a daily-wager continuously since 19.02.1985, towards his qualifying service as a second grade Clerk for entitlement of pension and other retiral benefits. The petitioner has prayed that a mandamus be issued, directing the respondents to fix his seniority in the grade of second grade Clerk, taking into account the period of service rendered by him from 19.12.1985 to 26.01.2006, i.e., before he was regularized.

2. The petitioner was appointed in the Nagar Nigam, Prayagraj as a Class-III employee on daily wages with effect from 19.12.1985. He was discharging his duties, as he says, to the full satisfaction of his superiors and with sincerity. His services were terminated without the issue of a show cause notice vide order dated 10.12.1986. He was neither given a charge-sheet nor retrenchment compensation. The petitioner along with other employees, who were similarly terminated, lodged a claim under the Industrial Disputes Act, which was referred to the Labour Court. The Labour Court, by its award dated 08.12.1989, found the termination of the petitioner's services, like others similarly circumstanced, illegal and set it aside. It was directed that the petitioner be reinstated with arrears of salary and other consequential benefits. The award also directed that the petitioner's services will be continuous and there will be no break. The Labour Court's award appears to have attained finality with no challenge laid to it by the respondents.

3. In compliance with the award, the petitioner was allowed to join duties as a daily-wager on 27.11.1993. He was paid his wages/ salary from 10.12.1986 to 26.11.1993, i.e., for the period of break in service on account of the illegal termination, that was set aside by the Labour Court. The petitioner was regularized in service with effect from 27.01.2006 as a Class-III employee. The petitioner's regularization was made after selection by a selection committee, constituted in accordance with rules. He was confirmed in service as a second grade clerk vide order dated 07.07.2008. The confirmation too came after scrutiny by the selection committee. The services of the petitioner from 19.02.1985 to 26.11.1993 were not reckoned for giving him seniority and promotion as well as consequential benefits, to which he was entitled on the basis of length of service. Accordingly, the petitioner instituted Civil Misc. Writ Petition No. 54282 of 2000 before this Court, seeking a direction for the regularization of his services as a clerk in the Electricity Department of the Nigam, treating his date of appointment as 19.02.1985 and to pay his salary with all consequential benefits. This Court, vide order dated 15.12.2004, held that the petitioner, in view of the Labour Court's award, was entitled to consequential reliefs with back-wages as well as fixation of his seniority in the list of daily-wagers with effect from the date he was initially appointed i.e. 19.02.1985. It was, however, opined that since persons, who are likely to be affected by the relief of seniority, were not impleaded, the Court was not minded to issue a direction to that effect. Accordingly, the writ petition was allowed in terms of the following orders :

The Writ Petition is consequently allowed to the extent that respondents shall

refix his seniority, after publishing a notice inviting objections from all sides. This order shall not affect the regularization of those persons, who have already regularized. His seniority shall be fixed accordingly. The back wages shall be paid to the petitioner. The order shall be complied with within three months from the date of communication of this order.

4. The seniority list of daily-wagers was published, in which the petitioner's name figured at serial No.16, showing the date of his appointment as 27.11.1993. The case of the petitioner is that a perusal of the seniority list for the daily-wagers of the year 1988-89 indicates that the petitioner, though taken back in service in compliance with the award of the Labour Court dated 08.12.1989, that directs his services to be reckoned as continuous, in fact does not give effect to that part. His services were regularized on 27.01.2006, without considering the award dated 08.12.1989 and the orders of this Court dated 15.12.2004 passed in Civil Misc. Writ Petition No. 54282 of 2000.

5. The petitioner moved an application on 13.09.2013 to the Nagar Ayukt, Nagar Nigam, Prayagraj, putting forward a claim to include the period of his service from 19.02.1985 to 26.01.2006 for the purpose of fixation of seniority and other consequential benefits. A tentative seniority list was published in the year 2013-14, where the petitioner's name finds place at Serial No. 26. Objections were invited to the said list vide memo dated dated 15.01.2014 issued by a Section Officer on behalf of the Nagar Nigam. The petitioner objected vide his objections/ letter dated 18.01.2014, taking a case that the award of the Labour Court and this Court's order had not been given effect to in the matter of fixation of his seniority, in

that, that his services with effect from 19.02.1985 had not been reckoned. A final seniority list was published, where the petitioner's services from 19.02.1985 to 26.01.2006 were not taken into consideration. It is the petitioner's case, if his services were taken into reckoning from 19.02.1985, he would stand at serial No.4 of the seniority list. The petitioner's representation was rejected by the Apar Nagar Ayukt, Nagar Nigam, Prayagraj vide order dated 28.07.2014, conveying a decision of the Nagar Ayukt in this regard.

6. It is said in the order, rejecting the petitioner's representation, that the direction of this Court to fix his seniority with effect from 19.02.1985, was with regard to the seniority list of daily-wage clerks, whereas the petitioner has claimed seniority with effect from 19.02.1985 as a regular second grade clerk.

7. Aggrieved by the order dated 28.07.2014, this writ petition has been instituted.

8. A notice of motion was issued on 08.09.2014. In course of time, parties have exchanged affidavits. By an amendment application made on behalf of the petitioner, that was allowed on 13.03.2014, certain facts, grounds and prayer have been added, which show that the petitioner has retired from service on 31.12.2019. The case, that has now been put forward more explicitly through the amendment, is that his services since 19.02.1985 till 31.12.2019, i.e., about 35 years, which include his services as a daily-wager, be taken into reckoning for the purpose of qualifying service, entitling him to pension and other post-retiral benefits. A relief in this regard has also been added by amendment.

