

(1997) 05 AHC CK 0106
In the Allahabad High Court

Case No : Special Appeal No. 289 of 1995 (Connected with Special Appeal No. 287 of 1995)

Prakash Chandra Sharma (Since Deceased)

APPELLANT

Vs

Deputy Director of Education, Bareilly Region, Bareilly &
Others

RESPONDENT

Date of Decision : 22-05-1997

Acts Referred:

Citation : (1997) 05 AHC CK 0106

Hon'ble Judges : D.P.Mahapatra;CJ and S.Rafat Alam, J

Final Decision : Dismissed

Judgement

S. Rafat Alam, J.

1. These appeals raise a short question that whether the option exercised by a teacher to retire at the age of 58 years, pursuant to the Government Order dated 10.8.1978 read with G.O. dated 29.8.1981 becomes final and irrevocable after it is countersigned by the Competent Authority or it would be open to a teacher to revoke the same till it is accepted by the Regional Deputy Director of Education and communicated.

2. During the pendency of the aforesaid appeals, the sole appellant, Prakash Chandra Sharma, of Special Appeal No. 289 of 1995 died on 22.12.1996, and therefore, in his place his widow, namely, Smt. Mayavati Sharma is substituted as appellant by this Court's order dated 28th of April, 1997 passed on the substitution application filed on behalf of his heirs and legal representatives.

3. The facts and points involved in both the appeals are identical, and therefore, heard together and is being disposed of with this common judgment.

4. The admitted facts in short is that the writ petitioners were teachers in a Government aided Institution recognised under the provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as the Act of 1921), and they were drawing salary and emoluments from the State Government in

accordance with the provisions of U.P. High Schools and Intermediate Colleges (Payment of Salaries to the Teachers and other Employees) Act, 1971 (hereinafter referred to as the Act of 1971

5. The teachers of State aided Educational Institutions controlled by the private Management were not covered under the pension scheme and they were getting benefits of contributory funds only. The State Government on the recommendations of the Government of India under the Chairmanship of Dr. A.L. Mudaliar introduced triple benefit scheme vide Government Order dated 17.12.1965 called as 'Triple Benefit Scheme' for employees working in educational institutions receiving aid from the State. This scheme comprised of Contributory Provident Fund, Compulsory Life Insurance and Pension including Family Pension and was made effective and applicable from 1.10.1964 to the permanent employees serving in State aided Primary School, Junior High School, Higher Secondary School, Degree Colleges and Training Colleges run either by the local bodies or private management. Accordingly, rules were framed carted as U.P. State aided Educational Institutions Employees Contributory Provident Fund Insurance and Pension Rules, 1964 (hereinafter referred to as the Rules of 1964) which came into force with effect from 1.10.64.

6. However, the teachers of the State aided NonGovernment Educational Institutions were not satisfied with the aforesaid retiral benefits because it was not at par with those admissible to teachers working in the Government Schools and Colleges, and therefore, they were agitating for grant of better pensionary benefits at par with their counterpart working in the Government Colleges. The State Government on consideration of their demand issued Government Order No. 5310/1583004(2)/1974/Shiksha (8) Anubhag, Lucknow dated March 31, 1978 providing that permanent whole time teachers, in a State aided Secondary Educational Institutions run by the private management and local bodies, retiring on or after 1.3.1977 would be entitled to get pension calculated at the same time and in the same manner as admissible to their counterpart employed in the Government Colleges equal in rank and grade except the benefit of deathcumretirement gratuity or family pension to dependent of a teacher after his death. Further, they will be covered under the General Provident Fund Scheme with effect from 1st March, 1977 and the Contributory Provident Fund Scheme in relation to such teachers shall be abolished with effect from 1st March, 1977. By another Government Order No. 740/1533051/1977/Shiksha (8) Anubhag, Lucknow dated 28.7.1978, the aforesaid benefit arising out of Government Order dated 31st March, 1978 was also extended to the teachers who had retired between 30.6.1974 and 28.2.1977 subject to their giving option within 90 days from the date of issuance of the Government Order, i.e., 28.7.1978 and on fulfillment of other conditions mentioned therein.

