(2025) 09 MEG CK 0624

In the Meghalaya High Court

Case No : Writ Petition (C) No. 146 Of 2023

Dr. Bela Keshan APPELLANT

Vs

North Eastern Hill University & Ors. RESPONDENT

Date of Decision : 10-09-2025

Acts Referred:
Constitution Of India, 1950 — Article 12

Citation : (2025) 09 MEG CK 0624

Hon'ble Judges : H. S. Thangkhiew, J

Bench : Single Bench

Advocate : P.K. Tiwari, S.P. Sharma, A.M. Pala, S. Sen, E. Blah, B. Deb, M. Lyngdoh, D. Das

Final Decision : Dismissed

Judgement

H.S. Thangkhiew, J

1. The brief facts are that the petitioner had joined City College, Kolkata on 02.01.1998 as a Lecturer in Zoology, wherein her service was governed by the West Bengal Non-Government Colleges Teachers (DCRB) Scheme. She was later promoted as Senior Lecturer and then to Reader, and while serving in City College, on an application through proper channel with lien for the post of Reader in Zoology at NEHU, joined the said post on 19.04.2007. After joining NEHU, the petitioner requested that her past service under the DCRB Scheme be counted towards the Old Pension Scheme (OPS) under the DCRB Scheme, but the same was rejected by NEHU, who insisted that the West Bengal Scheme was not governed by the CCS (Pension) Rules, and her earlier service was in a Non-Government College. Hence being aggrieved, she is before this Court by way of this writ petition.

2. Mr. P.K. Tiwari, learned Senior counsel assisted by Mr. S.P. Sharma, learned counsel for the petitioner has submitted that the petitioner on having entered service in City College had opted for pension (including family pension) cum

gratuity, as per the option allowed by Government order No. 1097-Edn. (CS) of 31.05.1978 on 26.02.1998, and as such was covered under the Old Pension Scheme. This he submits, is due to the fact that City College, Kolkata is affiliated to the University of Calcutta and is governed by the West Bengal Non-Government College Teachers (Death Cum Retirement Benefit Scheme), which is parimateria to the CCS Pension Rules of 1972. This fact he contends, was informed to the respondent NEHU by the Principal of City College vide letter dated 27.07.2007, and as the NEHU respondents still harboured doubts as to whether the petitioner could be considered under the CCS (Pension) Rules, 1972, a communication was made by them to the City College, who by letter dated 13.02.2008 responded that the petitioner would be eligible under the West Bengal Non-Government College Teachers (Death Cum Retirement Benefit Scheme).

3. The learned Senior counsel has then advanced a multipronged argument revolving around the fundamental issue of the respondent NEHU refusing to count the petitioner's past service and cover her under the Old Pension Scheme (OPS), with the main submission being that the petitioner's previous employment was in substance and spirit, service under the State of West Bengal. The learned Senior counsel has then outlined the legal character of the petitioner's previous employment by submitting that City College, Kolkata though administratively run by the Brahmo Samaj Education Society, was legally and functionally a Government Aided Non-Minority Institution, inasmuch as, the Government of West Bengal had in 2017, dissolved the Governing Body and brought the same under the direct purview of the State laws, which made the petitioner, a defacto State Government employee. It was then submitted by the learned Senior counsel that the petitioner's case is clearly within the ambit of Government policy designed for service mobility, and in this context has placed reliance on an O.M. dated 11.06.2020, issued by the Department of Pension and Pensioners Welfare, Government of India. By this OM he submits, a One-Time option has been provided to employees who joined the Central Government or Autonomous Body under the New Pension Scheme (NPS) between 01.01.2004 and 28.10.2009, who after submitting a technical resignation from pensionable State or Central establishment could be covered under the OPS, and have their past service counted. Learned Senior counsel has then submitted that the petitioner having resigned from her pensionable post in West Bengal in 2007, and joined NEHU in that year itself, fits this criteria perfectly, moreso, as the objective of the O.M.'s was to facilitate seamless mobility for the employees between Government Bodies without stripping them of their earned pension benefits, a benefit he contends NEHU, was obligated to extend.

