

(2008) 01 UK CK 0017
In the Uttarakhand High Court
Case No : Writ Petition No. 502 of 2003 (S/B)

Dr. Bharat Singh

APPELLANT

Vs

Indian Institute of Technology and Others

RESPONDENT

Date of Decision : 03-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2008) 1 UC 395

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Manoj Tiwari and Alok Mehra, for the Appellant; Sudhansu Dhulia assisted by, Puja Banga, for Respondent No. 1, Beena Pande, Standing Counsel (U.P. Govt.) for Respondent No. 2 and Anjali Bhargava, A.S.C. (Central Govt.), for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—By means of this Writ Petition, moved under Article 226 of the Constitution of India, the Petitioner has sought the following reliefs:

- A.) To issue a writ, order or direction in the nature of certiorari for quashing the order dated 9-9-2003 passed by the Respondent No. 1 (Annexure-13 to the writ petition).
- B.) To issue a writ, order or direction in the nature of mandamus commanding the Respondents to forthwith grant pension to the Petitioner in the light of Government policy contained in Government Orders issued from time to time.
- C.) To issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- D.) To award the cost of the writ petition in favour of the Petitioner.

2. Brief facts of the disposal of the writ petition are that the Petitioner was appointed as Lecturer of Civil Engineering in the University of Roorkee on

deputation basis and thereafter he was absorbed in the University in the year 1960. Thereafter, the Petitioner was promoted as Professor (Civil Engineering) in the University in the year 1963 and later on as Professor in Water Resource Development Training Centre in the year 1966. The Petitioner served as pro-Vice Chancellor of the University from April 1982 to October 1982 and thereafter he was appointed as acting Vice Chancellor of the University from October, 1982 to October, 1983. Ultimately, the Petitioner was appointed as Vice Chancellor of the Roorkee University and served in the said capacity upto October, 1986. The Petitioner completed 60 years of age on 13-12-1985, as such, he had to superannuate on the said date but as the Petitioner was holding a fixed tenure post of the Vice Chancellor till October, 1986 so he was not superannuated on 13-12-1985. Prior to 22-09-1984, the employees and the teachers of the University of Roorkee were not entitled to get pension but contributory provident fund scheme was applicable to them under which the employer used to contribute 8% of the basic pay in the contributory provident fund account of the teachers/employees concerned and likewise the teachers/employees had to deposit a minimum of 8% of the basic pay in the contributory provident fund account. The said deposited amount in contributory provident fund (hereinafter referred as C.P.F.) account was to be paid to the concerned teachers/employees after the retirement alongwith interest. The Respondent No. 2 issued G.O. No. 789/84/77/84 on 22-09-1984 (hereinafter referred as GO, 1984) wherein it was provided that the teachers/employees of the University of Roorkee who have opted for age of superannuation as 58 years would be given pension, death-cum-retirement gratuity, family pension and general provident fund and those who have opted for age of superannuation as 60 years would not be entitled for gratuity but would be entitled for other pensionary benefits like pension, family pension and G.P.F. In continuation of the earlier GO, 1984, Government of U.P. issued another GO. No. 2595/90 Pra.Shi-1-1175/87 dated 25/9/1990 (hereinafter referred as GO, 1990) seeking option for retirement from the employees if they so desire. Thereafter, the Secretary Department of Education, Government of U.P. issued another G.O. No. 2938/15(15)/95-46(14)/98 dated 22-09-1995 (hereinafter referred as GO, 1995) addressed to Finance Officer/Registrar of all the State Universities whereby it was provided that the pension of the teachers/employees who opt for the age of superannuation as 60 years shall be calculated on the basis of salary drawn at the age of 60 years and the teachers of the Universities shall be given the same pensionary benefits as admissible to the Central Government Employees.

