

(2010) 03 JH CK 0092
In the Jharkhand High Court

Narendra Narayan Ray and Krishna Deo Sinha	APPELLANT
Vs	
The State of Jharkhand and Others	RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Citation : (2010) 03 JH CK 0092

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard.

2. The petitioners in this writ application, who were appointed as Professors under the respondent Regional Institute of Technology and have retired from service on the post, have prayed for issuance of a writ in the nature of mandamus commanding upon the respondents 2 and 3 to implement the Triple Benefits Scheme i.e. the General Provident Fund-cum-Pension-cum-Gratuity Scheme and extend them the benefits thereof, with effect from 6.9.1999 which was the date when the scheme was notified after approval by the then State of Bihar. The petitioner No. 1 having died during the pendency of this writ application, his widow Ratna Prabha being the surviving legal representative, has been substituted in his place.

3. The case of the petitioners is that the respondent Regional Engineering College was established as a Society Registered under the Society Registration Act and it was under the general superintendence of the Board of Governors comprising of elected and nominated members, as per Rule-6 of the Memorandum of Association. The nominees included three nominees of the State Government and three nominees of the Central Government besides other officials.

The service conditions, as applicable to the State Government employees and the University Rules as applicable to the University to which the respondent RIT was affiliated, was made applicable to the teaching and non-teaching staff of the respondent Engineering College. The service condition also included the benefits

of retirement/Gratuity, General Provident Fund and Contributory Fund. This fact has been affirmed by the Central Government by its Circular No. 27572 and reiterated before this Court in a previous writ application vide CWJC No. 607 of 2000 [Chandra Prabha Devi v. Regional Institute of Technology and Ors.].

The Board of Governors of the respondent RIT at its 72nd meeting held on 17.6.1992, adopted a resolution making the Triple Benefits Scheme applicable to those employees of the Institute who were to retire on and after 1.4.1992. A corresponding notification was issued on 22.9.1992 by the respondent RIT, by which the individual employees were not only informed about the resolution, but also allowed to exercise their option for availing the benefits of the Triple Benefits Scheme. The notification also indicated that the option once exercised, will be treated as final and the employee would not be allowed to retract from his option.

The resolution though adopted and notified by the respondent RIT, had however, stipulated that the implementation of the resolution would be subject to the approval of the State Government and the Central Government. This was for the reason that the mandatory contributions were to be made in the ratio of 50-50 between the Central and the State Government.

4. When the approval of the State Government was being delayed, the petitioners filed a writ application before this Court vide CWJC No. 27 of 1998 (R) for issuance of a direction upon the State Government to take a prompt decision for approval of the aforesaid resolution adopted by the Board of Governors of the RIT.

The writ application was disposed of by this Court vide order dated 29.7.1998, directing the respondent State of Bihar to pass an appropriate order within three months from the date of passing of the judgment. The court while disposing of the writ application, had observed that as per the counter-affidavit of the respondent State, only a formal approval was needed by the State Government to implement the decision of the Board of Governors of the respondent RIT.

Despite direction of the court when there was further delay on the part of the State Government to approve and implement the decision of the Board of Governors, the petitioners filed a contempt application and it was only thereafter, the State of Bihar approved the resolution and notified that the Triple Benefits Scheme would be made applicable but with effect from the date of the notification i.e. 6.9.1999.

5. On account of the scheme being made effective from 6.9.1999, thereby depriving the petitioners from availing the benefits thereof, since they had retired prior to the aforementioned date, the petitioners filed another writ application before this Court vide CWJC No. 1006 of 2000 for issuance of a direction upon the State Government to make the scheme applicable from the date when the resolution was adopted by the Board of Governors of the respondent RIT.

Upon the writ application being dismissed by the Single Judge, the petitioners

preferred an appeal against the order of the Single Judge vide LPA No. 73 of 2007. However, the LPA was disposed of with a liberty to the petitioners to submit their representation before the concerned authorities of the respondents for reconsideration on the question regarding retrospective applicability of the Triple Benefits Scheme.

6. On the basis of the liberty granted, the petitioners filed their representation before the Secretary, Department of Science and Technology, Government of Jharkhand on 22.4.2002.

7. During this time, the respondent Regional Institute of Technology was converted into National Institute of Technology and the entire liability of the erstwhile RIT was taken over by the Central Government on 20.2.2002.

8. In response to the representation filed by the petitioner No. 2, the Secretary, Science and Technology, Government of Jharkhand sought a direction from the concerned authorities of the Central Government since the demand of the petitioners was for implementation of the decision taken by the Board of Governors which was taken prior to the notification of the NIT.

