

(2008) 08 DEL CK 0271
In the Delhi High Court
Case No : WP (C) No. 842 of 2003

Prof. A.K. Sharma and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Citation : (2008) 08 DEL CK 0271

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Arvind Kumar Sharma, for the Appellant; Maneesha Dhir and R.K. Singh and Deepa Rai, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—The petitioners are the employees of School of Planning and Architecture (respondent No. 2). They have filed the present writ petition for grant of following prayers:

(i) A Writ of Certiorari quashing the resolution of Executive Committee dated 24.4.1998 (Annexure P-4) of Respondent School and letters dated 26.3.1999 & 18.1.2000 (Annexure P-5) (Colly) of Respondent Ministry, being illegal, arbitrary, discriminatory and against the principles of equity, justice and good conscience and provisions of Memorandum of Association and Rules and Regulations of the Respondent School.

(ii) A Writ of Mandamus commanding the Respondent School to exercise jurisdiction vested in it as per its Memorandum of Association and the Rules and Regulations and give one more option to the Petitioners to switch over from CPF to GPF-cum-Pension Scheme.

(iii) A Writ of Prohibition restraining the Respondent No. 1 (Ministry of Human Resource Development) from interfering with the Respondent School in dealing with the request of the petitioners for switch over from CPF Scheme to GPF-cum-Pension Scheme.

2. Briefly stated the facts of the case are that when the petitioners had joined the service of respondent No. 2 school, there was Contributory Provident Fund Scheme in vogue and there was no Pension Scheme for the benefit of the employees in the school. Pension Scheme was introduced in respondent No. 2 school based on the recommendations of the Fourth Central Pay Commission vide O.M. No. 4/1/87-PIC-I dated the 1st May, 1987 which was adopted by respondent No. 2 school. It was mentioned in the O.M. that the Fourth Central Pay Commission has recommended that all the CPF beneficiaries in service on 01.01.1986 should be deemed to have come over to Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme. The option to continue under the CPF Scheme was to be exercised and conveyed to the concerned Head of Office by 30.09.1987 in the form enclosed with the OM, if the employees wish to continue under the CPF Scheme. In terms of para 3.6 of the OM, the option once exercised was to be treated as final.

3. The petitioners had exercised their options to continue under the CPF Scheme and had conveyed their decision in regard to the above to the concerned Head of Office by the cut off date mentioned in the OM i.e. 30.09.1987. The petitioners later on realized that the Pension Scheme was better than the CPF Scheme, they showed their interest to switch over to the Pension Scheme and this was sometime in the year 1998. The said request of the petitioners for changing over their options from the CPF Scheme to the Pension Scheme was placed for consideration before the Executive Committee of respondent No. 2 school at the meeting held on 24.04.1998. The Executive Committee of respondent No. 2 school passed a Resolution on 24.04.1998 and had resolved to recommend to the Ministry of Human Resource Development to allow the members of the faculty and staff for changing over their options from the CPF Scheme to the Pension Scheme. However, the Ministry of Human Resource Development, Department of Education, Technical Section-II turned down the proposal of respondent No. 2 school contained in its Resolution dated 24.04.1998 vide their letters bearing No. 4-14/98-TS.II dated 26.03.1999 & 4-14/98-TS.II dated 18.01.2000. The petitioners have alleged that the action taken by the respondent Ministry vide these impugned letters dated 26.03.1999 and 18.01.2000 is illegal, arbitrary, discriminatory and against the principles of equity, justice and good conscience and provisions of Memorandum of Association and Rules and Regulations of the respondent No. 2 School. The petitioners have contended that respondent No. 2 school was within its powers to allow them one more opportunity to switch over to the CPF Scheme to the Pension Scheme without seeking any approval from the Government for the same. The petitioners have cited the instances of employees of BIS, Delhi University & IITs (Kanpur, Roorkee, Mumbai & Kharagpur) to whom their respective employers have allowed second option to switch over from the CPF Scheme to the Pension Scheme. The case of the petitioners is that since the Pension Scheme is far better than the CPF Scheme and as the Pension Scheme is a welfare Scheme, they should be permitted to exercise the second option to switch over from the CPF Scheme to

the Pension Scheme and accordingly they have prayed for a writ of mandamus commanding respondent No. 2 School to exercise jurisdiction vested in it as per its Memorandum of Association and the Rules and Regulations and give one more option to them to switch over from the CPF Scheme to the Pension Scheme. The petitioners have also prayed for a writ of prohibition restraining Respondent No. 1 (Ministry of Human Resource Development) from interfering with respondent No. 2 School in dealing with their request for switch over from the CPF Scheme to the Pension Scheme.

