(2010) 01 DEL CK 0153

In the Delhi High Court

Case No : Writ Petition (C) No. 21243 of 2005

Jitendra Pal Singh APPELLANT

Vs

Lt. Governor NCT of Delhi and Others RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Citation : (2010) 166 DLT 591 : (2010) 3 ILR Delhi 290 : (2010) 3 SLR 641

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Subrat Birla, for the Appellant; Yashmeet, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this writ petition filed under Article 226 of the Constitution of India the petitioner seeks to issue direction to respondent No. 3 to comply with Section 10 of the Delhi School Education Act, 1973.

2. Brief facts as per the petitioner relevant for deciding the present petition are that the petitioner was a teacher in the respondent No. 3 school for the about last 30 years and attainted superannuation on 31.3.2005. He never voluntarily opted for Contributory Pension Scheme (CPF) scheme offered by the respondent and the option of pension was never given as required u/s 10 of the Delhi School Education Act and the Rules framed there under and that for the same the present petition is filed.

3. Counsel for the petitioner submitted that the petitioner never opted for CPF scheme and once having not opted the said scheme the petitioner is entitled to the pension as applicable to the Government teachers in terms of Section 10 of the Delhi School Education Act and Rules framed there under. He submitted that a letter was also written by the petitioner to respondent No. 3 seeking grant of pension and a copy was also sent to the Director of Education. He further submitted that a reply was given by respondent No. 3 stating that the petitioner should approach EPF Department for sanction of the pension, and on the other

hand there was no response from the Director of Education. As no steps were taken the petitioner was compelled to file the present petition.

4. Refuting the said submissions of the petitioner, the counsel for the respondent submitted the petitioner regularly contributed his share of the provident fund contribution, and he thus became entitled to the pension under Family Pension Fund and hence enjoyed the said benefit there under. Counsel for the respondent drew the attention of this Court to the photo copy of the statement showing the amounts of the contributions made by the employees and the share contributed by the employer, wherein it is shown that the petitioner himself is the signatory to the said contribution being made from his salary to the contributory fund. The said chart also clearly show that equal amount was contributed by the employer towards their share. The counsel for the respondent No. 3 further submitted that the petitioner being a member of the EPF and having availed of and withdrawn amount from his provident fund account cannot now seek pension benefits which are available to the Government employees. He submitted that no doubt there was one entry on page 74 of the paper book that showed that at the time of withdrawal of the amount by the petitioner he had received the same under protest but the same itself would not show that the petitioner was not aware of the fact that the said scheme of CPF was not applicable to him.

5. I have heard the counsel for both the parties and perused the records.

6. The argument of counsel for the petitioner in my view is amazing as the said scheme was applicable to all other employees then where was the question of the school to leave out the petitioner from the said scheme or for the petitioner not to have opted the said scheme or not to have known the said scheme. The petitioner has claimed parity with the other employees of the Government schools based on Section 10 of the Delhi School Education Act and the Rules framed there under. It would be relevant to reproduce the same here:

10. Salaries of employees--(1) 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 school run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognized private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such schools to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be noncompliance with the conditions for continuing recognition of an existing school and the provisions of Section 4 shall apply accordingly.

7. The same issue was also dealt in judgment of this Court in Ajit Singh v. Director of Education and Ors. 2006 VIII AD (DELHI) 708 where it was held that:

4. As is clear from the Section, the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school cannot be less than those of the employees of the corresponding schools run by the appropriate authority. Accordingly, the pay allowance etc. could be better. The concept of parity is different from the concept of less than. The petitioner''s case is that the benefit of the CPF or of the EPF provided to him under the service agreement or otherwise by application of law is less than the benefit of the GPF which is available to the teachers of the schools run by the Government. The return of the CPF or EPF Scheme is different from the return of the GPF with pension scheme and the two returns are valued differently for different people. There is no scale by which it can be said that the value of the CPF and EPF scheme is less than the value of the GPF pension scheme.

5. The employees of the schools run by the Government become entitled to the GPF scheme by virtue of their being Government servants. The benefit of the GPF scheme cannot be extended to the employees of the private schools as the employees of the private schools are not Government servants or others to whom the GPF applies.

8. The issue is otherwise no more res integra as this Court in V.S. Rahi Vs. The Lt. Governor and Others, has already taken a view that the benefits of the contributory provident fund scheme are in the nature of substitution and not in addition to the pension and since there is no pension scheme applicable to the private unaided school in Delhi, and therefore, the scheme of pension cannot be made applicable to the petitioner ipso facto. It would be pertinent to reproduce the relevant para of the said judgment:

10. For the foregoing reasons, I am of the opinion that not only that this petition was barred by principles of resjudicata but even otherwise the petitioner was not entitled to the benefits of pension as he had availed of the benefits of Contributory Provident Fund Scheme. The benefits of the Contributory Provident Fund Scheme are in the nature of substitution and not in addition to the pension and since there is no pension scheme applicable to the private unaided schools in Delhi, in my opinion, the petitioner would not be entitled to any such pension.

9. It is thus quite manifest from above that the persons who are already members of the Contributory Provident Fund (CPF) scheme would not be entitled to the pension in terms of the pension rules which may be applicable to the government teachers where the contributory pension scheme is not applicable.

10. Counsel for the petitioner placed reliance on the judgment of this Court in Safir Ahmed and Others Vs. Lt. Governor National Capital Territory of Delhi and Others, . In my view this does not help the petitioner as the same was distinguished in the case of V.S. Rahi (supra) where it was observed:

In Safir Ahmed and Ors. v. Lieutenant Governor, National Capital Territory of Delhi and Ors. (supra), the Court was concerned with the writ petition filed by certain employees of a minority institution wherein they had claimed that they should be paid the same pay and allowances and other benefits, as were being paid to other aided and recognised educational institutions. It was in this context that the Court directed that the petitioners in that case were entitled to gratuity and pension according to pay drawn by them at the time of resignation or retirement and, accordingly, the respondents in that case were directed to pay pension and other allowances payable to the petitioner at par with other educational institutions on the basis of the last pay drawn. The court in that case was not concerned whether an employee who was a member of the Contributory Provident Fund Scheme was also entitled to pension. The court had only directed the payment of salary, pension and gratuity, etc. at par with other educational institutions.

11. Hence in the light of the above discussed legal position, I do not find any merit in the present petition and the same is hereby dismissed.

