
(2010) 01 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3707 of 2010

Dr. Smt. Madhubala Saxena

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Citation : (2010) 126 FLR 179

Hon'ble Judges : S.P. Mehrotra, J;K.N. Pandey, J

Bench : Division Bench

Advocate : R.P. Dubey, for the Appellant; Pankaj Saxena, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

S.P. Mehrotra and K.N. Pandey, JJ.—Heard Sri R.P. Dubey, learned Counsel for the petitioner and Sri Pankaj Saxena, learned Standing Counsel appearing for the respondents.

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.

2. As per the averments made in the Writ Petition, the petitioner is working on the post of Reader and Head of the Department in English in Maharaja Harish Chandra P.G. College, Moradabad. The date of birth of the petitioner is 1.5.1953, and she is to attain the age of superannuation on 30.4.2015 and is due to retire on 30.6.2015 after getting Session benefit.

3. It is, inter alia, stated in the Writ Petition that the aforesaid College is affiliated to Mahatma Jyotiba Phule Rohilkhand University, Bareilly.

4. It appears that initially the petitioner opted for Contributory Provident Fund Scheme (CPF). However, in the year 2004, the petitioner exercised her option in

terms of the Government Order dated 25.8.1999 for switching over from Contributory Provident Fund Scheme (CPF) to General Provident Fund Scheme (GPF) with Pension. The intimation in regard to the exercise of option in the year 2004 by the petitioner was sent by the Principal of the College to the Director of Higher Education, U.P., Allahabad by the communication dated 2.5.2004 (Annexure-7 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 GPF plus Pension Scheme to the petitioner in accordance with the Government Order dated 25.8.1999, and various decisions of this Court.

Facts relevant for deciding the present Writ Petition are as under.

6. 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.

7. The last such Government Order was issued on 25.8.1999 (Annexure 5 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 (Annexure 6 to the writ Petition), 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 others v. State of U.P and others 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

Copy of the said judgment and Order dated 26th October, 2006 has been filed as Annexure 8 to the Writ Petition.

9. 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.

10. By the Order dated 3.11.2008 (Annexure 9 to the Writ Petition), their Lordships of the Supreme Court dismissed the said Special Leave Petition.

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

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

11. In our opinion, the petitioner in the present Writ Petition, who exercised her option in the year 2004 in terms of the Government Order dated 25.8.1999, is entitled to the benefit of GPF Scheme with Pension.

As noted earlier, the petitioner is due to retire on 30th June, 2015, and therefore, the option exercised by the petitioner in the year 2004 has been exercised as per the requirement of the said Government Order dated 25.8.1999.

12. We may mention that in Civil Misc. Writ Petition No. 13169 of 2008 Kirti Chand Gupta and others v. State of U.P. and others 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 (Annexure 10 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 25th August, 1999 to the petitioners in the said Writ Petitions.

13. Respectfully following the above decisions, we decide the present Writ Petition giving similar directions.

The Writ Petition is accordingly allowed.

The respondents are directed to give benefit of the Government Order dated 25th August, 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.