(2006) 11 OHC CK 0013

In the Orissa High Court

Case No : O.J.C. No. 4877 of 2003

Prof. Gyana Chandra — APPELLANT

Vs

Chancellor, Utkal University and Another — RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:
Orissa Service Code, 1939 — Rule 222

Citation : (2007) 1 OLR 254 Supp

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : B.S. Mishra, M.R. Mishra and A.P. Dhirasamanta, for the Appellant; S.K. Patri, P.K. Mohapatra, S. Mohanty, S.P. Mohanty, P.K. Beura and B.K. Nath, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—The brief facts, as delineated in this writ petition, tend to reveal as follows:

The Petitioner was initially appointed as a Lecturer in Economics in S.K.C.G. College, Paralakhemundi (Government College) on ad hoc basis on 18.9.1963. Subsequently, he was selected and appointed by the Utkal University in the post of Lecturer in Economics in Ravenshaw Evening College on 15.1.1964. On being selected by the Orissa Public Service Commission, the Petitioner was appointed as a Lecturer in Economics and was posted at F.M. College, Balasore on 15.12.1965. In course of his service career, he was promoted to the post of Reader in the year 1982 and was deputed to the Utkal University on 8.10.1982. The Petitioner served indifferent capacities including the post of Manager, National Bank for Agriculture and Rural Development (NABARD), Bombay. While working as Manager, NABARD, he was appointed to work as Professor in Economics on 31.3.1986. On 26.7.1990 the Petitioner exercised his option for his inclusion under the G.P.G.-cum-Gratuity-cum-Pension Scheme of the University (Pension Scheme hereinafter). Accordingly, the University authorities deducted necessary amount from the Petitioners'' pay towards his GPF subscription from the year 1990 and a GPF account in the name of the Petitioner was opened being P.F. No. 250. The subscription amount was also deposited in the said account and copy of GPF account Slip for the year 1995-96 to 1999-2000 is annexed as Annexure-2. While working as Professor in Economics in the University, he was deputed to work as Director in Nabakrushna Choudhury Centre for Development and Studies, Bhubaneswar. The Petitioner was relieved from his duties as per the office order dated 5.12.1997 of Utkal University, vide Annexure-3, and it was stipulated therein that the Petitioner was permitted to be relieved to join as Director, N.K.C. Centre for Development Studies on deputation for a period of three years from the date of his relief from the university on foreign service terms and conditions subject to the condition that contribution towards the cost of pension, GPF, and Leave Salary contribution as contemplated under Rule 222 of the Orissa Service Code would be paid by the Petitioner unless institute would consent to pay the same. He was allowed to be relied subject to submission of an undertaking through the Chairman, P.G. Council, Utkal University to the effect that he would refund Rs. 1,00,000/ - only to the University as early as possible in the prescribed proforma and in case of his failure to do so, the amount would be deducted from his GPF and other dues.

On 1.12.1997, O.P. 2, Vice Chancellor, Utkal University, issued a salary certificate of the Petitioner, wherein it was mentioned that there was deduction of some amount from his salary towards GFP subscription. While the Petitioner was continuing as Director, N.B.K.C. Centre for Development Studies, he retired from the University service on attaining the age of superannuation on 30.4.2002 and the GPF subscription was recovered from his salary by the Centre and was paid to the Utkal University. After retirement though the Petitioner submitted his pension papers before O.P. 2 on 5.4.2002, he has not been paid with any pensionary benefits, like pension, gratuity and other retiral dues. On 27.9.2002 a communication was made to the Petitioner by the O.P. 2 (Annexure-6) along with a copy of the order dated 19.9.2002 of the Chancellor, Utkal University, O.P. 1, wherein it was stated that as per Statute-289(2) of the Orissa Universities First Statutes, 1990, the option shall be exercised once only in respect of either scheme, which shall be final and that this matter had also been duly clarified by the Government in Finance Department, vide their letter No. 32413 dtd. 23.5.2001. Hence the case of the Petitioner to switch over from CPF Scheme to Pension Scheme (GPF-cum-Pension-cum-Gratuity Scheme) was not entertainable.

