
(2001) 09 PAT CK 0075

In the Patna High Court

Case No : C.W.J.C. Nos. 12681 and 12878 of 2000

Prof. (Dr.) Ram Nirajan Kedia and Others and Parashuram
Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0075

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—In both these writ petitions the common question of law falling for determination is whether the option once exercised by the petitioners and treated as final under Rule 4 of the Statutes governing retirement benefits, dated 24-11 -1982 could have been treated by the Syndicate and Vice-Chancellor of the University to be not final so as to give fresh option and entitle the petitioners to the benefit of pension as per Appendix-A of the aforesaid Statutes. Because of the common question of law the Writ Petitions have been heard together and are being disposed of by a common judgment.

2. The relevant facts of both the writ petitions lie within a narrow compass. In CWJC No. 12681 of 2000 all the 8 petitioners are either retired teachers or retired non-teaching employees of the respondent L.N.M. University, Darbhanga. They retired between the year 1994 and 1998 and as per their option exercised in February, 1983 received retrial benefits as per Appendix-B (non pensionary scheme) but by virtue of a decision of Syndicate of the University dated 20th December, 1997 (Annexure-3) the University issued a notification dated 16-1-1998 (Annexure-4) and extended fresh opportunity of exercising of option till 31 -1 -1998 to such employees who were agreeable to deposit with the University the contribution made by the University along with 6% interest in one instalment and further agreed not to demand pension/gratuity of earlier period remaining due on account of fresh option. The petitioners exercised their fresh option and opted for retirement benefits with pension as per Appendix-A. As per

direction of the University dated 26-11-1998 (Annexure-A series), the petitioners deposited the required amount in lump sum and thereafter received pension for the period till June 2000. Their pension was stopped since July 2000 and then came the impugned orders contained in Annexure-2 dated 13-10-2000 issued from the office of the Chancellor and the consequential orders against the individual petitioners contained in Annexure-1 series dated 25-10-2000. Since the petitioners of CWJC No. 12878/ 2000 are also retired teachers and employees of the University and the essential facts are common except that these petitioners were not sanctioned and paid any pension as per Appendix-A in spite of having availed the opportunity of revised option, the facts and documents have been referred only from the records of CWJC No. 12681/2000. In essence the claim of the petitioners is for pensionary benefits as per Appendix-A of the Statutes on the strength of the revised option provided to them under decision of the Syndicate.

3. There is no dispute that as retired employees of the University the petitioners post retiral benefits are to be governed by Statutes framed u/s 36 of the Bihar State Universities Act, 1976 (hereinafter referred to as the Act) read with Section 5 of the Bihar Inter Universities Board Act, 1981 (Bihar Act No. 27,1982). The relevant Statutes so framed bear the title-"Statutes for the grant of Retirement Benefits to Employees of the Bihar/Ranchi/Bhagalpur/Magadh/I.N Mithila/K.S.D. Sanskrit University". These Statutes had first received approval by the Chancellor on 18-11-1980 and were subsequently modified and the amended Statutes were approved by the Chancellor on 24-11 -1982 (hereinafter referred to as "the Statutes").

4. Prior to the Statutes schemes for retirement benefits were not uniform for the various Universities in the State of Bihar and hence these Statutes were framed with the aid of Bihar Inter Universities Board Act enacted with the purpose of bringing about co-ordination among the different Universities of the State and inter alia, for achieving desired uniformity in the Statutes, Ordinances and Rules. A new scheme of retirement benefits introducing pension along with GPF and gratuity as given in Appendix-A was made available to all the employees of the Universities who joined the service on or after 1-4-1978. These Statutes were brought into force w.e.f. 1-4-1972 and hence such employees who joined service before the 1st April 1978 and were still in service or had retired on or after 1-4-1972 were given an option under Rule 4 of the Statutes to opt for the triple benefit including pension as given in Appendix-A or to continue with old schemes of contributory provident fund or of contributory provident fund cum gratuity scheme as given in Appendix-B. As per proviso of Rule 3 if no option was exercised within the period prescribed then the concerned employee shall be deemed to have opted for the scheme set out in Appendix-A.

5. The main controversy in this case relates to interpretation of Rule 4 governing exercise of option and hence relevant part of Rule 4 is extracted below for ready reference:

Exercise of option,--"All the employees to whom these statutes apply and who joined service in the University/Constituent college before the 1st April, 1978 and are still in service or have retired on or after 1 -4-1972 and are alive on the date of notification of these rules have to send the option in writing to the Registrar within three months of the date of such notification. The option once exercised shall be final.

