(1997) 09 DEL CK 0091

In the Delhi High Court

Case No : Civil Writ Petition No. 4827 of 1995

P.S. Srinivasan APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 22-09-1997

Acts Referred:

Agricultural and Processed Food Products Export Development Authority Act, 1985 — Section 8

Citation : (1998) 3 AD 571 : (1998) 72 DLT 280

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Pramod Gupta, B. Babbar and Anil Sapra, for the Appellant;

Judgement

K. Ramamoorthy, J.

(1) The petitioner has prayed for the following reliefs :

(A)allow this writ petition of the petitioner with cost;

(B)issue appropriate order or orders, direction or directions-

(I)declaring the letter dated 4th July, 1991 from Apeda (Ann.P.1) as illegal and void in law;

(II)setting aside the letter dated 4th July, 1991 being illegal and void in law;

(III)declaring the petitioner to be entitled to continue to draw pension for the months from June, 1991 onwards;

(IV)directing the respondents to continue to pay pension to the petitioner from June, 1991 onwards;

(V)directing the respondents to pay arrears of pension to the petitioner from June, 1991 onwards with 18 percent interest thereon;

(VI)directing that if the Pension Scheme is not considered to be applicable to the

Apeda, the petitioner may in any case be given relief by paying his pension for the period from August, 1956 to November, 1970 when his service was under the Central Government and for the period from November, 1970 to March, 1988 when he served under the Council/APEDA, he may be paid the Contributory Provident Fund amount due to him and the pension and the commuted value of pension already paid to him may not be recovered from him."

The case of the petitioner briefly stated is this. In 1956 the petitioner was recruited as an Investigator in the Small Industries Services Institute. In 1960 he was promoted as Junior Field Officer. In 1962 he was transferred to the Office of the Development Commissioner, Small Scale Industries, New Delhi as Junior Field Officer. On 30.7.1964 the petitioner was sent on deputation to the Processed Foods Export Promotion Council as a Secretary. The deputation continued till 30.11.1970. On 1.12.1970 the petitioner was absorbed as a Secretary of Processed Food Exports Promotion Council. In the year 1985, the Act called ''Processed Food Products Export Development Authority Act'' was enacted by the Parliament. On 13.2.1986 the ''Agricultural and Processed Food Products Export Development Authority'' was constituted. He was taken in as a Secretary to the Authority. He retired on 31.3.1988. He had been drawing pension w.e.f. 1.4.1988 to 31.5.1991. He received a letter dated 4.7.1991 from the Secretary of the Authority stating that the introduction of GPF-cum-Pension Scheme was pending with the Government of India for approval and the Union of India had not approved the Scheme and, Therefore, the pension Was withheld.

(2) It is not necessary to relate the facts in great details because the petitioner would be entitled to pension if the Authority was obliged in law to pay pension to the petitioner and other employees similarly situated. If there is no law governing the grant of pension to the employees the petitioner would not be entitled to any pension. The second respondent .Agricultural and Processed Food Products Export Development Authority had stated in the counter affidavit that there was no scheme for the grant of pension in the Council where the petitioner was working prior to his absorption on 1.12.1970 and inasmuch as the Ministry of Commerce had not approved of the Scheme proposed by the Authority. The second respondent is not in a position to pay any pension to the petitioner and the petitioner has no legal right to claim pension and there is no corresponding obligation on the part of the second respondent to pay pension to. the petitioner. In paragraph 4 of the counter, the second respondent would state :

"I say that it is not denied that the answering respondent sanctioned Pension and Pensionary benefits to the petitioner. It is submitted that the respondent No. 2, had framed the G.P.F. Regulations, 1989, which were sent to the Ministry of Commerce .on 25th January, 1989 for approval, as per the requirements of the Act. The said regulations were duly approved by the Standing Committee of respondent No. 2, and were subsequently sent to the Ministry of Commerce (respondent No. 1) for its approval as required under the provisions of Section 32 of the Act. The said regulations formulated by respondent No. 2, provided for grant of Pension and other benefits and consequently the petitioner was sanctioned the same vide letter dated 14th February, 1989 on the presumption that the said regulations will be approved by the respondent No. 1, as was the indication given by respondent No. 1."

