(2011) 08 AHC CK 0189

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No''s. 32101 and 28790 of 2004

Dr. V.P. Singh and Others	APPELLANT
Vs	
Executive Council Banaras Hindu University, Varanasi and Others	RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:
Banaras Hindu University Act, 1915 — Section 43
Central Universities Retirement Benefit Rules, 1967 — Rule 3
Constitution of India, 1950 — Article 14, 16

Citation : (2011) 7 ADJ 531

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri GK. Singh for the petitioners. Shri Rakesh Sinha for the Central Government. Shri Pankaj Naqvi for Banaras Hindu University and Shri V.K. Upadhyay for the University Grants Commission.

2. All the petitioners are teachers/ employees of the Banaras Hindu University. By the writ petition No. 32101 of 2004 they have prayed for quashing the decision of the Executive Council of the University dated 19th-20th July, 2002 as communicated by the Registrar of the University on 5.9.2002 regretting to approve the orders of the Vice Chancellor of the University dated 20.3.2001 and 18.1.2002 to grant another opportunity to the university employees, and to all those who have superannuated after 1.1.1996, to opt for the pension scheme. Consequently, the action taken in compliance to the Vice Chancellor order dated 18.1.2002 was withdrawn. The petitioners have further prayed for writ of mandamus commanding the university to allow the petitioners to switch back from Contributory Provident Fund Scheme (CPF Scheme) to General Provident Fund-cum-Gratuity-cum-Pension Scheme (GPF-Gratuity-Cum-Pension Scheme).

3. In Writ Petition No. 28790 of 2004, the petitioner has challenged the decision

of the Executive Council dated 31st May, 2003 communicated to the petitioner vide letter dated 24th July, 2003.

4. Brief facts giving rise to these writ petitions are that the Fourth Central Pay Commission recommended that all contributory fund beneficiaries in service as on 1.1.1986 should be deemed to have come over to the Pension Scheme unless they specifically opt to continue under the Contributory Provident Fund Scheme. The Department of Pension and Pensioners Welfare accordingly issued an order on 1.5.1987 under which the option was to be exercised by 30.9.1987. Those employees, who opted to continue under CPF Scheme were expressly retained in CPF Scheme. All the petitioners opted to continue with CPF Scheme.

5. Shri G.K. Singh appearing for the petitioners states that the Banaras Hindu University vide its Circular dated 26.3.2001 invited applications from the employees of the respondent university for changing over from CPF to GPF-Gratuity-Pension Scheme. The option was to be exercised by 25.5.2001. The decision to give an opportunity to the employees was taken by the Vice Chancellor on the recommendation of a committee, which was appointed by the competent authority of the university and included two members of the Executive Council. Many employees exercised the option and were allotted the GPF numbers. Although in respect of some of the numbers ''interim'' word was mentioned but in many cases the word ''interim'' was not mentioned. The process continued for a period of 17 years after which the facility was discontinued and a decision was taken by the Executive Council of the University on 19th-20th July, 2002, which is under challenge.

6. It is submitted by learned counsel for the petitioner that the Executive Council of the University has acted arbitrarily in not accepting the option form, which was submitted by the petitioner in pursuance to the notification dated 26.3.2001. The university had in the past also invited options in the year 1988 and thrice in the year 1995 from the teachers/ employees of the Universities. There are several other premier institutes/ universities in the country in which the teachers and employees have been extended the facility of switching back from CPF to GPF-Gratuity-Pension Scheme upto the year 2003.

