
(1996) 07 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8147 of 1996

Girija Shanker Pandey

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 23-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 07 AHC CK 0091

Hon'ble Judges : Palok Basu, J and R.K.Mahajan, J

Final Decision : Allowed

Judgement

Palok Basil, J.—Dr. Girija Shankar Pandey has challenged the order of the Vice Chancellor. Gorakhpur University, dated 18121995 whereby the petitioner's representation has been cancelled.

2. The short facts are that the petitioner was appointed as a Lecturer in the department of Education in Gorakhpur University on 2271957. Having attained the age of 60 years on 31101984, the petitioner was superannuated on the said date. It may be mentioned that prior to the coming into force of the Government Order dated 3171993, the petitioner was entitled to the scheme by which contributory provident fund benefits were available to him. It appears that after considering the various pension schemes in vogue in the State as well as several judicial decisions, the aforesaid Government Order came into being which provided an opportunity to the teachers to give an option for pensionary benefits notwithstanding the fact that they had already obtained the amount on retirement which was known as contributory provident fund. The petitioner's case is that he had opted for the pension scheme inasmuch as they University started releasing the pension to the petitioner but the Finance Officer raised certain objections as a result of which the matter went to the ViceChancellor and by the impugned order the ViceChancellor held the view that since the petitioner retired with effect from 31101984 that is not before 111984, therefore, the petitioner was not entitled to give the option under the Government Order dated

3171993.

3. When this writ petition was filed, a counteraffidavit was called. An interim order was passed on 19396 whereby the recovery of the sum of Rs. 36,937/ already received by the petitioner as pension in pursuance of the release of the pension to him relying upon his option, was stayed. In the counteraffidavit the stand taken by the University is that the option clause was not applicable to the petitioner and, therefore, the ViceChancellor was right in passing the impugned order dated 181295. It is alleged that because the petitioner had already taken the contributory provident fund amount, his option was inadvertently accepted which had to be cancelled and, therefore, it is alleged that the earlier order of the ViceChancellor dated 5111993 was not in accordance with law whereby the petitioners option was accepted without reference to the State Government.

4. Sri S.K. Pandey, learned counsel for the petitioner has been heard at substantial length in support of this writ petition. Sri Dilip Gupta has espoused the cause of the University. Sri A.N. Roy, learned Standing Counsel has represented the State of U.P. The exchange of affidavits between the petitioner and the University having been completed, as jointly requested by the learned counsel for the parties, the writ petition is being finally disposed of at the admission stage.

5. There are some factual averments existing paragraphs 20,20A and 21 of the writ petition which read as under:

"20. That on 201295 Hon"ble D.B.S. Chauhan, J. was pleased to dispose of contempt petition No. 1284 of 1995 with an observation "that if the petitioner is not satisfied by the said order, he can ventilate the grievance by challenging the same before appropriate forum.

"20A. That the facts related to case of the petitioner has been twisted and erroneously presented in the order of ViceChancellor. He illegally and without application of mind and proper consideration to the Government Order dated 31793 acted in haste to avoid the consequences of contempt proceeding and travelled beyond the scope of controversy regarding adjustment of contributory provident fund with the arrears of pension as directed by Hon"ble Court by order dated 26595 and 1995 making them migatory, it is stated in his order dated 181295 that the petitioner did not submit the option paper under Government Order dated 241283. This statement is wrong as it was obligatory to all teachers to give their options on prescribed option paper and on the basis of their options, the retirement benefit was to be decided. As the petitioner had given his option for contributory provident fund, the total provident fund amount was released in his favour on the basis of option given by him. In this connection the petitioner is to add further that Prof. R.P. Rastogi, Department of Chemistry, Prof. R.C. Tiwari, Department of Hindi, Dr. Tulsi Misra, Department of Hindi, Dr. R.P. Barnwal, Department of Education, Dr. (Km.) Shobha Garg, Department of Education and many other teachers retired from University service after 111994 and received

their full provident fund amount as all had given option for contributory provident fund under Government Order dated 24121983. Again all of them opted for pension/family pension benefit as provided under Government Order dated 3071993.

"21. That pension to the above mentioned retired teachers was sanctioned by the ViceChancellor and pension payment orders were issued accordingly. They received their monthly pension from July 1993 to November 1994. The adjustment of their paid contributory provident fund amount with arrears of pension were made as provided under Government Order dated 30793. To best of the knowledge of the petitioner most of them are getting their pension through treasury."

