

(2007) 02 RAJ CK 0114

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 2563 of 2005

Suo Moto

APPELLANT

Vs

Rajasthan University and Others

RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2007) 2 WLN 501

Hon'ble Judges : N.N. Mathur, J;Manak Mohta, J

Bench : Division Bench

Judgement

N.N. Mathur, J.—The Instant petition was registered on the reporting that the University Teacher?s i.e. Professors, Associate Professors, Assistant Professors and teachers in other categories in different Universities in the State of Rajasthan namely Rajasthan University, Jaipur, Jai Narayan Vyas University, Jodhpur, Sukhadia University, Udaipur, Rajasthan Agriculture University, Bikaner, Maharana Pratap University, Udaipur, who are entitle to pension and other retiral benefits on attaining age of superannuation, are likely to be in trouble because Pension Funds of the Universities are drastically squeezing. It is apprehended that very shortly the funds may go dry. The sword is hanging on thousands of distinguished teachers of the Universities.

2. Having noticed the above report, by order dt. 02.05.2005, we reminded the State of Rajasthan of its Constitutional obligation in the field of Higher Education. In response to the notice, the Principal Secretary, Finance and Planning, Government of Rajasthan filed a balance sheet showing the position of pension funds in 12 Universities as follows:

S.No. Name of Universities Balance 1. University of Raj., Jaipur 1536.00 2. University of Kota, Kota 0.03 3. Sanskriti University, Jaipur 1.86 4. MP Agri., University, Udaipur -0.59 5. MLS University, Udaipur 1125.18 6. Bikaner University, Bikaner 0.00 7. National Law University, Jodhpur 0.00 8. Ayurved University, Jodhpur 0.00 9. Rajasthan Agri., University, Bikaner -908.00 10.

MDS University, Ajmer 112.71 11. JNV University, Jodhpur -2157.1 12. VMOU, Kota 34.21 TOTAL -255.71 3. The respondent State of Rajasthan took a plea to the effect that they have nothing to do with the pension funds of the Universities. Each of the University have their own autonomy. Thus, this Court made an observation in its order dt. 01.09.2006 as follows:

The State cannot be permitted to close its eyes in the name of ?University Autonomy?. If the funds are not sufficient with the Universities, the State of Rajasthan owe obligation to pay the pension to the University?s teachers.

4. However, before giving specific directions, we considered it appropriate to obtain comments from the State Authorities. This Court also directed to constitute a Committee to examine the entire issue. Pursuant to the orders of this Court, the State of Rajasthan has issued a Notification dt. 31.08.2006, constituting a Committee to consider the situation of Pension funds of the Universities of the State of Rajasthan and make suggestions for the improvement of the Pension funds. The composition of the Committee is as follows:

1. Addl. Chief Secretary (Development) Chairman
2. Principal Secretary, Finance Deptt. or his nominee Member
3. Commissioner, College Education, Rajasthan, Jaipur Member
4. Sh. Jeevan Lal Mathur, Jodhpur (Educationist)Member
5. Sh. Narsingh Prasad Bhatt (Educationist) Member
6. Officer on Special Duty (Hr. Edu.) Edu. (Gr.4) Deptt. Govt. Secretariat, Jaipur. Member Secretary

5. During the pendency of the petition. we permitted Pensioners Society i.e. JNV Pensioners through its President Dr. B.M. Kothari to intervene. They have submitted written submissions. The submissions are extracted as follows:

(a) That it appears that the State Government is misleading the whole issue by taking the position that there was a stipulation in the pension scheme that the Universities would fund the scheme from their resources. It may however be stated that ?there was no such stipulation in the pension scheme communicated by the Government vide its letter F.3 /36/ Edu /4/ 89 of 16.04.1991. Second, no such undertaking was given by the Syndicate. To our Knowledge the position is not otherwise in other Universities. However if the Government holds the view that there was a stipulation in the pension scheme that Universities would fund the scheme from their resources or if any such undertaking was given by any University, the Government should have produced the relevant papers before the Hon?ble Court, in absence of which the said contention of the Government deserves to be rejected outright.

