(2012) 04 CHH CK 0066

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 196 of 2011

Santosh Kumar Upadhyay APPELLANT

Vs

State of Chhattisgarh RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Chhattisgarh Vishwavidyalaya Adhiniyam, 1973 — Section 47, 48
Madhya Pradesh Uchcha Shiksha Anudan Ayog (Nirsan) Adhiniyam, 1994 — Section 3(1), 3(3)

Citation : (2012) 2 CG.L.R.W. 259 : (2012) 2 MPJR 16

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : R.C. Agrawal and Dr. N.K. Shukla, with Mr. Sangarsh Pandey, for the Appellant; Y.S. Thakur, Dy. A.G. For State/Respondents No. 1 and 2 and Mr. Neeraj Choubey, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—The petitioners, who claim to be the retired employees of the respondent No. 3- Pt. Ravishankar Shukla University (for short "the University") by the petitioner, seek a direction to the respondent authorities to pay all the pensionary benefits to the petitioner as well as family pension to the dependants of the deceased employees at par with the employees of the State Government from the date when it was revised for the employees of the State Government. The petitioners also seek benefit of 6th pay Commission in respect of pensionary benefits, as was made available to the employees of the State Government. The indisputable facts, in brief, as projected by the petitioners, are that the petitioner are the retired employees of the third respondent/University. The then, State Government of Madhya Pradesh by circular dated 6th December, 1989 (Annexure- R/1) decided to grant the benefits of gratuity, pension, family pension and computation at par with Government employees, however, it was made clear that no financial benefit would be given and the same will be made available from the contributory fund created by the University, which was accepted with approval by memo dated 22nd March, 2001 (Annexure- R/2) issued by the present State of Chhattisgarh. The petitioner claim the above stated benefits on the basis of Statue No. 32 of the University (Annexure -P/2) and also on the basis of circular dated 6th December, 1989 of the State Government. The petitioner are also claiming benefit on the basis of the order passed by the learned Single Judge of the High Court of Madhya Pradesh in K.L. Khandelwal & another v. State of Madhya Pradesh & others, W.P. No. 1736 of 1996 decided on 25.2.1999. Wherein the petitioner No. 1 was a retired Deputy Register of Jiwaji University, Gwalior. In the said petition, the circular dated 6th December, 1989 was under consideration.

2. Shri Agrawal, learned senior counsel appearing with Dr. Shukla, learned senior counsel and Shri Pandey, learned Advocate for the petitioner, would submit that the representation dated 26th May, 2009 (Annexure-P/1) was made by the petitioners to the Commissioner, Higher Education, Government of Chhattisgarh, Raipur, for grant of revised pension, which has not yielded and result. Thus, a direction, as aforestated, be issued to the State Government.

3. Shri Thakur, learned Dy. Adv. General appearing for the State/respondents No. 1 & 2, relying on the return filed by the State, would submit that the retired employees of the University are entitled to receive the retrial benefits at par with the retired State Government employees. Shri Thakur would further submit that the circular dated 6th December, 1989 issued by the, then, State of Madhya Pradesh has been duly adapted by the State of Chhattisgarh, as is evident from the memo dated 22nd March, 2001, Shri thakur would next submit that the University has to create University employees pension and gratuity fund as per clause 9 of the Statute No. 32. The same would be operated by the State Government and if there is any shortfall in the said fund, the Government may sanction grant for the same, as recently a sum of Rs. 2.00 crores has been sanctioned by the state Government to the said fund vide letter dated 29th October, 2010 (annexed with the written submission filed by the University), However, it is responsibility of the University to create fund for pension and gratuity and make payment accordingly, as aforestated.

4. Shri Choubey, learned counsel appearing for the third respondent/University, would submit that the respondent University is a State University and for all practical purposes. The State Government monitors the finance of the University, as it is provide under Sections 47 & 48 of the Chhattisgarh Vishwavidyalaya Adhiniyam. 1973 that the State Government Shall as soon as may be, cause the annual report and the audit report be laid on the table of the State Legislative Assembly. Thus, it is the responsibility of the State Government to discharge liability of making payment of retrial benefits to the retired employees of the University.

5. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended there to.

6. Statute No. 32 was approved by the Co-ordination Committee in its meeting held on 27-28 October, 198, which came into force w.e.f. 1st April 1987. Relevant clauses of Statute No. 32 i.e. Clauses 9.13 (a) & (e) and 14 (a) (d) (e) & (f) read as under :

9; OPERATION AND CONSTITUTION OF UNIVERSITY EMPLOYEE PENSION AND GRATUITY FUND-

In order to meet the expenditure on pension and gratuity disbursement to the employees of the University as prescribed in the M.P. Civil Service (Pension) Rules 1976 and in order to meet other incidental expenses on the operation of the scheme, a University Employees Pension and Gratuity Fund (Uniperngraf) shall be created and it shall be centrally controlled and administered by the Madhya Pradesh Uchha Shiksha Anudan Ayog/December of Higher Education, Bhopal, It shall comprise and be constituted out of the following :

(a) Monthly Contributory Provident Fund subscription made by the University to the account of each employee as university share as per Statute No. -26 of the University in respect of persons who elect to join the Pension & Gratuity Scheme under this Statute.

