

(2010) 01 AHC CK 0171
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 71796 of 2009

Amar Nath Maurya

APPELLANT

Vs

State of U.P. Through principal secretary higher education,
uchch shiksha anubhag, vidhan bhawan, U.P. At Lucknow and
others

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0171

Hon'ble Judges : S.P.Mehrotra, J and Kashi Nath Pandey, J

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra, and Kashi Nath Pandey, JJ.

1. Heard Sri R.P. Dubey, learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.
2. The learned counsel for the parties are agreed that the controversy involved in the present Writ Petition is covered by the earlier decisions of this Court, referred to hereinafter in the present Judgment, and therefore, the present Writ Petition may be decided at this stage itself.
3. Two supplementary affidavits have been filed on behalf of the petitioners, which have been taken on record by the Order dated 08.01.2010.
4. From the averments made in the Writ Petition and the Supplementary Affidavits, it appears that the petitioner Dr. Amar Nath Maurya was appointed as Lecturer in Botany Department at D.S. College Aligarh, and he joined his services on the post of Lecturer on 6.9.1973. The date of birth of the petitioner Dr. Amar Nath Maurya was 9.6.1944. The age of superannuation of teachers working in Degree Colleges was enhanced from 60 years to 62 years by the Government Order dated 24.2.2004 (Annexure SA2 to the Second Supplementary Affidavit) . Accordingly, the date of superannuation of the petitioner Dr. Amar Nath Maurya was 8.6.2006 and the date of retirement after getting session benefit was 30th

June, 2006. The petitioner accordingly retired on 30th June, 2006.?

5. It appears that initially the petitioner opted for Contributory Provident Fund Scheme (CPF) . However, in the year 2004, the petitioner exercised his option in terms of the Government Order dated 25.8.1999 for switching over from Contributory Provident Fund Scheme (CPF) to General Provident Fund Scheme (GPF) with Pension. The intimation in regard to the exercise of option in the year 2004 by the petitioner and other teachers working in D.S. College, Aligarh was sent by the Principal of the College to the Regional Higher Education Officer, Agra Region, Agra by the Communication dated 12.5.2004/18.5.2004 (Annexure SA1 to the Second Supplementary Affidavit) .

6. It is, inter alia, prayed in the Writ Petition that writ, order or direction in the nature of mandamus be issued directing the respondents to accord the benefit of GPF plus Pension Scheme to the petitioner in accordance with the Government Order dated 25.8.1999, and various decisions of this Court.

7. Facts relevant for deciding the present Writ Petition are as under.

The State Government from time to time has issued Government Orders permitting the teachers to exercise their options for switching over from Contributory Provident Fund Scheme (CPF) to General Provident Fund Scheme (GPF) with Pension.

The last such Government Order was issued on 25.8.1999 (Annexure 5 to the Writ Petition) which permitted the teachers to exercise their options before one year of their retirement. However, by the Government Order dated 5/6.5.2000 (Annexure 6 to the Writ Petition), a clarification was issued that option could be exercised only by such teachers, who were governed under the General Provident Fund Scheme and not under the Contributory Provident Fund Scheme.

8. It appears that this Court in Civil Misc. Writ Petition NO. 25140 of 2001 (Dr. Shri Gopal Gupta and others Vs. State of U.P and others) considered the aforesaid Government Orders dated 25.8.1999 and 5/6.5.2000, and held by the Judgment and Order dated 26th October, 2006 as follows:

"....The policy of the Government providing benefit of GPF plus pension Scheme at no point of time denied the benefits to those teachers who had not opted for the said scheme prior to 25th August, 1999 or during the period prescribed either in the Government Order of 1980 or 1982. Since the scheme remained in existence and time for giving option was extended from time to time, the interpretation given by the State to the aforesaid Government order dated 25th August, 1999 and the clarifications dated 5th June, 2000 and 12th July, 2000 cannot be sustained in the eyes of law.

The petitioners who had applied/opted for GPF plus pension scheme though they were covered under the CPF scheme, one year before their date of retirement i.e. during the extended period as per the Government Order dated 25th August, 1999 could not have been refused the said benefit on the ground that the

aforesaid scheme/option was open only for those teachers who are covered by the GPF scheme....."

9. Copy of the said Judgment and Order dated 26th October, 2006 has been filed as Annexure 7 to the Writ Petition.

10. It further appears that the State Government filed a Special Leave Petition before the Supreme Court being Petition for Special Leave to Appeal (Civil) No. 722 of 2008.

11. By the Order dated 3.11.2008 (Annexure 8 to the Writ Petition), their Lordships of the Supreme Court dismissed the said Special Leave Petition.

12. Thus, the aforesaid Judgment and Order dated 26th October, 2006 became final.

13. This position has not been disputed by the learned Standing Counsel.

14. In our opinion, the petitioner in the present Writ Petition, who exercised his option in the year 2004 in terms of the Government Order dated 25.8.1999, is entitled to the benefit of GPF Scheme with Pension.

15. As noted earlier, the petitioner retired from service on 30th June, 2006, and therefore, the option exercised by the petitioner in the year 2004 was as per the requirement of the said Government Order dated 25.8.1999.

16. We may mention that in Civil Misc. Writ Petition No. 13169 of 2008 (Kirti Chand Gupta and others Vs. State of U.P. and others) connected with various other Writ Petitions, similar controversy was involved. A Division Bench of this Court by its Judgment and Order dated 16th April, 2009 (Annexure 12 to the Writ Petition) decided the said Writ Petitions following the decision of this Court in Dr. Shri Gopal Gupta (supra), and gave directions to the respondents in the said Writ Petitions for extending the benefit of the said Government Order dated 25th August, 1999 to the petitioners in the said Writ Petitions.

17. Respectfully following the above decisions, we decide the present Writ Petition giving similar directions.

18. The Writ Petition is accordingly allowed with the following directions:

1. Within four weeks from today, the petitioner will file an application before the concerned authority (Director of Higher Education, Uttar Pradesh, Allahabad) alongwith a certified copy of this Order. Within six weeks of the filing of such application alongwith certified copy of this Order, the concerned authority will inform the petitioner regarding the amount of contribution made by the employer in respect of the Contributory Provident Fund Scheme (CPF) together with interest thereon to be deposited by the petitioner as well as the necessary formalities to be completed by the petitioner.

2. On receipt of necessary information from the concerned authority as mentioned in the direction no. 1 above, the petitioner will, within two months of

the date of receipt of such information, deposit the aforementioned amount together with interest thereon and also complete the necessary formalities.

3. On the deposit being made and the formalities being completed by the petitioner as mentioned in the direction no. 2 above, the respondents within three months thereafter will give benefit of the Government Order dated 25.8.1999 to the petitioner in terms of the option exercised by the petitioner in the year 2004.

19. On the facts and in the circumstances of the case, the parties will bear their own costs.