It was also directed that the policy decision taken by the Government contained in the G.O. may be informed to all the concerned and if they wanted to change their option they should be given an opportunity to do so within a period of 90 days from the date of issuance of G.O. Thereafter, another G.O. No. 4547/16-1-Pra.-Shi-1/77/84 dated 27-02-1996 (hereinafter referred as GO, 1996) was issued by the State of U.P. through Department of Technical Education regarding pensionary benefits to the employees/teachers of the University of Roorkee

wherein it was provided that pension shall be computed on the basis of salary drawn at the time of retirement irrespective of fact whether retirement is at the age of 58 years or 60 years. Meaning thereby the services rendered after completing 58 years of age shall be added for qualifying services. It was further provided that the employees/teachers who have opted for 60 years as age of superannuation should not be entitled for gratuity. Thereafter, the Petitioner also made several representations to the above effect to the authorities concerned. It was alleged in the writ petition that the benefit of the GOs, 1993 and 1995 had been given to Professor R.S. Mittal and Professor K.V. Mittal and the Petitioner is also entitled to get the benefit of the GOs, 1993 and 1995. On the representation of the Petitioner, the Under Secretary, Department of Technical Education, U.P. issued order dated 07-04-2003 to the Registrar, LIT. Roorkee stating therein that the GO, 1995 is not applicable in the department of technical education. Pursuant to the order dated 07-04-2003 issued by the Govt. of U.P., the Dean of Faculty Affairs, LIT. Roorkee informed the Petitioner vide its letter dated 09-09-2003 that the Petitioner's request for the change of option cannot be acceded. Feeling aggrieved by the said order, the Petitioner has preferred this writ petition.

3. The Respondent No. 2 filed counter affidavit and submitted that the GO, 1996 was issued for the benefit of those employees who were then in service. The Petitioner was retired on 14-12-1985, thus the G.O. was not applicable in his case. It was also admitted that the employees of the Roorkee University were governed by Roorkee University Act, 1947 and the GOs were issued by the Technical Education Department. As the GO, 1995 was issued by the Education Department, it was not be applicable to the case of the Petitioner who was employee of Roorkee University. It was further submitted that the G.O. dated 13-06-2000 was applicable only to government employees and the Petitioner was not covered by it. It was further submitted that the Petitioner was retired on 14-12-1985, as such, the provision of the GO, 1996 would not be applicable to the Petitioner. At last, it was pleaded that the writ petition is devoid of merit and is liable to be dismissed.

4. The Petitioner has also filed rejoinder affidavit reiterating the same averments which he has made in the writ petition.

5. We have heard learned Counsel for the parties and perused the record.

6. The learned Counsel for the writ Petitioner contended that prior to the issuance of GO, 1984, the teachers and the employees of the Roorkee University were entitled to get the Contributory Provident Fund Scheme (CPF) under which the employer used to contribute some amount proportionate to the basic pay of the employee in the CPF account and the employee or the teacher concerned had to deposit an amount not less than the contribution made by the employer and that amount deposited in CPF account was to be paid to the employee with interest after retirement. In pursuance to the GO, 1984 issued by Respondent No. 2, it was provided that the teachers and the employees of the Roorkee University who opted for age of superannuation as 58 years shall be given

pension, death retirement, gratuity, family pension and general provident fund and who opted for the age of superannuation of 60 years shall not be entitled for gratuity only, however, they would be entitled to other pensionary benefits. Pursuant to said GO, employees and the teachers had to submit their options within the stipulated period as to whether they intend to get the pensionary benefits including pension, retirement, gratuity, family pension, general provident fund, etc, or they would like to continue with the old system. It was further contended that in the year 1996, the Government again issued a GO, 1996 providing that the pension of the employees and the teachers shall be computed on the basis of the salary drawn at the time of retirement irrespective of their retirement at the age of 58 years or 60 years. The said GO also contained a direction to the authorities concerned to inform about the modification of the earlier GO, 1984 to all concerned and give them an opportunity to change their option within 90 days from the issuance of the said GO. The Petitioner represented before the authorities concerned and has claimed opportunity to change his option to avail the benefit of pension and also sought to avail the benefit of pension as given to other professors of the University. It was further contended that the Petitioner was not informed about the GO, 1996 and he was not given any opportunity to exercise his option in view of the modification made in the GO and thus, he was deprived of his right. It was further contended that the case of the Petitioner was recommended to the Government and the Government did not find favour with the recommendation of the University and turned down the request of the Petitioner illegally without considering the facts and circumstances of the case. The learned Counsel for the Respondents supported the impugned order passed by the State Government.