4. The learned Senior counsel has further submitted that the stand taken by the NEHU is untenable, inasmuch as, in spite of receiving confirmation that the West Bengal Scheme provided for pension, gratuity and family pension, have claimed that the West Bengal Scheme was not identical to the Central Civil Service (Pension) Rules, 1972, though the same is parimateria. It has also been argued

that the respondent NEHU, has admitted the fact that a crucial UGC circular dated 21.09.2020, which brought the 11.06.2020 O.M. to the notice of all Central Universities, which provided that the 3 month's option window would begin from the date of the circular was never circulated, and as such the respondent NEHU, was estopped from citing delay as a ground to deny the writ petitioner the benefit. In rounding up his submissions, the learned Senior counsel has submitted that pension is not a bounty but a right, and that beneficial Government policies must be interpreted liberally in favour of the employee, and the Court should recognize the substantive nature of her previous service by directing the NEHU to count her past service, and place her under the Old Pension Scheme. In support of his submissions, the learned Senior counsel has placed reliance on the following decisions:-

i) Union of India & Anr. vs. Pradeep Kumari & Ors (1995) 2 SCC 736

ii) Parmatma Saroup vs. State of U.P. & Ors. 1989 SCC OnLine All 870 : 1990 Lab IC 648

iii) Madan Singh Shekhawat vs. Union of India (1999) 6 SCC 459

5. Mr. S. Sen, learned Standing counsel for the respondent NEHU in reply has submitted that the petitioner on consideration of the matter by the respondent NEHU was not entitled under the Office Memorandums and other Notifications. In this connection, the learned counsel has submitted that the Government of India had issued OM's dated 26.07.2005 and 28.10.2009, allowing portability of past service only in well-defined situations and a conjoint reading of the two OM's would show that O.M. dated 26.07.2005, applied only to cases where an employee moves from a Central Government Department or Central Autonomous Body, governed under the CCS Rules, to another such entity and O.M. dated 28.10.2009, expanded the scope to include State Government employees covered under a pension scheme similar to CCS Pension Rules, Central Government Departments under similar Non-CCS Rules and Central/State Autonomous Bodies under the Old Pension Scheme. The OM's he submits being categorical and unambiguous, nowhere contemplate Non-Government Colleges, such as City College, Kolkata being included. City College, Kolkata he submits is administered by its own Managing Committee though aided by the Government and the Scheme for the teachers namely; the West Bengal Non-Government College Teachers (Dead Cum Retirement Benefit Scheme) makes this distinction very clear. Section 5(b) (i) of the Scheme he submits, excludes Colleges, established, maintained and administered by the State Government and City College being neither a State Government Institution nor State Autonomous Body, the petitioner's service cannot be considered for portability of pensionary benefits under the CCS (Pension) Rules, 1972.

6. The learned counsel has then submitted that the OM's having strictly confined the mobility of personnel amongst Central/State/Autonomous Bodies, the scope of the Notifications/Schemes therefore, even in exercise of the powers of judicial

review cannot be expanded. It is also contended that the power of judicial review is about examining the legal grounding and the exact purport of a notification and not about adding to, or changing the wordings thereof, as the conditions for seeking benefit under the OM's or Notifications, are to be strictly interpreted. In the instant case he submits, the wordings of the Notifications being clear, the plain language used therein, must be given effect to. In support of his arguments, the learned counsel has placed reliance on the case of Union of India & Anr. vs. Deoki Nandan Aggarwal reported in 1992 Supp. (1) SCC 323 and the case of Saraswati Sugar Mill vs. Commissioner of Central Excise Delhi III reported in (2014) 15 SCC 625.

7. With regard to the UGC circular dated 21.09.2020 directing for implementation of OM dated 11.06.2020 pertaining to mobility, it is submitted that though it is a fact that instructions of the UGC are binding upon the University as per the provisions contained in the UGC Act, however, no purpose would be served in considering the petitioner's case afresh in terms of the OM dated 11.06.2020, as the same was not applicable to her due to her in-eligibility. He finally submits that in any case, the claim of the writ petitioner is not maintainable, as the instant writ petition has been filed well after she resigned from the University.

