(2014) 11 KL CK 0202

In the High Court Of Kerala

Case No : Writ Petition (Civil) Nos. 23638 and 31569 of 2009

N.K. Chandran Pillai — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:
Constitution of India, 1950 — Article 14, 16(1), 19(1), 21, 300A

Citation : (2014) 11 KL CK 0202

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan (Sr.), Mohan Idiculla Abraham and Martin D. Alumkara, Advocate for the Appellant; S. Gopakumaran Nair (Sr.), M. Chandra Bose, S. Gowtham, A. Rajasimhan, Abraham P. Meachinkara, Advs., Millu Dandapani, SC and Sarena George, Senior Government Pleader, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—The petitioners, who are the retired employees of the second respondent board have come up before this Court aggrieved by two Government Orders (Exts. P13 & P15) by which the right to receive State Government pension and gratuity conferred on them by Ext. P4 Government Order dated 30.01.2001 was taken away by the Government after a gap of 7 1/2 years.

2. For convenience of discussion, W.P. (C) No. 23638 of 2009 is taken as the leading case and the documents are referred to as they are arrayed in that writ petition.

3. The petitioners are retired employees of the second respondent board, who were working in different capacities as Livestock Inspectors, Livestock Superintendents etc. All of them commenced their service during 1971-72 as Inseminators on contract basis under the Indo-Swiss Project (ISP) under Animal Husbandry Department, which was later merged with Kerala Livestock Development and Milk Marketing Board. The above said Board was later

reconstituted as the Kerala Livestock Development Board Ltd., the second respondent herein.

4. Certain employees of the Board approached this Court with writ petitions alleging non regularisation of their services under the Board and this Court, by Ext. P2 common judgment dated 6.2.97 directed the Government to pass orders regularising the services of those employees in the respective posts from the respective dates of their initial appointments. In implementation of Ext. P2 judgment, the Government had issued Ext. P3 order dated 13.6.97 regularising the services of 24 contract/provisional employees in their respective posts from the date of their initial appointment. However, the services of the petitioners as Inseminators from 1971-72 to 1978 were not regularised by the Board by extending the benefit of Ext. P2 judgment, though they were similarly situated. Therefore, the petitioners filed representations before the Government and later, the services of the petitioners were regularised in the respondent board on 3.4.1978. Thus, they became regular employees of the respondent board with effect from the aforesaid date.

5. However, the contract period from 1971 to 2.4.1978 in the erstwhile ISP and KLD & MM Board Ltd., was treated only as pay contract. Therefore, the Managing Director of the Board sent a proposal to the Government to regularise the Inspectors who had worked in the erstwhile ISP during 1971-72 to 1978 from the date of their initial appointments. Thereupon, the Government, as per Ext. P4 order regularised the services of the employees, who had worked in the ISP as Inseminators on contract appointments from 1971-72 from the respective dates of their initial appointments. However, the following conditions were imposed:

"1. No arrears shall be paid. They will not be eligible for GPF. They will be treated as Government employees in every respect except for GPF and arrears.

2. Pension and gratuity will be paid as if for government employees. In the case of retired personal also the same benefit will be extended subject to the condition that they will refund the employer''s contribution of EPF and,

3. Government/Board shall make pension contribution for the respective period of service."

6. In Ext. P4, Ext. P3 was made mention of as reference No. 1. The second reference in Ext. P4 is Ext. P5 dated 27.4.2004 from the second respondent recommending regularisation of service with retrospective effect.