6. Learned Counsel for the petitioners first challenged the legality of Chancellor's directions contained in Annexure-2 on the ground that no opportunity of hearing was given to the retired employees like the petitioners who are affected by such directions; secondly it was submitted that there as no conclusive material to come to an opinion, as expressed in Annexure-2 that subsequent opportunity to change options has caused heavy financial burden upon the University and the State Government and the last submission is that Chancellor's observation that there was no provision in the Statutes for further change of option which had become final was wrong and dincorrect. According to learned Counsel for the petitioners such inference was arrived at by ignoring correct interpretation of Rule 4; this rule should have been interpreted to be directory so as to save the action of the Syndicate and other authorities of the University under which fresh option was given to the petitioners. In the alternative to this submission it was argued that even if an option under Rule 4 was final, once the University authorities gave another option on which the petitioners acted ad altered their position by depositing certain sums of money as demanded, the University authorities or even Chancellor were bound by principles of promissory estoppel and they cannot e permitted to go back upon their promise or representation and deprive the petitioners of the benefits of pension etc. as per revised option.

7. So far as the question of natural justice is concerned, a persual of Annexure-2 makes it clear that the main thrust of Chancellor's directive to the University is to ensure that the authorities of the University respect the mandate of law as appearing from Rule 4 of the Statutes. The directives merely point out the position of law as it has been understood by the Chancellor. No case of any individual employee was being considered by the Chancellor nor any fresh decision was being taken by him relating to pensionary benefits of the employees or ex-employees. In such circumstances, for the purpose of pointing out the legal position the Chancellor or any other authority cannot be restrained on the ground of natural justice by holding that first the authority concerned hear all those who are governed by the concerned law. Thus, this Court finds no substance in the submission that the matter should be remitted back to the Chancellor for issuing any directive of the nature contained in Annexure-2 only after hearing the petitioners.

8. The next submission relating to financial burden on the University or the State Government on account of serviced option given to the employees ex-employees of the University was sought to be advanced on the basis of a letter of the University dated 11-7-2000 contained in Annexure-14. The said letter sent by

the Registrar of the University to Director, Higher Education, Government of Bihar merely indicates certain statistics as to how many employees wanted to change their option but had remained deprived and what would be the amount involved per month if an opportunity of fresh option was given to the employees. The figures contained in Annexure-14 are in the nature of mere estimates forwarded to the State Government for the purpose of formulating a new policy, if warranted. In the present case this Court is not concerned with the said exercise which is admittedly going on at the level of the State Government and there appears to be a proposal pending before the Inter University Board also for amendment in Rule 4 of the Statutes. this Court would not like to make any further comment which may prejudice such pending consideration. For the present controversy this Court finds that the directive of the Chancellor is based upon a simple understanding that the ex-employees are prepared to deposit certain amounts for receiving pension because such pension is more beneficial to them. More benefit by way of pension must mean increased financial liability upon the University or the State Government. Even on behalf of the petitioners it was admitted that petitioners have been tempted to revise their option and opt for pensionary scheme in Appendix-A of the Statutes in view of recent revision of pension by the State Government which is also applicable to the University. It will be noticed subsequently while discussing another point that the petitioners not only accept that they will suffer financially if no fresh option is given to them rather they have made this fact a ground for treating the finality Clause in Rule 4 to be directory and not mandatory. this Court further finds that Chancellor's directive in question is primarily and mainly based upon an interpretation of Rule 4 of the Statutes. Petitioners can be granted relief only through a writ in the nature of Mandamus and by a positive direction to the University to pay the petitioners pensionary benefits as per Appendix-A of the Statutes and for this the financial implication are not of any consequence and the only relevant question for decision in this case is whether the petitioners claim is in accordance with the Statutes and law or not. To examine the correctness of all the material observations and findings in Annexure-2 would have been essential if it was a case involving only a writ in the nature of certiorari. But, it is well-settled that for a writ in the nature of mandamus, as is required in the present case, the petitioners must show a legal right in them and corresponding legal duty in the respondents to perform the act demanded through writ. For this reason the grievance based upon observation in Annexure-2 concerning financial implications is found to be without any consequence.

9. The next submission is that the Clause in Rule 4 which provides that the "option once exercised shall be final" is not mandatory. For this purpose emphasis was led on Sections 34(g) and Section 71(1) of the Act and particularly upon the word benefit used in connection with constitution of pension, Insurance or Provident Fund for the employees of the University and teachers of the college. The submission on behalf of the petitioners is that since pension etc. is provided only for the benefits of the employees hence Rule 4 must be interpreted

as directory in all respects because such interpretation will be more beneficial for the petitioners and other employees who want to change their option to Appendix-A which now provides much higher pension than what was available to employees at the time they had exercised the initial option. It was also submitted by referring to certain dates of the initial option of some of the petitioners that those options had been received by the prescribed authorities not strictly within the period of three months as prescribed by Rule 4 and yet they were treated to be" valid options. This according to the petitioners made entire Rule 4 directory and hence the option exercised earlier was not bound to be treated as final.