7. The petitioners have amended the writ petitions and have challenged the decision of the Government of India and the University Grants Commission dated 22.7.2003,23.9.2003 and 20.10.2003 rejecting the request of the University to allow the teachers/ employees to switch over to the GPF-Gratuity-Pension Scheme and have challenged the order dated 22.7.2003 passed by the Joint Secretary (Personnel), Department of Expenditure, Ministry of Finance, Government of India, the order dated 23.9.2003 passed by the Under Secretary, University Grants Commission, and the order dated 20.10.2003 passed by the Deputy Secretary, Department of Secondary and Higher Education, Minister of Human Resource Development, Government of India. It is submitted that on the recommendation of 5th Pay Commission the pay package was drastically amended in favour of the employees, who had opted for GPF-Gratuity-Pension

Scheme and has adversely affected those, who continued under CPF Scheme in as much as the age of superannuation was raised from 60 to 62 years; the commutation of pension was increased from 1/3rd of the pension to 40% of the pension amount 25% of the non-practicing allowance was provided to the teachers belonging to medical profession to be treated as pay, for calculating pension. The deamess allowance was added for the purposes of calculation of gratuity, with ceiling of Rs. 3.5 lacs and family pension was liberalised w.e.f. 1st January, 1998 giving the benefit to mother/ father, in the absence of spouse and children. The denial of an opportunity, which has been given to the teachers of many other institutes, to switch back from CPF to GPF Scheme, is thus wholly arbitrary and illegal and violative of petitioners'' rights under Art 14 and 16 of the Constitution of India.

8. Shri Pankaj Naqvi appearing for the Banaras Hindu University, states that the President of India in the capacity as visitor of the University had approved the amendment of Statute 43 of the B.H.U. Act and accordingly the Central University Retirement Benefit Rules, 1967 were circulated by notification dated 29.12.1967 requesting the employees of the University to exercise their option under Rule 3(iii) of the Rules. Those employees, who opted for CPF Scheme were again given an opportunity to switch over providing for the last date of exercising the option by 31st December, 1995. Thereafter, no further opportunity was allowed. Some of the employees, who had opted for CPF Scheme and also did not avail the option by 31st December, 1995 made joint representation giving him another opportunity. Their representation was forwarded to University Grants Commission, New Delhi in November, 1999. The University Grants Commission referred the matter to the Ministry of Human Resource Development, which in turn sought the advice of Ministry of Finance. The Ministry of Finance did not accept the joint representation.

9. The Vice Chancellor constituted a Committee under the Chairmanship of Shri D.K. Rai vide notification dated 31.1.2001 to examine whether the request of the teachers/ employees to give one more opportunity can be considered. The Committee recommended that the letters of UGC dated 15th June, 2000 and Ministry of Human Resource Development dated 19th June, 2000 be reported to the Executive Council for its permission to make it applicable within the scope of Statute 43 of the Banaras Hindu University. The Vice Chancellor by his order dated 20.3.2001 accepted the recommendation and issued a circular allowing another opportunity to all the employees inviting revised option forms to all those employees, who were on the rolls of the university as on 31.12.1995 and have superannuated prior tot he issuance of the Circular dated 26.3.2001. The matter was placed before the Executive Council of the University, which in its meeting dated 19th-20th July, 2001 resolved that since the invitation of option is in contravention of the directives of the UGC/ MHRD, the same cannot be accepted. Consequently, the Vice Chancellor by his order dated 18.1.2002 was withdrawn the option and the decision was circulated to all the concerned in the University vide notification dated 5th/9th September, 2002.

10. Shri Pankaj Naqvi submits that the University is fully funded by the University Grants Commission, and is bound by the directions of the Ministry of Finance. Since the Ministry of Finance did not agree, neither the Ministry of Human Resource Development nor the UGC were competent under the financial discipline, to accept the request for giving another option to switch over to the pension scheme.

11. Shri Rakesh Sinha, learned counsel appearing for the Central Government has relied upon the affidavit of Shri R.P. Tiwari, Under Secretary, Department of Higher Education, Ministry of Human Resource Development, Shastri Bhawan, New Delhi, in which it is stated that as a matter of policy the Union Government has discontinued the GPF-Gratuity-Pension Scheme to all the employees joining Central Government, and that after 1.1.2004 all the Central Government employees were offerred and have been brought under the new Pension Scheme. The Ministry of Finance has suggested that all the employees covered under the GPF-Gratuity-Pension Scheme may be considered to switch over to new pension scheme and thus there is no merit in the writ petition in which prayers have been made by the petitioners to allow them to switch back to the GPF-Gratuity-Pension Scheme, after they have opted for CPF Scheme.