7. The State Government further decided to grant benefit of deathcumretirement gratuity to teachers of the State aided NonGovernment Secondary Institutions in view of their long standing demand. Consequently G.O. No. 2523/153070/77

dated 10.8.1978 was issued providing that the teachers who opted for retirement at the age of 58 years (which is the age of superannuation for the teachers serving in the Government Colleges), shall be entitled to get deathcumretirement gratuity subject to fulfilment of other conditions mentioned therein. Accordingly, UP. Rajya Sahayta Prapta Uchhtar Madhyamik Vidyalaya Ke Adhyapakon Ke Mrityu Tatha Sewa Nivritti Anutosh Niyamavali, 1981 (hereinafter referred to as the Niyamavali, 1981), was notified by G.O. No. 3218/1583070/77 (Shiksha 8) Anubhag, Lucknow dated 29.8.81. Clause 16 of the aforesaid Niyamavali of 1981 provides that the concerned teacher shall give his option in the prescribed proforma "Ka" n Triplicate, which shall be sent to the District Inspector of Schools, through his institution for his counter signature. After such counter signature one copy of the option so exercised by the teacher shall be retained by the District Inspector of Schools, one copy shall be sent to the Controlling Officer (Regional Deputy Director of Education) and one copy shall be returned back to the Management of the Institution to be pasted in the service book of the concerned teacher.

8. It is not in dispute that the writ petitioners exercised their option in the prescribed manner within the time stipulated in the Niyamavali of 1981, which was also countersigned by the District Inspector of Schools and one copy was sent to the Regional Deputy Director of Education concerned and one copy to the management of the Institution concerned and one copy to the management of the Institution for pasting in their service book. It is also not in dispute that all the writ petitioners after exercise of their option as far back as in the year 1982, did not either revoke their option or take any steps in this regard till 1991.

9. It appears that a large number of teachers working in Government aided private institutions could not avail benefit of pension on same rate which is admissible to teachers of Government Institutions and the benefit of G.O. Dated 10.8.1978 read with Niyamavali of 1981 granting deathcumretirement gratuity by exercising their option within the prescribed time. Therefore, the Government came with another G.O. No. 4376/155890/3003(78)/90 dated 6.10.1990 and 4.11.1991 giving further opportunity to such teachers to exercise their option for the purpose of retrial benefits. It is these two aforesaid orders which gave rise to the writ petitions revoke their earlier option exercised pursuant to the order dated 10.8.78 and to opt to continue in service till 60 years of age. The sole appellant (since deceased) of Special Appeal No. 289 of 1996 (Prakash Chandra Sharma), submitted his fresh option in the month of January, 1992. When the respondent communicated the appellant that the earlier option pursuant to the G.O. dated 10.8.78 has become final and now they cannot reexercise their option, the appellant invoked the writ jurisdiction of this Court by filing Writ Petition Nos. 17267 of 1992 and 36179 of 1994, which was heard and disposed of by the learned Single Judge vide judgment dated 29.3.95 which are under challenge in both the appeals. The learned Single Judge on the above facts, held that the option to retire at the age of 58 years exercised by a teacher under G.O. dated 10.8.78 and the Niyamavali of 1981 becomes final and irrevocable once it

is countersigned by the Competent Authority prescribed in para16 of the Niyamavali of 1981 and the copies of the same are endorsed to the Manager of the Institution for being affixed in the service book, and to the Controlling Authority, namely Regional Deputy Director of Education. It has further been held that the option to retire at the age of 58 years is in effect, option for deathcumretirement gratuity as per G.O. dated 10.8.78 read with Niyamavali of 1981, and thus the exercise of option and its acceptance/ authentication/ confirmation is governed only by the Niyamavali of 1981 and the issuance of subsequent G.O.'s dated 6.10.90 and 4.11.91 do not alter the legal position which only gives right to those teachers who could not opt for gratuity by giving their option earlier to retire at the age of 58 years in pursuant to the Niyamavali 1981. It does not confer any right in favour of teacher who had already opted for retirement at the age of 58 years and whose option has been countersigned/ accepted by the Competent Authority, to withdraw the same and opt to retire at the statutorily prescribed age of 60 years.

10. Writ petition No. 36179 of 1994 giving rise to Special Appeal No. 287 of 1995 has been remitted back to the Regional Deputy Director of Education to find out as to whether the option forms submitted by these two petitioners in the month of May, 1982 were accepted/countersigned by the Competent Authority, namely, the District Inspector of Schools and copies thereof were endorsed to the Manager of the Institution for being affixed in the service books and also to the Regional Deputy Director of Education, for record at his end, as required under Rule 16 of the Niyamavali of 1981. The Regional Deputy Director of Education was further directed to dispose of the petitioner's representations in accordance with law and in the light of the judgment rendered in Writ petition No. 17267 of 1992.

11. The aggrieved petitioners of both the writ petitions have now challenged the aforesaid two judgments of the learned Single Judge in these two appeals on the grounds, inter alia, that a teacher exercising option to retire at the age of 58 years for getting benefit of deathcumretirement gratuity under the Niyamavali of 1981, has a right to revoke the same till it is accepted by the Regional Deputy Director of Education and communicated to the concerned teacher. Further the G.O.'s dated 6.10.90 and 4.11.91 gave further opportunity to a teacher to exercise fresh option to retire at the age of 60 years if his earlier option to retire at the age of 58 years under the Niyamavali of 1981 has not been accepted and communicated to the teacher concerned.