10. The aforesaid submission is misconceived. this Court cannot go into the validity of transactions relating to options of the year 1983. The parties treated those options valid and such transactions cannot be of any help in the interpretation of the last sentence of Rule 4 which clearly provides in no ambiguous and uncertain terms that the option once exercised shall be final.

11. Some judgments have been cited on behalf of the petitioners in support of the proposition that the word "shall" is not always indicative of a mandatory command and based upon the purpose and context it can also be used as "may". The aforesaid proposition of law is well-settled and hence it is not necessary to refer to the judgments cited. In the present case the interpretation of the relevant Clause of Rule 4 is not dependent upon the sense in which the word "shall" has been used. Its meaning has to be gathered from all the words used in this Clause. The words "once exercised" and the word "final" leave no manner of doubt that the framers of the Statutes did not leave any discretion in the authorities of the University so that they could even for a good reason treat such options to be non final. The word final is well understood as decisive or conclusive. If this word is not given a finality of meaning no other word can be used by the law makers to express the end or conclusion of any transaction. Hence, merely for the reason that finality shall be inconvenient to some ex-employees or that for violation of finality Clause the Statutes do not prescribe consequences, it is not possible to hold the Clause in question to be directory.

12. Before closing the discussion related to interpretation of Rule 4 some judgments cited on behalf of the petitioners may be noticed. According to learned Counsel for the petitioners the rule laid down in Heydon's case calling for purposive construction should be adopted in the present case to avoid the mischief being caused on account of finality of the first option. In support of such proposition reliance was placed upon judgment of the Supreme Court in the case of The Bengal Immunity Company Limited Vs. The State of Bihar and Others, which has been followed in several other cases such as K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, and some other judgments on the same line. The Heydon's Rule permits a departure from the rule of literal construction when the material words are capable of two or more constructions. In that situation the Court is permitted to examine the purpose for which the law was enacted or in

other words the difficulty or mischief which was sought to be remedied by the law in question. After finding out the remedy provided by law, the Court should prefer that construction which "shall suppress the mischief and advance the remedy". On the other hand it has been argued on behalf of the respondents that the particular Clause of Rule 4 contains such material words which do not permit two or more constructions and hence the Court has no occasion to apply the Heydon's rule in the present case. According to the respondent the rule of literal construction which requires that the words of a Statute must first be understood in their natural, ordinary and popular sense is alone applicable in the present case. According to the respondents if the finality given to an option is causing hardship then it is for the Legislature to apply their mind and make suitable amendments, if required. The Court, in the garb of interpretation cannot bring about such changes in law which can be done only by amendment as per Will of the Legislature.

13. In the facts of the case, this Court has no hesitation in holding that the Heydon's rule has application because the material words in Rule 4 are not capable of two or more constructions. They are, as indicated earlier, unambiguous and absolutely clear. As per the rule of literal construction, which must hold the filed in the present case, the material part of Rule 4 leaves no discretion in the Syndicate, the Vice-Chancellor or any other authority of the University to treat the option under Rule 4 of the Statutes to be anything other than final.

14. The next major issue raised on behalf of the petitioners is that of promissory estoppel. According to the petitioners as per law laid down by the apex Court in the case of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, as followed in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, ; (*Union of India v. Godfrey Philips India Ltd.*) *Ashok Chand Singhvi Vs. University of Jodhpur and Others*, in spite of Rule 4 of the Statutes standing in the way of authorities of the University in allowing change of options which had already attained finality, since such authorities made a promise on which the petitioners changed their option and deposited some money hence the respondents must be held bound by the equitable principle of promissory estoppel and this Court should not permit them to go back upon their promise or representation. The aforesaid proposition was also supported by placing reliance upon observations and comments made by Lord Denning in his book--*The Discipline of Law*, Part 5, where he has dealt with *High Trees Case*.

