

(2009) 01 AHC CK 0050
In the Allahabad High Court
Case No : Writ Petition No. 582 (S/B) of 2000

Preetam Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 95

Citation : (2009) 01 AHC CK 0050

Hon'ble Judges : U.K.Dhaon, J and Barkat Ali Zaidi, J

Final Decision : Allowed

Judgement

B.A. Zaidi, J.—Heard Sri Upendra Nath Mishra, learned counsel for the petitioners, and Sri Jai Deep Narain Mathur, the learned Advocate General, assisted by Shri Ashok Shukla appearing on behalf of State of U.P. and U.P. Avas Evam Vikas Parishad.

2. The petitioners, who were the employees of U.P. Avas Evam Vikas Parishad, U.P. Lucknow have filed the instant writ petition being aggrieved by the order dated 14.9.1999. During the pendency of the writ petition, the State Government passed the orders dated 13.9.2005 and 12.7.2007, which the petitioners have also challenged by bringing an amendment to the writ petition.

3. The learned counsel for the petitioners submits that the Avas Vikas Parishad (hereinafter referred to as the ""Parishad") is a statutory Corporation having excellent financial status and is in a position and capacity to pay pension to its employees through Pension Regulation Prepared under Section 95 of the U.P. Avas Vikas Parishad Adhiniyam (hereinafter referred to as the ""Adhiniyam"). He further submits that the Parishad is not taking any financial assistance from the State Government for introduction of the Pension Scheme in the Parishad and as such the impugned orders passed by the State Government are arbitrary illegal and deserves to be quashed. He further submits that the Parishad on 21.02.1995 passed a resolution for change of policy from contributory provident fund to pension/family pension and gratuity and thereafter the State Government

granted "no objection" to the pension scheme by its order dated 16.5.1996.

4. Sri J.N. Mathur, learned counsel for the opposite parties fairly concedes that the Parishad under the provisions of Section 95 of the Adhiniyam has power to frame pension regulations as Section 95 (1)(f) of the Adhiniyam deals with condition of service.

5. It is an admitted case of the parties that contributory provident fund scheme was implemented in U.P. Avas Evam Vikas Parishad through Regulation framed by the Parishad under Section 95 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965. The board of U.P. Avas Evam Vikas Parishad on 21.2.1995 passed a fresh resolution for change of policy from contributory provident fund to pension/family pension and gratuity and this scheme was forwarded by the Parishad to the State Government for its approval. The State Government after considering the various aspects of the matter, by its order dated 16.5.1996, granted no objection to the pension scheme initiated by the Parishad but while granting the no objection certificate, the State Government made it clear that no financial assistance will be provided to the U.P. Avas Evam Vikas Parishad by the State Government. The Parishad on the basis of no objection certificate issued by the State Government dated 16.5.1996 asked its employees for option regarding the pension scheme. The petitioners have alleged that they had given options for the pension scheme. The State Government, thereafter by the order dated 30.9.1997 decided that the Employees Provident Fund and Miscellaneous provisions Act, 1952 is not applicable to the employees of the U.P. Avas Evam Vikas Parishad and the Parishad has full powers under Section 95 of the Adhiniyam to frame its own regulations regarding payment of pension to its employees and officers. The petitioners have alleged that the Parishad in its meeting held on 5.11.1997 framed regulations in exercise of its power under Section 95 of the Adhiniyam. The relevant clauses of Section 95 of the Adhiniyam are as follows:

"95 Power to make regulation: (1) The Board may, by notification in the Gazette, make regulations providing for:

(a).....

(b).....

(c)

(d).....

(e)

(f)the conditions of service of officers and servants of the Board;

(g).....

(h).....

(i)the authority on which moneys may be paid from the Board's fund;

(j).....

(k).....

(l).....

(m).....

(n)Any other matter which is to be or may be provided for by regulations under this Act or the rules."

6. The pension regulations were prepared by the Parishad on the basis of the Government Rules and Regulations regarding pension, which the Parishad also approved for its implementation w.e.f. 1.1.1996. The petitioners have further alleged that the Bureau of Public Enterprises requested the Secretary, Department of Housing to implement the pension scheme by its order dated 19.11.1997 as no prior approval was taken from the Bureau of Public Enterprises.