(b) The accumulated balance of the subscription to the Contributory Provident Fund of each employee made by the University as university share together with interest there on (upto the date of transfer the amount by university) will be credited to the University) will be credited to the University Employees Pension and Gratuity Fund (UNIPENGRAF) maintained at the level of M.P. Uchcha Shikhsa Anudan Ayog. The University share of the employee who have opted to retain the Contributory Provident Fund Scheme, will not be transferred to the University. Employees Pension and Gratuity Fund (UNIPENGRAF) but shall be continued to be maintained separately as per provisions of the existing Contributory Provident Fund Scheme under Statue No. 26. in order to implement the Pension Scheme, the Registrar of the University will ensure that at least 90% of the accumulated balance of University share is credited to University Employee Pension & Gratuity Fund (UNIPENGRAF) with on month from the date of promulgation of the Statute. Only such employees in respect of whom 90% of the University share is credited to the Pension Fund within prescribed time, shall be covered under the Scheme. Where a University has granted house building advance to any employee to the extent of 75% of the total amount of CPF as provided in the relevant Statute, the condition regarding deposit of 90% of university share due to an employee, could be relaxed by the M.P. Uchcha Shikhsa Anudan Ayog on merits of each case, For this purpose, the M.P.U.S.A would be competent to issue necessary directions and such directions will be binding on the University. Where M.P.U.S.A.A. has granted relaxation in respect of an employee, such employee would be covered by this Scheme. The remaining amount of 10% of the University share with interest shall be deposited by the Registrar in the University Employee Pension and Gratuity Fund (UNIPENGRAF) within a maximum period of six months from the date of promulgation of the statute in respect of the employees who opt to join this scheme.

(c) Grant in -aid sanctioned by the Government from time to time to cover the deficiency of funds in running the Pension and Gratuity Scheme.

(d) Amount mentioned under paragraph 8 (b) above.

(e) Amount earned as interest on investment of the fund.

(f) The employees who have already retired on or after 1.4.1987 and have given option for joining the Pension and Gratuity Scheme and have received part or full amount with interest of their Contributory Provident Fund, shall be required to deposit in one installment in the University, the part or full share of the university contribution towards provident fund along with the interest there on paid to them along with simple interest on the above amount @ 5% from the date of receipt of the amount till the date on which the amount is credit to the pension fund for transferring the amount to the University Employee Pension and Gratuity Fund (UNIPENGRAF) within a period of six months from the date of promulgation of this Statute to get the benefit of the Pension and Gratuity Scheme.

13. Procedure Regulating the payment of Pension and Gratuity to the Employee of the University -

(a) For the purpose of receiving pension, every pensioner shall be required to open a Saving Bank Account in his own name (single account) with the specified disbursing branch of the bank.

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(e) Registrar of the university shall be the competent authority for sanction of pension gratuity commutation, anticipatory/provisional pension and gratuity. The amount so sanctioned shall be payable by the........(bank) only after its enfacement authorization by the F.O. (Pension) of Madhya Pradesh Uchacha Shiksha Anudan Ayog, Bhopal.

All suits or other legal proceedings in respect of settlement of pension and gratuity claims under this Statue shall be instituted by or against the Registrar of the university concerned from which the employee retired.

(ii) all the payments of pension, gratuity, and commutation after sanction by the Registrar of the university, shall be enfaced by the F.O. (Pension) of Madhya Pradesh Uchcha Shiksha Anudan Ayog, Bhopal and the letter will authorize the.........(Bank) to arrange payments to the pensioner through the branch of the bank opted by him.

14. Procedure for Pension and Gratuity Payment to the University Employees:

(a) When calculating the pension, family pension, gratuity and commutation amount payable to the employee on retirement, the procedure, the proformas and the rules as laid down in the M.P.

Civil Service (Pension) Rules 1976 and the M.P. civil Pension (commutation) Rules, 1976 as amended from time to time by the Government shall be applicable mutatismutandis.

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(d) After preparation of the pension case by the Registrar, the pension papers shall be forwarded to the Finance Officer (Pensions). M.P. Uchcha Shiksha Anudan Ayog. Bhopal at least 13 months before the date of retirement of the employee concerned for enfacement and authorizing the payment of pension. Gratuity etc. The pension case forwarded by the Registrar shall be pre-audited by the Resident Audit Officer of Local fund stationed at the University.