15. On the other hand learned Counsel for the State submitted that principle of promissory estoppel has been accepted by the Supreme Court and other Courts of this country as a principle of equity which belongs neither to the realm of contract nor of estoppel but such principle of equity has consistently been held to lie within the parameters of law and it cannot be used so as to defeat the positive mandate of law or to confer legitimacy to a promise which was made without

authority of law and without jurisdiction. In support of this submission learned Counsel of the State placed reliance upon M.P. Sugar Mills case itself where the apex Court in Paragraph 18 considered with approval the views of United State's Court of Appeals in the case of Balsonavich v. U.S. and of the House of Lords in Howell Falmouth Boat Construction Co. Ltd. and concluded "if the acts or commissions of the officers of the Government are within the scope of their authority and are not otherwise impermissible under the law, they will work estoppel against the Government". In support of the aforesaid proposition reliance was also placed upon subsequent judgments of the apex Court reiterating the aforesaid views in Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another, . Kasinka Trading and another, etc. etc. Vs. Union of India and another, and Shabi Construction Company Vs. City and Industrial Development Corporation and Another,

16. After going through the case law cited above this Court finds that while developing the equitable principle of promissory estoppel the Supreme Court has been consistent in pointing out its limitations as well." It is now fully settled, as appears from judgments relied upon on behalf of the State that the doctrine of promissory estoppel cannot be invoked to compel public bodies to carry out any promise or representation made by them which is contrary to law or beyond their authority and power. In view of such settled law this Court finds no force in the submission advanced on behalf of the petitioners on the basis of the doctrine of promissory estoppel and no relief can be granted to the petitioners on the basis of such doctrine because it is found that the promise or representation made by the Syndicate or Vice-Chancellor was contrary to Rule 4 of the Statutes and hence also beyond their authority or power.

17. The last contention which remains to be considered is one reside by learned Counsel for the petitioners in CWJC No. 12878/2000 to the effect that since the authorities of the respondent University as well as of some other Universities in the State of Bihar have acted contrary to Rule 4 of the Statutes and in past they have given opportunity to the concerned employees to change their initial option hence the petitioners must also be given similar facility as given to similar employees in past and this Court should further hold that Rule 4 of the Statutes has suffered quasi repeal on account of disuse of the relevant provision (Rule 4) for a long period. In support of the doctrine of quasi repeal reliance was placed upon judgment of the apex Court in the case of Municipal Corporation for City of Pune and another. Bharti Forge Company Ltd. and Ors. (1993) 3 SCC 434. On the other hand learned Counsel for the State has submitted that the facts of the present case clearly show that the authorities of the University have acted in recent past in violation of Rule 4 of the Statutes and it is not a case where the Statutes have in disuse for long period. According to the respondents the Chancellor's directives are meant to prevent illegality and this Court in exercise of writ jurisdiction should not interfere because the effect would be to perpetuate an obvious illegality. According to the respondents also the matter of the amendment of the Statutes is under consideration at the level of the State

Government but their categorical stand is that Chancellor's action is not only in accordance with law but is meant to put the working of the Universities of the State of Bihar on proper lines and in accordance with the provisions in the Statutes.

18. After giving serious consideration to all the facts and circumstances this Court is of the view that Rule 4 of the Statutes cannot be held to have been repealed as per doctrine of desuetude. Statutes have been notified after necessary amendments only in the year 1982. Their purposes is to provide options of retirement benefits to the concerned employees and at the same time to finalise and formalise the rights of such employees and the corresponding duty of the Universities. Payment of retiral benefits is a matter having serious effect upon the rights of the parties with equally grave financial implications for the University and the State and hence such a matter cannot be left in doldrums or in a state of uncertainty. This purposes is achieved by relevant Clause of Rule 4 of the Statutes. Ignoring this provisions by authorities of the University may create a situation where persons who are not legally eligible may become entitled to particular pensionary benefits. Such entitlement would be clearly a gift by an authority having no such power so long the relevant provisions of the Statutes are not amended. Hardship cannot be a ground for grant of such entitlement contrary to provisions of the Statutes. For this a reference can easily be made to a recent judgment of the apex Court in the case of Union of India and Others Vs. Rakesh Kumar etc.,

19. At the stage of reply it was suggested on behalf of petitioners that by applying the principle of reading down of Statues, the word final in Rule 4 be ignored. For reasons expressed earlier such interpretation is neither required nor possible.

20. On the basis of aforesaid discussions and findings it must be held that the petitioners have failed to make out a case for issuing a command to the respondents to continue payment of pension to the petitioners as per Appendix-A of the Statutes. Hence, this Court has no option but to dismiss the writ petitions. However, an alternative submission advanced on behalf of the petitioners deserves to be noticed. According to the petitioners, in case they are not found entitled for pension etc. as per Appendix-A then the University should be directed to return their money which they have deposited on the basis of University's directives, forthwith and with due interest. In the facts of the case, the University is directed to act equitably and take a decision relating to such claim for refund of the amounts deposited by the petitioners and similarly situated othe. employees of the University expeditiously and in any case within a period of one month. The writ petitions are dismissed with the aforesaid direction.

21. In the facts of the case, there shall be no order as to costs.