(2002) 01 DEL CK 0072

In the Delhi High Court

Case No : Civil Writ Petition No. 2789/89

H.C. Shali APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 29-01-2002

Acts Referred:

Citation : (2002) 5 AD 327 : (2002) 97 DLT 369 : (2003) 1 SLJ 205

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : V. Shankra, for the Appellant; Kailash Gambhir, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—Petitioner has filed this writ petition under Article 226 of the Constitution of India seeking a direction against the respondents to restructure the pensionary benefits of the petitioner from the date of his retirement i.e., 28.2.73 on the same terms and conditions on which the pensionary and other related benefits of the employees of the similar status in the schools run by the appropriate authority who have retired after 31.12.73 and onwards have been structured.

2. The controversy in the present petition arises as a result of the Delhi School Education Act, 1973 (for short the said Act) having come into force on 31.12.1973. The petitioner retired on 28.2.1973 prior to the said Act coming into force and opted for restricted pension scheme under triple benefit scheme. The relevant sections of the said

Section 2(i):

''existing employee'' means an employee of an existing school who is employed in such school immediately before the commencement of this Act, and includes an employee who was employed in such school for a period of not less than twelve months immediately preceding the 2nd day of September, 1972.

Section 10:

The scales of pay and allowances medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in Schools run by the appropriate authority."

3. The learned counsel for the petitioner has contended that on bare reading of Section 2(i) of the said Act it is apparent that while the first portion of the said sub-section deals with the employees in employment at the stage of the Act coming into force, the second part deals with the employees who were not employed when the Act came into force. The second portion comes into play when the employee was employed in such school for a period of not less than twelve months immediately preceding the 2nd day of September, 1972.

4. The learned counsel for the petitioner contends that thus the provisions of Section 2(i) would be applicable to the petitioner and the petitioner would thus be entitled to be treated as existing employee.

5. Learned counsel for the respondent on the other hand, contends that pension has not been specifically included u/s 2(i) and the petitioner having availed of scheme of pension on his retirement should not be entitled to the benefits u/s 10 of the said Act.

6. Learned counsel for the respondent also contends that there has been gross delay and laches on part of the petitioner in approaching the court as the petitioner retired in February, 1973 and the first representation has been made by him on 25.11.86 and the petitioner approached the court in 1988. This submission is opposed by learned counsel for the petitioner who contends that it was the duty of the respondents to have applied the provisions of the Act and at best this should preclude him from entitlement for pensionary benefits for a period before 25.11.83 since the first representation was made n 25.11.86.

7. I have considered the rival contentions advanced by learned counsel for the parties. A reading of Section 2(i) clearly shows that legal fiction had been applied to include certain employees who on plain reading of the meaning of existing employee would not have been so included. Thus apart from the employees who are employed with the School immediately before the commencement of the Act employees who are employed with such School for a period of 12 months preceding 2.9.1972 are also included in the definition of an employee. Admittedly, the petitioner has worked for a period of 12 months prior to the date of commencement of the Act. In the said section no exception has been made that with this definition of existing employee will not apply so far as provision of pension is concerned. In the absence of any exception having been made, I am of the considered view that there is no reason why provisions of Section 10 of the Act dealing with the medical facilities, pension, gratuity and provident fund should not apply to an existing employee as defined in Section 2(i) of the Act. Since the petitioner falls within this definition the petitioner is entitled to the

benefit of Section 10 of the said Act. However, in view of the petitioner having opted for restricted pension scheme under triple benefit scheme petitioner''s pension is liable to be worked out under the said scheme on the basis that the provisions of the Act apply to the petitioner.

8. The other issue to be decided relates to the question of delay and laches raised by the respondent. This issue has been considered in CWP 6538/98 in the case of Major Rajinder Singh v. Union of India and Ors. decided on 17.1.2002 by this court where after considering the judgment of the Supreme Court it has been held that Pensionary benefits accrue from month to month and is thus analogues to the concept of a salary which a person would be entitled during the course of his service. Thus the principles laid down by the Supreme Court in M.R. Gupta v. Union of India and Ors., 1995 31 ATC 186 would apply to the case where the claim is of pension. It was thus held that if the person approaches the court belatedly the same cannot be held against him in granting the benefits of pension at least taking into consideration the date when he approached the court. Admittedly, the petitioner approached the respondent authorities on 25.11.86 through a representation. The petitioner approached the court on 7.12.1988 and thus would be entitled for a period commencing from 7.12.85 i.e., from 3 years prior to his approaching the court. In view of the aforesaid, the petitioner is entitled to pensionary benefits from 7.12.85. The arrears of the pensionary benefits be paid to the petitioner by the respondents within a period of two months.

9. Though no prayer for interest has been made, learned counsel for the petitioner makes an oral prayer to grant interest. I am not agreeable to give interest on the past amount to the petitioner, in view of the petitioner having approached the Court belatedly.

10. Petition stands allowed in the aforesaid terms. The parties are left to bear their own costs.