
(2000) 04 AHC CK 0029

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 32662 of 1996 and 21561 and 25511 of 1998

Prabha Kakkar (Smt.)

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Citation : (2000) 2 UPLBEC 1378

Hon'ble Judges : N.K. Mitra, C.J.;R.R.K. Trivedi, J;G.P. Mathur, J

Bench : Full Bench

Advocate : R.N. Singh, for the Appellant; Ashok Mehta, Chief Standing Counsel, for the Respondent

Judgement

R.R.K. Trivedi, J.—In Civil Misc. Writ Petition No. 21561 of 1998, a learned Single Judge noticed contrary views expressed by two Division Benches. Consequently, he referred the matter to Hon"ble the Chief Justice by order dated 9th July, 1998 for constituting a Larger Bench to resolve the conflict. Hon"ble the Chief Justice by order dated 23rd July, 1998 constituted this Full Bench to resolve the controversy and thus this bunch of Writ Petitions has come before us.

2. Before coming to the controversy, which is subject-matter of consideration before this Full Bench, it is necessary to look into the backgrounds in which the dispute has arisen.

3. Petitioners are teachers serving in Government aided private educational institutions. There was disparity in service conditions of the teachers serving in Government run institutions and those serving in Government aided private educational institutions. Government of India appointed Secondary Education Service Commission, which made certain recommendations for removing disparity. On basis of these recommendations. State of Uttar Pradesh initially introduced a scheme known as "Triple Benefit Scheme" and framed Rules known as "Uttar Pradesh Aided Educational Institutions Employees Contributory Provident Fund, Insurance, Pension Rules, 1964" which came in effect from 1st

October, 1964. In pursuance of the aforesaid Rules, Government Order dated 17-12-1965 was issued for implementing the Scheme under which the benefits of (i) contributory provident fund, (ii) special life Insurance, and (iii) pension including the family pension were to be given to all the teachers serving in the State aided primary schools, Junior High Schools, Higher Secondary Schools, Degree Colleges, Training Colleges etc. However, the pensionary benefits under the above Triple Benefits Scheme were still not at par with pensionary benefits admissible to teachers serving in Government institutions. To remove this disparity and in order to provide the same pensionary benefits to the teachers of Government Aided Private Institutions which were admissible to Government teachers, State of Uttar Pradesh issued Government Order dated 31st March, 1978. However, as the age of superannuation in case of teachers serving in Government colleges was 58 years, the teachers serving in Government Aided Private Institutions were asked to opt for the age of superannuation at 58 years for getting the pensionary benefits at par with the teachers serving in Government Colleges. Government Order inviting such option was issued on 10-8-1978. Under this Government Order if teacher opted to retire at the age of 58 years, he was to get death-cum-retirement gratuity along with other pensionary benefits. For giving effect to this scheme, Rules known as "U.P. State Aided Secondary Schools "Teachers" Death-cum-Retirement Benefit Rules" were published on 29-8-1991. In pursuance of this Government Order, options were exercised by some teachers. However, large number of them could not exercise options. By Government Order dated 6-10-1990, a second opportunity was given to the teachers to exercise option. This order dated 6-10-1990 was further clarified by Government Order dated 4-11-1991 a fresh opportunity was given to teachers to exercise option within 90 days from the date of the order. When these two orders namely 6-10-1990 and 4-11-1991 came in existence some of the teachers who had already opted to retire at the age of 58 years in pursuance of the order dated 10-8-1978 again exercised option to retire at the age of 60 years or made applications to withdraw the options already given. Some of the teachers who had submitted options in pursuance of order dated 6-10-1990; after coming into existence of order dated 4-11-1991 again submitted fresh options expressing their desire to retire at the age of 60 years. In these circumstances, controversy arose as to whether the option once exercised by a Teacher could be changed, modified or withdrawn subsequently. The authorities of the Education department took the view that option once exercised was final and could not be changed or modified subsequently, which was challenged by teachers by filing several Writ Petitions before this Court. A Division Bench while deciding Kamla Sharma (Smt.) Vs. Deputy Director Education and Others, held that option exercised by teachers could be changed. The relevant portion of it is being reproduced below--