8. On behalf of the respondent No. 6, i.e. the State of West Bengal, it has been submitted by Mr. B. Deb, learned Senior counsel assisted by Mr. M. Lyngdoh, learned counsel, that the petitioner who was appointed as a Lecturer at City College, Kolkata in 1998, and had opted to be put under the Old Pension Scheme, was granted a lien of 2 years from City College with effect from 19.04.2007 in order to join as a Reader at NEHU, but instead of retaining her lien, had submitted a resignation on the very date she joined NEHU i.e. 19.04.2007. It is submitted that the petitioner by resigning had severed her earlier service permanently, which has created a break in her service. In addition, he contends even with regard to the One-Time option to employees offered under the OM dated 11.06.2020, the failure of the petitioner to exercise her option within the mandated 3 months, had rendered her in-eligible for consideration under the OPS. He therefore, submits that the denial of OPS benefits by the respondent University was correct, and no interference is called for by this Court.

9. On hearing the learned counsel for the parties, it is seen that the entire crux of the matter hinges upon the past service of the writ petitioner, for the purposes of counting her service, to entitle her to be put under the Old Pension Scheme. In this regard, it is necessary first to examine the nature and status of City College, Kolkata, as to whether it can be considered to come under the definition of Article 12, on account of the fact that there is deep and pervasive control over the College by the State of West Bengal as submitted by the petitioner. The City College as can be seen from the materials is a 'Non-Government College' administered by its own Management Committee, though aided by the Government, the Governing Scheme for its Teachers i.e. West Bengal Non-

Government College Teachers (Death Cum Retirement Benefit Scheme) has laid down the criteria to distinguish Colleges established, maintained and administered by the State Government from others. In this context, it would be useful to refer to clause 5 (b) (1) contained in the Scheme at Chapter-II, which reads as follows:-

“5. In this scheme unless there is anything repugnant in the subject or context-

(b) “College” means a college or an institution having all or any of the streams viz. Arts, Science, Commerce and Education, which is affiliated to a University in accordance with the provisions of the Act constituting such University or the Statutes/Ordinance made thereunder but does not include College –

(i) established, maintained and administered by the State Government.”

A plain reading of the above quoted clause, shows that the Scheme which covers Non-Government College Teachers, does not include Colleges that are established, maintained and administered by the State Government. No doubt the College receives aid from the Government and is under the purview of state legislation, such as the West Bengal College Service Commission Act, 1978, with her salary being met by the State Government and her service pensionable, but however, by operation of clause 5 (b) (1) of the Scheme, it is clear that City College is neither an institution of the State Government, nor can it be considered a State Autonomous Body. As such, the question of considering the petitioner a defacto State Government employee does not arise.

10. Coming to the Office Memorandums (OM’s) from which the petitioner also bases her claim to entitlement, the same are briefly illustrated hereinbelow:-

i) OM dated 26.07.2005 – Subject:- Counting of past service on submission of technical resignation on or after 01.01.2004 by employees governed by Central Civil Services (Pension) Rules, 1972.

ii) OM dated 28.10.2009 – Subject:- Mobility of personnel amongst Central/State & Autonomous Bodies while working under Pensionable establishments

iii) OM dated 11.06.2020 – Subject:- Mobility amongst Central/State & Autonomous Bodies while working under Pensionable establishments

iv) Circular dated 21.09.2020 issued by UGC - Subject:-Mobility amongst Central/ State & Autonomous Bodies while working under Pensionable establishments; ….. three months period for calling options from the date of the circular/instructions.

The above quoted OM’s on a conjoint reading, extend benefits of counting past service for employees who were governed by the Old Pension Scheme under the Central Civil Services (Pension) Rules, 1972, which are akin to the Old Pension Scheme opted to by the petitioner. By OM dated 26.07.2005, the same, brought under its cover employees who entered into Central Government service or in the service of an Autonomous Body set up by the Central Government on or before 31.12.2003, who tendered technical resignation to take up new appointment.