7. Thereafter, certain Livestock Inspectors and Livestock Assistants covered by Ext. P4 Government Order approached this Court seeking for a direction to the respondents to implement Ext. P4 Government Order and to disburse their pension and other retirement benefits. This court by Ext. P7 judgment dated 16.2.2006 disposed of the original petitions observing that the Government had proposed to take a decision in the matter. There was a direction to the first respondent to take appropriate action in accordance with law in the matter with

notice to respondents 2 and 4 within another four months, in case, the petitioners approach the first respondent with any surviving grievance. Since the first respondent failed to take appropriate action in the matter as directed in Ext. P7, some of the petitioners in the aforesaid case filed a representation before the Government. As there was no immediate response from the part of the Government, contempt petitions were filed before this Court wherein, an affidavit was filed by the Secretary of the Animal Husbandry Department conveying the decision taken in compliance with Ext. P7 judgment. Thereafter, the Government issued Ext. P9 order stating that Government pension cannot be sanctioned to the retired Livestock Inspectors for the reason that the EPF authorities have not agreed to refund the employer''s contribution of EPF which was one of the conditions laid down in Ext. P4 Government Order.

8. The contempt petitions were disposed of by Ext. P12 judgment finding that there was substantial compliance and reserving the right of the petitioners therein to challenge the correctness of the aforesaid Government Orders.

9. The petitioners would allege that though they informed the fourth respondent by letter dated 27.7.2007 that the EPF authorities have no objection in transferring the employer''s share of provident fund pension contribution along with interest to the State Government, if the State Government was prepared to accept the same treating the petitioners as State Government employees. The Government issued Ext. P15 Government Order dated 7.8.2008 withdrawing Ext. P4 Government Order. This according to the petitioners is unreasonable, arbitrary, discriminatory and violative of Articles 14, 16(1) and 300A of the Constitution of India.

10. I have heard the learned Senior Counsel for the petitioners, the learned Senior Counsel for the second respondent, the learned standing counsel for the third respondent and the learned Senior Government Pleader for the State.

11. The arguments advanced by the learned Senior Counsel for the petitioners are as under:

"(a) Ext. P15 Government order dated 7.8.2008 withdrawing Ext. P4 Government order dated 30.1.2001 after a long hiatus of about 7 1/2 years taking away the accrued rights of the petitioners to receive State Government pension and gratuity is highly reasonable, arbitrary, discriminatory and violative of Articles 14, 16(1), 21 and 300A of the Constitution of India.

(b) In Ext. P15 the main reason for non-settlement of pensionary claims on the basis of Exts. P4 Government order dated 30.01.2001 is that the EPF authorities were not agreeable to refund the employer''s share to the EPF account of employees or to exempt Live Stock Inspectors from the provisions of the Scheme. The above reason is factually unfounded and against record.

(c) In Ext. P15 Government order the Government proceeded on a wrong assumption of fact. Ext. P4 Government order was not made conditional upon the agreement of EPF authorities to refund the employer''s contribution. No condition is found in Ext. P4 G.O. The Government went at a tangent and Ext. P15 is illegal."

12. The argument advanced by the learned Senior Counsel for the second respondent can be summed up as under:

"(a) Ext. P4 Government order dated 30.01.2001 on the basis of which the petitioners are claiming vested right was issued only in the context of regularisation and it does not amount to a promise at all. Ext. P4 was subjected to certain riders.

(b) In the case of retired employees, it is difficult to get back their contributions. Unless the Government shoulder the financial burden which would be cast upon the second respondent board, it may not be possible for the second respondent to meet the liability. There is no readiness on the part of the retired employees to refund the contribution. The petitioners have never challenged Exts. P8 and P9.

(c) Ext. P15 takes back only regularisation."

13. The following are the arguments advanced by the learned Senior Government Pleader:

"(a) Ext. P4 itself is conditional on the happening of certain events. Therefore, the question of legitimate expectation does not arise. It is clear from Ext. P11 that the stand of the third respondent is conditional. It makes it clear that the transfer of employees'' share of pension contribution to the State Government has not been agreed to by the third respondent.

(b) The benefit of pension cannot be restricted to a class of persons. Ext. P15 is not attacked on the ground of withdrawal of regularisation."

14. In reply, the learned Senior Counsel for the petitioners advanced the following arguments:

"(a) Ext. P4 Government order creates rights, i.e. substantive rights of regularisation, and the same mentions pension also.

(b) By Ext. P15, the entire Ext. P4 Government order was withdrawn.

(c) A live member means a member who has not been removed from membership.

