

(2013) 03 PAT CK 0055

In the Patna High Court

Case No : Civil Written Jurisdiction Case No. 16404 of 2007

Baidya Nath Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Citation : (2013) LabIC 4046

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Yugal Kishore and Shashi Bhushan Singh, for the Appellant; Nivedita Nirvikar, J.S. Baranwal, SC-1, Santosh Kumar Jha, Rajesh Kumar Verma, SC 27 and Ajay Bihari Sinha, for the Respondent

Judgement

Navaniti Prasad Singh, J.—In the three writ petitions under consideration there is a common question of law involved. Insofar as the first two writ petitions are concerned, i.e., C.W.J.C. No. 16404 of 2007 (Baidya Nath Choudhary v. The State of Bihar & Ors.) and C.W.J.C. No. 10640 of 2008 (Sachchida Nand Verma v. The State of Bihar & Ors.), the pleadings are complete, but so far as C.W.J.C. No. 21317 of 2012 (Ajay Kumar Jha v. The State of Bihar & Ors.) is concerned, as the pleadings appeared to be incomplete, this third case is de-listed for being put up under the heading "For Orders" separately and final judgment is not being delivered in respect of this third case. The common question that arises in the remaining two writ petitions is with regard to liability of the University to pay pension. The dispute arises as to the interpretation of the amendment by insertion of Clause-4B to the Triple Benefit Pension Scheme with effect from 20.12.2005. State and University submit that the amendment would be prospective in operation thereby pension could only be started from the year 2006 prospectively. Whereas learned counsel for the petitioners submits that this amendment is remedial and/or curative. It validates actions taken earlier and, therefore, would be retrospective.

2. Before discussing the legal issues, it is necessary to note the relevant facts in

relation to the two cases.

3. In C.W.J. C No. 16404 of 2007 (Baidya Nath Choudhary v. The State of Bihar & Ors.) the facts are thus. Petitioner was appointed as Lecturer in Zoology in Ganesh Dutt College, Begusarai on 29.8.1961. On 17.12.1981, he was promoted and notified as Reader. He retired on 30.04.1995. But, by University letter dated 17.10.1998, he was notified as University Professor with effect from 29.08.1986. The College is a constituent unit of L.N. Mithila University.

4. It appears that in 1980, the Chancellor approved the statutes for the grant of retirement benefits to the employees of the Bihar/Ranchi/Bhagalpur/Magadh/L.N. Mithila/K.S.D. Sanskrit University, which was amended and also approved by the Chancellor in the year 1982. It applied to all the employees of the University and its constituent Colleges who joined service before 1st of April, 1978 and who retired on or after 1.4.1972 and are still alive. This scheme contemplated three schemes. Scheme-A was of General Provident Fund-cum-Pension-cum-Gratuity Scheme. Scheme-B was Contributory Provident Fund-cum-Gratuity Scheme, wherein the employer contributed to the provident fund of the employee 8% of the pay of the employee regularly. The third, i.e., Scheme-C contemplated only Contributory Provident Fund where the employers contribution was 10% of the employees pay regularly to the employees' provident fund. Apart from other things Clause-4 provided for exercise of option. It clearly provided that the options must be sent in writing to the Registrar of the University within three months of the date of such notification. It also specifically provided that option once exercised shall be final. It also provided that those who exercised option under Scheme-A and had been in receipt of Contributory Provident Fund earlier, would have to refund the employer's contribution along with interest as provided in Clause-4. Thus seen, all employees were required to put their options by the end of February, 1983. These statutes are commonly known and referred to as the Tripe Benefit Retirement Scheme.

5. It appears that this petitioner had not opted for Scheme-A, i.e., General Provident Fund-cum-Pension-Gratuity, but had opted for other scheme. On 7.11.1998, Lalit Narayan Mithila University (hereinafter referred to as the University) issued a letter giving chance to persons to revise their options. It was so stated in the letter that upon return of the employer's share of contributory provident fund with compound interest pension would be started there after. This date was then extended up to 30.06.1999.

