

(2014) 10 RAJ CK 0110

In the Rajasthan High Court

Case No : Civil Special Appeal (Writs) No. 1434/2014 in Civil Writ Petition No. 5778/2014

State of Rajasthan

APPELLANT

Vs

Pensioners' Welfare Samiti

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Citation : (2014) 10 RAJ CK 0110

Hon'ble Judges : Prakash Gupta, J; Govind Mathur, J

Bench : Division Bench

Advocate : P.S. Bhati, Additional Advocate General, Advocate for the Appellant; G.R. Punia, Mukesh Vyas and Varun Singhvi, Advocate for the Respondent

Judgement

1. By order dated 1.10.2014, learned Single Bench directed appellant State of Rajasthan to release a fund of Rs. 8.00 crores immediately to ensure payment of the arrears of pension, subject to final decision of the writ petition to members of the respondent petitioner association.

2. The argument advanced by learned Additional Advocate General Dr. P.S. Bhati, while questioning correctness of the interim direction given, is that as per provisions of the University Pension Regulations, 1990 (hereinafter referred to as "the Regulations of 1990"), the responsibility to make payment of pension to the members of the respondent petitioner association is upon Swami Keshvanand Rajasthan Agricultural University, Bikaner, therefore, no liability could have been fastened with the State of Rajasthan. It is pointed out by learned Additional Advocate General that though necessary compliance of the directions given has already been made but the principles for fastening liability through interim orders is required to be settled and further the amount paid to the University by the State is required to be secured by appropriate directions of this Court.

3. On the other hand, stand of the counsel for the respondent association is that after implementation of the directions given by Single Bench, no need exists to examine the matter on merits.

4. From perusal of the record it reveals that learned Single Bench desired compliance of the order within a period of ten days and this appeal was presented on 7.10.2014 and was listed before the Court on 14.10.2014. The State looking to the time period given under the order dated 1.10.2014 and also keeping in mind the hardship that could have been caused to members of the petitioner association, considered it appropriate to honour the interim directions, subject to final decision of the instant appeal. In such circumstances, we are of the view that the issue sought to be agitated deserves consideration on merits.

5. In brief, factual matrix of the case is that the members of the petitioner association are retired employees of Swami Keshvanand Rajasthan Agricultural University, Bikaner. They are entitled to have pension as per provisions of the Regulations of 1990 that came into force on 1.1.1990. As per clause 3(5) of the Regulations of 1990 the pension paid to the retired employees is required to be charged from the "pension fund", definition of which is as under:--

""Pension Fund" means the fund created for the purpose of transferring the total accumulated amount of University contribution in C.P. F. (including the amount of loan taken out of it) and interest thereon as on date of commencement of these regulations and monthly contribution made thereafter in respect of such employees who opted or are deemed to have opted the pension scheme under these regulations. The pension paid to the retired employees shall be charged to this Fund."

6. As per the petitioner association, the State Government, by flux of time has taken into its grip the entire economic autonomy of the University and that resulted into paucity of funds necessary to disburse pension. The University in such circumstances left with no option, but to stop payment of pension to its retired employees including members of the petitioner association. A request was also made by the University to the State Government to provide necessary aid but of no consequence. It is also stated on behalf of the respondent petitioner association that in the year 1990 when the pension regulations were introduced, there was only one Agricultural University in the State of Rajasthan, but the State Legislature by its subsequent enactments created two more universities and burden of expenditure of those too has been put with Swami Keshvanand Rajasthan Agricultural University. Beside the above, as per the respondent petitioner association the State Government compelled the University to sign a memorandum of understanding on 19.1.2000 that virtually usurps entire financial autonomy of the University, so much so that University is required to have approval from the State Government for taking any minor step that demands budget allocation. The unwarranted interference of the State with the autonomy of the University has made the University bankrupt and as such the aid of the State is essential for grant of pension to the members of the petitioner association.