4. In response to notice of this writ petition, both the respondents have filed their separate counter affidavits. They both have strongly opposed the prayers made by the petitioners in the present writ petition. Respondent No. 1 (Ministry of Human Resource Development) in its counter affidavit has taken a stand that OM dated 01.05.1987 by which option was given to the employees of respondent No. 2 institute to switch over from the CPF Scheme to the Pension Scheme by 30.09.1987 contains a Policy decision of the Government. Respondent No. 1 has contended that since the request of the petitioners to allow them to exercise second option to switch over from the CPF Scheme to the Pension Scheme involves a financial aspect and is a Policy matter, the Union of India has the power and authority to decide whether such a request deserves to be considered or not. As per respondent No. 1, the school of Planning and Architecture (respondent No. 2) is fully funded by the Government of India and enjoy administrative autonomy in terms of Memorandum of Association and Rules. However, to ensure maintenance of academic standards and professional excellence in technical education, the Government of India exercises its control on financial and Policy matters. All the matters involving financial implications require prior sanction and approval of the Government of India. Respondent No. 1 has further stated in its counter affidavit that even prior to issuance of OM dated 01.05.1987, the petitioners were given an option to switch over to the Pension Scheme, but they chose to remain in the CPF Scheme for inexplicable reasons. The petitioners by their positive action opted to stay in the CPF Scheme and therefore it is alleged that the petitioners cannot now legitimately make a grievance if they are not able to take advantage of the Pension Scheme, which they now find to be more beneficial. Respondent No. 1 has defended its stand taken in the impugned letters dated 26.03.1999 and 18.01.2000 referred above. According to respondent No. 1, any change over after the cut off date, instances of which have been mentioned by the petitioners in their petition, are irregular and without the sanctity of the Government of India.

5. The stand of respondent No. 2 in its counter affidavit is that respondent No. 2 school cannot allow the petitioners to exercise the second option to change over from the CPF Scheme to the Pension Scheme unless the same is approved and sanctioned by the Central Government (Ministry of Human Resource Development). The plea of respondent No. 2 is also that it is fully funded by the Central Government. Respondent No. 2 has stated in its counter affidavit that the Government of India, Ministry of Human Resource Development vide letters

dated 26.03.1999 and 18.01.2000 had informed that the request of respondent No. 2 school to permit the petitioners to change over from the CPF Scheme to the Pension Scheme was considered in consultation with the Department of Pension and Pensioner's Welfare and Department of Expenditure. The Department of Expenditure is stated to have not agreed to the proposal stating that no deviations can be made from the principle that option once exercised is treated final. According to respondent No. 2, since the Central Government has already rejected the recommendations, respondent No. 2 school is unable to accede to the demands of the petitioners.

6. From the pleadings of the parties the question that arises for consideration of this Court is whether the petitioners who had consciously exercised their option to continue with the CPF Scheme in terms of OM dated 01.05.1987 can be allowed to exercise the second option to switch over from the CPF Scheme to the Pension Scheme, when Government is not agreeable for the same.

7. Mr. Arvind Kumar Sharma, learned Counsel appearing on behalf of the petitioners has relied upon an unreported judgment of this Court in *S.L. Verma and Ors. v. Union of India and Anr.* {WP(C) No. 2107/2002 decided on 22.10.2003} and on the strength of this judgment, he has contended that since this Court has allowed the employees of Bureau of Indian Standard (BIS) to exercise the second option to switch over from the CPF Scheme to the Pension Scheme under similar circumstances, the petitioners should also be granted the benefit of exercising the second option so that they may switch over from the CPF Scheme to the Pension Scheme. The judgment of this Court in *S.L. Verma's* case (*Supra*) cannot be used as a precedent for deciding the question raised by the petitioners in the present writ petition. The relief was granted by this Court in *S.L. Verma's* case on the facts of that case which are distinguishable from the facts of the present case. In the case of *S.L. Verma*, the employees of BIS to whom the benefit of exercising the second option was extended had exercised their option to continue under the CPF Scheme beyond the cut off date i.e. 30.09.1987 mentioned in the OM dated 01.05.1987. The judgment of this Court in *S.L. Verma's* case went up the Hon'ble Supreme Court in appeal filed by the Union of India. The judgment of the Supreme Court in *S.L. Verma's* case titled *Union of India (UOI) and Another Vs. S.L. Verma and Others*, of this judgment is relevant and the same is extracted below:

The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 01.05.1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.09.1987. In that view of the matter respondents No. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulation, 1988) had become

ipso facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage, but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No. 14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondents No. 1 to 13 was illegal when a request was made by respondent No. 14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of memorandum and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 01.01.1986. In terms of such legal fictions, it will bear repetition to State, the respondents No. 1 to 13 would be deemed to have switched over to the Pension Scheme, which a fortiori would mean that they no longer remained in the CPC Scheme.