(3) In paragraph 5 the position of the second respondent was made clear in the following terms:

"I say that the letter dated 4th July, 1991 was written by the answering respondent on the indication given by respondent No. 1, that since no approval to the Gpf Regulations sent by the respondent No. 2 had been granted, the same could not be implemented as per the provisions of Section 32 of the Act. In fact, the regulations have till date not been approved by the respondent No. 1. The respondent No. 2, acted in accordance with the indication given by the respondent No. 1, in stopping the pension of the petitioner."

(4) The second respondent on these grounds prayed for the dismissal of the writ petition. The first respondent in his counter affidavit has stated that the Ministry of Commerce had not approved the Introduction of the Pension Scheme to the employees of the Authority. u/s 33 of the Act, 1985 the Government had not approved the Scheme and, Therefore, the petitioner would not be entitled to any pension. The petitioner states that atleast from August, 1956 to 30th of November, 1970 he was in Government service and as per the Pension Rules of the Central Government, his case could be considered for the grant of pension.

(5) The letter dated 4.7.1991, which is impugned, reads as under ;

"As you are aware that the introduction of Cpf Cum Pension Scheme in Apeda has been pending with Government for approval. We have now received reply from Ministry of Commerce vide their letter No. 11/1/89- EP (AGRi. IV) dated 25th June, 1991, wherein they have turned down our request for Cpf cum Pension Scheme for Apeda employees. Ministry have also stated that Apeda Rules, 1986 have been framed under the power conferred by Section 32 of Apeda Act, 1985 which empowers the Authority to frame rules with regard to the option to be given to the employees of erstwhile Council to become officer/ employees of Apeda and not for framing any Pension Scheme or offering Cpf cum Pension Scheme to the erstwhile Council employees. More so, when they were, while in the Council, governed by Cpf Rules and not Cpf cum Pension Scheme. Therefore, that part of the Rules and Form Iii under the Rules which offers Cpf cum Pension Scheme seems to be ultra virus of the power conferred by the Apeda Act. Department of Personnel and Training to whom the matter was referred by the Ministry of Commerce have stated that the approval of that Department was not taken for the introduction of Pension Scheme in APEDA. We have been directed to take corrective action if some wrong action has already been taken. In view of the above facts, we are constrained to withhold your pension with immediate effect. You are also requested to refund the amount of pension wrongly paid. In the meantime, we are again taking up the case with

Ministry of Commerce for reconsidering the entire issue regarding grant of pension cum Cpf scheme on humanitarian grounds. The final disposal will be communicated to you as and when Government decision is received."

(6) The submission on behalf of the petitioner is that when he gave the option he had clearly mentioned about the pension and he would rely upon the form prescribed by the Authority.

(7) A reading of the provisions of the Act would show that unless Pension Scheme is approved by the Union of India the employees of the Authority would not be entitled to any pension. Section 32 of The Agricultural & Processed F.P.E.D. Authority Act, 1985 empowers the Central Government to make rules for carrying out the purposes of the Act. Section 33 empowers the Authority to make regulations with the previous sanction of the Central Government. Section 33 reads as under:

"Power to make regulations - (1) The Authority may, with the previous sanction of the Central Government, by notification in Official Gazette, make regulations not inconsistent with the provisions of the Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act. (2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely: (a) the times and places at which meetings of the Authority or any Committee thereof, shall be held and the procedure to be followed threat and the number of members which shall form a quorum at a meeting under Sub-section (8) of Section 4; (b) the method of appointment, the conditions of service and the scales of pay and allowances of any of the officers and other employees of the Authority under Sub-section (3) of Section 7; (e) generally for the efficient conduct of the affairs of the Authority. (3) The Central Government may, by notification in the Official Gazette. modify or rescind any regulation sanctioned by it and the regulation so modified or rescinded shall have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or rescission shall be without prejudice to the validity of anything done under the regulation before its modification or rescission."