6. It appears that petitioner within this ex-tended date deposited in the University a sum of Rs. 50,600 being employer's contribution to Contributory Provident Fund (hereinafter in short CPF) with compound interest. But, thereafter his pension was started only with effect from February, 2003. Hence, this petitioner claims that apart from other dues, pension is to be started with effect from May, 1995, he having superannuated on 30.4.1995. University takes stand that as the Triple Benefit Scheme has been amended with effect from 20.12.2005, by introduction of Clause-4B, pension is payable only from 2006 and

any amount of pension paid earlier is recoverable.

7. In the second case, i.e., C.W.J.C. No. 10640 of 2008 (Sachchida Nand Verma v. The State of Bihar & Ors.), the petitioner was appointed as Lecturer in Ganesh Dutt College, Begusarai in the Chemistry Department as Lecturer on 11.8.1961, He was notified as Reader on 14.11.1980. By University notification dated 30.08.1994, he was notified as University Professor with effect from 11-09-1986. He retired on 31 -03-1999. His pension was started with effect from 1-04-1999. On 4-08-1999 (Annexure-3), while recommending payment of gratuity of Rs. 1 lac an adjustment of Rs. 50,307 was made towards University contribution to the provident fund with cumulative interest, being CPF contribution of the employer. Petitioner apart from other dues has sought payment of revised pension. University and the State, on the other hand, submits that in fact he is entitled to pension in view of amendment to the Triple Benefit Pension Scheme by introduction of Clause-4B only with effect from 2006 and pension paid earlier does not need be revised rather is to be refunded to the University.

8. It appears that prior to 1982 the practice of grant of retirement benefits varied from University to University. It seems that to bring about uniformity in retirement benefit amongst employees of various Universities of the State, the statutes for grant of retirement benefits to the employees of the Bihar/Ranchi/ Bhagalpur/Magadh/L.N. Mithila/K.S.D. Sanskrit University was approved by the Chancellor and was amended on 25.11.1982. Clause-1 of the statutes reads as under:--

1. The Statues hereby constitute the following alternative schemes:--

(a) General] Provident Fund-cum-Pension-cum-Gratuity Schemes (given in Appendix-A).

(b) Contributory Provident Fund-cum-Gratuity scheme in which employer's contribution to Provident Fund shall be limited to 8% "of pay of the employee (given in Appendix-B).

(c) Contributory Provident Fund only, in which the employer's contribution shall be 10% of pay of the employee.

These statutes shall come into force with effect from 1.4.1972.

9. From these, it would be seen that three types of distinct schemes were contemplated, Scheme-A contemplated General Provident Fund-cum-Pension-cum-Gratuity. Scheme-B contemplated Contributory Provident Fund-cum-Gratuity but no pension. Employer's contribution to provident fund to the employees was 8% of the employee's pay. Scheme-C was only Contributory Provident Fund with employer's contribution to the employee's provident fund being 10% of the pay of the employee. These Scheme-B & C does not include pension. Clause-4 & 4 A reads as follows:--

4. Exercise of option.--All the employees to whom these statutes apply and who

joined service in the University/Constituent colleges before the 1st April, 78 and are still in service or have retired on or after 1.4.72 and are alive on the date of notification of these rules have to send the option in writing to the Registrar within three months of the date of such notification. The option once exercised shall be final.

In the case of employees who retired from the service of the University on or after the 1st April, 1972, but have died before exercising his/her option under this statute, his/her family shall be eligible for exercising the option between the schemes, provided that if the family opts for the scheme given in Appendix "A": it shall have to refund the University share of the Contributory Provident Fund of the deceased employee, along with interest thereon either in cash or by adjustment from the amount of gratuity or both, and in case the family opts for the scheme in Appendix "B", it shall have to refund the employer's share to the Contributory Provident Fund of the deceased, that exceeded 8 percent of pay of the deceased, along with interest thereon.

4A. Employees who opt for the scheme "A" or to whom scheme "A" is applicable by virtue of the fact that they joined service of the University on or after 1.4.78, who have already drawn employer's contribution and interest thereon from their Provident Fund in part or whole, will be required to refund the same in monthly installments not exceeding sixty. In case the full amount is not recovered by the date of retirement or death, the balance amount will be recoverable from the gratuity and failing that it will be payable in cash by the employee/beneficiary. The above provisions will be equally applicable in the case of an employee who has opted for scheme "B", excepting that the amount to be refunded will be 20 percent of the employer's share with interest thereon.