Government obligation towards payment of Pension.

1. By its letter dt. 16.04.1991 referred to in Para (5a) above the Government

wrote to the Universities in the State that it had decided to introduce Pension Scheme in the Universities w.e.f. 01.01.1990 and asked the Universities to implement the Pension Scheme according to the Rules framed by the Government. Thus it was the Government decision to introduce the Pension Scheme as per rules framed by it. The Universities were simply asked to implement the scheme. That being the position, it is clearly the Government which should bear responsibility for it.

2. The rules made by the Government stipulated that through the existing employees would have the choice to opt either for the Pension Scheme or continue to be governed by the Contributory Provident Fund, those appointed after 01.01.1990 would be governed by the Pension Scheme. For these employees the Contributory Provident Fund stood abolished.

3. That the University had no role to play in formulating the Scheme or making rules there for. The Universities were asked to follow the directions of the Government in this regard, even those which were to prove serious drain on the Pension Fund. In this view it would be futile for the Government to argue that the Universities should fund a scheme formulated by it.

4. The first Statutes of the University were made by the Vidhan Sabha and Contributory Provident Fund was introduced by Statute 33. Later Pension was introduced by the Government in lieu of the Contributory Provident Fund. When the Contributory Provident Fund was in vogue, the Employer's contribution towards Provident Fund was reimbursed in the Block Grant sanctioned to the University. The obligation towards Contributory Provident Fund was thus borne by the Government. On this basis alone it should be the Government's obligation to meet the requirements of pension introduced in lieu of Contributory Provident Fund.

5. Under the scheme of the University Act and Block Grant Conditions, it is necessary to have approval of the Government before any matter which has financial implications can be implemented by the University. This scheme clearly points to the obligation of the Government to meet the expenditures related to matters which are approved by the Government. Otherwise, if the University is to fund any expenditure, why would the Government approval be necessary.

6. So far as the Pension Scheme is concerned it was the Government which asked the Universities to introduce Pension with retrospective effect, and it was the Government which framed the Pension Regulations and GPF Regulations. No mention was made in this order that the financial obligation of the scheme or any part thereof will be that of the University concerned. In fact it could not have been so, because the Pension Regulations were imposed by the government. If it was the University which was required to meet the financial obligations of the Pension Scheme, the Govt. had no business to ask the Universities to introduce the Pension Scheme, and impose Pension Rules.

7. That in this connection Hon'ble Court's kind attention is drawn to the order of

the Rajasthan High Court dt. 30.08.1994 in the case DB Civil Writ Petition No. 115/1993, Dr. Amrit Lal Gandhi v. The JN Vyas University Jodhpur. The petitioners sought to make Pension applicable from 01.01.1986 instead of 01.01.1990. It has been mentioned in the order of the High Court that the State in its reply submitted that the 'State is fully empowered to control the finances of the autonomous body'. Further disputing the claim of the petitioners to make the Pension Regulations effective from 01.01.1986 instead of from 01.01.1990, it was stated by the Govt. that 'the justification of the cut off date is wholly economic'. It is clear from the above that the Government admits that financial obligation related to the pension is wholly of the Government.

8. Subsequently in the order of the Supreme Court dt. 10.01.1997 in Civil Appeal No. 9710-9717/1995 filed in the Supreme Court by the State of Rajasthan in the above and other such cases, the Supreme Court has noted that 'the Government has stated in its affidavit before the High Court that the justification of the cut off date of 01.01.1990 was wholly economic'.

9. That the above clearly shows that it is admitted by the Government that the economic liability regarding pension is that of the Government. It may be mentioned that the writ petition was not contested by the university, but was contested only by the Govt. If in Government's view the Pensionary obligations were to be met by the Universities, it had no business to even contest the petitions.

Government Policies have led to the present precarious position of the pension fund.

10. That from newspaper reports it appears that the Government has in some way held the Universities responsible for mismanagement of Pension Funds and thereby imply that the mismanagement is in someway responsible for the precarious position of the Pension Fund. This contention has absolutely no basis.