7. There is no dispute that prior to the issuance of the GO, 1984, the Petitioner was under Contributory Provident Fund Scheme and he had to contribute his share according to the rules and the employer also used to contribute the amount proportionate to the basic salary of the Petitioner in the CPF. There is no dispute between the parties that the Petitioner-Dr. Bharat Singh served in different capacities like faculty, Pro-Vice Chancellor and Vice Chancellor of the Roorkee University; he had to superannuate at the age of 60 years on 13/12/1985 but he continued in service upto 30th October, 1986 as he has been appointed Vice Chancellor for a fixed tenure. It is not disputed that GO, 1984 introduced the pension scheme for the teachers and employees including those who had retired on or after 01-01-1984. The scheme gave following three options:

i. Pension, Death-cum-Retirement Gratuity, Family Pension and General Provident Fund with retirement at the age of 58 years.

Or

ii. Pension, Family Pension and General Provident Fund with retirement at the age of 60 years.

Or

iii. To continue with the then prevalent C.P.F. Scheme with retirement at the age of 60 years.

8. It is also not disputed that the Petitioner opted to continue with the prevalent contributory provident fund scheme and retired at the age of 60 years. Thus, the Petitioner was not entitled to get the pension, family pension and G.P.F., etc. Thereafter, the Government issued G.O. No. 2595/90 Pra.Shi-1-175/87 dated 25-09-1990 (hereinafter referred as GO, 1990) in continuation of the earlier GO, 1984 to seek option for retirement from the employees/teachers of Roorkee University if they so desire. GO, 1990 is quoted hereunder-

"No.: 2595/90 Pra.Shi-1-175/87

From

Ranjit Kumar Bose

Under Secretary

U.P. Govt.

To,

The Registrar

University of Roorkee

Roorkee

Technical Education Section-I, Lucknow: Dated : 25-9-1990

Subject: Sanction of retirement benefits to the teachers of the University of Roorkee and other degree Engineering Institutes of the State.

Sir,

I am directed to say in continuation of the G.O. No.- 789/84/77/84 dated 22-9-84 on the above subject, that there are some teachers could not get the benefits specified in the said G.O., due to unavoidable reasons, or others, who had exercised their option earlier and now want to exercise another option. The Governor after sympathetic consideration of the demands made by the teachers, has been pleased to give one more opportunity to those teachers who have either not exercised their option under the earlier issued and above referred G.O., or have exercised an option once, to exercise their option within 90 days from the date of issuance of this G.O., as per the terms and conditions specified in the earlier G.O. on the specified pro-forma. In the case of those in service teachers, who could not exercise their option earlier and do not exercise their option under this concession even now, it will be assumed that they have opted to retire at the age of 58 years with pension, family pension death cum retirement gratuity and other general provident fund benefits, provided they are

otherwise eligible for this benefit.

2. I am also directed to say that those teachers who were appointed in Roorkee University or other Degree Engineering Institutes after 1-1-1984, or will be appointed after the issuance of this G O., will have the option of either retaining their old contributory provident fund scheme or opt for the general provident fund, pension and death cum retirement gratuity, within 90 days of the date of issuance this G.O., or their actual date of appointment. In the case of those teachers of Roorkee University and other degree Engineering Institutes, who have a gone out of the University or their Institutes for teacher training/teacher fellowships, or are out for other reasons to other Institutions, States or foreign countries, it should be ensured that such teachers are informed about the provisions of this G. O. and they have where required, exercised their options within the stipulated time. No relaxation in this regard will be given to such teachers, after the specified time limit.