9. The reply of the Central Government, as appearing from its letter dated 17.3.2005 addressed to the Director, NIT, Jamshedpur indicates that the liability of the Government of Jharkhand prior to 6.9.1999 was taken over by the Central Government, although no firm commitment on the financial liability by the Central Government was given on this issue.

10. The grievance of the petitioners is that in spite of the fact that the State of Jharkhand had agreed in principle that the benefits of the Triple Benefits Scheme can be given with effect from 1.4.1992, as indicated vide letter of the Secretary, Department of Science and Technology, Government of Jharkhand addressed to the concerned authorities of the Central Government and despite the fact that the Board of Directors of the erstwhile RIT, by adopting the resolution, had decided that the benefits be given from the date of the resolution i.e. 17.6.1992, the petitioners have not been favoured with any pensionary benefits.

It may be noted here that the relief, as originally claimed by the petitioners in this writ application, was made in the context of the claim for the benefits of the Triple Benefits Scheme from the date of the resolution adopted by the Board of Governors i.e. 1.4.1992. This relief has now been modified by confining the claim for the benefits of the new scheme from the date it was made effective by the State Government i.e. from 6.9.1999. As it appears, the petitioners appear to have reconciled to the fact that the applicability of the benefits of the Triple Benefits Scheme could be made effective from the date of the approval by the State Government and such approval being granted by the State Government, can be made effective prospectively from the date of the approval i.e. from 6.9.1999. Petitioners have nevertheless claimed that the benefits of the scheme be given not only from 6.9.1999, but it should also be extended to cover those employees of the Institute who retired in between 17.6.1992 and 23.8.1999.

11. Denying and disputing the claim of the petitioners, the stand taken by the respondent State Government as also by the respondents 3 and 4, is that the issue as to whether the benefits of the scheme can be claimed from retrospective effect or from prospective effect, has been decided by the Division Bench of this Court in LPA No. 73 of 2002 and as such, the claim of the petitioners that such benefits should be extended to them who had retired prior to the date when the State Government had declared the scheme to be effective, is not tenable.

12. For proper appreciation of the case, a brief reference of the background facts would be necessary. A Circular issued by the Central Government in 1972, instructing all the Regional Institutes of Technology within the country to adopt and implement the Triple Benefits Scheme for the employees of the Institutes. This was considered by the Board of Governors of the respondent RIT after about 20 years in 1992. Though, the scheme was adopted, but since it involved financial implications, the approval of the State Government was necessary. As such, a proposal for implementing the Scheme, as adopted by the Board of Governors, was forwarded to the State Government by the RIT, Jamshedpur. The State Government notified its belated decision approving the proposal and sanctioning its implementation, but with effect from the date of the notification i.e. from 6.9.1999. However, while issuing the notification, the State Government did not make any qualifying statement that the benefits of the Scheme would be made applicable to those employees who had retired in between the date the Board of Governors of the RIT had adopted the resolution i.e. from 1992, till the date of the notification issued by the State Government in September 1996. The obvious inference is that the benefits of the Scheme was to have prospective effect and applicable to such employees of the respondent RIT who would retire on or after 6.9.1999.

13. The Triple Benefits Scheme was introduced as a new scheme for the employees of the Regional Institute of Technology. Prior to the introduction of the Triple Benefits Scheme, the retiral benefits for the employees of the respondent RIT, was under a scheme known as Compulsory Contributory Provident Fund (CCPF) in which an obligation was imposed upon the employer to contribute 8.33% of the basic pay of the employees towards provident fund. In the said scheme after retirement, an employee was entitled to get the total amount of deposit i.e. the employee's contribution as well as the contribution made by the employer together with interest accrued on the total amount. However, the scheme did not provide for any monthly pension.

On the other hand, in the newly introduced Triple Benefits Scheme, there is no obligation on the part of the employer to make any contribution towards the employee's provident fund. The employee who retires, gets the total accumulated amount of his contribution together with interest as provident fund and in addition, monthly pension is secured to him after his retirement.

14. The claim of the petitioners needs to be considered in the context of the fact that prior to the date of the implementation of the new Triple Benefits Scheme

from September 1999, both the present petitioners had retired. Admittedly, during the tenure of service, they were governed by the earlier Compulsory Contributory Provident Fund scheme under which they were eligible to receive the benefits of the employer's contribution. The relationship of the petitioners with their employer came to an end on and from the respective dates of their retirement. This is a significant difference between the new scheme and the old scheme. While in the old scheme, the relationship between the employee and the employer came to an end on and from the date of retirement of the employee, but under the new pension scheme, the relationship between the employer and the employee merely undergoes a change and does not end altogether.