(d) Where the rights of the citizens against the State are concerned, an interpretation which upholds those rights are to be adopted."

15. It is true that Ext. P4 was subject to three conditions stated in paragraph (2) above. The 2nd condition was that in cases of retired personal, the benefit would be extended subject to the refunding of the employer''s contribution of EPF. While the learned Senior Government Pleader would argue that, that was a condition for extending Ext. P4, the learned Senior Counsel for the petitioners

would argue that for the implementation of Ext. P4, the same is not conditional, but it is only incidental.

16. It is relevant to note that three orders were referred to in Ext. P4. The first reference is Ext. P3 Government Order dated 13.6.97 which was issued in implementation of Ext. P2 judgment of this Court. The second reference is Ext. P5 letter dated 27.4.2000 from the second respondent to the first respondent. Ext. P5 was a recommendation by the second respondent to confer upon the Inseminators/Livestock Assistants, the benefit of their services from the date of initial appointments to the date of regularisation of the Board. In Ext. P5, it was recommended that the pension and gratuity should be paid as in the case of Government employees. It was further recommended that in case of retired personal also the same benefit be extended subject to the condition that they would refund the employer''s contribution of EPF.

17. It was pointed out by the learned Senior Counsel for the petitioners that in the contempt petitions which were disposed of by Ext. P12 judgment, the Employment Provident Fund Organisation represented by the Assistant Provident Fund Commissioner, Kochi, was impleaded as additional respondent. In that case, the counsel for the petitioner was served with a statement by the additional second respondent along with copy of the letter dated 9.8.2007 wherein it was stated that there was no prohibition in transferring the employer''s contribution in respect of the live members, if required by the State Government to grant State Government pension for the eligible employees. Ext. P10 is the photocopy of the above statement along with the letter dated 9.8.2007. However, in the statement filed before this Court, letter dated 9.8.2007/20.8.2007 was replaced by a letter dated 27.7.2007. The above statement along with the copy of the letter dated 27.7.2007 is produced as Ext. P11 in this case.

18. The stand taken in Ext. P10 letter dated 9.8.2007/20.8.2007 from the Regional Provident Fund Commissioner (Legal) addressed to the Assistant Provident Commissioner is very much relevant for adjudicating the issues involved in these writ petitions. In the aforesaid letter dated 9.8.2007/20.8.2007, it has been clearly stated that there was no prohibition in transferring the employer''s contribution in respect of the members if required by the State Government to grant State Government pension for eligible employees. The contempt petitions were disposed of in view of Exts. P8 and P9 Government Orders by dropping the contempt proceedings and granting liberty to question the correctness or otherwise of the orders passed by the Government dated 27.3.2007 and 24.7.2007. The petitioners herein were not parties to the contempt petitions, and therefore, it was submitted that they were not aware of the aforesaid Government Orders. In this context, Exts. P13 and P14 also have some relevance.

19. Ext. P13 is the letter from the office of the Employment Provident Fund Organisation issued to one N.K. Chandran Pillai, Livestock Superintendent wherein it was stated that the office has no objection in transferring the

employer''s share of PF/Pension contribution along with interest to the State Government, if the State Government is prepared to accept the same considering the addressee as a State Government employee, retrospectively for grant of State Government pension. Ext. P14 is a similar letter addressed to one A. Ahmed who is a retired Livestock Superintendent. The case of the respondent State would stand terribly watered down in the light of Exts. P13 and P14.

20. The other reason pointed out in Ext. P15 Government Order is that the financial position of the respondent Corporation is not sound enough to bear the additional expenditure in respect of the payment of pension contribution and revised salary on account of retrospective regularisation of Livestock Inspectors. That is not a good or valid reason for withdrawing Ext. P4 Government order.

21. Exts. P8 and P9 Government Orders are referred and relied on in Ext. P15 Government order to show that individual representations were rejected by the Government seeking for pension based on Ext. P4 Government Order. Exts. P8 and P9 cannot bind the petitioners or other similarly placed employees and they bind only those the employees against whom those orders were passed.