3. I am also directed to say that the Chief Accounts Officer of Roorkee University and the Accounts Officers of other Institutes will ensure that the Provident Fund Contribution of all those teachers who have exercised their option for the pension scheme in accordance with the conditions specified in the earlier G.O. dated 22-9-1984 is deposited in the treasury, regularly. This action must also be ensured in such cases in which it has not been done till date, so that the teachers get the benefit of this scheme in the future, without any inconvenience. The University/degree Engineering Institutes will ensure at their level that the concerned teachers are duly informed about the acceptance/rejection of their option, within one month of receipt.

4. These orders are being issued with the concurrence of the finance department vide their Unofficial Note No. E-11-2819/Ten-90 dated 21-9-90.

Yours faithfully

Sd/-

(Ranjit Kumar Bose)

Under Secretary

9. The learned Counsel for the Petitioner contended that the GO, 1990 was not circulated by the University to the employees/teachers including the Petitioner who had been retired from services. It was further contended that no revised option from the retired teachers or staff were obtained by the University pursuant to the aforesaid GO, 1990. According to the learned Counsel for the Respondents, the GO, 1990 was not applicable to those employees who had been retired before the date of the issuance of the GO, 1990. It is evident from the perusal of the said GO that the said GO was only applicable to those employees who were in service on the date of the issuance of the GO and it was not applicable retrospectively. The change of the options was to be invited only from those employees who had not been retired from the service on the date of

enforcement of GO, 1990. The Petitioner was retired from service in the year 1986, prior to the issuance of the GO, 1990, as such, there was no need to call for any option from the Petitioner. We do not find any force in the contention of the learned Counsel for the Petitioner.

10. It is also admitted to the parties that the State of U.P. issued a G.O. No. 4547/16-1 Pra.Shi-1-77/84 dated 27-02-1996 (Annexure-3 to the writ petition) in continuation of the GO, 1984 with regard to the University of Roorkee and other degree level engineering institutions of the State that the pension and family pension of those teachers, non-teaching employees who have already opted for or will opt for the retirement at the age of 60 years would be calculated on the basis of the salary drawn at the time of retirement at the age of 60 years according to the procedure specified for calculation of the pension in respect of the State Government employees. Teachers and staff retiring at the age of 60 years would not be entitled to the gratuity. The State Government also directed the Universities that the concerned teachers and non-teaching employee should be informed accordingly. It was further stipulated in the said GO that the staff and the teachers who wish to change their previous option in accordance with the GO should submit their option to the concerned officer within 90 days of the date of the issuance of the GO. It is apparent from the perusal of the GO that it was not applicable to the retired employees. The GO was only applicable to those teachers and staff who were in service on the date of the issuance of the GO. It is evident that the Petitioner retired in the year 1986 and the GO, 1984 is applicable in his case and the Petitioner had opted to remain in the C.P.F. scheme pursuant to the GO, 1984. The GOs, 1990 and 1996 are not applicable in the case of the Petitioner as he was not in service at the time of the issuance of the GOs, 1990 and 1996. It was not necessary to inform and seek option as contemplated in the GOs, 1990 and 1996 from the Petitioner.

11. It is also pertinent to mention here that the Government issued G.O. No. 1936/15-(15)-93-3(54)/89 dated 31-07-1993 (hereinafter referred as GO, 1993), annexure-7 to the counter affidavit, to all the Universities wherein it was provided that all the teachers and employees who were retired before 01/01/1984 would be given the benefit of pension scheme. Thereafter, the GO, 1993 was modified subsequently vide G.O. No. 2938/15(15)/95-46(14)/98 dated 22-09-1995, annexure-2 to the writ petition. Copy of the said GO was issued to all the State Universities wherein it was provided that the pension of the teachers who have opted for the age of superannuation as 60 years shall be calculated on the basis of the salary drawn at the age of 60 years. It was further provided that the teachers of the Universities shall be given the same pensionary benefit as admissible to Central Government Employees. The employees who wanted to change their option pursuant to the provisions made in the GO were given opportunity to do so within a period of 90 days from the date of the issuance of the GO. It is pertinent to mention here that the GOs, 1993 and 1995 neither modified the GO, 1984 nor it gives any indication that any benefit; to the employees/teachers of the Roorkee University would be granted by the

