
(2010) 05 DEL CK 0319
In the Delhi High Court
Case No : L.P.A. 144 of 2010

Jitendra Pal Singh, Ex. PGT, Physics

APPELLANT

Vs

The Lt. Governor National Capital Territory of Delhi, The
Director of Education Delhi Administration and The Chairman
Apeejay Education Society

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Delhi School Education Act, 1973 — Section 10, 10(1), 4

Citation : (2010) 05 DEL CK 0319

Hon'ble Judges : Mukta Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Subrat Birla, for the Appellant; Shoaib Haider, for N Waziri, Standing Counsel and Yashmeet Kaur, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—The present appeal arises out of an order dated 13th January, 2010 passed in WP(C) No. 21243/2005 whereby the petitioner's petition seeking pension as is given to the employees of Schools run by the appropriate authority was dismissed.

2. Brief facts relevant for the present case are that the Appellant was a teacher in the Respondent No. 3 School and attained superannuation on 31st March, 2005. According to the learned Counsel for the Appellant, he never voluntarily contributed to the Contributory Pension Scheme (CPF) offered by the Respondent, and as no option was given, the Appellant was entitled for pension u/s 10 of the Delhi School Education Act and the Rules framed thereunder. It is stated that there is no stipulation in the said provision that the pension scheme of the school run by the appropriate authority could be replaced by the Contributory Provident Fund as provided in Employees Provident Fund Scheme, 1952. The Appellant further states that he wrote a letter to the Respondent No. 3 with copy to Respondent No. 2, seeking grant of pension, to which he received

no response from Respondent No. 2 and Respondent No. 3 directed him to approach the EPF Department.

3. Learned Counsel for the Respondent controverting the contentions on behalf of the Appellant submits that the Appellant was regularly contributing his share to the provident fund and throughout enjoyed the benefits thereunder and was entitled to pension only under the "Family Pension Fund". By way of a chart, it is demonstrated that both the employee and employer contributed towards their respective share of the provident fund and the Appellant having availed and withdrawn the amount from the provident fund account, cannot now seek pension benefits which are available to the Govt. employees. Learned Counsel for the Respondent places reliance on the decision rendered by this Court in V.S. Rahi Vs. The Lt. Governor and Others, and Ajit Singh v. Director of Education and Ors. 2006 VIII AD (Delhi) 708.

4. We have heard the parties. It may be noted that the learned Counsel for the Appellant bases his claim on Section 10 of the Delhi School Education Act which reads as under:

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 recognized 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 non-compliance with the conditions for continuing recognition of an existing school and the provisions of Section 4 shall apply accordingly.

5. Section 10(1) of Delhi School Education Act does not contemplate that an employee will be given pension as well as Contributory Provident Fund and despite the fact that a person opts for the contributory provident fund whether by written consent or by way of his conduct, he would also be entitled to pension. According to the said provision all that is required is that the benefits of the employees of any recognized private school should not be less than those of the employees of the corresponding status in the schools run by the appropriate authority. In the present case, the Appellant and the Respondent No. 3 regularly contributed to the Contributory Provident Fund and amount from the said fund was also withdrawn by the Appellant. Though the Appellant never gave the formal option but the contribution to the fund from the Appellant's salary was under his signatures. Thus, in view of the conduct of the Appellant, it is a case of

deemed acceptance.

6. The Hon''ble Supreme Court in the case of Committee for Protection of Rights of Committee for Protection of Rights of ONGC Employees and others Vs. Oil and Natural Gas Commission, Dehradun and another, held that it was not the intention of Parliament that the Provident Fund benefit envisaged by the Provident Fund Act would be in addition to the pensionary benefits. While quoting the statement of objects and reasons of the Provident Fund Act it held that it indicated that the Scheme of Contributory Provident Fund by way of retiral benefit, envisaged by the Provident Fund Act, is in the nature of a substitute for old age pension because it was felt that in the prevailing conditions in India, the institution of a pension scheme could not be visualized in the near future

7. Thus, the benefits of the Contributory Provident Fund Scheme are in the nature of substitution and not in addition to the pension and as there is no pension scheme applicable to the private unaided schools in Delhi, the same cannot be made applicable by taking recourse to Section 10 of the Delhi Education Act. We are in agreement with the decision rendered by the learned Single Judge and the decisions of this Court in the case of S.S. Nayar v. Chairman, ONGC and Ors. 88 (2000) DLT 77, V.S. Rahi Vs. The Lt. Governor and Others, and Ajit Singh v. Director of Education and Ors. 2006 VIII AD (Delhi) 708.

8. We find no infirmity in the judgment. Hence the appeal is dismissed.