

**(2009) 11 BOM CK 0008**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 109 of 2009**

Smt. Maya

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

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**Date of Decision :** 19-11-2009

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2010) 1 MhLj 865

**Hon'ble Judges :** A.R. Joshi, J;A.H. Joshi, J

**Bench :** Division Bench

**Advocate :** K.H. Deshpande and U.N. Andhare, for the Appellant; B.H. Dangre, Addl. Govt. Pleader for Respondent Nos. 1 to 3 and Vaishali Tanna, for the Respondent

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## Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith. Heard finally by consent.

2. Facts, which are not in dispute, are as follows:

[a] Petitioner got employment and 3rd joined with respondent No. 2 on July, 1973, and remained in the same employment continuously till she attained 60 years of the age of superannuation.

[b] Govt. of Maharashtra has extended the benefit of pension to the class of employees to which petitioner belongs.

[c] The Scheme, when formulated, created following categories:

[i] The employees who were in 30th service prior to September, 1982, and are eligible for Contributory Provident Fund and opt in favour of pension.

[ii] The family member of eligible employee, who was 1st in employment on October, 1982 and dies 31st before January, 1984 without exercising option, is entitled to be governed by more beneficial scheme amongst pension or Contributory Provident Fund.

[iii] The employees in service 30th prior to September, 1982 and who do opt in favour of Contributory Provident Fund, will continue to get the benefit of pension.

[d] Admittedly, the petitioner has exercised option for retention of Provident Fund Scheme by submitting 27th the option form on January, 1984.

[e] The policy decision prescribed that option once given is final and binding.

[f] The Scheme of extending the benefit of pension to the staff of aided colleges, namely to those who were in service on 1st October, 1982, was challenged in Writ Petition No. 2632 of 1985.

[g] This Court issued a Writ of Mandamus 26th by Judgment dated February, 1987, and directed that persons, who 1st were appointed after January, 1973, are entitled to Pension-cum- Gratuity Scheme, and cut off date to 1st October, 1982 was held to be violative of Article 14 of the Constitution of India.

[h] Said judgment was challenged before Hon''ble Supreme Court which SLP was dismissed by Hon''ble Supreme Court in 1997.

[i] It is admitted that Govt., has issued the direction through Govt. 10th decision dated August, 1994, reiterating its earlier policy decision. 12th

[j] On August, 1999, the Govt. of Maharashtra issued one more decision consolidating earlier direction after Judgment of Hon''ble Supreme Court, and without modifying basic substratum of the scheme as proclaimed.

3. In the above referred background of facts, petitioner desires to resile from her option. She believes that this would not amount to resiling from the option, but she has a right that her option should not be acted upon and she should be given pension by disregarding her option. Based on this claim, her prayer is for quashing Annexure-N declining to refuse her to withdraw her option to retain the Contributory Provident Fund Scheme.

Her second prayer is for not to act upon her option.

Her prayers in summary, therefore, are as follows:

(a) Quashing Annexure-N ''letter dated 20th September, 2008 [Prayer (i)].

(b) Direction to process petitioner''s proposal for pension [Prayer (ii)].

(c) To ignore petitioner''s option dated 27th January, 2004 [Prayer (I-a)].

4. The submissions of learned Senior Adv. Mr. K.H. Deshpande in support of prayers can be summarized as follows:

[i] The State Govt. had carved out a class of employees of aided colleges, namely: 1st

(a) who were employed after January, 1973, and had retired before 1st October, 1982.

(b) The Govt., has carved out another class of employees, who were in service prior to 1st October, 1982, and were in employment.

(c) The employees who entered the 1st service after October, 1983.

[ii] The above referred three classes carved out by the State Govt., are without any rationale and this aspect is adjudicated in the Judgment of this Court in case of Retired Employees of Non-Govt. College Association, Nagpur v. State of 26th Mah. and Ors. decided on Feb., 1987 [Coram : C.S. Dharmadhikari and H.W. Dhabe, JJ.] [1987 Mh.L.J. 326].

[iii] This Court has, therefore, struck 01st down October, 1982, not the date by which different classes were carved out.

[iv] Thus, the employees, to whom the Scheme applies, applies uniformly irrespective of as to whether they have retired prior or later.

[v] The right of an employee to exercise option and retain the Contributory Provident Fund Scheme is insignificant and every employee would be essentially governed by pension only, though option to retain Contributory Provident Fund Scheme is exercised.

5. In reply, learned Addl. Govt. Pleader Mrs. Dangre submitted as follows:

[i] By virtue of Judgment of this Court in Writ Petition No. 2632 of 1985, what has been done is that a class of employees of aided colleges 1st retired prior to October, 1982, who were denied the benefit of pension, have now been rendered entitled for pension.

[ii] The decision rendered by this Court does not affect or interfere with:

(a) the modality, the mechanism and the procedure prescribed in the Govt. Resolution, which carves out a right of benefit to an employee to retain Contributory Provident Fund.

(b) period fixed for exercise of option by the employee either for Contributory Provident Fund or Pension.

(c) Fixing a deadline for exercising option to those who are in the employment after 1st October, 1982.

(d) The option once exercised to be final and binding.

[iii] It is nowhere pointed out that the above referred modality and mechanism was under challenge in Writ Petition [supra]. It is also not shown that the modality and mechanism as regards exercising the option to retain Contributory Provident Fund Scheme is struck down in expressed or implied way.

6. The question, which falls for determination in this petition, is formulated as follows:

Whether an Employee of a private aided 1st College appointed prior to October,

1982, and continued in service thereafter, is entitled to the benefit of pension by ignoring the conditions contained in the decision of the Government dated 21st June, 1983 and Govt. decision dated 10th August, 1994 as regards exercise of options, and having opted in favour of retention of Provident Fund Scheme?

7. This Court has perused all the Govt. Resolutions.

8. The submission of learned Senior Adv. Mr. K.H. Deshpande that option becomes insignificant does not find any foundation, whatsoever, on record.

9. Perusal of the scheme and judgment of this Court reveals that the modality and mechanism of exercising of the option is an essential incidence of extension of scheme of pension. A class of employees, whose quantum of provident fund is huge, inclusive of employer's contribution, may for their personal choice retains the Contributory Provident Fund Scheme and naturally they are not entitled for the pension.

10. The class of employees, who fail to exercise option, are to get the benefit of new scheme, but who consciously do not want the pension, are allowed to do only once and without a right of retraction.

11. Thus, permitting the employees to exercise the option and making the said option final and unreliable has not been touched or set aside by the Judgment of this Court.

12. Moreover, the said aspect of adherence to the scheme of Provident Fund for electing to get payment was not a part of scrutiny before this Court in Writ Petition No. 2632 of 1985.

13. It is seen that the employees, who remain in 1st employment after October, 1984 and opt for such Contributory Provident Fund, are not entitled to pension, once they opt for Contributory Provident Fund, and this aspect was never under challenge in past and even now it is not under challenge.

14. It is the petitioner's infusion based on her desire to change her option, that she wants to read the option of election to Provident Fund being lapsed by virtue of Judgment of this Court in Writ Petition No. 2632 of 1985 is a figment that reality.

15. Petitioner's claim and contention has no legal or factual foundation. Petitioner is estopped and is bound by her option. The petition does not contain a challenge to the Govt. Resolution which carves out a scheme for giving option. In absence of such challenge being raised and said scheme being struck down as without petition has a legal base and has no merit.

16. Rule is discharged. In the circumstances, parties shall bear respective costs.