11. That it is the Government functionaries, the Registrar and the Finance Officer who are responsible for ensuring proper management of funds and adherence to Block Grant Conditions. And then the Govt. has been given power by the act to recover expenditures made in violation of Rules. In any case the Pensioners are not in any way responsible for mismanagement of funds, if at all such mismanagement is there, and can therefore not be made victims of such mismanagement.

12. That in fact it is the Government's obstinacy, shortsightedness and wrong policies that are directly responsible for the precarious state of Pension Funds, for the following stated reasons.

(a) That according to the rules framed by the Government, the Pension is computed on the total emoluments drawn by an employee at the time of retirement. Dearness Allowance as admissible on the amount of pension drawn by a pensioner is further payable at rates sanctioned by the Government from

time to time in future. However, the Pension Fund is constituted by the Employer's contribution to the PF calculated only on the Basic pay. From its very inception by the Government therefore, the Pension Fund, carried seeds of future depletion. It is surprising that the Govt. could have been so shortsighted as not to see this basic deficiency in the scheme.

(b) After the Pension Regulations came into force, it was realized by the University that if the PF was calculated on the basic pay only, it would very soon become difficult to meet the pensionary obligations. The University therefore passed an amendment providing for PF contribution to be calculated on pay+ DA w.e.f. 20.03.1991 (Res. 33/97 dt. 19.04.1997 of the Syndicate and Res. 8/98 of the Senate). But the Government never gave its approval to the amendment despite a long correspondence between the University and the Govt. and various representations from the Teacher's Association. The Government raised objections regarding retrospective affectivity (although it had itself made the Pension Rules from a retrospective date) and sought information on financial implication time after time. Even after the University made the amendments prospective and also submitted details of financial implications, assent was not received. It was also explained to the Govt. that the matter was of principle and if it was desired to meet the pensionary obligations, it would be necessary to amend the PF statute to provide for adequate Pension Fund. It was also submitted to the Government that there was no reason to deny PF contribution on pay + DA to the Universities when the same was being allowed by the Government to the teachers of the private colleges vide its order 11/22 Edu 5/88 dt. 20.03.1991. In fact the University had given retrospective effect to the revision of PF calculation on Pay + DA in accordance with this facility having been given by Govt. to the teachers in private colleges w.e.f. 20.03.1991. It may also be mentioned that as early as in 1989 an amendment was passed by the University that Providing Fund contribution by the University be computed at the rate of 105 of the Pay. Even this small raise in the PF contribution was not agreed by the Government. In this connection it will be very relevant to refer to the letter dt. 01.06.2000 written by the V.C., Jai Narayan Vyas University, Jodhpur to the Government followed by another letter dt. 06.02.2002 fervently arguing for calculation of PF on Pay + DA or @ 12% of maximum pay. But the Govt. did not agree. It did not even agree to the recommendation of the Committee appointed by Coordination Committee in its meeting held on 23.05.2001 that Pension contribution be calculated on Pay + DA or @ 12 per cent of maximum pay. It is pertinent to note that the PF still continues in this University to be calculated at 9% of Basic Pay. The Government should therefore take full responsibility for the depletion of the Pension Fund on this account.

(c) It may also be appreciated that due to policy of the Government there has been no recruitment in the University, neither in the teaching nor in non teaching, staff for the last 8-9 years. Out of about 50 posts of Professors 49 are vacant, out of nearly 125 posts of Readers some 97 are vacant and out of about 500 post of Lecturer nearly 200 are vacant. Hence the number of persons

pertaining to whom the employer's contribution to PF is diverted to the Pension Fund has gone down seriously.

(d) That the Government had directed the Universities in the State to count services rendered in Government or in other Universities for computing pension. This provision seriously increased the outgo of pension both in terms of the per month pension amount and the commutation amount. In many cases the amount deposited by an employee in the pension fund in lieu of getting his services in other institutions counted was almost offset by the increased commutation only. The increased pension was an additional burden. This provision made by the Government, which the Universities had no option but to follow, caused a serious strain on the already depleting Pension Fund. There are nearly 100 cases in the JN Vyas University in which by counting past services the pension and the commutation was revised.