8. The OM dated 01.05.1987, which is subject matter of consideration in the present petition, came for consideration before the Hon"ble Supreme Court in a batch of petitions titled Krishena Kumar and Others Vs. Union of India and others, wherein it was held as under:

The option given to the Railway employees covered by Provident Fund Scheme to switch over to the pension scheme with effect from a specified cut-off date would not be violative of Article 14 of the Constitution. It was never required to be decided in D.S. Nakara and Others Vs. Union of India (UOI), that all the retirees formed a class and no further classification was permissible. In case of pension retirees who are alive the Government has a continuing obligation and if one is affected by dearness the other may also be similarly affected. In case of P.F. Retirees each one's rights having finally crystallized on the date of retirement and receipt of P.F. benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners. In each of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving of the option. Option once exercised would be final. Options were exercisable vice versa. The specified date has been fixed in relation to the reason for giving the option and only the employees who retired after the specified date and before and after the date of notification were made eligible. This was substantiated by what has been stated by the successive pay commissions. The corresponding concomitant benefits were also granted to the provident fund holders. There was, therefore, no discrimination and the question of striking down or reading down clause giving option would not arise.

9. A perusal of the judgments of the Supreme Court in S.L. Verma's case and also in Krishena Kumar's case (Supra) would clearly show that the Supreme Court has taken a view that the option under the OM dated 01.05.1987 exercised by the employees to continue with the CPF Scheme was to be treated as final

and cannot be allowed to be changed by permitting second option. In the present case, the petitioners were admittedly given option to switch over from the CPF Scheme to the Pension Scheme even before the option was given to them vide OM dated 01.05.1987. Before that the petitioners were given option to opt either for the GPF Pension Scheme or CPF-sum-Gratuity Scheme w.e.f. 01.04.1981 and thereafter vide OM dated 01.05.1987. The petitioners by their conscious and positive act opted to continue with the CPF Scheme. In terms of para 3.6 of the OM dated 01.05.1987, the option so exercised by them became final and cannot be allowed to be changed after the cut off date i.e. 30.09.1987 mentioned in the above referred OM. The examples of the employees of BIS, employees of Delhi University and the employees of IITs (Kanpur, Roorkie, Mumbai & Kharagpur) referred and relied upon by the petitioners are not applicable in the present case because in all these cases, the decision to allow the second option to the employees of the said organizations was taken by the institute in which the employees were working and the institute had taken upon themselves to bear the extra financial burden for payment of pension to those to whom the benefit of second option was extended. The Government of India has taken a categorical stand that it did not approve for extending the second option to switch over from the CPF Scheme to the Pension Scheme either to the employees of BIS or to the employees of Delhi University or the employees of IITs. According to the Government of India, the benefit of second option granted to those employees was irregular and the Government of India was not a party to the same. How in such a situation, the petitioners can seek reliance or claim parity with the employees of the above referred institutes. This Court is of the opinion that the matter relating to switching over from the CPF Scheme to the Pension Scheme has financial implications and therefore falls in the category of Policy matters of the Government. There are any number of judgments wherein it has been held that the Court cannot compel the Government to change its Policy which involves financial burden on it. Reliance is placed upon the judgments of the Supreme court in *Ekta Shakti Foundation Vs. Govt. of NCT of Delhi*, and *Lieutenant (Mrs.) India Kumari Kartiayoni Vs. The Maha Nideshak, Raksha Mantralaya, Shastra Sena Chikitsa Seva, New Delhi-I and others*, . Since in the present case, respondent No. 1 (Ministry of Human Resource Development) has rejected the recommendations of respondent No. 2 school for permitting the petitioners to switch over from the CPF Scheme to the Pension Scheme, the benefit of exercising the second option prayed for by the petitioners cannot be extended to them.

10. I also do not find any merit in the argument advanced on behalf of the petitioners that respondent No. 2 school itself is competent to extend the benefit of allowing the petitioners the second option to switch over from the CPF Scheme to the Pension Scheme. The petitioners have not denied either in their pleadings or during arguments that respondent No. 2 school is fully funded by the Government of India and therefore any matter involving financial implications would require approval of the Government of India. Even Clause 6 of the

Memorandum of Association of respondent No. 2 school provides that if on the winding up or dissolution of the school, there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the School or any of them, but shall be dealt with in such a manner as the Government of India may determine. This strengthen my conclusion that respondent No. 2 of its own cannot allow the petitioners to exercise the second option for changing over from the CPF Scheme to the Pension Scheme unless the same is sanctioned by the Government of India.

11. In view of the totality of the facts and circumstances of the case discussed here-in-above, I have no hesitation in saying that the present writ petition has no merit and therefore fails and is hereby dismissed leaving the parties to bear their own costs.