

(2011) 07 SHI CK 0188
In the High Court Of Himachal Pradesh
Case No : CWP No. 1712 of 2008

J.P. Vashishtha

APPELLANT

Vs

Sainik School Society and Another

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Citation : (2011) 07 SHI CK 0188

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—The Petitioners herein above are the Employees of Respondent Sainik School working in different capacities. The Petitioners have sought the Following relief"s:

- (i) That the impugned Annexures-PI and Annexure P-N, dated 24.8.2011 and 4.6.2008 may kindly be quashed and set aside by issuing a writ of certiorari.
- (ii) That a writ of mandamus may kindly be issued, directing the Respondents to permit the petition and other similarly situate persons to give fresh options to opt for the pension Scheme keeping in view the amendment made in the scheme by the Respondent No. 1 Board in the year 1991 and the Petitioner and other similarly situate persons be held entitled to the consequential benefits under the Pension Scheme.
- (iii) That in case during the pendency of the writ petition the Petitioner or other similarly situate person retire, such person(s) may also be held entitled to the benefits flowing from the decision of the present writ petition.

2. Respondent No. 1 is a registered Society registered under the Societies Registration Act, 1860. The said Society has opened Sainik Schools in different States through out the country and one of the schools of Respondent society is situated at Sujampur Tihra in District Hamirpur, Himachal Pradesh in the year 1978. The Petitioners are working in different capacities as shown hereunder:

Sr. No.

Post Held

Post Held.

Working w.e.f.

1.

J.P Vashishtha

Master (Mathematics)

23.4.1984

2.

S.K Dixit

Art & Craft Attendent.

1.10.1981

3.

S.P Thakur

Master(English)

13.7.1985

4.

Deep Kumar

Library Attendant

1.4.1986

5.

V.K Sharma

Mess Manager

9.8.1980

6.

S.K Gupta

Accountant

1.9.1980

7.

Ramji Dass

Lower Division Clerk.

1.4.1984.

8.

S. Deswal

Master(English)

19.9.1983

9.

R.C Sharma

Asst. Master(Hindi)

17.9.1983 (Retired on 28.2.2011.)

10.

G.D Kshirsagar

Master(Maths)

20.9.1982

3. The employees of the Respondent-School were entitled for the "Contributory Provident" Fund under the CPF Scheme w.e.f 1.4.1988. The governing body of Respondent No. 1 decided to apply pension scheme as applicable to the employees of Central Government also to the employees of Sainik Schools. As such, Respondent No. 1 sought option from its employees vide letter dated 3rd March, 1989 (Annexure -PA), that the employees who were in service on 1.4.1988 may be allowed to exercise their option either for continuing with the existing CPF scheme or to switch over to the pension scheme along with G.P.F. As regards the employees who were appointed on or after 1st April, 1988, were to be governed by pension scheme and G.P.F only. Thus, the employees aforesaid were required to submit their option to the Office Superintendent of the School before 10.3.1989.

4. The Board of Governors took a decision vide Annexure P-C dated 9-12-1991 that benefits of family pension and commutation of pension would be extended to Sainik School Employees. On the representation of some of the employees, a School Routine Order (SRO) was issued on 10.1.1992 by Respondent No. 2 to its employees only conveying the gist of decision taken on 9.12.1991 by the Board of Governors. (Annexure P-B) and the options were called from the employees of Respondent-s school. Relevant paras of the said order is reproduced here below:

4. Decision has been received from Board of Governor"s Sainik Schools Society, New Delhi that Sainik School employees shall be allowed a fresh opportunity for exercising option or to change their option to pension scheme/CP Fund latest by

31 Jan, 92. In case, no revised option is received within the stipulated date i.e. 31st Jan, 92 it shall be presumed that the concerned employees are not willing to revise/change their options.

5. Employees who have been appointed after 01 April, 1988 and ex-serviceman who are working in Sainik School are not required to exercise their options as per rules.

6. The option profoma can be obtained from the School Office.

5. Earlier on the basis of letter dated 3.3.1989 (Annexure PA), most advantageous features including Family Pension and commuted pension were not made applicable to the employees of Sainik School. Later vide (Annexure PB) dated 10.1.1992 did not convey the decision of the Board of Governors, virtually it looked like the same as that of Annexure PA. Thus the Petitioners did not care for it. After sometime the Petitioners came to know that some decision was taken by the Board of Governors in terms of letter dated 9.12.1991 (Annexure PC) which was not brought to their notice, then they made a representation jointly to the concerned authorities but they were informed to make individual representations, as such the Petitioners made their individual representations. On this the Respondent No. 2 sent a communication to the Petitioners on 12.2.2001 that their representation was under active consideration with Respondent No. 1 and sought some information in order to enable them to proceed with the matter further. The requisite information was sent, but vide letter dated 24.8.2001 (Annexure PI). They were informed that their representations were rejected on the ground that the Ministry of Finance (Department of Expenditure) stated that 5th Centre Pay Commission did not recommend for grant of another option to those who by themselves opted to be governed under the CPF scheme in implementation of the recommendations of the 4th Pay Commission to switch over to the Pension Scheme. As such the proposal to allow another option to the employees who by themselves opted to be governed under CPF scheme for switching over to the GPF Pattern was not agreed to.