"We are unable to accept the submission of the learned Counsel that the second G.O. dated 4-1-1991 did not permit the petitioner to exercise a second option. The G.O. says that there was some anomaly in the language used in the various

Government Orders issued in the year 1978 and on 6-10-1990 and, therefore, most of the teachers in the State could not exercise their option due to confusion and, therefore, a fresh opportunity was being given to them to exercise option within 90 days. This could never be the intention of the G.O. that, though there was ambiguity those teachers who had exercised option in pursuance of the G.O. dated 6-10-1990 could not exercise their option again while those who had not at all exercised their option due to ambiguity could exercise their option. Such an interpretation would render the G.O. dated 4-1-1991 wholly arbitrary. In our opinion, the G.O. gave a right to all the teachers to exercise their option again as the Government itself was of the view that the earlier G.O. in this regard were not clear and there was ambiguity in their language. We are further of the opinion that the G.O. should not be interpreted in a very technical manner. In *Devi Krishna Goyal v. DIOS, Ghaziabad* (1990) 13 A T C 155, the Supreme Court ruled that notwithstanding a condition in the G.O. to the effect "option once used will be deemed to be final"--the option could be withdrawn prior to its acceptance. We are, therefore, clearly of the opinion that as the Writ Petition had exercised a second option on 4-1-1992 withdrawing her earlier option dated 24-10-1990, it was not open to the Deputy Director of Education to have accepted her first option by passing an order to that effect on 15-9-1992. Therefore, the writ Petition of Smt. Kaushal Varshney was rightly allowed by this Court."

4. Another Division Bench however while deciding similar controversy in Special Appeal No. 2891 of 1995, *Prakash Chandra Sharma v. Deputy Director of Education, Bareilly Region, Bareilly and Ors.* vide judgment dated 22nd May, 1997. [reported in (1997) 2 UPLBEC 1156] took the following view--

"In our view, the teachers submitting their option in pursuant to the G.O. dated 10-8-1978 and Niyamavali dated 29-8-1981 amounts to acceptance of the offer of the State Government and in the absence of any express or implied requirement of acceptance in the Niyamavali of 1981, no further acceptance is required except as provided in Clause 16 of the Niyamavali of 1981, i.e., counter-signature by the District Inspector of Schools and forwarding one copy to the Management for being posted on the service record of the concerned teacher and another copy to the Deputy Director of Education for information which is merely an official and ministerial act. Moreover, the time plays a dominant role in the formation of a contract. After lapse of reasonable long period one cannot back out and evoke his promise. By efflux of time it would be deemed that the option exercised by the appellants is accepted. After more than a decade the appellants cannot take a plea that since acceptance was not communicated to them and therefore, they have a right to revoke."

5. Judgment of Division Bench in case of *Kamla Sharma* (supra) was also considered by the subsequent Division Bench but it was distinguished on facts. The relevant paragraph No. 18 of the judgment in which Division Bench dealt with the judgment in case of *Kamla Sharma* (supra) is being reproduced below--

"The Division Bench judgment of this Court rendered in the case of Smt. Kaushal Varshney v. Deputy Director of Education, Agra and Ors., (supra) on which reliance has been placed by the learned Counsel is also not applicable in the facts and circumstances of the present case because in that case the option exercised on 24-10-1990 was withdrawn on 4-1-1992 even the respondent by its order dated 15-9-1992, accepted the earlier option dated 24-10-1990 which stood withdrawn on 4-1-1992 and thus the Division Bench of this Court held that it was not open to the respondent to accept the first option by passing an order to that effect on 15-9-1992."