12. With regard to discrimination it is stated by Shri Rakesh Sinha relying upon para 10 of the counter affidavit that the Ministry of Human Resource Development by its letter dated 1.9.2003 and 21.5.2004 communicated to the Directors of IITs at Bombay, Kanpur, Delhi, Gorakhpur, Madras, Guwahati and Roorki that option exercised by the employees at the time of implementation of the 4th Central Pay Commission was final and there is no question of further exercising the option to switch over to the GPF-Gratuity-Pension Scheme. The Directors of these IITs were requested not to entertain any request for switch over from the staff, who have since retired. The Delhi University was also not given permission by UGC for extension of date of option from CPF Scheme to GPF Scheme.

13. Shri V.K. Upadhyay appearing for the University Grants Commission has relied upon the counter affidavit of Dr. N.K. Jain, Joint Secretary, University Grants Commission, New Delhi. He has reiterated the objections taken by the University as well as the Central Government. He submits that the University Grants Commission had taken up the matter by letter dated 8.8.2001 to the Joint Secretary, Government of India, MHRD to consider to extend the scheme and to notify a clear view of cut off date so that the institutions do not fix their own cut off date. The Ministry of Human Resource Development, Government of India by its letter dated 22.9.2001 informed the UGC that earlier the matter was examined in consultation with the Ministry of Finance (Department of Expenditure). The Ministry had regretted and expressed its inability to allow one more option to change over from CPF to GPF Scheme to the employees of the UGC and institutions maintained by it. Earlier the Ministry of Human Resource Development, Government of India by letter dated 19.6.2000 had also

communicated the matter pertaining to the option in consultation with the Ministry of Finance and had regretted its inability to allow one more option.

14. It is submitted by learned counsel appearing for UGC that Ministry of Human Resource Development by its letter dated 24.12.2002 forwarded a letter to the Vice Chancellor, Bananas Hindu University regarding change of option. After examining the matter UGC informed by its letter dated 23.9.2003 that the options were available only upto 30.9.1987 and as such request of University cannot be considered.

15. So far as discrimination is concerned, learned counsel appearing for UGC submits that the Banaras Hindu University extended the date in the year 1988 and in 1995 on its own, without the approval of UGC. The UGC by its letter dated 23rd September, 2003 informed the University that one more option to change over cannot be accepted. In case of Assam University the employees, who were recruited after 1994 and that at that time only GPF Scheme was available, the Assam University by mistake given CPF to the employees, which was not permissible. In para 8 of the counter affidavit of Dr. M.K. Jain, Joint Secretary, UGC it is stated that IITs at Kanpur, Bombay, Gorakhpur and Roorki are not covered under the purview of UGC and that Delhi University was not given any permission by UGC to extend the date. By D.O. letter dated 25.5.1999 addressed to the Registrar, University of Delhi, a copy of which was endorsed to all Central University cut of date for change over from CPF to GPF was informed to be 30.9.1987 and the benefit of retirement liabilities for such employees after cut off date was to be treated as unapproved expenditure. On the basis of the reply received from the Delhi University to UGC they suggested to Ministry of Human Resource Development on 3rd September, 2002 to regularise the change for Delhi University upto 31.3.1998 or that the Government of India may instruct UGC with pension liability of the employee be not made by UGC, who have permitted irregular conversion from CPF to Pension Scheme after 30.9.1987. In reference to these letters the Ministry of Human Resource Development informed UGC on 24.10.2002 that since the UGC is funding agency and it itself had extended the Government policy on conversion from CPF to GPS to the Central Government and deemed universities receiving 100% maintenance grant, no specific Government instructions are warranted to those employees of the University of Delhi, who had not permitted to make conversion from CPF to GPF Pension Scheme after prescribed cut off date. The UGC had not permitted the University for extension of the dates. The conversion was accepted by the Executive Council of the Delhi University, where there is no representative of UGC/ Government of India. The permission for extension to some of the employees by Banaras Hindu University after the cut off date is in violation of the instructions given by the Government of India and UGC.