2. The aforesaid order in Annexure-6 is under challenge in this writ petition on the ground that:

Firstly, the authorities having accepted the option exercised by the Petitioner to come under the Pension Scheme and deducted the GPF subscription from his salary till his retirement in the year 2002 are estopped from saying that the Petitioner''s case cannot be considered for GPF-cum-Pension-cum-Gratuity Scheme. According to the learned Counsel for the Petitioner, as the opposite parties consciously and continuously deducted the GPF subscription amount from the salary of the Petitioner, the opposite parties had accepted the fact that the Petitioner had switched over from CPF to Pension Scheme.

Secondly, since cases of several other persons similarly situated like the Petitioner in Utkal University, Sambalpur University and Berhampur University, were considered by the authorities and they were favoured with the benefit of switching over from CPF to Pension Scheme, there is no reason to deny such benefit to the Petitioner and denial of such benefits to the Petitioner would amount to discrimination. The Petitioner has also taken a ground that no opportunity of hearing was afforded to him by the authorities at any point of time before passing the impugned order.

3. In opposition to the claim of the Petitioner, a detailed counter affidavit has been filed on behalf of O.Ps. taking a stand that the provisions of Statutes 289(1) of the Orissa Universities First Statute 1990 is a bar. According to the said provision, only once an employee can exercise his option for Pension Scheme or Contributory Provident Fund Scheme. Once the employee exercises his option, there is no scope for any change and that is final in terms of the provision of Statute 289(2).

4. Mr. S.K. Patri, learned Counsel for the Utkal University, contends that the Petitioner had opted for Contributory Provident Fund Scheme on 13.1.1989 as per Annexure-A, and thereafter, though there was some lapses on the part of the University in accepting his option for Pension Scheme and deducting the provident fund subscription till he attained the age of superannuation, the Petitioner can not take advantage of the same.

5. Mr. Mishra, learned Counsel for the Petitioner, submits that under Statutes 289(3), if any employee fails to exercise the option required under these Statutes within the prescribed time limit, he/she shall be deemed to have opted for the Pension Scheme. According to him, the Petitioner had given an option, which was after the prescribed time.

6. Be that as it may, fact remains that the Petitioner had opted for CPF Scheme and thereafter, he switched over to the Pension Scheme and the University authorities accepted the contribution consciously and knowingly without any objection till his retirement. Even when the Petitioner was posted in Foreign Service, the communication indicates that he was availing the benefits of Pension Scheme with the knowledge of the University authorities, which amounts to acceptance by the authorities the fact of switch over of the Petitioner to the Pension Scheme.

7. That apart, in the rejoinder affidavit, the Petitioner has indicated that the authorities, at different point of time had allowed Pro. Satya Narayan Rath, Prof. Brundaban Chandra Acharya and Smt. Belamati Suna, who were serving under the Sambalpur Universities, to switch over from the CPF Scheme to Pension Scheme, the details of which have been given in Annexure-7. This aspect goes

unchallenged and there is no doubt about the same. The opposite parties, however, have tried to make out a case in the additional affidavit filed to the rejoinder that granting of benefits as aforesaid to some of the persons does not amount to discrimination, but they have admitted that taking into consideration certain peculiar facts and circumstances of the case, details of which have not been given in this affidavit, the Government accorded permission on 2.6.98 (Annexure-7) in favour of the aforesaid employees to come over to the Pension Scheme and the Chancellor had also accorded post facto approval. The O.Ps. have stated that the case of the aforesaid persons cannot be cited as an example.

The affidavit aforesaid is contrary to the stand taken by he opposite parties in their counter affidavit. The submission of Mr. Patri, learned Counsel for the opposite parties that if the Petitioner is allowed to switch over from CPF to Pension Scheme, it would go against the spirit of the statute. But the same authorities at various points of time have taken decisions relaxing the statutory provision and have given benefit to certain persons. In my considered opinion, non-consideration of the case of the Petitioner vis-a-vis the cases of Ors. , in which the opposite parties have agreed and allowed the benefits of Pension Scheme to them, amounts to discrimination. That too, action of the opposite parties in consciously deducting amount from his salary towards GPF contribution, not once or twice, but for years together and till the Petitioner attained the age of superannuation, shows that the authorities by their own act have consciously accepted the Petitioner''s case for switching over from CPF to Pension Scheme.

8. For the foregoing reason, this writ petition is bound to succeed. Accordingly, the writ petition is allowed. Annexure-6, the communication dated 27.9.2002 is hereby quashed.

The opposite parties are directed to give the benefits of Pension Scheme to the Petitioner within a period of four months from the date of communication of this order. Issue writ accordingly.

In the circumstances of the case, I make no order as to costs.