6. From perusal of the views expressed by the two Division Benches, it is clear that the Division Bench in case of Kamla Sharma has taken the view that as admittedly there was ambiguity in Government Orders dated 10-8-1978 and 6-10-1990, second opportunity ought to have been given even to those teachers who had already exercised option. Further the Division Bench relying on the judgment of Hon"ble Supreme Court in Devi Krishna Goel's case also took the view that the acceptance of the option and its communication was necessary and the option already exercised could be withdrawn prior to its acceptance. Whereas the Division Bench in Prakash Chandra Sharma's case expressed the view that the option submitted by the teachers in pursuance of the Government Order dated 10-8-1978 and the Rules of 1981 amounted to acceptance of offer by the State Government and in absence of any express or implied requirement of acceptance in Government Orders and the Rules of 1981, formality of acceptance was not required. It has been further held that by efflux of time the option exercised would be deemed to have been accepted and the teachers after lapse of reasonable long period cannot be allowed to back out and revoke their promise. In view of the aforesaid contrary legal position expressed by the two Division Benches, in our opinion, the following legal questions require determination of this Full Bench--

1. Whether In the Scheme provided in the Government Orders dated 10-8-1978, 6-10-1990 and 4-11-1991 and the Rules of 1981 acceptance of the option exercised by the teacher and its communication was necessary to make it final and irrevocable?

2. Whether the option exercised by teacher became final and irrevocable after it was counter signed by the District Inspector of Schools?

3. Whether by efflux of long time the option exercised by teacher in pursuance of the Government Orders could be legally deemed to have been accepted and it could not be changed or revoked?

7. We have heard Sri R.N. Singh, learned Senior Counsel for the Petitioner and Sri Ashok Mehta, learned Chief Standing Counsel for the Respondents.

8. Sri R.N. Singh has submitted that it is admitted position that there was confusion and ambiguity in the Government Orders which was clarified by the State Government by issuing order dated 4th November, 1991 by which a fresh

opportunity to exercise option within 90 days from the date of the order was also given. It is submitted that the option could not be legally exercised properly as there was confusion and ambiguity. The view taken by the Division Bench in the case of Smt. Kamla Sharma (*supra*) is correct and justified. Learned Counsel has further submitted that the Government has issued an order on 17-2-1999 by which teachers have been permitted to change their option, one year before retirement. This subsequent order of the State Government is indicative of the intention of the Government that it never intended to make the option final and it was for this reason that a fresh opportunities were provided from time to time on the demand of the teachers. Learned Counsel has submitted that in case of confusion and ambiguity the correct position can be determined by taking into consideration the stand of the Government taken in subsequent orders. Learned Counsel has further submitted that the Government Order dated 6-10-1990 and circular dated 30th October, 1990 issued by the Director of Education expressly required that the option exercised by the teachers shall be accepted and its acceptance/non-acceptance shall be communicated to the concerned teachers." However, this express requirement present in aforesaid two orders, unfortunately could not be noticed by the Division Bench deciding the case of Prakash Chandra Sharma and consequently the correct view could not be taken. Learned Counsel has submitted that the judgment of Hon"ble Supreme Court in case of Devi Krishna Goyal (*supra*) is binding and the Division Bench in case of Smt. Kamla Sharma should be upheld.

9. Learned Chief Standing Counsel, on the other hand, submitted that from a conjoint reading of orders dated 6-10-1990 and 30th October, 1990 it is clear that if no action on the option exercised was taken or communicated by the authorities it shall be taken to be implied accepted and teacher should not be permitted to change it after long lapse of time. Learned Counsel has submitted that in such matters, it is the public interest that finality should be attached to the option exercised to avoid uncertainty and it was for this reason that the Government Orders provided that the option once exercised shall be taken to be final.

10. We have carefully considered the submissions of the learned Counsel for the parties and the questions formulated for determination by this Bench are being considered and decided in the light of the submissions made by the Counsel for the parties.