16. From these facts, we find that the University Grants Commission had never communicated any decision to the Banaras Hindu University to extend cut off date for change of the option. The Ministry of Human Resource Development had

requested Ministry of Finance (Department of Expenditure), which did not agree to extend the cut off date for switching over from CPF to GPF Scheme. The Office Memorandum No. 4/1/87 dated 1.5.1987 notifying the scheme pertaining to change over from CPF to GPF was never amended. The Vice Chancellor of the Banaras Hindu University, on his own without any authority from University Grants Commission and further without there being any resolution of the Executive Council appears to have extended the date for some of its employees upto 31st December, 1995. The change offerred to then was beyond the authority of the Vice Chancellor of the University. The Committee headed by Prof. D.K. Rai had made a recommendation for giving one more opportunity to switch over to GPF, which appears to have been accepted by the Vice Chancellor, without the recommendations of the Executive Council and that finally the Executive Council by its impugned decision regretting its inability to approve the orders of the Vice Chancellor dated 20.3.2001 and 18.1.2002. The Vice Chancellor of the University could not have acted against the directives of the University Grants Commission and Ministry of Human Resource Development as the University is fully funded by the University Grants Commission.

17. We are of the opinion that the Vice Chancellor on his own without there being any approval of the Executive Council, which is in turn bound in the matters of financial discipline, by the decisions taken by the University Grants Commission, which fully funds the University, did not have any authority to extend the date for option.

18. In the present case the question involved is not to extend the date of option but to allow the petitioner to withdraw their option to continue in the CPF Scheme. Under the scheme all the teachers/ employees were allowed the benefit of GPF-Gratuity-Pension Scheme. Only those employees, who had exercised their option to continue under the CPF Scheme were not given the benefit Rule 3(iii) of the Central University Retirement Benefit Rules, 1967 were not amended to give authority to the Vice Chancellor to extend the last date. The Vice Chancellor on his own without any valid authority vested in him extended the cut off date in the year 1988 and in 1995. The petitioners did not take benefit of this unauthorised extension policy also. They, therefore, have no right whatsoever to claim further extension. The Executive Council did not commit any mistake in regretting its inability to extend the date following the directives of the UGD and Ministry of Human Resource Development.

19. The petitioners are teachers and employees of the University, "hey had fully understood the financial implications of the option exercised by them. The benefits offered by the 5th Pay Commission given w.e.f. 1.1.1996 could not be a ground to allow them to opt for GPF-Gratuity-Pension Scheme almost nine years after the cut off date fixed at 30.9.1987 had expired.

20. The University Grants Commission has given sufficient explanation to the complaint of discrimination. The Guwahati University employees appointed in 1994 were wrongly offered CPF Scheme and thus they were all brought into GPF

Scheme for rectifying the error. The IITs were instructed by UGC/ MHRD not to extend cut of date since they are not funded by the U.G.C. Any decision taken by them will not amount to discrimination with the teachers/ employees of the Central Universities. The Delhi University continued with an illegality, against the clarifications issued by the UGC and Ministry of Human Resource Development

21. In Union of India (UOI) and Others Vs. M.K. Sarkar, the Supreme Court held where an employee governed by CPF Scheme did not opt for pension scheme, despite several chances given to him, his representation 22 years after his retirement, with willingness to refund the amount cannot be permitted to switch over to pension scheme. If his request is accepted, the effect would be to permit him to secure double benefit There was no recurring or continuing cause of action to file writ petition after such a long time. If was further held that when he had notice or knowledge of the availability of option he could not be heard to contend that he did not have written intimation of option.

22. We also find that this writ petition was filed on 5.8.2004 challenging the decision of the Executive Council of the University dated 19/20th July, 2002, communicated by the Registrar of the University on 5.9.2002, and much after the new pension scheme had become applicable to all the employees joining Central Government after 1.1.2004. The employees, who were covered by GPF-Gratuity-Pension Scheme were given offer to switch over to new pension scheme and thus in the year 2004 there was absolutely no justification for the petitioners, many of whom have retired long ago to be offered an opportunity to change their option and to switch back to GPF-Gratuity-Pension Scheme.

23. Both the writ petitions are dismissed.