6. The reply of the University concerning the aforesaid three paragraphs is as under:

"That with regard to the contents of paragraphs 13, 14, 15, 16, 17, 18, 19 and 20 of the petition it may be pertinent to state here that this Hon"ble Court passed an order dated 26th May, 1995, and subsequently the ViceChancellor passed a detailed order dated 18th December, 1995, a copy of which has been annexed as Annexure11 to the petition. The said order of the ViceChancellor is a detailed order and the respondent graves leave of this Hon"ble Court to refer to the same at the time of hearing of the petition. Suffice it to say that the ViceChancellor after having carefully considered the case of the petitioner was of the clear opinion that the Government Order dated 31st July, 1993 was not applicable to the case of the petitioner and it was by mistake that the pension order had earlier been issued. The ViceChancellor, therefore, cancelled the earlier pension order and further passed an order that the amount of pension already paid may be recovered from the petitioner. It may be stated that under the Government Order dated 24th December, 1993 the petitioner had already received contributory provident fund amount, since the petitioner had not opted for pension/general provident fund in terms of the Government Order dated 24th December, 1993.

That the contents of paragraphs 20A and 21 of the petition are incorrect and are denied. The order of the ViceChancellor dated 18th December, 1995 correctly point out the facts. The petitioner has completely failed to appreciate that the Government Order dated 31st July, 1993 was restricted to only those teachers who had retired prior to 1st January, 1984 and it was not open to the petitioner to have submitted any option form in terms of the said Government Order. In the order dated 18th December, 1995 the ViceChancellor had sought to emphasis that petitioner had not filled in the option form for pension/general provident fund in terms of the Government Order dated 24th December, 1993. So far as the case of certain teachers referred to in the paragraph under reply are concerned it may specifically be stated that they are not receiving pension under the Government Order dated 31st July 1993. The petitioner is wrong in stating that they are being paid pension under Government Order dated 31st July, 1993.

That the contents of paragraph 22 of the petition are incorrect and are denied. The statements made in the paragraph under reply only show the petitioner's ignorance of the terms of the Government Order dated 31st July 1993, since it specifically relates to those teachers who retired prior to 1st January, 1984."

7. It may be mentioned here that admittedly the petitioner was paid a sum of Rs. 1,31,929.95 as contributory provident Fund paid by the University at his retirement on 31.11.1987. In the impugned order of Vice Chancellor it has been stated that the petitioner was paid another sum of Rs. 15000/- deposited through FDR dated 7.9.82. It is said that the contribution of the University was Rs. 70,225.92 P. apart from given by him and to get pensionary benefit under the relevant Government Order applicable now. The view to the contrary taken by the Vice Chancellor in the impugned order dated 18.12.95 can not be sustained.

8. Sri S.K. Pandey, learned counsel for the petitioner made a statement at the Bar on behalf of the petitioner that as per the practice prevailing, the petitioner shall also voluntarily permit adjustment of the amount of employers contribution from out of the arrears of pension payable to the petitioner, it is held that the petitioner is entitled to pensionary benefits in pursuance of the option extended by him notwithstanding the fact that he had obtained the benefits earlier under the contributory provident fund scheme. In fact, such an undertaking is contained also in the representations of the petitioner dated 19.1.95 (Annexure VI) and 8.6.95 (Annexure VIII) on which reliance has been placed during arguments.

9. Coming to the factual position, it is admitted to the University that the University had already taken stand that the petitioner is entitled to exercise option and it is in this view of the matter that the University had started paying pension to the petitioner vide earlier order of Vice Chancellor dated 5.11.1993. The paragraphs quoted above further make it clear that the teachers who had retired even after 1.1.1984 have been allowed to get pension from the University under the revised Government Order dated 31.7.1993 by exercising option just as the petitioner did. The denial of the averments in the counteraffidavit is indeed half hearted inasmuch as the payment of pension is not denied to similarly placed teachers as the petitioner. What is attempted to be said is that those teachers may not be covered by the Government Order relied upon by the petitioner. Therefore, in fact, there is no distinction in the case of the petitioner and in the case of those teachers named in the paragraphs noted above.

10. When the University has conceded paying the pension to those teachers in spite of their having given option just as the petitioner did, the petitioner has absolute right to continue with the option.

11. In view of the aforesaid discussion, the writ petition succeeds and is allowed. The impugned order of the Vice Chancellor dated 18.12.95 is quashed. It will be open to the petitioner to lay a fresh claim on the pensionary benefits under his option and the said payment shall be commenced within three months after adjusting the accounts concerning University's contribution to the contributory

provident fund and also taking note of the pension released so far, to the petitioner on account of acceptance of his option by the University's earlier order dated 5111993. Parties will bear their own cost. Petition allowed the petitioner's share in the contributory provident fund. These two figures are admitted to the parties but the actual amounts may be verifiable at the time of releasing pension finally in pursuance of the order to follow hereinafter.