Question Nos. 1 and 2.--We have perused Government Orders dated 28th July 1978, 10th August, 1978, 6th October, 1990 and 4th November, 1991 and also the Rules of 1981. Though Government Orders dated 28th July, 1978 and 10th August, 1978 expressly provided that the option once exercised shall be deemed to be final but these Government Orders were silent so far as the acceptance of the option exercised by teachers was concerned. In Rules No. 3 and 4 of the Rules of 1991 also it was provided that the option once exercised within the time provided shall be final. However, in Paragraph No. 3 of the Government Order

dated 6th October, 1990 it was specifically provided that in all such matters, if no action has been taken, the authorities shall take action immediately and the acceptance or non-acceptance of the option exercised shall be communicated to the concerned teachers within a month and in pursuance of the Government Order dated 6-10-1990, Director of Education issued circular Order dated 30-10-1990 to all the Regional Deputy Director of Education of the State requiring them to take prompt action in the matters where the options have been exercised. By this departmental order, even the time schedule was provided for taking action in each case where option is exercised by teacher, and it was specifically required that the acceptance/non-acceptance of the option exercised shall be communicated to the concerned employees by 2nd February, 1991. Then came the Government Order dated 4th November, 1991 in Paragraph No. 2 whereof it was stated that in absence of the clarification contained therein the teachers were under confusion and they could not exercise options. By this order, a fresh opportunity of 90 days was further provided to exercise options. In view of the specific requirement of acceptance of the option by Regional Deputy Director of Education and communication of the same to the concerned employees, it is difficult to accept that the formal acceptance of the option exercised by the teacher was not necessary. It appears that the Division Bench deciding the case of Prakash Chandra Sharma could not be made aware of the specific requirement of acceptance of the option provided in the orders and in absence of which the correct view could not be taken. In our opinion, the view taken by the Division Bench in case of Smt. Kamla Sharma was correct and justified. The Hon'ble Supreme Court in case of Devi Krishna Goyal v. District Inspector of Schools, Ghaziabad and Ors. 1998 AWC 1452, held in Paragraph No. 3 as under,--

"We are of the view that the High Court should not have rejected the writ application. It has not been disputed anywhere that option stood withdrawn before it was accepted. The provision in the rule "an option once used will be deemed to be final" would not mean that when an offer is made it is not open to be withdrawn before it is accepted. The respondent No. 1 obviously acted under the wrong notion and the High Court did not appreciate his aspect. We would accordingly hold that the appellant was entitled to withdraw the opinion."

11. Division Bench deciding Smt. Kamla Sharma's case (supra) relied on the judgment of Hon'ble Supreme Court. The Division Bench deciding the case of Prakash Chandra Sharma also considered the case of Devi Krishna Goyal but distinguished it for the following reasons mentioned in paragraph No. 17 of the judgment :

"In the case of Devi Krishna Goyal v. District Inspector of Schools, Ghaziabad and Ors. 1998 AWC 1452 (supra) the Managing Committee recommended the withdrawal of option exercised by the teacher on 20-1-1987 which was rejected by the District Inspector of Schools on the ground that it would not be possible to accept the proposal as per the Rules. The Apex Court was of the view that since

it has not been disputed anywhere that option stood withdrawn before it was accepted, the appellant was entitled to withdraw it, whereas in the case in hand, it is evident from the impugned order of the Deputy Director of Education and the finding recorded by the learned Single Judge that the appellant exercised his option on 25-2-1982 and it was accepted/counter-signed by the District Inspector of Schools on 28-7-1983 as per Clause 16 of the Niyamavali, 1981. Therefore, the aforesaid judgment of the Apex Court is not applicable in the facts and circumstances of the present case and is of no help to the appellant."