(8) The respondents are right in contending that when the Central Government had not approved of the Scheme, the petitioner cannot claim any pension. Section 8, which deals with "special provision of transfer of employees to the Authority" and it reads as under :

"Special provision of transfer of employees to the Authority.-(1) On the establishment of the Authority, it shall be lawful for the Central Government to transfer to the Authority, by order, and with effect from such date or dates as may be specified in the order, any officer or other employee holding office as such in the Processed Foods Export Promotion Council (hereafter in this section referred to as the Council) immediately before the date on which the Authority is established. Provided that the scale of pay of the post in the Authority to which such officer or other employee is transferred shall not be lower than the scale of pay of the post he was holding immediately before such transfer and the other terms and conditions of service (including pension, leave, provident fund and medical benefits) of the post to which he is transferred shall not be less favourable than the terms and conditions of service in relation to the post held by him immediately before such transfer. (2) An order under Sub-section (1) may be made so as to have retrospective effect from a date not earlier than the date of the commencement of this Act. (3) Before any order is issued under Sub-section (1), all officers and employees of the Council shall be given an option to express, in such form as may be prescribed, and within such time as may be specified in that behalf by the Central Government, their willingness or otherwise to become employees of the Authority and such option once exercised shall be final: Provided that no order under Sub-section (1) shall be made in relation to any officer or other employee of the Council who has intimated his intention of not becoming an employee of the Authority within the time specified in that behalf: Provided further that such of the officers and employees of the Council who do not express, within the time specified in that behalf, their intention of becoming the employees of the Authority, shall be dealt with in the same manner and in accordance with the same laws and standing orders as would have applied immediately before the commencement of this Act to the employees of the Council in the event of the reduction of the strength of the officers and employees of the Council. (4) An officer or other employee transferred by an order made under Sub-section (I) shall, on and from the date of transfer, cease to be an employee of the Council and become an officer or other employee of the Authority with such designation as the Authority may determine and shall, subject to the provisions of the proviso to Sub-sec.(l), be governed by the regulations made by the Authority under this Act in respect of remuneration and other conditions of service (including pension, leave, provident fund and medical benefits) and shall continue to be an officer or other employee of the Authority unless and until his employment is duly terminated by the Authority: Provided that till such time as the regulations referred to above governing the conditions of service of its officers or other employees are framed by the Authority, the relevant laws and standing orders applicable to the officers and employees of the Council shall continue to be applicable to them. (5) If a question arises whether the terms and conditions of service prescribed in the regulations framed by the Authority in respect of any matter, including remuneration, pension, leave, provident fund and medical benefits, are less favourable than those attached to the post he had by an officer or other employee immediately before his transfer to the Authority, the decision of the Central Government in the matter shall be final."

(9) The effect of this provision is that as and from the date of transfer the employee who had opted to become an employee of the Authority, would cease to be the employee of the Council. When the Statute is very clear on this aspect,

the petitioner cannot claim pension on the ground that he had served the Council from August, 1956 to 30th of November, 1970. Rule 14 of the Agricultural and Processed Food Products Export Development Authority Rules, 1986 reads as under :

"Transfer of Staff of the Processed foods Export Promotion Council.-On the establishment of the Authority, the officers and other employees holding office as such in the Processed Foods Export Promotion Council shall be given an option to express their willingness or otherwise to become employees of the Authority within a period of 3 months from the date of publication of these rules. The option shall be in Form III."

Form No. 1II reads as under :

Form Iii (See rule 14) Form of option to be exercised by the officer and other employees of the Processed Foods Export Promotion Council. I...........(Name of the officer or other employee) hitherto functioning as......(Designation) in the Proposed Food Exports Promotion Council, New Delhi, hereby indicate my willingness/unwillingness to become an officer/ employee of the APEDA. 2. I elect/do not elect to be governed by the pension-cum gratuity scheme of the Authority. Signature of the officer/employee of PFEPC. Place: Date: NOTE.-Strike out whichever is not Applicable.

(10) The petitioner would rely upon Clause 2 of the Form to say that in the Form he had elected to be governed by the Pension Scheme. This is not decisive of the question.

(11) We are of the view that once the Scheme u/s 33 of The Agricultural and Processed Food Products Export Development Authority Act, 1985 has not been approved of by the Central Government, the petitioner cannot seek to claim pension. Accordingly the petition is dismissed. There shall be no order as to costs.