In the case of persons who have already retired the employer's share of the provident fund with interest thereon shall be deposited by them either in cash or by adjustment from the amount payable as gratuity or both.

10. A conjoint reading of the aforesaid two Clauses, being Clauses-4 & 4A, would show that these options were available to employees who had been employed prior to 1.4.1978 including those who retired after 1.4.1972 and were alive. It also provided that within three months the employee was required to give the option and that option once exercised was final. The mechanism where the option resulted in change of retirement benefits was also provided. Concerned employee was required to refund the employer's contribution with interest as stipulated in Clauses-4 & 4A. Clause-3, inter alia, provided that for those employees who joined service on after 1.04.1978 only Scheme-A applied and those who failed to exercise the option by default scheme became applicable.

11. It appears that this scheme having been announced a large number of employees had either opted for Scheme-B or Scheme-C as at that time pension was a very small amount. Subsequently, the State Government revised pensions and it now became profitable for the employees to receive pension. In some of

the Universities including L.N. Mithila University, upon persuasion of the employees, they were given a chance to revise their options. Some of the employees who were still in service, they revised their options making adjustment in their provident fund contributions. Some who had retired chose to refund the employer's share of contribution in their CPF account along with compound interest and, subsequently, University started paying them full pension. This apparently created a chaotic situation.

12. As would be seen from above schemes that under different schemes different deductions were to be made. For example, if someone had selected Scheme-A then there was no employer's contribution. There was only to be a deduction from the employee's pay for the credit of his GPF account which was an interest bearing account and the money had to be kept separately. If someone opted for Scheme-B then in the CPF account the employer had to contribute 8% of the pay regularly and this along with employee's deductions was to be kept in a separate interest bearing account. Similarly, in respect of Scheme-C where a greater amount had to be deducted (10%) and contributed by the employer towards CPF. When options were changed, liability to pay the gratuity arose and recurring liability of pension arose. Various deposits had to be recalculated and realigned. Accordingly, it seems that State brought these anomalies and chaos to the notice of the Chancellor. Pursuant where to, in the year 2000 the Chancellor issued directions to the University that in view of the statutes aforesaid all persons who were given chance to revise their options must be relegated to their original options. The result was that good number of employees, who were in receipt of pension by virtue of changing their options or giving fresh options after the last date fixed by the statute, were deprived of their pension. They were now required to refund the same to the University. This led to a large number of writ petitions being filed before this Court which were heard and finally disposed of by judgment and order dated 7.09.2001, being the case of Prof. (Dr.) Ram Nirajan Kedia and Others and Parashuram Singh and Others Vs. The State of Bihar and Others

13. Various arguments were made on behalf of the writ petitioners who were employees of the University, but were all negated by this Court. This Court clearly held that direction of the Chancellor to relegate the employees to their original options in terms of the statute was correct. The opportunity given to them to give fresh option or to revise their options after the date as specified in the statute was wrong.

14. It may be noted here that later another Bench of this Court took a contrary view and the matter then travelled to Division Bench in Letters Patent Appeal. In the said case, the Division Bench of this Court approved the judgment of this Court in the case of Prof. (Dr.) Ram Nirajan Kedia case (supra) and set aside the judgment under appeal, which had since reported, being Gopal Lall Vs. The State of Bihar and Others, . The judgment of the Division Bench in the case of the The State of Bihar and Another Vs. Gopal Lall and Others, . Apparently, these