Suggested Solutions

13. There is a huge deficit in the Pension fund of the JN Vyas University, Jodhpur. As per statement given by the University the total deficit was 8 crore in 2004-05. The problem therefore needs to be attended to by concrete measures and not by cosmetics formulations.

(a) That at this stage it will be futile to revise the Provident Fund contribution as a percentage of Pay + DA or to 12% of the maximum pay, because this is not going to substantially alter the position now, especially because due to the policies of the Government the number of contributions to PF is becoming less and less and the number of pensioners is rising. No recruitment has been made for the last 8 years or so and if recruitment is made now, the new appointees will fall under the new pension scheme and will not be subscribers to the existing pension fund.

(b) That it will also be futile to suggest that some percentage of extra income earned by the employees as examination remuneration, overtime allowance etc. be diverted to the Pension Fund. This suggestion is nothing more than a cosmetic device with no relevance to meeting the demands of pension obligations.

(c) It will also not help to suggest that University should augment its income by running vocational, self sufficiency courses etc. In fact the University needs money even for its own regular academic and infrastructural needs and if some income is generated by way of vocational or self sufficiency courses, the same will be required for the above needs. In any case for a University like Jodhpur, rather for any other University in the State, the money thus generated will hardly be enough to meet the rising demands of pension. It may be mentioned in this connection that this University was asked by the Government to deposit the savings (nearly 2.5 crores) of the PTET Entrance Examination with the Government.

(d) The Govt. has lost enough time. If the Provident Fund contributions were

revised as demanded by the University w.e.f. 20.03.1991 or from the actual date of the adoption of the amendment for computing PF on Pay + DA and other steps had also been taken to augment the pension fund, the situation might have been different. Now these steps will not at all be enough.

(e) Since the Pensioners Society is constituted by the retired employees of the JN Vyas University, we have spoken of the condition and situation pertaining to this University. But the situation of the pension fund is precarious both in the Rajasthan University and ML Sukhadia University, Udaipur. Then while it may appear that there is no problem at present in the newer Universities, the fact is this is going to last only a few years. As years advance and the number of pensioners increase and those contributing to pension fund decrease, the situation will become the same as it exists in Jodhpur today.

(f) The only alternative now left for the Government is to own its obligation to meet the pensionary needs of the University by contributing directly to the Pension Fund or by taking over the responsibility of payment of pension. There is no other option. The Government suggestion as reported in newspaper that the pension scheme be reviewed and certain benefits be deleted deserves to be rejected outright, the suggestion is to our view bad-in-law and faith. The Supreme Court in its various judgments has held that pension is not a grace, it is what has to be paid to the employees as a matter of his right for the services performed.

6. It was submitted that the teachers of the Universities cannot be deprived of pension on the ground of mismanagement in the Universities for the simple reason that the University is managed by the Vice Chancellor, who is the appointee of the State Government. The other two important functionaries of the Universities are the Registrar and the Financial Advisor or the Accounts Officer. They are also the appointees of the State Government. All the Universities are functioning under the control and supervision of the Chancellor, who is the Governor of the State. Teachers have nothing to do in the financial mismanagement of the University.

7. The term 'Pension' has been defined in various enactments. Article 366(17) of the Constitution of India defines 'pension' as under: '366(17) 'Pension' means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable; a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto of subscriptions to a provident fund? Thus, pension is a periodical payment made by an employer to his employee in consideration of the services rendered. Pension can be either contributory or otherwise depending upon the mode provided in the Statute.

Right to Pension:

The grant of pension is considered to be a welfare measure providing for livelihood for an employee who has rendered satisfactory qualifying service under

an employer. It is the obligation of the State to make effective provision for sanctioning inter alia public assistance in old age. Article 41 of the Constitution of India obliges the State to do so. Article 41 of the Constitution of India reads as under:

41. Right to work, to education and to public assistance in certain cases- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases unemployment, old age, sickness and disablement, and in other cases of undeserved want.

