
(2010) 02 AHC CK 0169
In the Allahabad High Court

Dr. P.L. Sharma

APPELLANT

Vs

Director of Higher Education and Another

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Citation : (2010) 125 FLR 418 : (2010) 2 UPLBEC 1150

Hon'ble Judges : Satya Poot Mehrotra, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard the learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondent Nos. 1 and 2, and perused the record.

2. The present Writ Petition was filed on 27.02.2003. Counter affidavit, sworn on 02.07.2004, has been filed on behalf of the respondent No. 1.

3. Learned Counsel for the parties are agreed that the controversy involved in the present Writ Petition is covered by various decisions of this Court, referred to hereinafter in the present judgment, and therefore, the present Writ Petition may be decided at this stage itself.

4. From the averments made in the Writ Petition, it appears that the petitioner Dr. P.L. Sharma was appointed as a Lecturer in S.M. Inter College, Chandausi in the year 1966; and that in December, 1972 the petitioner was absorbed as Lecturer in S.M. (P.G.) College, Chandausi. The initial appointment of the petitioner was on probation, however, on 09.10.1974 the petitioner was confirmed. The date of birth of the petitioner being 01.09.1942, the petitioner attained the age of superannuation on 31.08.2002 and was due to retire on 30.06.2003 after getting session benefit.

5. It appears that in the year 1984 the petitioner opted for Contributory Provident Fund Scheme (CPF). However, on 19.07.2001, the petitioner submitted

his Option Letter exercising his option in terms of the Government Order dated 25.08.1999 for switching over from Contributory Provident Fund Scheme (CPF) to General Provident Fund Scheme (GPF) with Pension. Copy of the said Option Letter dated 19.7.2001 has been filed as Annexure-5 to the Writ Petition. As the approval of the Director Higher Education, U.P., Allahabad (respondent No. 1) in regard to the said Option Letter was not received, the Principal, S.M. (P.G.) College, Chandausi sent a Communication dated 31.08.2001 (Annexure-6 to the Writ Petition) to the Director, Higher Education, U.P., Allahabad (respondent No. 1) requesting the latter to provide approval in the matter.

6. It appears that by the Order dated 22.04.2002, the Assistant Accounts Officer acting on behalf of the Director, Higher Education, U.P., Allahabad (respondent No. 1) declined to give approval for the option exercised by the petitioner for switching over from Contributory Provident Fund Scheme (CPF) to General Provident Fund Scheme (GPF) with Pension.

7. It was, interalia, observed that the scheme contemplated in the Government Order dated 25.08.1999 was applicable to the teachers and employees covered under the General Provident Fund Scheme (GPF), and was not applicable to the teachers and employees covered under the Contributory Provident Fund Scheme (CPF). Copy of the said Order dated 22.04.2002 has been filed as Annexure-1 to the Writ Petition.

8. In view of the above, the petitioner has filed the present Writ Petition, interalia, praying for issuance of writ, order or direction in the nature of certiorari quashing the said Order dated 22.04.2002 (Annexure-1 to the Writ Petition), and further, for issuance of writ, order or direction in the nature of mandamus directing the respondent Nos. 1 and 2 to accept the option exercised by the petitioner and accord the benefit of GPF+Pension Scheme to the petitioner in accordance with the Government Order dated 25.08.1999.

9. In the counter affidavit filed on behalf of the respondent No. 1, the said Order dated 22.04.2002 was sought to be justified on various grounds.

10. For deciding the controversy involved in the present Writ Petition, it is necessary to notice certain further facts.

11. 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.

12. The last such Government Order was issued on 25.8.1999 (Annexure 2 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, 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. Similar stand, as noted above,

was taken in passing the said Order dated 22.04.2002 (Annexure-1 to the Writ Petition).

13. It appears that this Court in Civil Misc. Writ Petition No. 25140 of 2001 Dr. Shri Gopal Gupta and Ors. v. State of U.P and Ors. 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....

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

15. By the Order dated 3.11.2008, their Lordships of the Supreme Court dismissed the said Special Leave Petition.

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

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

18. We may mention that in Civil Misc. Writ Petition No. 13169 of 2008 (Kirti Chand Gupta and Ors. v. State of U.P. and Ors.) 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 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.

19. In view of the above decisions, we are of the opinion that the petitioner in the present Writ Petition, who exercised his option by the Option Letter dated 19.07.2001 (Annexure-5 to the Writ Petition) in terms of the Government Order dated 25.08.1999, was entitled to the benefit of GPF Scheme with Pension, and the respondent No. 1 acted illegally in issuing the Order dated 22.04.2002

declining to accept the option exercised by the petitioner by the said Option Letter dated 19.07.2001.

20. It is noteworthy that the petitioner was due to retire on 30.06.2003, and therefore, the above option exercised by the petitioner by the Option Letter dated 19.07.2001 was exercised as per the requirement of the said Government Order dated 25.08.1999.

21. In view of the above discussion, we are of the view that the present Writ Petition deserves to be allowed quashing the said Order dated 22.04.2002, and giving directions similar to those given in the above decisions.

22. The Writ Petition is accordingly allowed.

23. The Order dated 22.04.2002 (Annexure-1 to the Writ Petition) is quashed, and the following directions are given:

1. Within four weeks from today, the petitioner will file an application before the concerned authority (Director of Higher Education, Uttar Pradesh, Allahabad) along-with a certified copy of this Order. Within six weeks of the filing of such application along-with 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 by the Option Letter dated 19.7.2001.

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