
(2017) 03 AHC CK 0122

In the Allahabad High Court

Case No : Special Appeal Defective No. 1239 of 2009

Sumanpal Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Insurance-Pension Rules (Old Pension Scheme), 1964 — Rule 5(g)

Citation : (2017) 3 ADJ 735

Hon'ble Judges : Tarun Agarwala and Vivek Chaudhary, JJ.

Bench : Division Bench

Advocate : Siddhartha Khare, Ashok Khare, Advocates, for the Appellant; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Vivek Chaudhary, J.—The appellant has filed the present Special Appeal against the judgment of the learned Single Judge dated 10.09.2009 whereby the learned Single Judge has refused his prayer for being covered under the old Pension Rules namely U.P. State Aided Educational Institution Employees Contributory Provided Fund-Insurance-Pension Rules, 1964 (hereinafter referred to as "Old Pension Scheme") on the ground that he has been appointed and joined on the post of Headmaster on 01.04.2008 and the same being a fresh appointment, he would be covered by the New Defined Contribution Pension System prescribed by a Notification dated 28.03.2005.

2. The undisputed facts of the case are that the appellant was appointed as a Assistant Teacher in Sarvokaya Uchchar Madhyamik Vidyalaya, Kakather, Ghaziabad, which is a recognised and aided junior high school and is governed by the provisions of U.P. Basic Education Act, 1972 and U.P. Junior High School (Payment of Salary to Teachers and other Employees) Act, 1978. The appellant continued to work as Assistant Teacher till 30.03.2008 and after his due selection and approval, he was appointed and joined as a Headmaster at Bhartiya Samdarsh Inter College at the junior high school level from 1.04.2008. Thus,

there was no break in service. The appellant admittedly as a Assistant Teacher was covered by the Old Pension Scheme and due deductions were regularly made for the said scheme from his salary. The said scheme was applicable to both the Assistant Teachers and the Headmaster of the institution. Rule 5 (g) of Rules 1964 defined employees as under:

"(Employee" means a permanently employed person borne on the whole-time teaching or non-teaching establishment of an aided institution, excluding- (a) the inferior staff and (b) the ministerial staff of the institutions maintained by a Local Body."

Thus, the employee includes both the Assistant Teachers and the Headmaster.

By a notification dated 28.03.2005 a new Defined Contribution Pension System was introduced. The said New Pension System was effective from 01.04.2005 and was applicable:

"for new entrants to the service of the State Government and of all State controlled Autonomous Institutions and State-aided Private Educational Institutions where the existing pension scheme is patterned on the scheme for Government employees and is funded by the consolidated fund of the State Government."

3. Thus, for educational institutions, the Old Pension Scheme was substituted by the New Pension Scheme. However, clause 1 (i) of the New Pension Scheme provided the coverage as follows:-

"(i) From 1st of April, 2005, the new defined contribution pension system would mandatorily apply to all new recruits to the service of the State Government and of all State-controlled autonomous/Stateaided Private Educational institutions referred to above. However, employees covered by the existing pension scheme whose service would be of less than ten years on 1st April, 2005, may also voluntarily opt for the new pension system in place of the existing pension scheme."

4. Thus, the New Pension Scheme was applicable only on the new entrants to the service. It further gave an option to the employees covered by the Old Pension Scheme whose services were of less than 10 years on 01.04.2005 to voluntarily opt for the New Pension Scheme. Since the appellant was appointed in 1986 and on 01.04.2005 had much more than ten years of service to his credit, the voluntary option was not available to him and he was to compulsorily continue under the Old Pension Scheme. Thus, due deductions were made from his salary from April to August, 2008 as per the provisions of the Old Pension Scheme. However, from August, 2008 the department applied New Pension Scheme treating him to be in new service on the post of Headmaster. In the said circumstances, the appellant filed the present writ petition for a writ of mandamus commanding the respondent to permit him to continue under the Old Pension Scheme.

5. The learned Single Judge treating his appointment as Headmaster of the institution from 01.04.2008 i.e. much after 01.04.2005, dismissed the writ petition holding him to be in a new service.

Rule 1 (i) of the New Pension Scheme clearly states that New Pension Scheme is only applicable to new entrants to the service and not to a person who was already in service but has only changed his post. The appellant was in service as a Assistant Teacher since 1986 and for the purpose of pension, his service as Assistant Teacher was covered by Old Pension Scheme. The said scheme is applicable both to the Assistant Teachers and the Headmaster of the Basic School. Thus, had the New Pension Scheme not come into existence, he would have continued to be covered under the Old Pension Scheme of 1964 even on becoming a Headmaster. Clause 1 (i) of the New Pension Scheme clearly provides that the new Pension Scheme is applicable only to those persons who entered into service after 01.04.2005. The appellant had entered the service for the purposes of pension on 17.02.1986 and only his post had changed from Assistant Teacher to Headmaster of a basic school. Thus, for the pension purpose, he continued in the same service and there is no change in his service. Similarly, he also could not have opted the New Pension Scheme as his service was already of more than ten years on 01.04.2005. Thus, it is only the Old Pension Scheme which would be applicable on the appellant.

In view of the above, the present Special Appeal is allowed and the judgement of the learned Single Judge dated 10.09.2009 is quashed. The writ petition is allowed and the respondents are directed to treat the appellant as covered by the Old Pension Scheme and to make regular deductions and grant benefits to the appellant as per terms of the said scheme.