6. The Petitioners felt aggrieved by the aforesaid decision of Respondent No. 1. As such, filed separate writ petitions. During the pendency of the earlier writ petitions, Principal of Respondent No. 2 sent a letter dated 5.3.2002 to the Respondent No. 1 whereby he admitted the lapse on his part that while publishing SRO (Annexure PB) aforesaid, the points of the revised scheme were not highlighted in the SRO stating clearly that previous anomalies have been removed. Thus, the employees thought that there was nothing new in the scheme, therefore, paid no attention to the SRO aforesaid. This fact was noticed by this Court while disposing of the writ petition filed by the Petitioners and the Respondents were directed to consider the case of the Petitioners afresh in a time bound manner, On making representation by them to Respondents immediately.

7. Pursuant to aforesaid order dated 22.5.2007 passed by this Court. The Petitioners preferred their representations individually but the same were rejected on 4.6.2008(Annexure PN) precisely on the ground that in the light of directions of Ministry of Finance (Department of Expenditure) grant of another option to the employees who by themselves opted to be governed under the CPF schemes for switching over to the G.P.F Pattern has not been agreed to and thereby maintained the status quo on the subject. The same was conveyed. Hence, the Petitioners filed the present writ petitions, precisely on the ground that Annexure PB (SRO) dated 10.1.1992 left them in dark about the decision of Board of Governors as aforesaid.

8. The Respondents resisted and contested the claim of the Petitioners on the ground that Respondent No. 1 vide his letter No. PC-10(4)/87-SSC dated 8.2.1989 informed the employees of Sainik School to exercise their option either to continue with the CPF or to switch over to pension Scheme along with G.P.F as per Annexure R-1 and same was conveyed to the employees through SRO Annexure PA dated 3.3.1989. It is also contended that after sending SRO the employees were at liberty to get verified their option from the concerned office and that on the receipt of letter No. 2(2)/90/D9SSC) dated 9-12-1991 another SRO Annexure PB was published for giving fresh opportunity to the employees to exercise their option or change their option latest by 31.1.1982 (Annexure R-3), that in case no revised option is received within the stipulated date, it shall be presumed that the employees are not willing to revised/change their option. It is further contended that only the gist is published under SR Os all the member of the staff are otherwise required to consult the Office Superintendent on all the office matters relating to pay , allowances, CPF, gratuity, pension etc. It is also contended that Mr. S.K Gupta, one of the Petitioners is the Accountant and custodian of the files containing all policy letters on pay and allowances, CPF, GPF, gratuity, family pension, commutation of pension and allied matters including the Board of Governors. Therefore, Their contention that they were not conveyed about the decision taken by the Board of Governors is false and wrong.

9. Shri. Surinder Sharma, learned Counsel for the Petitioner, vehemently argued that the decision of the Board of Governors was not at all conveyed to the Petitioners in the right perspective by issuing SRO (Annexure PB) on 10.1.1992, therefore, the Petitioners were deprived of knowing about the decision of Board of Governors and by going through the aforesaid SRO, the Petitioners did not find any change in the earlier SRO and later on but when they came to know about it that its real decision and substance was worked they made a representation as desired and this fact was also admitted by the Principal of the Sainik School that the gist of the decision was not conveyed vide Annexure PB to the Petitioners. Therefore prejudice has been caused to them in exercising the required option.

10. Sh. Sandeep Sharma, Ld. ASG representing the Respondents duly assisted by Sh. Varun Chandel submitted that only the gist of the decision are conveyed in SRO, which was accordingly conveyed and in case of any doubt the employees

of the School are at liberty to seek clarification from the Superintendent concerned. He further ventilated that Annexure PB dated 10.1.1992 is based upon the decision taken by the Board of Governors and the Petitioners did not verify its details from the quarter concerned, therefore, the Respondents cannot be faulted and no further option can be considered. Thus, he justified the stand taken by the Respondents.

11. I have given my careful consideration to the contents of parties and have carefully examined the records.

12. As a matter of fact, the employees of "Sainik Schools" were entitled to pension w.e.f 1.4.1988 on the pattern of the Central Government pension Scheme as provided under the Central Services Pension Rules, 1972, corrected up to 1st April, 1988. However, Sainik School employees had no option for commutation of pension. For the purpose of counting of service for reckoning the quantum of pension, some conditions were led. Pension was admissible only for the length of the service rendered on regular basis in Sainik School. In case of the employees, who rendered service in organisations other than Sainik School, their service was to be counted towards pension provided:

- (i) The erstwhile service is the pensionable service, and
- (ii) The erstwhile organisation undertakes in writing that it will bear the financial liability towards pension contribution for the relevant period.

