

(2010) 01 AHC CK 0290

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2268 of 2010

Mangat Singh and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Citation : (2010) 125 FLR 416

Hon'ble Judges : S.P. Mehrotra, J;K.N. Pandey, J

Bench : Division Bench

Advocate : R.P. Dubey, for the Appellant;

Final Decision : Allowed

Judgement

S.P. Mehrotra and K.N. Pandey, JJ.—Heard Sri R.P. Dubey, learned Counsel for the petitioners and the learned Standing Counsel appearing for the respondents.

The learned Counsel for the parties are agreed that the controversy involved in the present writ petition is covered by the earlier decisions of this Court, referred to hereinafter in the present judgment, and therefore, the present writ petition may be decided at this stage itself.

A supplementary affidavit has also been filed on behalf of the petitioners along-with the writ petition.

2. From the averments made in the writ petition and the supplementary, affidavit, it appears that the petitioner No. 1 Mangat Singh was appointed as Lecturer in Geography subject on 16.8.1975 in Mahatma Malviya Degree College Khekha, Baghpat. The date of birth of the petitioner No. 1 Mangat Singh is 20.1.1950, and he is to attain the age of superannuation on 19.1.2012, and is due to retire on 30.6.2012 after getting Session benefit.

3. It further appears that the petitioner No. 2 Rama Shankar Sharma was appointed as lecturer in Economics subject in the aforesaid College on 16.8.1975. The date of birth of the petitioner No. 2 Rama Shankar Sharma is

1.7.1955, and he is to attain the age of superannuation and is due to retire on 30.6.2017.

4. It is, inter alia, stated in the writ petition that the aforesaid College is affiliated to Chaudhary Charan Singh University, Meerut (Meerut University,, Meerut).

It further transpires that initially the petitioners opted for Contributory Provident Fund Scheme (CPF). However, by the Option Letters, each dated 22.11.2007, each of the petitioners exercised his option in terms of the Government Order dated 25.8.1999 for switching over from Contributor Provident Fund Scheme (CPF) to General Provident Fund Scheme (GPF) with Pension. The said Option Letters of the petitioners were forwarded by the Principal of the aforesaid College to the Director of Higher Education, U.P. Allahabad by the Communication dated 1.12.2007. Copies of the said Communication dated 1.12.2007 and the said Option Letters of the petitioners are annexed as Annexure SA-1 to the supplementary affidavit.

5. It is, inter alia, prayed in the writ petition that writ, order or direction in the nature of mandamus be issued directing the respondents to accord the benefit of GPF plus Pension Scheme to the petitioners in accordance with the Government Order dated 25.8.1999, and various decisions of this Court.

6. Facts relevant for deciding the present writ petition are as under.

The State Government from time to time has issued Government Orders permitting the teachers to exercise their options for switching over from Contributory Provident Fund Scheme (CPF) to General Provident Fund Scheme (GPF) with Pension.

The last such Government Order was issued on 25.8.1999 (Annexure 5 to the writ petition) which permitted the teachers to exercise their options before one year of their retirement. However, by the Government Order dated 5/6.5.2000 (Annexure 6 to the writ petition), a clarification was issued that option could be exercised only by such teachers, who were governed under the General Provident Fund Scheme and not under the Contributory Provident Fund Scheme.

7. It appears that this Court in Civil Misc. Writ Petition No. 25140 of 2001 (Dr. Shri Gopal Gupta and others v. State of U.P. and others) considered the aforesaid Government Orders dated 25.8.1999 and 5/6.5.2000, and held by the judgment and order dated 26th October, 2006 as follows:

...The policy of the Government providing benefit of GPF plus pension Scheme at no point of time denied the benefits to those teachers who had not opted for the said scheme prior to 25th August, 1999 or during the period prescribed either in the Government Order of 1980 or 1982. Since the scheme remained in existence and time for giving option was extended from time to time, the interpretation given by the State to the aforesaid Government Order dated 25th August, 1999 and the clarifications dated 5th June, 2000 and 12th July, 2000 cannot be sustained in the eyes of law.

The petitioners who had applied/opted for GPF plus pension scheme though they were covered under the CPF Scheme, one year before their date of retirement i.e. during the extended period as per the Government Order dated 25th August, 1999 could not have been refused the said benefit on the ground that the aforesaid scheme/option was open only for those teachers who are covered by the GPF Scheme...

Copy of the said judgment and order dated 26th October, 2006 has been filed as Annexure 7 to the writ petition.

It further appears that the State Government filed a SLP before the Supreme Court being petition for Special Leave to Appeal (Civil) No. 722 of 2008.

8. By the Order dated 3.11.2008 (Annexure 8 to the writ petition), their Lordships of the Supreme Court dismissed the said Special Leave Petition.

Thus, the aforesaid judgment and order dated 26th October, 2006 became final.

This position has not been disputed by the learned Standing Counsel.

9. In our opinion, the petitioners in the present writ petition, who exercised their option by the Option Letters dated 22.11.2007 in terms of the Government Order dated 25.8.1999, are entitled to the benefit of GPF Scheme with Pension.

As noted earlier, the petitioner No. 1 is due to retire on 30.6.2012 while the petitioner No. 2 is due to retire on 30.6.2017, and therefore, the options exercised by the petitioners by the Option Letters dated 22.11.2007 have been exercised as per the requirement of the said Government Order dated 25.8.1999.

10. We may mention that in Civil Misc. Writ Petition No. 13169 of 2008 Kirti Chand Gupta and others v. State of U.P. and others connected with various other writ petitions, similar controversy was involved. A Division Bench of this Court by its judgment and order dated 16th April, 2009 (Annexure 9 to the writ petition) decided the said writ petitions following the decision of this Court in Dr. Shri Gopal Gupta (*supra*), and gave directions to the respondents in the said writ petitions for extending the benefit of the said Government Order dated 25th August, 1999 to the petitioners in the said writ petitions.

11. Respectfully following the above decisions, we decide the present writ petition giving similar directions.

The writ petition is accordingly allowed.

The respondents are directed to give benefit of the Government Order dated 25.8.1999 to the petitioners in terms of the options exercised by the petitioners within three months of the filing of the certified copy of this Order before the Director of Higher Education, Uttar Pradesh, Allahabad.

On the facts and in the circumstances of the case, the parties will bear their own costs.