However, the Division Bench in paragraph No. 23 of the judgment, (already quoted above) observed that there was no express or implied requirement of acceptance in the Niyamavali of 1981 and action of acceptance was not required except as provided in Clause 16 of the Niyamavali of 1981, i.e., counter-signature on the option exercised by the District Inspector of Schools. In our opinion, the Division Bench could not appreciate the legal position correctly with regard to requirement of counter-signing of the option by the District Inspector of Schools, which in no way could be termed as acceptance of the option. There is no doubt about the legal position that the counter-signing of a document is only an act of authentication of a previously signed document by additional signature. The object is to authenticate the signature of the author to the writing. A Division Bench of Punjab High Court in case of Prof. M. Ramaswamy Professor of Constitutional Law in the Faculty of Law and Others Vs. Miss Manju Bakhru, after detailed discussion about the requirement of counter-signature, expressed the legal position as under in paragraph No. 5 of the judgment :

".....Countersign signifies signing in addition to the signature of another in order to attest authenticity. Words "Countersign" and "attest" indicate a solemn personal act of authentication of genuineness, it is an act of authentication of a previously signed document by an additional signature. The object is to authenticate the signature of another to the writing. By this process the authenticity of the signature on the writing is attested by the person counter-signing....."

12. Thus, the Division Bench was not justified in saving that the countersigning of the option submitted by the teacher in prescribed form amounted to acceptance. The circular order dated 30th October, 1990 issued by the Director of Education in pursuance of the Government Order dated 6th October, 1990, clearly provided that the acceptance/non-acceptance of the option exercised shall be communicated by the Regional Deputy Director of Education to the concerned employee within the specified time hence countersigning of the option by the District Inspector of Schools could not be taken as acceptance of the same. The purpose behind the requirement of countersigning by District Inspector of Schools was perhaps to ascertain that the option was exercised by the correct person and he satisfied other conditions which were necessary for exercise of the option. The obligation of the District Inspector of Schools was thus to authenticate the signature of executing of the option and information supplied by

him in the prescribed proforma. Thus our conclusion is that the act of acceptance of the option by the Deputy Director of Education and its communication to be employee was necessary in order to make it final. The counter signature of District Inspector of Schools on such option could neither be taken as acceptance nor could it attach any kind of finality to it. The questions No. 1 and 2 are answered accordingly.

Question No. 3.--The last question for determination is whether by efflux of long time the option exercised by teacher could be deemed to have been accepted. In our opinion, in view of the Government Order dated 17th February, 1999, by which it has been provided that the teachers of Government Aided Private Higher Secondary Schools may change their options within a year before their retirement i.e. by 1st July of the academic year, in which concerned teacher shall attain the age of superannuation, it is not now necessary to decide this question. Under the aforesaid Government Order teachers can change their option within one year before their retirement. Hence, in our option, it is not longer necessary to decide this question.

13. After answering the legal questions to the manner stated above we are of the view that Division Bench judgment in Smt. Kamala Sharma is correct. The judgment in case of Prakash Chandra Sharma does not state the correct position of law and is accordingly overruled. Now we propose to decide the writ petitions according to the facts involved in each case.

Civil Misc. Petition No. 21561 of 1998.--Petitioner of the case Smt. Prabha Kakkar was serving as a lecturer in Education in Arya Kanya Inter College, Govind Nagar, Kanpur. Her date of birth is 21-10-1939. She submitted her option to retire at the age of 58 years on 9-11-1990. On 29th January, 1992, petitioner submitted a fresh option to retire at the age of 60 years. The management however, insisted that the petitioner shall retire on 30th June, 1998 i.e., at the age of 58 years. The petitioner made a representation to the Director of Education who directed the District Inspector of Schools to decide the controversy. The representation was rejected by District Inspector of Schools on 29th June, 1998 aggrieved by which this writ petition was filed by petitioner. In the impugned order it has been said by District Inspector of Schools that the option exercised by the petitioner has already been countersigned by the competent authority and under the Government Order dated 4th November, 1991, there is no provision under which she could change her option once already exercised. It has not been said that the option exercised by petitioner was accepted at any point of time and its acceptance was communicated to her. In our opinion, since action of acceptance was neither taken nor communicated to her, she was entitled to withdraw her option. She is entitled to work on the post till 30-6-2000.