subsequent GOs, 1993 and 1995. The University of Roorkee has categorically stated in its counter affidavit that the GO, 1993 was not applicable to the employees/teachers of the erstwhile University of Roorkee and has no relevance to the present GO who had retired prior to 01-01-1984. The GO, 1993 was issued to the State University teachers who had retired prior 01-01-1984. The GO issued on 1995 clarifying the GO, 1993 issued by the State of U.P. is not applicable to the employees of the Roorkee University as the University is governed by the Roorkee University Act, 1947. The Petitioner in para 5 and 7 of the rejoinder affidavit categorically admitted that the GO, 1993 is not applicable in the case of the Petitioner. If the GO, 1993 is not applicable in the case of the Petitioner, then the subsequent GO, 1995 modifying the GO, 1993 would not be applicable in the case of the Petitioner.

12. The learned Counsel for the Petitioner further contended that the Petitioner made a representation on 17-3-1997 and the Registrar of the University of Roorkee recommended the case of the Petitioner for the change of the option pursuant to the government policy and requested the State Government to grant approval for the same. The copy of the letter of the Registrar has been filed alongwith the writ petition as annexure 6. The learned Counsel for the Petitioner further drawn the attention on the GO, 1993 issued with regard to the University employees/teachers whereby it was provided that the benefit of pension was granted even to such teachers who were retired before 1-1-1984 when there was no pension scheme applicable to the University teachers. The Petitioner referred the matter of the members or the faculty Professor R.S. Mittal and Professor K.V. Mittal to whom the University granted the pensionary benefits. The learned Counsel for the Respondents refuted the contention and contended that the Professor R.S. Mittal and Professor K.V. Mittal were retired from the services prior to 01-1-1984 without opting for superannuation benefits whereas the Petitioner was superannuated after 01-1-1984 and has opted to remain in CPF scheme with reference to the GO, 1984. The original record was summoned from the University and it is not disputed that Professor R.S. Mittal and Professor K.V. Mittal, members of the faculty were retired prior to 01-1-1984. The learned Counsel for the Respondents submitted that if they have committed a mistake in applying the interpretation of the GO, the said mistake could not be allowed to be repeated in the case of Petitioner. It is apparent from the record that the GOs, 1993 and 1995 are not applicable in the case of the members of the staff and the employees of the Roorkee University. As we have pointed out earlier that these GOs did not modify or amend the GO, 1984. The Petitioner has himself admitted in his pleadings that the GOs, 1993 and 1995 are not applicable in his case. Thus, if any mistake has been committed by the University in the past, it cannot be allowed to be perpetuated further when it was detected. The Apex Court has held at para 75 in State of U.P. Vs. Neeraj Awasthi and Others, as under:

The fact that all appointments have been made without following the procedure, or services of some persons appointed have been regularised in the past, in our opinion, cannot be said to be a normal mode which must receive the seal of the

court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. The State and the Board were bound to take steps in accordance with law. Even in this behalf Article 14 of the Constitution will have no application. Article 14 has a positive concept. No equality can be claimed in illegality is now well settled.

13. In view of the foregoing discussions, it is apparent that no mandamus can be issued to perpetuate a wrong, which was not permitted by the law. The recommendations made by the Registrar to the Government did not estop the Respondent to contest the claim of the Petitioner, if under a wrong impression or under a wrong interpretation of GOs, the case of the Petitioner was recommended to the Government and Government did not accept the recommendations. The Respondents cannot estop to raise this plea during the course of the hearing of the writ petition that under a wrong notion or interpretation of the GO, the recommendation of the Petitioner was made to the Government.

14. In view of the above, the writ petition is liable to be dismissed and is dismissed accordingly.

15. No order as to costs.