22. The next reason shown in Ext. P15 is that employer''s contribution to EPF to those 24 persons had been paid by the Kerala State Livestock Development Board and since the employees are already getting EPF pension, sanction of Government pension to these categories is not possible. The above reason also is untenable. In Ext. P4 Government Order, it has been directed that in case of retired personal, the same benefits would be extended subject to the condition that they would refund the employer''s contribution to the EPF. Therefore, this Court is of the definite view that the receiving EPF pension cannot be made a ground for denying State Government pension and gratuity which is accrued to the petitioners under Ext. P4 Government Order dated 30.1.2001.

23. The Apex Court in Deokinandan Prasad Vs. The State of Bihar and Others, has observed that the right to get pension is property. At that time, property right was a fundamental right under Articles 19(1) and 31(1) of the Constitution of India. Now, it is a legal right under Article 300A of the Constitution. Therefore, Ext. P15 Government Order withdrawing Ext. P4 Government Order thereby depriving the State Government pension and gratuity, which accrued to the petitioners without there being any overriding public interest is without authority of law and is hit by Article 300A of the Constitution of India.

24. The Doctrine of promissory estoppel also preserves a right which accrued. The accrued right of the petitioners to receive pension cannot be destroyed by issuing Ext. P15. The petitioners who were continuing in service even after Ext. P4, demitted their office thereafter on a legitimate expectation that they would receive State Government pension and gratuity as per Ext. P4.

25. The Apex Court in Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, has held that legitimate expectation is now considered to be part of the principles of natural justice. Here, the right which

accrued to the petitioners had been taken away by Ext. P15 without affording the petitioners an opportunity of being heard. Once, the legitimacy of expectation is established, this Court is bound to have the task of weighing the requirements of fairness against any overriding public interest relied upon for the change of policy. The first respondent has not alleged, far less shown any overriding interest to withdraw Ext. P4 Government Order and, therefore, Ext. P15 is liable to be quashed as violative of the doctrine of legitimate expectation.

26. It was persuasively argued by the learned Senior Counsel for the second respondent that application of Ext. P10(3) issued by the third respondent fund is in respect of live members only. It was, therefore, argued by the learned Senior Counsel for the second respondent that, therefore, the petitioners who have demitted their office cannot come within the meaning of live members. In answer to the said argument, the learned Senior Counsel for the petitioners submitted that the words ''live members'' made mention of in Ext. P10(3) have to be read as members who are not removed from the membership. In support of the said argument, the learned Senior Counsel invited my attention to the decision of the Apex Court in Madan Lal ''Dhartipakar'' Vs. Shri Neelam Sanjeeva Reddy and Others, wherein the Apex Court has adopted the interpretation that upholds the rights of the individual. In that case a question of interpretation relating to the right of a citizen against the State was involved. I see valid force in the argument advanced by the learned Senior Counsel for the petitioners.

27. The learned Senior Counsel for the petitioners pointed out that the financial burden that would be cast upon the second respondent also is not a valid ground to sustain Ext. P15 in the light of the decision of the Apex Court in State of Mizoram and Another Vs. Mizoram Engineering Service Association and Another, wherein such a contention by the State Government was repelled by the Apex Court while allowing the pay scale to the Chief Engineer in the State of Mizoram.

28. It is here, one should be reminded of the words of the Apex Court in Deokinandan Prasad''s case (cited supra) that ''pension is not a bounty payable on the sweet will and pleasure of the Government and the right to pension is a valuable right vesting in a Government servant''. On a consideration of the entire materials placed on board, this Court is of the definite view that the petitioners are entitled to succeed.

In the result, the writ petitions are allowed. Exts. P13 & P15 are quashed. The first respondent is directed to implement Ext. P4 Government Order forthwith de hors Exts. P13 & P15 and to extend and disburse the State Government pension and gratuity admissible to the petitioners under Ext. P4 and also to pay arrears of pension. Unless the dues are paid within a period of three months, the first respondent shall be liable to pay interest @ 12% on the arrears of pension with effect from the respective date on which the pension became due to the petitioners.