The Office Memorandum dated 28.10.2009, merely extended the coverage of mobility to personnel serving in State Governments, or appointed on or before 31.12.2003. The OM dated 11.06.2020, on representations being received by personnel who joined under the New Pension Scheme in Central Government/ Central Autonomous Bodies after 01.01.2004 but before 28.10.2009 but were denied the benefit of counting of past service in the Old Pension Scheme, then addressed the issue by providing for the exercise of options within three months of issue of the OM dated 11.06.2020. Lastly the circular dated 21.09.2020, issued by the UGC instructed Central Universities to comply with the OM dated 11.06.2020, calling for options, with the rider that the provisions of the said OM should not be relaxed or diluted at any cost. In the same circular it was also provided that the three months period for calling the options would count from the date of issuance of the said circular.

11. On the discussions above, reference can be made to the judgments cited by the counsel for the respondent NEHU, firstly to the case of Union of India & Anr. vs. Deoki Nandan Aggarwal (supra) wherein at Para-14, which is reproduced hereinbelow, it has been held that a Court adopts a construction which would carry out the obvious intention of the legislature but could not legislate itself.

“14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Vide P.K. Unni v. Nirmala Industries (1990) 2 SCC 378, 383-84 : (1990) 1 SCR 482, 488, Mangilal v. Suganchand Rathi (1964) 5 SCR 239 : AIR 1965 SC 101, Sri Ram Ram Narain Medhi v. The State of Bombay 1959 Supp 1 SCR 489 : AIR 1959 SC 459, Hira Devi (Smt) v. District Board, Shahjahanpur 1952 SCR 1122, 1131 : AIR 1952 SC 362, Nalinakhya Bysack v. Shyam Sunder Haldar 1953 SCR 533, 545 : AIR 1953 SC 148., Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdaor Sabha (1980) 2 SCC 593 : 1980 SCC (L&S) 197 : (1980) 2 SCR 146, G. Narayanaswami v. G. Pannerselvam (1972) 3 SCC 717 : (1973) 1 SCR 172, 182, N.S. Vardachari v. G. Vasantha Pai (1972) 2 SCC 594 : (1973) 1 SCR 886, Union of India v. Sankal Chand Himatlal Sheth (1977) 4 SCC 193 : 1977 SCC (L&S) 435 : (1978) 1 SCR 423, and CST v.

Auriaya Chamber of Commerce, Allahabad (1986) 3 SCC 50, 55 : 1986 SCC (Tax) 449 : (1986) 2 SCR 430, 438. Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme, will not also come under the principle of affirmative action adopted by courts some times in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power."

Secondly, the judgment in the case of Saraswati Sugar Mill vs. Commissioner of Central Excise Delhi III (supra) at Para-19 thereof, which is reproduced below has also held that when the wording in the notification is clear, then the plain language of the notification must be given effect to.

"19. An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the notification either to grant or deny exemption. The Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption notification. In Bombay Chemicals (P) Ltd. vs. CCE - (1995) Supp (2) SCC 646, a three Judge Bench of this Court held that an exemption notification should be construed strictly, but once an article is found to satisfy the test by which it falls in the notification, then it cannot be excluded from it by construing such notification narrowly."

12. The decisions relied upon by the learned Senior counsel for the petitioner, to support the contention that the consideration of the case of the petitioner should not be mired by technicalities and that the grant of pensionary benefits should be construed liberally are not useful, in view of the clear cut provisions of the OM's and the facts surrounding the instant case and as such, are not discussed or elaborated upon. Similarly, the decision relied upon by the learned Senior counsel for the respondent No. 6, would have no application, inasmuch as, the option as per the OM itself was not available to be exercised by the petitioner.

13. In the backdrop of these facts and circumstances, firstly the fact that City College, Kolkata is not a Government College and secondly, the OM's being not applicable to the case of the petitioner, as she was neither in her past service in the employ of the Central Government/State Government or an Autonomous Body under the Central or State Government, the claim of the petitioner for consideration for coverage under the Old Pension Scheme is thus unsustainable. Further, the non-communication of the circular dated 21.09.2020 to the petitioner, is found to be of no consequence, as the same contained only instructions that the OM dated 11.06.2020 pertaining to mobility, be implemented without relaxing or diluting the norms. It is also noted that the petitioner had resigned before instituting the present writ petition and though the order accepting her resignation is also impugned, the same is irrelevant in the present discourse.

14. Accordingly, for the reasons stated above, the instant writ petition being devoid of merit is dismissed, however with no order as to costs.