Such of the ex-servicemen, re-employed in Sainik Schools or who were already drawing pension from the central government were not be granted pension for their service in Sainik School. These employees will, however, continued to enjoy the benefits of existing Contributory Provident Fund (CPF) Scheme. Whereas, the employees who were in service as on 1.4.1988 were required to exercise their option in the prescribed proforma by the 28th Feb, 1989 either for continuing with the existing CPF scheme or to switch over to the pension scheme along with GPF. As regards the employees, who were appointed on or after 1st April, 1988 were to be governed by pension scheme and GPF. All these details were mentioned by the Respondent No. 1 in the letter circulated to all the Principals of Sainik Schools including Respondent No. 2. On the basis of which, SRO (Annexure PA=R-2) was issued on 3.3.1989 whereby the options for GPF were sought by the Respondent No. 2 from its employees to be submitted before the Office Superintendent before 10.3.1989. But, many representations were received by Respondent No. 1 from the employees of Sainik Schools, thus the Respondent No. 1 Inter alia extended the additional benefits to the Sainik School employees vide letter No. PC-10 dated 22.7.1991 whereas Letter No. 2(2)/90 D(SSC) dated 22.7.1991 extended the additional benefits to Sainik School employees. Thus, the complete pension scheme was given effect w.e.f 1.4.1998 vide letter No. 2(2)/90/D(SSC) dated 22.7.1991. Accordingly decisions was taken that the Sainik School employees shall be allowed for exercising the option or change their option to Pension Scheme CPF and this was required to be done by

31.1.1992. In respect of the serving Sainik School employees. The principal of the concerned Sainik School was required to obtain the revised option from them. The other terms and conditions remained the same. Further it was also decided that the Sainik School employees who have retired after i.1.1988 were also allowed to revise their option. If they have already received the CPF amount, they were required to refund the school share of the CPF with interest, the same being charged at rates as applicable to PF deposits from time to time and interest was ordered to be calculated from the date of retirement to the date of refund of the amount with the School. In case, no revised option is received by that time i.e. 31.1.1992 it would be presumed that the concerned Ex-employee did not want to revise his option.

13. Surprisingly, the gist of the decision as conveyed by Respondent No. 1 to the Principal concerned was not further conveyed to the Petitioners vide SRO (Annexure PB) dated 10.1.1992, it only mentioned that the decision was received from the Governors Sainik School society that the Sainik School employee shall be allowed a fresh opportunity for exercising option or to change their option to pension scheme/CP Fund latest by 31.1.1992, in case no revised option is received within the stipulated date i.e. 31.1.1992, it shall be presumed that the concerned employees are not willing to revise/change their options. The extended benefits which were ordered to be allowed by the Governing body were not at all conveyed.

14. It is well settled that the statutory authority who are required to implement/convey the orders of higher authorities are statutorily and religiously bound to convey the real sense fairly and without any reservation so as to achieve the desired result. But in the instant case principal of Respondent No. 2 only conveyed half cooked decision vide SRO (Annexure PB) by concealing material context which created more confusion to its employees than clarifying the same.

15. Thus, in my considered opinion, the Petitioner were mis-led by the said SRO (Annexure PB dated 10.1.1992), thinking that only the time for exercising the option was extended without any further extended benefits, which ultimately prejudiced the Petitioners in exercise of their option, it was incumbent upon the Respondent No. 2 to convey the decision passed by the Governing Body and brought the matter into the notice of the employees of Sainik School in its right spirit. The mistake in issuing the SRO (Annexure PB) is clearly admitted by Respondent No. 2 vide his letter Annexure PJ dated 5.3.2002 and this mistake was also brought to the notice of Respondent No. 1 but despite that even thereafter it was not corrected by Respondent No. 1. The arguments advanced by the learned ASG that the Petitioner could have sought clarification from the officials is not at all sustainable as the decision which was conveyed to the Petitioners was different from the decision already taken by the governing body and there was no occasion for them to seek clarification and no rule or law has been brought to my notice that it was for the Petitioners to get it verified as ventilated.

16. Therefore, for the reasons aforesaid the impugned Annexures PI dated 24.8.2001 and Annexure P-N dated 4.6.2009 are unsustainable, thus quashed and set aside. The Respondents are hereby directed by writ of mandamus to permit the Petitioner and other similar situate employees of Respondent No. 2 School to seek fresh option to opt for pension scheme within one month in consonance with Annexure -PC dated 9.12.1991 as amended. In case they or any one of them would opt for it, they or that person would be entitled to its consequential benefits but if any of the Petitioner in the mean time attain the age of superannuation, such person shall also be entitled to the benefit flowing from the decision of the present writ petition. Further, if option is exercised by the retiree(s) for GPF and pension scheme it shall be accorded to him/them within three months from exercising his/their option.

17. With the above directions, all the petitions stand disposed of. No order as to costs.