
(2010) 02 AHC CK 0317
In the Allahabad High Court

Dr. Ramesh Chandra Agarwal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-02-2010

Acts Referred:

Citation : (2010) 3 AWC 2852 : (2010) 125 FLR 7

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Satya Poot Mehrotra and Kashi Nath Pandey, JJ.—Heard Sri K.K. Srivastava, learned Counsel for the petitioner and Sri Pankaj Saxena, 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. As per the averments made in the writ petition, the petitioner is working on the post of Reader in the Department of Chemistry in D.N. (P.G.) College, Meerut. The date of birth of the petitioner is 11.11.1949, and he is to attain the age of superannuation on 10.11.2011, and is due to retire on 30.6.2012 after getting session benefit.

4. It appears that initially the petitioner opted for Contributory Provident Fund Scheme (C.P.F.). However, by the option letter dated 19.11.2007 (Annexure-4 to the writ petition), the petitioner sought to change his option from Contributory Provident Fund Scheme (C.P.F.) to General Provident Fund Scheme (G.P.F.) with Pension. The said option letter was submitted by the petitioner pursuant to the Government order dated 25.8.1999 (Annexure-3 to the writ petition).

5. 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 G.P.F. plus pension scheme to the petitioner in accordance with the Government order dated 25.8.1999. and various decisions of this Court.

6. 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 (C.P.F.) to General Provident Fund Scheme (G.P.F.) with Pension.

7. The last such Government order was issued on 25.8.1999 (Annexure-3 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.

8. 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 26.10.2006 as follows:

...The policy of the Government providing benefit of G.P.F. plus Pension Scheme at no point of time denied the benefits to those teachers who had not opted for the said scheme prior to 25.8.1999 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 25.8.1999 and the clarifications dated 5.6.2000 and 12.7.2000 cannot be sustained in the eyes of law.

The petitioners who had applied/opted for G.P.F. plus Pension Scheme though they were covered under the C.P.F. scheme, one year before their date of retirement, i.e., during the extended period as per the Government order dated 25.8.1999 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 G.P.F. Scheme....

9. Copy of the said judgment and order dated 26.10.2006 has been filed as Annexure-2 to the writ petition.

10. 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.

11. By the order dated 3.11.2008 (Annexure-6 to the writ petition), their Lordships of the Supreme Court dismissed the said special leave petition.

12. Thus, the aforesaid judgment and order dated 26.10.2006 became final.

This position has not been disputed by the learned standing counsel.

13. In our opinion, the petitioner in the present writ petition, who exercised his option by the option letter dated 19.11.2007 (Annexure-4 to the writ petition) in terms of the Government order dated 25.8.1999, is entitled to the benefit of G.P.F. Scheme with Pension.

14. As noted earlier, the petitioner is due to retire on 30.6.2012, and therefore, the option exercised by the petitioner by the option letter dated 19.11.2007 has been exercised as per the requirement of the said Government order dated 25.8.1999.

15. 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 16.4.2009 (Annexure-8 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 25.8.1999 to the petitioners in the said writ petitions.

16. Respectfully following the above decisions, we decide the present writ petition giving similar directions.

17. The writ petition is accordingly allowed.

18. The respondents are directed to give benefit of the Government order dated 25.8.1999 in terms of the option exercised by the petitioner within three months of the filing of the certified copy of this order before the Director of Higher Education, Uttar Pradesh, Allahabad.

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