12. Mr. Ashok Bhushan, learned counsel appearing for the appellants argued that the option to retire at 58 years is like a notice of voluntary retirement and an employee has a right to withdraw it before it becomes effective, i.e., before he reaches 58 years. He submitted that the appellant no. 1 of Special Appeal No. 287 of 1995, attained the age of 58 years, on 1.12.1994 and the appellant no. 2 on 1.9.1995 and both of them withdrew their option much before they reached the age of 58 years, and hence there is nothing wrong in the withdrawal of their

option. Learned counsel vehemently argued that so long the option exercised in pursuant to the Government Order dated 10.8.1978 read with Niyamavali of 1981 is accepted and communicated by Regional Deputy Director of Education, a teacher has a right to withdraw the same and exercise fresh option in pursuant to the Government Orders dated 6.10.1990 and 4.11.1991 exercising option to continue in service till the age of 60 years. It is further urged that the Regional Deputy Director of Education is the Competent Authority to accept option exercised by a teacher claiming benefit of deathcumretirement gratuity and the countersignature by the District Inspector of Schools does not amount to acceptance and thus, the first option exercised earlier by these appellants never became final and they have right to withdraw.

13. In support of the aforesaid contention reliance has been placed on the following judgments of the Hon"ble Supreme Court:

1. Balram Gupta v. Union of India and others reported in AIR 1987 SC page 2354.
2. Punjab National Bank v. P.K. Mittal reported in 1989 SC 1083.
3. Devi Krishan Goel v. District Inspector of Schools, Ghaziabad and others (1990)13, Administrative Tribunal Cases, 155.

14. Learned counsel also cited the Division Bench judgment of this Court dated 22.12.1993 rendered in Special Appeal No. 482 of 1993, Smt. Kaushal Varshney v. Deputy Director of Education. Agra and others and single Judge judgment of this Court in Km. Shakuntala Tandon v. State of P.P. and others (1994) Volume2 UPLBEC 921 and unreported Single Judge judgment dated 30.11.1996 passed in Writ Petition No. 13976 of 1996, Shambhunath Upadhvaya v. Regional Deputy Director of Education and others. Attention of this Court was also drawn to the judgment of the learned Single Judge of this Court dated 6.1.1997 given in Writ Petition No. 3523 of 1996, Smt. Priti Lata Srivastava v. Regional Deputy Director of Education. Allahabad, judgment dated 15.11.1996 in Writ Petition No. 11582, of 1996, Ahmad Akhtar Qalim v. District Inspector of Schools. Allahabad and judgment dated 23.8.1996 in Writ Petition No. 20339 of 1994, Nem Chand Gangwar v. Deputy Director of Education. Bareilly.

15. In the case of Balram Gupta v. Union of India and others (Supra), the appellant on completion of 20 years of service sought voluntary retirement by giving notice dated 24.12.1980 mentioned therein that the period of notice be treated with effect from 1.1.1981. In terms of Rule 48A of Central Services (Pension) Rules, 1972, the period of three months notice was to expire on 31st March, 1981. However, by the impugned order dated 20.1.1981, he was allowed to retire voluntary from service prospectively with effect from the afternoon of 31st March, 1981. In the meanwhile, the appellant withdrew his notice of voluntary retirement through his letter dated 1st of January, 1981 and requested the authorities to treat his resignation as cancelled, which was rejected and consequently, he was relieved from the post on 31st March, 1980. On these facts, the Hon"ble Apex Court held that the appellant is at liberty and entitled

independently without subRule (4) of Rule 48A of the Pension Rules, as a Government Servant, to withdraw his notice of voluntary retirement, as there was no valid reason for withholding the permission to withdraw the resignation which was in accordance with the guidelines framed in this regard. Moreover, the request of voluntary retirement and withdrawal of the same took place in so quick succession without affecting any administrative setup or arrangement which is not the fact in the case in hand as noticed hereinbefore. Both the appellant exercised their option to get deathcumretirement gratuity and opted to retire at the age of 58 years as long back as in the year 1982 and after lapse of considerable long period they exercised their fresh option in January, 1992 in pursuant to the Government Order dated 4.11.1991 read with Government Order dated 6.10.1990, which was meant only for those teachers who could not avail the benefit of deathcumretirement gratuity by G.O dated 10.8.1978 and Niyamavali of 1981.