judgments created very uncomfortable position for the retired employees, especially because now the State Government was consistently revising pension, it became very un-remunerative to them to live without pension. The other effect was that large number of employees, who were in receipt of pension upon their revised options, had died. Asking pensioners to refund huge amount of pension received through decades appeared to be unreasonable. Equally there was serious problem with the Government. The Government was then required to pay to the employees" substantial amount of money with compound interest up to date as CPF. Apparently, because of these problems and issues Government reached to an amicable solution. All these issues that all options that were unauthorizedly given after the due date be treated as valid. Pensions of those pensioners which had been stopped would be restored and the statute be amended legitimizing those actions. This is Annexure-16 to the third supplementary affidavit of the petitioner and is not disputed. This was circulated by the State Government vide their letter dated 17th of November, 2005 in the Department of Human Resource Development (Higher Education) with the concurrence of the Finance Department. Soon thereafter, the statue for retirement benefit under the Triple Benefit Scheme was amended through Governor Secretariat, Bihar letter No. BSU-19/2005-3193/GS(I), Patna, dated 20.12.2005. By this Clause-4B was introduced in the statute. The new Clause-4B is quoted hereunder:--

4B. Notwithstanding anything to the contrary as contained in the Statute for the grant of retirement benefits, approved by the Chancellor, vide Letter No. BSU-52/80-5285/GS (I) dated 18/21.11.1980, as amended by Letter No. BSU-52/80-2158/GS (I), dated 25.11.1982 (in force with 14.11.1980), it is hereby provided that all the employees to whom these Statutes apply and who joined service of the university/constituent colleges before 1st April, 1978 and are still in service or have retired and provided with fresh option after the cutoff date fixed in earlier statutes and have already given their option to the University shall be given the benefits of scheme set out in Appendix-A of the retirement benefits statutes:

Provided further that the University shall not provide fresh option henceforth in any case otherwise the expenditure so incurred as a result thereof, shall be realized from the concerned persons as a public demand under the provisions of the Public Demands Recovery Act, 1914.

This amendment will also be applicable to the newly created or carved out Universities of Bihar, such as J.P., University, Chapra/B.N. Mandal University, Madhepura/Veer Kunwar Singh University, Ara/Maulana Mazharul Haque Arabic & Persian University, Patna.

15. The question is to the scope and applicability of this Clause-4B. According to the State and the University statute was introduced only with effect from 20.12.2005 and it would have a prospective effect. In other words, they submit that though they (employee) wrongly exercised options after due date, which

was legitimized by this amendment, the pension would become payable only with effect from the year 2006. On the other hand, counsel for the petitioners submits that looking to the past wrong practice and the Government resolution, which notices the same, this amendment only, seeks to cure the defect, remedy the situation and legitimize the revised options and the payment of pension. They submit that applying the Heydon's Rule we must interpret and understand Clause-4B without losing sight of the Government resolution which explains the whole situation and specifically notes that wherever pensions had been stopped they must be restored.

16. Having given my anxious consideration, in my view, the contention put forward by the petitioners is correct and has to be accepted.

17. From the events and facts noted above, it would be seen that originally when the Triple Benefit Scheme was floated options were to be exercised only once within three months which was final. It may be noted here that second proviso to Clause-3 of the scheme clearly provided a default Clause. It provided that persons who had failed to exercise options validly within the period specified would be deemed to be falling under Scheme-A. A reference to the said Clause would also show that all employees who came in employment after 1.04.1978 could only opt for Scheme-A, i.e., pension scheme. But, it also happened that some initially gave an option for non-pensionable scheme. But, later on with the connivance of the University Authorities unauthorizedly they, changed their options to Scheme-A and started receiving pension. It was at this juncture that in the year 2000, the Chancellor first stepped in and stopped all these unauthorized changes which led to the decision of this Court in the case of Prof. (Dr.) Ram Niranjana Kedia (*supra*) and in the Division Bench judgment in the case of Gopal Lall's case (*supra*) upholding the action of the Chancellor. It is to get over this situation that the Government resolution was taken and circulated on 17th of November, 2005. If one reads the entire resolution of the Government, which is Annexure-16 to the third supplementary affidavit in the first writ petition and which the Government and the Universities have not challenged otherwise, it would show that the Government noticed the difficulty that would be created by not allowing change of option. Government clearly resolved to legitimize the wrongly exercised options. It clearly went to the extent of saying that Government had resolved that all pensions that had been stopped would be restored. That was a clear intention of the Government which intention was fructified by the amendment whereby new Clause-4B was added to the statute, as quoted above.

