
(2006) 08 DEL CK 0125

In the Delhi High Court

Case No : Writ Petition (Civil) No. 17416 of 2004

Ajit Singh

APPELLANT

Vs

The Director of Education and Others

RESPONDENT

Date of Decision : 08-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14
Delhi School Education Act, 1973 — Section 10(1)
Delhi School Education Rules, 1973 — Rule 177(2)

Citation : (2006) 133 DLT 285

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Indrani Ghosh, for the Appellant; Puneet Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—This writ petition seeks an order or direction in the nature of declaration declaring that the action of the respondent/school in withholding the pensionary benefit of the petitioner is in violation of the petitioner's fundamental rights under Article 14 of the Constitution and in violation of Section 10(1) of the Delhi School Education Act and Rule 177(2)(a) of the Rules and for a direction for granting the petitioner the pensionary benefits as has been given to one Mr.B.Das, an ex employee of the school. The petitioner is a retired TGT Physical Education teacher of Delhi Public School, Mathura Road. He joined the school after coming into effect of the Delhi School Education Act, 1973 (hereinafter referred to as "The Act") and claims that his service is regulated by Section 10(1) of the Act which envisages parity of pay, pension, gratuity and other prescribed benefits between the employees of recognized private unaided schools with employees of corresponding status in schools run by the appropriate authority. The petitioner signed the service agreement in 1978. He says that he signed the agreement as he was told by the respondents that he was being offered a better scheme of pay, terminal benefits etc. and unless he signed the agreement giving up his claim for revised pay and arrears of pay from 1975 to

1977 and also his claim for General Provident Fund, he would not get revised pay from January, 1978 onwards. He then says that after recommendations of the Fifth Pay Commission were accepted by the Government of India, he found that the Contributory Provident Fund Scheme offered by the respondents was much inferior to the pension and General Provident Fund of the employees of Government schools and that the petitioner had been shortchanged by the school. In 1998 the respondent/school again sought options from the employees to be fixed in the revised pay scale. The petitioner instead of opting for the scheme provided by the Fifth Pay Commission, represented on 17.4.1998 to the school to fix his pay in the Government scales and not the Delhi Public School Society scales as the benefits under the said scheme were not at par with the pensionary, medical allowance and other benefits as given to Government school teachers. The petitioner was suspended on 13.5.1998 and was subsequently taken back in service on 10.11.2001. The petitioner mentions that another colleague Mr.B.Das was also similarly suspended and reinstated. The petitioner says that the respondents/school filed an LPA 73/2002 arising from CWP 2975/1998 and the respondents agreed therein to pay pension to Mr.B.Das as envisaged in Rule 10(1) of the Act and thereupon the petitioner wrote to the respondent school to withdraw the management's share to the Contributory Provident Fund and treated his share as contribution to General Provident Fund. The petitioner in his letter dated 29.3.2004 demanded the same benefit as given to Mr.B.Das. The Regional Provident Fund Commissioner vide a letter dated 16.4.2004 required the petitioner to submit his documents regarding Provident Fund etc. The petitioner replied vide letter dated 26.4.2004 stating therein that there was no need to file any document in view of the provisions of Section 10(1) of the Act. The respondents/school, on the other hand, vide a letter dated 29.4.2004 declined the request for pension and further stated that the request was contrary to applicable rules, law and service agreement dated 10.5.1978. The petitioner repudiated the stand of the respondents vide his letter dated 12.5.2004 and made another request vide his letters dated 5.7.2004 and 17.7.2004. The petitioner says that the service agreement of 10.5.1978 was violative of the provisions of the Act and the Rules. Mr.B.Das, it is pointed out by the petitioner, had refused to sign the service agreement. The petitioner retired on attaining the age of superannuation on 31.8.2004 and thereafter made another representation on 20.9.2004. The respondent/ school has declined to concede the demand of the petitioner and, hence, the writ petition.

2. The respondent/school has filed a counter affidavit in which it says that all the employees of the school are covered by The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act for short) and a Trust with exemption u/s 79 of the EPF Act is being maintained by the school under the name DPS-EPF Trust and the petitioner continued to be a member of the Trust till the date of his retirement. It is pointed out that the petitioner had specifically opted for the CPF scheme instead of Pension Scheme and that the option was exercised consciously and consequent upon the option, the management's

contribution was duly remitted to the employees PF Trust and the pension portion to the office of the Regional Provident Fund Commissioner (RPFC) and a statement of the contribution made was sent annually to the petitioner duly acknowledged by him. The school denied that the EPF Scheme offered to the teachers of the school is inferior to the pension and GPF Scheme applicable to the employees of Government schools and that the petitioner had been shortchanged by the respondents school. Further, it is contended that the GPF Scheme is not applicable to the teachers of the respondent/school at all. About the settlement arrived at by Mr.B.Das, it is contended in the counter that Mr.B.Das was not paid the pensionary benefits as a matter of right and that the settlement had been arrived at with the intervention of the Court. The respondent also dispute that the petitioner's case was identical with that of Mr.B.Das in as much as Mr.B.Das had not signed the service agreement. The respondent maintains that the petitioner is being governed by the EPF Act.