15. The claim of the petitioners for extending them the benefits of the Triple Benefits Scheme appears to be based on the ground that the resolution of the Board of Governors had declared that the benefits would be applicable to the employees of the RIT on and from the date of adoption of the resolution by the Board in 1992.

16. A Division Bench of this Court has already declared that the benefits of the new scheme, as notified by the State Government, cannot be demanded with retrospective effect and it would operate from the prospective effect i.e. from the date of notification. The petitioners cannot therefore demand the benefits of the new scheme with retrospective effect.

17. The only issue which needs to be addressed is, whether in the light of the background facts and circumstances, the benefits of the Triple Benefits Scheme could be extended to the petitioners from the prospective date i.e. from 6.9.1999, even though they had retired from service prior to the aforesaid cut-off date. A similar issue came up for consideration before the Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), . In Nakara's case also, while introducing the revised Pension Scheme, the Government had notified a cut-off date for enforcement of the revised scheme entitling the benefits of the revision to those retiring after the cut-off date, while depriving the benefits to those retiring prior to that date. Considering the issue on the facts of the case, the Apex Court had observed as follows:

the cut-off date as specified in the Government Notification for making the revised scheme applicable, accord differential and discriminatory treatment to equals in the matter of commutation of pension. It would have a traumatic effect on those who retired just before that date. This division which classified pensioners into two classes is artificial and arbitrary, is not based on any rational principle and whatever principle, if there be any, has not only no nexus to the objects sought to be achieved by liberalizing the pension rules, but is counter productive and runs counter to the whole gamut of the pension scheme.

18. In the present case also, as it would appear from the backgrounds facts, the Central Government had introduced the new Triple Benefits Scheme way back in 1979 and had given direction to all the Regional Institutes of Technology to adopt

the same for its employees. The Board of Governors of the respondent RIT had adopted the resolution for implementing the Triple Benefits Scheme to its employees way back in 1992. Pursuant to the adoption of the resolution, a privilege was given to the employees of the RIT to opt for the Triple Benefits Scheme and it was specified that the once the option is exercised, it would be irreversible. The petitioners had exercised their choice by opting for the Triple Benefits Scheme way back in 1992 itself and since then, they were aspiring for getting the benefits of the Triple Benefits Scheme. The delay in approving and implementing the resolution as taken by the Board of governors, was caused by the State Government without there being any reasonable excuse for such delay and it was only pursuant to the pressure created by the contempt application filed by the petitioners, that the State Government had finally approved and notified the Scheme for implementation. While fixing the cut-off date for implementing the scheme as 6.9.1999, the State Government has apparently failed to consider the fact that the resolution for implementing the scheme was adopted by the Board of Governors of RIT way back in 1992 and the employees including the petitioners had exercised their option for availing the benefits of the Triple Benefits Scheme in 1992 itself. There appears no acceptable or persuasive reason offered by the State Government as to why the benefits of the liberalized scheme should not be extended to those employees who had retired prior to the specified date.

19. However, even though, it has been decided by the Division Bench of this Court that the Triple Benefits Scheme would be operative prospectively, yet, the respondents perhaps have considered that even by retaining the specified date for the limited purposes to avoid payment of arrears which may impose a heavy burden on the Government Exchequer. Yet by making the scheme effective from the specified date, future pension of the earlier retired Government employees could be computed afresh and paid to them by making the scheme prospectively operative for them. The petitioners may not claim the benefits of the new scheme from retrospective effect i.e. from the date of their retirement, but the concerned authorities of the respondents could have considered the extension of the benefits of the new scheme to the petitioners prospectively from the specified date. It may be noted that the Triple Benefits Scheme being non-contributory, extension of the benefits of the scheme to those employees who had retired before the specified date, will not affect the share available to others since there is no pension fund for payment.

20. In the light of the above facts and circumstance, this matter is remitted back to the concerned authorities of the respondents to reconsider the claim of the petitioners for extending them the benefits of the new Triple Benefits Scheme from prospective date i.e. from the date when implementation of the scheme was made effective by the Government Notification. A decision on the above issue should be taken by the concerned authorities of the respondents and effectively communicated to the petitioners within three months from the date of receipt/production of a copy of this order.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the counsel for the respondent.