18. In my view, this amendment has to be read keeping in view the historical background in which it was enacted. It was clearly meant to overcome or remedy a situation which had been created by unauthorized exercise of options. The use of expression "and provided with fresh option after cut-off date fixed in earlier statute" as used in Clause-4B read in such perspective can only mean to cover all those cases where original options for non-pensionable schemes were revised by

fresh options under Scheme-A after due date. The only thing that was done by this amendment was to legitimize the change of option to pension scheme, as contained in Appendix-A of the retirement benefit statute, as earlier indicated. This would also be clear from proviso to Clause-4B which clearly prohibited the Universities from providing for fresh options henceforth. This could only mean that giving any further chance to change the option was prohibited and it legitimized previous changes. It was only intended to legitimize what had earlier been wrongly done. That is the intent of this amendment. This is the Heydon's Rule of interpretation, which clearly states to look at the mischief sought to be remedied in a purposeful manner. The expression quoted above from newly introduced Clause-4B has to be accordingly interpreted and understood.

19. On behalf of the State and the University, it is submitted that this rule should be given a prospective operation. Meaning thereby, that the pensions would start, if so required, from the year 2006. In my view, this submission would be forgetting the mischief which had been sought to be legalized. If one looks at the Government resolution it in no uncertain term states that where pension had earlier been stopped they have to be restored. This clearly demolishes the stands of the University and the State.

20. Thus, in my considered opinion, the effect of Clause-4B is only to legitimize the unauthorized changes in option beyond cutoff date stipulated in the statute. Thus, wherever the University employees have changed their options refunded the employer's share of contribution to employee's provident fund with cumulative interest, they would be entitled to receive pension. Thus seen, the amendment is retroactive.

21. But, the question still remains as to from when would the pension start. In my view, for this purpose, we must refer the letters of the University which gave them the chance to unauthorizedly change their option. Those letters, inter alia, are dated 7.11.1998 (Annexure-E to the counter-affidavit in the case of Baidya Nath Choudhary's case) as also Annexure-14 to the supplementary affidavit in the same case. This letter clearly shows that pension option change would start after the employer's share with compound interest is refunded to the University either in cash or by way of adjustment from money payable by the University. The employee cannot accept a part of the offer, permitting change of option and reject the rest, starting date of pension. They cannot approbate and reprobate at the same time.

22. In the first writ petition, we have seen that it is on 30.6.1999, petitioner refunded the employer's contribution with compound interest. In the second case, it is with effect from 4.08.1999 that University adjusted the CPF contribution with interest from the gratuity payable. Therefore, in my view, pension payment liability would start immediately mere-after and not before. Once pension payment liability is so fixed, it goes without saying that whenever subsequently there was revision in pension, the pensioner would be entitled to the revisions, without having to ask for it or to file a writ petition for the same.

The revisions have to be compulsory and automatic in all cases. I mention this fact because in practice unless a person approaches the authorities or this Court rarely benefits arising out of it is given suo motu by the authorities for reasons best known to them or for reasons which this Court cannot discuss.

23. Thus, in my view, both the writ petitions to the extent indicated above must succeed. Petitioners are entitled to the full pension from the period indicated above including its revision as and when announced by the State. It shall be the liability and the responsibility of the Registrar of the University to ensure complete calculation on this account and payment thereof within a period of two months from today from whatever source or fund available to them.

24. Universities across the State would be well advised to follow this judgment in case of all the employees and not force them to burden this Court with multiple litigations on the same issue.

25. Apart from this, if the petitioners still have some grievance left with regard to any other dues, I direct them to file a detailed representation giving full calculations to the Registrar of the University, who would immediately get the matter examined and within one month of representation being filed pass appropriate orders with full calculation quantifying the dues payable, if any, or rejecting the claim by reasoned order, if any, and communicating the same to the petitioners. The responsibility shall lie on the Registrar for timely compliance. If any amount is found due and payable, the same shall be paid by the University from whatever fund it has within one month thereafter. With the aforesaid observations and directions, these two writ petitions are allowed.