7. Thereafter, the State Government stayed the implementation of pension scheme in U.P. Avas Evam Vikas Parishad by its order dated 26.11.2007 and the matter was referred to the cabinet for a decision. On 17.6.1998, the Cabinet constituted a committee under the Chairmanship of the Chief Secretary, regarding the change of policy from contributory provident fund to pension in Parishad. The committee in its meeting held on 2.2.1999 resolved that since the financial condition of the Parishad is excellent the pension scheme may be implemented. The State Government, thereafter by the order dated 14.9.1999 also lifted the ban on implementation of the pension scheme in U.P. Avas Evam Vikas Parishad with certain conditions, one of which was that the pension scheme shall be funded only from the C.P.F. calculated till now, and except that no financial liability, shall be imposed either on the Parishad or on the State Government. The record reveals that the order dated 14.9.1999 was modified by the State Government by its order dated 7.5.2003 subject to the condition that no financial assistance shall be provided by the State Government and the relevant Rules regarding implementation of pension scheme would be framed by the government under section 94 of the Adhiniyam.

8. On 10.2.2005, the following interim order was passed by this Court:

"Sri S.K. Kalia, appearing for the petitioner has urged that the question regarding the grant of pension to the Board Employees is lingering on since 1994 though no objection was given in 1996 and thereafter a Committee was constituted in 1998 and it recommended that pension may be allowed to the employees. However, the government provided that it would not bear any expenses and the amount be met by creating individual Board of Trustee or Trustees. Since the matter is said to be under consideration an interim mandamus was issued on 20.7.2000 saying that pension scheme as approved by the Board shall continue and the operation of the G.O. dated 14.9.1999 shall remain in abeyance but the said scheme has not been implemented. His further submission is that delay in implementing the scheme is causing monetary loss to the employees every day

and few employees have even died.

Sri Ashok Nigam, appearing for the State of U.P. as well as for the Board, intimates that high power committee consisting of five members has been constituted and the question regarding grant of pension to the Board Employees is under consideration. He says that the Committee may give its decision any time.

Sri Kalia prays that the matter be decided finally in the writ petition as the government is applying delaying tactics by appointing one or the other Committee whereas the employees are suffering a lot.

Sri Ashok Nigam contends that active consideration is going on and some reasonable time be allowed.

The question regarding role of the government in grant of pension to the Board Employees and the right and authority of the Board as well as the government under the Act and the Rules shall be considered at the time of hearing of the writ petition.

Under the above facts and circumstances, we feel that the matter be adjourned for two months and on the next date of listing Sri Ashok Nigam shall inform the Court as to what decision has been taken by the Committee and how the Committee intends to solve the problem.

List after two month."

9. The State Government, thereafter by the order dated 13.9.2005 provided that since the pension is not being paid to the employees of other autonomous organizations and Corporations, and as such a comprehensive guideline is required to be prepared at the State level for payment of pension to the employees of all public sector undertakings and decided that implementation of the Government Order dated 7.5.2003 regarding introduction of pension scheme in the Parishad be kept in abeyance. The said order dated 13.9.2005 has been challenged by the petitioner by amending the writ petition. During the pendency of the writ petition, the State Government on 12.7.2007 has taken a decision that there is no justification for introducing a pension/Provident Fund Scheme in all those Public Sector Undertakings/Corporations, which are either covered by the Employees Provident Fund Act, 1952 or which have a Contributory Fund Scheme in operation. The said order of the State Government was also challenged by the petitioner through an amendment application, which was allowed by this Court.

10. It is undisputed that the Parishad under the provisions of Section 95 (1)(f)(i) & (n) of the Adhinyam has framed pension regulations regarding the payment of pensions to its employees. Section 95 (1)(f) of the Adhinyam deals with conditions of service and since payment of pension/family pension and gratuity is a condition of service, the Parishad itself was competent to implement the pension/family pension and gratuity scheme from its own funds. In the light of

the above mentioned legal provision, the Parishad possess power to frame its own regulations for conditions of service of officers and servants of the Parishad. The Parishad in its wisdom has framed the scheme regarding the payment of pension/family pension and gratuity to its employees without taking any financial assistance from the State Government.

11. Thus the reference of scheme for its approval to the Government and the decision of the Government was a futile exercise and without any authority of law, resulting in the unnecessary interference with the independent functioning of the Parishad as the Parishad is a body constituted under the U.P. Avas Evam Vikas Parishad Adhiniyam 1965.

12. For the forgoing reasons, the writ petition succeeds and is hereby allowed. The impugned orders dated 13.9.2005, copy of which is Annexure 14 and the order dated 12.7.2007, copy of which is Annexure 18 on the record, are hereby quashed, so far as they relate to U.P. Evam Avas Vikas Parishad. A writ in the nature of mandamus is issued directing the U.P. Avas Evam Vikas Parishad to implement its pension/family pension and gratuity scheme in accordance with its regulations framed on 5.11.1997.

13. Under the circumstances, there shall be no order as to costs.