7. Heard learned counsels and considered the argument advanced.

8. It is well settled that while dealing with an application for grant of interim relief three things viz. prima facie case, balance of convenience and irreparable loss that may be caused to any of the party in the event of grant of interim order or its denial are prime consideration. The discretion available must be exercised judiciously by the courts. The correctness of the impugned action to get satisfied with regard to eventualities referred above should always be examined on the touchstone of the legality, fairness and public interest. Causing a grave irreparable private injury in the event of denial of interim relief is also an important factor to be kept in mind while considering an application for interim order, but while taking into consideration such eventuality a court have to see legal liability of the party against whom interim order is to be issued.

9. Beside the above, whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition and in normal course the final relief sought for should not be granted at an interim stage. (See State of Uttar Pradesh and Others Vs. Ram Sukhi Devi, and Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, .

10. The prima facie responsibility for making payment of pension to the members of the respondent petitioner association as per provisions of Regulations of 1990 is upon the University through the "pension fund" created as per clause 3(5) of the regulations aforesaid and no liability in this regard is with State Government.

11. So far as memorandum of understanding dated 19.1.2000 is concerned, suffice to mention that it is nothing but an effort to check misuse of the funds made available to the University by the State Government. The memorandum of understanding signed on 19.1.2000 though checks financial autonomy of the University to some extent, but no condition of that in any manner relates to the "pension fund" created under the Regulations of 1990. The fund aforesaid, as apparent from its definition was created by transferring the total accumulated amount of the University contribution in contributory provident fund including the amount of loan taken out of it and interest thereon as on date of commencement of the regulations. It also includes monthly contributions made to it after application of the Regulations of 1990 in respect of such employees who opted it or deemed to have opted the pension scheme.

12. From perusal of the order impugned it is apparent that the direction given by learned Single Bench is to settle equities between the parties and to meet immediate needs of the pensioners to whom pension was not disbursed from last several months. The order takes care of the personal irreparable injury that would have been caused and was causing to the members of the respondent petitioner association due to non-payment of pension. In our considered opinion, while examining this eventuality too the court should have examined prima facie liability of the State Government for grant of aid to the University for payment of pension. The direction given, if would have been for the respondent University,

the position would have been entirely different in view of the fact that as per the Regulations of 1990 prima facie responsibility to pay pension is on it.

13. An important aspect of the matter is that the interim direction has been given after hearing counsels for the parties. The nature of interim direction granted *ex parte* and after hearing the parties stands of two different positions. In an order *ex parte* the court is not supposed to pass a detailed speaking order to satisfy itself with availability of the factors viz. *prima facie*, balance of convenience and irreparable injury that may be caused due to denial of interim order, but an order, if passed after hearing the parties, is a pre-condition for grant of interim direction.

14. From perusal of the order impugned it is apparent that the only factor taken into consideration by learned Single Bench is the personal irreparable injury that caused and would have been further caused in the event of denial of pension to the members of the petitioner association. This factor alone is not sufficient to grant a direction to the State Government for extending aid in a tune of Rs. 8.00 crores. The order as such is not sustainable. However, being already complied, we are not inclined to set aside the same.

15. However, Looking to all the facts of the case we deem it appropriate to issue following directions while disposing of this appeal:--

"1. The aid given to the University in pursuance to the interim order dated 1.10.2014 is to be treated as a loan advanced to Swami Keshvanand Rajasthan Agricultural University, Bikaner;

2. Appellant State of Rajasthan and respondent Swami Keshvanand Rajasthan Agricultural University, Bikaner shall deliberate, as desired by learned Single Bench, to have a fresh and comprehensive policy decision for proper management of pension funds of respondent Swami Keshvanand Rajasthan Agricultural University, Bikaner.

3. The respondent University till having such policy is required to make payment of pension to the members of the petitioner association.

4. The respondent University, if requires financial assistance from the Government of Rajasthan to meet with the pension liability, it may make such request to the State to advance loan. The State shall consider the same sympathetically."

16. The nature of the relief claimed in the petition for writ demands early hearing, thus, we deem it appropriate to request learned Single Bench to provide immediate hearing of the case, if possible.

17. With the directions and observations as above the appeal stands disposed of.