(e) On receipt of pension case from the Registrar of the University, the Finance Officer (Pension), M.P. Uchcha Shiksha Anudan Ayog, Bhopal will scrutinize it expeditiously. After satisfying himself that the pension case submitted by the Registrar, is in order in all respects, he will issue authority to the designated bank for payment of pension and gratuity. The first copy of the PPO will be for the Head Office of the Bank, the second copy will be for pensioner and the third copy will be for university record. After receipt of the first and fourth copy by the designated bank, it shall send the fourth copy to the branch of the bank through which the employee asked for disbursement of his pension. The second, third and fourth copy of the PPO will clearly indicates that no payment can be made on the basis of those copies.

(f) The Registrar of the University could sanction anticipatory pension or anticipatory gratuity of provisional pension or provisional gratuity according to the rules, contained in the M.P. Civil service (Pension) Rules, 1976, under intimation to the Finance Officer (Pensions), M.P. Uchcha Shiskha Anudan Ayog, Bhopal, But this will be done only when pension case is prepared and sent to the Ayog for issue of payment authority. The procedure for payment of anticipatory pension/gratuity for provisional pension/gratuity will be the same as prescribed for final payment of pension and gratuity mentioned in para 14 (e) above.

7. Clause 9 of Staute No. 32 provides of contribution for creation of employee pension and gratuity fund. It is further provided that each employee will make a contribution to the fund and the University will also contribute the same amount to the said fund. The said fund shall be centrally controlled and administered by the Madhya Pradesh Uchha Shiksha Anudan Ayog/Department of Higher Education. It is further provided that the grant -in aid sanctioned by the Government from time to time will be made to cover the deficiency of funds in running the Pension and Gratuity Scheme.

8. Clause 13 of Statute No. 32 provides for procedure Regulating the payment of Pension and Gratuity to the Employee and clause 14 provides for procedure for Pension and Gratuity Payment to the University Employee.

9. It is well principle of law that pension is not a bounty payable on the sweet will

and pleasure of the Government and that, on the other hand, the right of pension is a valuable right vesting in a Government servant. (See Deokinandan Prasad Vs. The State of Bihar and Others,

10. The Supreme Court recently in PEPSU Road Transport Corporation, Patiala Vs. Mangal Singh and Others, , observed as under:

34. Pension is a retirement benefit partaking of the character of regular payment to a person in consideration of the past services rendered by him. We hasten to add that although pension is not a bounty but is claimable as a matter or right, yet the right is not absolute or unconditional. The person claiming pension must establish his entitlement to such pension in law. The entitlement might be dependent upon various considerations or conditions. In a given case, (s/c whether) the retired employee is entitled to pension or not depends on the provisions and interpretation of the rules and regulations.....

It is further held that:

29. It is well- settled law the regulations made under the statute laying down the terms and conditions of service of the employees, including the grant of retirement benefits, have the force of law. The regulations validly made under the statutory powers are binding and effective as the enactment of the competent legislature. The statutory bodies as well as general public are bound to comply with the terms and conditions laid down in the regulations as a legal compulsion. Any action or order in breach of the terms and conditions of the regulations shall amount to violation of the regulations which are in the nature of statutory provisions and shall render such action or order illegal and invalid.

11. The fund so created will be controlled and administered by the Madhya Pradesh Uchha Shikhsa Anudan Ayog/Department of Higher Education. Now, it will be done by the Higher Education Department of the Governments the Shiksha Anudan Ayog was abolished, in 1994.

12. Subsequently, under the provisions of the Madhya Pradesh Uchcha Shiksha Anudan Ayog (Nirsan) Adhiniyam, 1994 (for short ''the Adhiniyam, 1994"), the Madhya Pradesh Uchcha Shiksha Anudan Ayog Adhiniyam, 1973 was repeated and as a result, under sub-section (1) Section 3 of the Adhiniyam, 1994, the Ayog stood dissolved.

13. Sub-section (2) Section 3 provides that all assets and liabilities of the Ayog on the appointed day shall stand vested in the State Government and the State Government shall have all powers necessary to take possession, recover and deal with such assets and to discharge such liabilities.

14. Sub-section (3) of the Adhiniyam; 1994 provides that any proceeding pending immediately before the appointed day to which the Ayog was a party shall be continued as if the State Government was party there of in lieu of the Ayog.

15. In view of the above, all the responsibilities and functions of the Ayog continued to be performed by the State Government. The petitioners, being the employees of the University, as entitled to all the benefits, as aforestated, at per with the Government employees. Accordingly, the respondents are directed to grant retrial benefits to the petitioners, as revised from time to time for the State Government employees in accordance with the provisions of Statute No. 32 and as per the circular dated 6th December, 1989 issued by the, then State of Madhya Pradesh and the memo dated 22nd March, 2001 of the State of Chhattisgarh. As an upshot, the writ petition is allowed to the extent indicated above, leaving the parties to bear their own costs.