16. Similarly, in the case of Punjab National Bank v. P.K. Mittal (Supra) the resignation was accepted by the Bank from the earlier date, i.e., before the expiry of three months period as provided under Regulation No. 20. In the meanwhile, the respondent withdrew his resignation much before the expiry of the statutory period of three months and thus the Apex Court held that the acceptance of resignation by the Bank from the earlier date was illegal.

17. In the case of Devi Krishan Goel v. District Inspector of Schools (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 by the District Inspector of Schools and therefore, 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/countersigned by the District Inspector of Schools on 28.7.1983 as per Clause 16 of 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.

18. The Division Bench judgment of this Court rendered in the case of Smt. Kaushal Varshney v. Deputy Director of Education. Agra and others (Supra) on which strong 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 then the respondent by its order dated 15.9.1992, accepted the earlier option dated 24.10.90 which stood withdrawn on 4.1.1992 and thus, the Division Bench of this Court held that it was not open to the respondents to accept the first option by passing an order to that effect on 15.9.1992.

19. In the case of Km. Shakuntala Tandon v. State of U.P. and others (Supra),

the option exercised on 2nd January, 1991 was withdrawn on 21st December, 1993 prior to the decision taken by the District Inspector of Schools. Similarly, in the case of Shambhu Nath Upadhyaya v. Regional Deputy Director of Education and others, the option to retire at the age of 58 years was exercised on 14.12.1990 but it was withdrawn by letter dated 7.1.1991 before it could be accepted or rejected.

20. In the case of Smt. Priti Lata Srivastava v. Regional Deputy Director of Education (Writ Petition No. 3523 of 1996, disposed of by judgment dated 6.1.97) Ahmad Akhtar Qalim v. District Inspector of Schools. Allahabad (Writ Petition No. 11582 of 1996, disposed of on 15.11.1996) and Nem Chand Gangwar v. Deputy Director of Education (Writ Petition No. 20339 of 1994, disposed of on 23.8.1996), the learned Single Judge relying on the Division Bench Judgment of this Court rendered in Smt. Kaushal Varshney v. Deputy Director of Education (Supra) allowed the writ petition, as noticed herein before that in the case of Smt. Kaushal Varshney the Division Bench allowed the prayer of the teacher because respondents accepted the first option which was already withdrawn by giving 2nd option on 4.1.1992. Therefore, the cases cited above are not applicable in the facts and circumstances of the present case because in those cases option was withdrawn before it could be accepted whereas in the case in hand the option, exercised by a teacher, was accepted as far back as on 28.7.1983 by the District Inspector of Schools (Competent Authority) as provided in the Niyamavali of 1981, is now being sought to be withdrawn by exercising fresh option in pursuant to G.O. dated 6.10.90 and 4.11.91 which in fact was meant for only those teachers who did not avail the benefit of G.O. dated 10.8.78 and the Niyamavali of 1981. From a perusal of G.O. dated 6th October, 1990 and 4.11.91 it is apparent that the State Government wanted that maximum teachers should get the benefit of deathcumretirement gratuity granted by G.O. dated 10th August, 1978 and Niyamavali of 1981, and therefore, the State Government by the aforesaid Government Order provided another opportunity only for those teachers who have been deprived of the benefit of gratuity by not exercising their option.

21. The contention of the learned counsel that mere counter signature by the District Inspector of Schools on the option exercised by the teacher in pursuant to the Niyamavali, 1981 does not amount to acceptance of the proposal, unless it is accepted by the Deputy Director of Education and communicated to the teachers, a teacher has a right to withdraw it, is without any substance and cannot be accepted for the reason that it is an admitted position that the teachers of the State aided Institution were not satisfied with the post retrial benefit given to them from time to time and were persistently pressing the Government to give them deathcumretirement gratuity like those teachers working in Government Institutions. The State Government accepted their demand provided they opt to retire at the age of 58 years which is the age of superannuation of a teacher working in a Government School. Therefore, the State Government had already accepted the demand of the teachers to give

them deathcumretirement gratuity and consequently, issued G.O. dated 10th August, 1978 and Niyamavali dated 29th August, 1981 inviting option to accept retirement on attaining the age of 58 years instead of 60 years.