Civil Misc. Writ Petition No. 19031 of 1998.--Petitioner, Sheelwant Singh's date of birth is 5-7-1939, he exercised his option on 12-2-1982. However, after the Government Order dated 6th October, 1990. He filed a second option expressing his desire to retire at the age of 60 years. The notice dated 3rd July, 1997 was

however, served on him that he shall attain the age of superannuation on 5th July, 1997. Counter affidavit has been filed by District Inspector of Schools, Allahabad wherein it has been stated that the petitioner has been retired on 30th June, 1998. However, in the counter-affidavit has not been stated anywhere that the option exercised by petitioner on 12-2-1982 was accepted by competent authority and the acceptance was duly communicated to the petitioner. Petitioner filed the writ petition challenging the notice dated 3rd July, 1997, Annexure VI to the writ petition, under which he has been forced to retire. The case is squarely covered by judgment of Hon"ble Supreme Court in case of Devi Krishna Goel v. District Inspector of Schools, Ghaziabad and Ors. (supra). Hon"ble Supreme Court in paragraph No. 4 in the similar facts and circumstances held as under :

"We are told, and there is no rebuttal to the submission, that the appellant would have in normal course superannuated on 19th March, 1989 when he be of the age of 60 years. Once we hold that the appellant was entitled to withdraw the offer of option to retire at the age of 58 years, he would be entitled to the benefit of continuing in service till March, 1989. The appeal is allowed and the respondent No. 1 is directed to continue the service of the appellant till 19th March, 1989."

14. In the present case, the appellant has wrongly been retired on 30th June, 1998 though in normal course he would have been entitled to continue in office up to 30th June, 2000. In our opinion, he is entitled for the relief and shall be allowed to work on the post till 30th June, 2000.

Civil Misc. Writ Petition No. 32662 of 1996.--In this case, petitioner, Prem Bahadur Srivastava exercised his first option on 1-1-1991, which was countersigned by District Inspector of Schools on 18th January, 1991. His date of birth is 10-10-1938. Accordingly to the option exercised he has already retired on 30th June, 1997. The second option was filed on 23rd September, 1996 expressing desire to retire at the age of 60 years. His claim is that he was entitled to continue up to 30th June, 1999 which period has also expired. The option was sought to be changed only a few days before his age of superannuation i.e., 9th October, 1996. He cannot even be granted benefit of the Government Order dated 17th February, 1999 which came in existence during the pendency of the writ petition. In the facts and circumstances stated above we do not find it fit case for interference by this Court under Article 226 of the Constitution.

Civil Misc. Writ Petition No. 25511 of 1998.--Nand Kishore Singh, petitioner in this case first exercised option on 8-11-1982. The second option dated 26th January, 1992 was filed before District Inspector of Schools on 27th January, 1992. By this subsequent option he expressed desire to retire at the age of 60 years. The first option dated 8-11-1982 was countersigned by District Inspector of Schools on 28-2-1992 i.e., after submission of the second option. The representation of the petitioner has been rejected by Deputy Director of Education on 14th July, 1998 challenging which the present writ petition has

been filed. In our opinion, as the acceptance of the option dated 8-11-1982 was not communicated to petitioner and no action was taken on the same up to 29-2-1992, the petitioner could withdraw his earlier option by submitting second option on 27th January. 1992. The representation of the petitioner has been illegally rejected. Petitioner's date of birth is 20th July, 1939. He is entitled to continue in office up to 30th June, 2000.

15. For the reasons stated above, Civil Misc. Writ Petition No. 21561 of 1998, Civil Misc. Writ Petition No. 19031 of 1998 and Civil Misc. Writ Petition No. 25511 of 1998 are allowed. Petitioners of these writ petitions shall be allowed to continue in service till 30th June, 2000, Civil Misc. Writ Petition NO. 32662 of 1996 is, however, dismissed. However, there shall be no order as to costs.