3. The service agreement was entered into by the petitioner with the respondent (undated but described as one dated 10.5.1978 in the pleadings). The petitioner agreed to the CPF Scheme and gratuity although it says that the services will be governed by the Delhi School Education Act, 1973 (hereinafter referred to as the Act). Section 10(1) of the Act relied upon by the petitioner is as under:

10. Salaries of employees--(1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognized private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such schools to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of Section 4 shall apply accordingly.

4. As is clear from the Section, the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school cannot be less than those of the employees of the corresponding schools run by the appropriate authority. Accordingly, the pay allowance etc. could be better. The concept of parity is different from the concept of less than. The petitioner's case is that the benefit of the CPF or of the EPF provided to him under the service agreement or otherwise by application of law is less than the benefit of the GPF which is available to the teachers of the schools run by the Government. The return of the

CPF or EPF Scheme is different from the return of the GPF with pension scheme and the two returns are valued differently for different people. There is no scale by which it can be said that the value of the CPF and EPF scheme is less than the value of the GPF pension scheme.

5. The employees of the schools run by the Government become entitled to the GPF scheme by virtue of their being Government servants. The benefit of the GPF scheme cannot be extended to the employees of the private schools as the employees of the private schools are not Government servants or others to whom the GPF applies.

6. Although it is not explained in the counter affidavit as to how a member of the CPF scheme has been converted into the EPF, it is pointed out during the arguments that the EPF Act came to be applicable to the educational institutions w.e.f. 6.3.1982. The Act required the Government to frame a scheme called the Employees' Provident Fund scheme and after the scheme is framed, the scheme was to apply to all the establishments covered by EPF Act. It is submitted by the respondent that the Contributory Provident Fund to which the petitioner was subscribing was a voluntary scheme not mandated by any Act but mandated by the requirement of Section 10(1) which says that the emoluments and benefits of the private unaided schools could not be less than the salaries and other emoluments payable to the schools run by the appropriate authority. It is stated that by virtue of the Act, it became mandatory for the school to follow Employees' Provident Fund scheme and, Therefore, the provident fund maintained by the school and run by the DPS EPF society are governed by the Employees' Provident Fund scheme.

7. Coming to the case of Mr.B.Das, I find that the agreement arrived at with Mr.B.Das in course of the LPA 73/2002 has been filed by the respondent. The terms of the agreement mentioned in the settlement do not say that the GPF scheme will apply to Mr. Das although it is mentioned that the pension shall be payable to Mr.B.Das in accordance with the Government rules at the applicable rate for monthly pension as notified by the Government w.e.f. 1.4.2002 and further that respondent no.3 shall discharge the employer's share and interest on their own Contributory in the Provident Fund in favor of the Principal of the school. The difference between the case of the petitioner and that of Mr.B.Das is clear from the very fact that Mr.B.Das did not sign the service agreement. The other difference identified by the respondent is that Mr.B.Das was treated as a Trained Graduate Teacher, a category lower than the Post Graduate Teachers (PGT). Mr.B.Das had been kept in the old DPS pay scale and fixed allowance etc. The case of the petitioner, Therefore, is not comparable with that of Mr.B.Das and, Therefore, the parity as claimed under Article 14 of the Constitution cannot be extended to the petitioner. It is also pointed out that the settlement was arrived at without any reference to the merits of the claim of Mr.B.Das and without in any way reflecting on the rules applicable to him.

8. The petitioner in the rejoinder has relied upon an Office Memorandum issued

by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare dated 1.5.1987 with the following subject:

Change over of the Central Government employee from the Contributory Provident Fund Scheme to Pension Scheme - Implementation of the recommendations of the Fourth Central Pay Commission.

9. The first paragraph of the Office Memorandum reads as under:

The undersigned is directed to state that the Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the Pension Scheme. The last such option was given in the Department of Personnel and Training O.M.No.F3(1)-Pension unit/85 dated 6th June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central Pay Commission has now recommended that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme.

10. It is clear from the above extraction that the notification applied to all Central Government employees. The petitioner admittedly is not a Central Government employee and cannot take any advantage of this Office Memorandum. Hence, the petitioner is not entitled to the relief prayed for.

11. The petitioner is apprehensive that when the petitioner finally withdraws his provident fund, the respondent/school may decline to give the interest earned on it w.e.f. 1.9.2004. Mr. Mittal informs the Court that the fear is unfounded and the school will give interest at the admissible rates that has accrued on the funds till date of withdrawal. Mr. Mittal, however, says that the petitioner should promptly apply for withdrawal lest there is a long gap between this order and the actual withdrawal by the petitioner.

12. The petition is dismissed.