22. Clause 16 of the Niyamavali of 1981 provides that a concerned teacher will give his option through the Institution within the prescribed time in the annexed proforma (ka) in triplicate and submit the same before the Competent Authority (District Inspector of Schools/Regional Inspectress of Girls Schools/District Inspectors of Schools (Girls) for his/her countersignature. After countersignature one copy will be retained with the concerned officer, one copy will be sent to the Controlling Authority and the other copy will be returned to the Manager of the Institution who will paste the same in the service book of the concerned teacher. In Clause III of the aforesaid Rule the period for exercising option was mentioned six months from the date of notification of the Niyamavali of 1981 (Rule) i.e., 29th August, 1981. Therefore, the only requirement as provided in the Niyamavali, 1981 was that a teacher working in an aided Institution is required to give his option within six months from 29.8.81 in the proforma (Ka) annexed to the Rule through the Management which is to be countersigned by the District Inspector of Schools. The Rule does not provide any acceptance or communication of the same to the concerned teacher except countersignature by the District Inspector of Schools.

23. In our view, the teachers submitting their option in pursuance 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., countersignature by the District Inspector of Schools and forwarding one copy to the Management for being pasted 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 can not back out and revoke 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 appellant cannot take a plea that since acceptance was not communicated to them and therefore, they have a right to revoke.

24. The other contention that the Government Orders dated 6.10.1990 and 4.11.1991 provided a fresh opportunity to the teachers of an aided institution to reexercise their option, also deserves to be rejected for the reasons that it is apparent from the reading of both the Government Orders that it was meant only for those teachers who could not exercise their option earlier in terms of Niyamavali of 1981 and it was not intended to reopen the option already exercised in terms of G.O. dated 10.8.1978 read with Niyamavali dated 29.8.1981 or giving an opportunity to a teacher to withdraw the option already exercised by him for deathcumretirement gratuity which is already countersigned/

accepted by the District Inspector of Schools, who is the Competent Authority in terms of Clause 16 of the Niyamavali of 1981.

25. During the course of argument, learned counsel relying on Rule of 1965 giving benefit of Triple Benefit Scheme" notified by G.O. of 1965 argued that in the matter of pension Regional Deputy Director is the Competent Authority, and therefore, option exercised by a teacher for getting deathcumretirement gratuity is required to be accepted by the Regional Deputy Director of Education to obtain finality. We are not inclined to accept this contention, for the reasons that the benefit of deathcumretirement gratuity was for the first time accepted by the State Government by G.O. dated 10.8.1978 and consequently a rule (Niyamavali of 1981) was framed and notified by G.O. dated 29.8.1981 prescribing the manner and procedure to exercise the option. An official act is to be done in the manner and procedure prescribed in the Rule framed in that regard and not otherwise. Therefore, we are of the view, that for claiming deathcumretirement gratuity the option is to be exercised and accepted in the manner as laid down in the Niyamavali of 1981 notwithstanding Rule of 1965, otherwise the entire Scheme would become unworkable.

26. During the course of argument learned counsel relying on paragraph 3 of the Government Order dated 6th October, 1990 urged that every proposal for getting the benefit of deathcumretirement gratuity is required to be accepted or rejected by the Director of Education.

27. Paragraph 3 of the Government Order dated 6.10.90 only provides that the Director of Education shall also ensure that every teacher/employee shall be communicated regarding acceptance and rejection of their option within a period of one month. Therefore, it does not amend or modify the procedure laid down in Clause 16 of Niyamavali of 1981 providing manners and procedures for exercising option and acceptance thereof, but only insists that the Director, who is the Head of Department, should ensure that the process must be completed within a period of one month. It does not provide that the acceptance is to be made by the Director himself. Even a teacher exercising option in pursuant to the G.O. dated 6.10.1990 and 4.11.1991 is also required to exercise option in accordance with the provisions contained in the Niyamavali of 1981. It has rightly been argued by Sri K. M. Dayal, learned Senior Counsel representing the Management that the G.O. dated 6th October, 1990 shall apply only to those teachers who are exercising their option for the first time under this G.O. and did not exercise their option for any reason under the old G.O. dated 10th August, 1978 read with Niyamavali of 1981, and therefore, this will not govern the cases of those teachers whose options have already been accepted.

28. Having considered the submissions made by the learned counsel for the parties, we are of the view that the option exercised by a teacher for getting deathcumretirement gratuity in terms of G.O. dated 10.8.78 and the Niyamavali of 1981, becomes final and irrevocable, once it is countersigned by the Competent Authority, as per procedure laid down in the Niyamavali of 1981 and

it cannot be withdrawn by the teacher unilaterally. We are further of the view that the G.O. dated 6.10.1990 and 4.11.1991 does not provide a fresh opportunity to a teacher, who has already opted for retirement at the age of 58 years and whose option has been countersigned/accepted by the Competent Authority, to withdraw the same and to exercise a fresh option for retiring at the age of 60 years.

29. In view of the aforesaid discussions, we do not find any merit in these appeals. They are, accordingly dismissed.

(Appeals dismissed)