9. Parties having exchanged affidavits, the petition was admitted to hearing on 07.11.2024, which proceeded forthwith. Judgment was reserved.

10. Heard learned Counsel for the petitioner Mr. Srinath Dwivedi, Mr. Harsh Vardhan Gupta, learned Counsel appearing on behalf of respondent Nos. 2 and 3 and Mr. Sharad Chandra Upadhyay, learned Standing Counsel on behalf of the State-respondent No.1.

11. Now that the petitioner has retired from service, the issue about the fixation of his seniority in the cadre of regular second grade clerks does not survive. What really survives for determination is if the petitioner is entitled to reckon the period of service from 19.02.1985 to 26.01.2006, when he was regularized in service, after selection in accordance with rules, towards his qualifying service for entitlement to pension and other post-retiral benefits.

12. Though much was argued on both sides, if the Uttar Pradesh Qualifying Services for Pension and Validation Act, 2021 nullify the principles laid down by the Supreme Court in **Prem Singh v. State of Uttar Pradesh and others**², we are of opinion that the principles in **Prem Singh** (*supra*) would apply to the case of daily wagers like the petitioner, regularised in the non-centralised services of the Nagar Palika. The right of an employee serving in a Nagar Palika in the State of Uttar Pradesh, not belonging to the centralised service, to receive post-retiral benefits, is governed by the Uttar Pradesh Nagar Palika Non-Centralised Services Retirement Benefit Regulations, 19843.

13. I had occasion to consider this point in **Ram Sewak Yadav v. State of U.P. and others**⁴, where it was held :

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.”

16. The line of decisions noticed in **Kallu Ali** and the extension of the principle to various classes of employees, who had worked outside the regular establishment followed by regularization, asking their service rendered dehors the rules to be reckoned for the purpose of their qualifying service, entitling them to pension etc., are all based on the principle in **Prem Singh**. In the opinion of this Court, this line of decisions would pose some difficulty in cases of employees of establishments of the State Government, to which the Act of 2021 applies and which, as said earlier, virtually upturns the principles laid down by the Supreme Court in **Prem Singh**. This would, however, not be the case about establishments, to which the Act of 2021 does not apply. It has already been noticed that there is no issue in this case that the Act of 2021 does not apply to the respondents. What, therefore, follows is that the law laid down in **Prem Singh** would govern the rights of employees in the respondents' establishment. The decisions that have followed and extended the principle in **Prem Singh** to classes of employees

functioning dehors the rules followed by regularization for the purpose of reckoning their qualifying service, entitling them to pension, would squarely apply to the petitioner's case.

17. In the opinion of this Court, therefore, the petitioner is entitled to the reckoning of his services rendered on ad hoc basis w.e.f. 02.09.1988 until his regularization in service on 26.03.2006 for the purpose of determining his post retiral benefits. The respondents have committed a manifest error in not taking into account the period of service rendered on ad hoc basis prior to regularization for the purpose of determining the petitioner's pension, gratuity and other post retiral benefits. These have to be determined taking into account the entire period of service, including that rendered on ad hoc basis prior to regularization.

14. The only difference in the present case and **Ram Sewak Yadav (supra)** is that in **Ram Sewak Yadav**, the employee was retained as an ad hoc employee for a long period of time with effect from 02.09.1988 until his regularisation in service on 02.03.2006, whereas, in the present case, the petitioner was retained as a Daily Wager from 19.02.1983 until 26.01.2006, when he was regularised. The retention outside the regular establishment on a continuous basis for along period of time, followed by regularisation in service and absorption in the regular establishment, is key to the principle laid down by the Supreme Court in **Prem Singh** to entitle the employee to reckon his services rendered outside the regular establishment for the purpose of entitlement to post-retiral benefits. Then, it does not matter whether the services rendered outside the establishment were ad hoc, daily rated, work charged or of some other description.

15. The only question that now survives for consideration is if the entire service rendered by the petitioner as a Daily Wager is to be credited to his account to work out his pension or that period of time is to be reckoned towards his qualifying service alone in order to enable him to pension and other post-retiral benefits. The answer to this question is unmistakable that service rendered outside the regular establishment can only be accorded weightage to the extent that it entitles the petitioner to grant pension and other post-retiral benefits. It cannot be added to his regular service to work out his pension and other post-retiral entitlement. In this connection, the law laid down by the Supreme Court in **Uday Pratap Thakur v. State of Bihar and others**⁵ and connected matters, places the matter beyond cavil. In **Uday Pratap Thakur** (supra), it was held :

23. 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.

16. In the result, this writ petition succeeds and stands allowed. A *mandamus* would issue to the respondents, ordering them to ensure, amongst themselves, sanction and payment to the petitioner his retirement pension and other post-retiral benefits, taking into account the services rendered by him from 19.02.1985 to 26.11.2006 as a Daily Wager for the purpose of qualifying service, though not counting those services for quantifying the entitlement either to pension or other post-retiral benefits. The entire arrears of pension and other due post-retiral benefits shall be determined within a period of three months from the date of receipt of this order and current pension shall be paid regularly. The arrears of pension shall carry simple interest at the rate of 6% per annum from the date the petitioner retired from service until the payment of arrears. The other post-retiral benefits payable shall also carry interest at the same rate, payable from the date of the petitioner's retirement until disbursement.

17. There shall be no order as to costs.

18. The Registrar (Compliance) is directed to communicate this order to the Municipal Commissioner, Nagar Nigam, Prayagraj and the Additional Municipal Commissioner, Nagar Nigam, Prayagraj, both through the learned Chief Judicial Magistrate, Allahabad.