8. In various decisions, the Hon^{ble} Supreme Court has held that right to receive pension is a statutory right and amounts to property within the meaning of Article 19(1)(f) of the Constitution of India as it stood and now Article 300A of the Constitution of India.

9. The Constitution Bench of the Hon^{ble} Supreme Court in the case of Deokinandan Prasad Vs. The State of Bihar and Others, held as under:

30. We are not inclined to accept the contention of the learned Counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The rules, we have already pointed out, clearly recognize the right of persons like the petitioner to receive pension under the circumstances mentioned therein.

31. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh Vs. Union of India, It was held that such a right constitutes ? property? and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh ILR (1965) P&H 1 approved the decision of the learned Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is ?property? within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as ? property? cannot possibly undergo such mutation at the whim of a particular person or authority.

32. The matter again came up before a Full Bench of the Punjab and Haryana

High Court in *K.R. Erry v. The State of Punjab* ILR (1967) P&H 278. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right of superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judge on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand to consider the question whether before taken action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant.

10. In yet another case of *D.S. Nakara and Others Vs. Union of India (UOI)*, has considered the object of making provision for pension and has also held that the provision relating to grant of pension is required to be interpreted liberally. This judgment was considered in subsequent decisions and the same has been distinguished in holding that the same has no application to the fixation of cut off date for grant of pensionary benefits to the optees of provident fund. However, in all other respects, it has been followed till date. Reference be also made to *Krishena Kumar and Others Vs. Union of India and others*,

11. There is yet another judgment of Hon^{ble} Supreme Court which though not on pension but throws light on the approach to be adopted while considering the claim of employees for pension. This is the judgment in the case of *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, are relevant.

12. In the case of *Som Prakash Rekhi v. Union of India and Anr.* reported in , the Hon?ble Supreme Court has laid down the parameters of judicial review with reference to Part-III and Part-IV of the Constitution of India in the matter of determination of pensionary rights.

REGARDING FINANCIAL IMPLICATIONS:

13. In the case of *Subrata Sen and Others Vs. Union of India and Others*, the Hon?ble Supreme Court, while applying the decision in the case of *D.S. Nakhara*, held that once a pensionary scheme is introduced and revised, no discrimination can be made amongst the pensioners. The defence of non-availability of the amount in the pension fund was rejected. Paragraphs 14, 15, 16, 17 and 18 are relevant.

14. In the case of *Air India Employees Self Contributory Superannuation Pension Scheme Vs. Kuriakose V. Cherian and Others*, , the Hon?ble Supreme Court again considered the question of award of annuity and held that once it was agreed to pay the annuity, no change can be made in the amount of entitlement of the employees. Paragraphs 48 to 52 are relevant.

15. In the case of *Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others*, , though the question of regularization of the employees was involved, the Hon?ble Supreme Court held that it was obligatory duty of the State to make available adequate funds to the University to fulfill its obligation enshrined by Part-III and Part-IV of the Constitution of India. Paragraphs 23,31 and 35 are relevant.

16. Today, the case is listed on the application filed by the State Government. It is averred that the report of the Committee constituted under the order of the Court is under consideration of the State Government. It is also submitted that the information given by the Universities are incomplete and some more time is required to collect the necessary information. Reference has also been made to the meeting of the Vice-Chancellor?s Co-ordination Committee and the Draft Model Pension Rules. It is prayed that some more time may be given to the State Government to submit the report to take appropriate decision.

17. Considering all the facts and circumstances of the case, we are of the view that as the report of the Committee is still pending with the Government for consideration, it will be premature to adjudicate on the issue. Consequently, we dispose of the writ petition with hope and trust that the State Government will consider the entire issue in right perspective. If the University Teachers or Pensionary Society does not feel satisfaction with the decision of the State Government in that regard or there is a delay in taking the decision, it will be open for them to approach this Court by way of filing a fresh writ petition. We make it clear that the writ petition is disposed of without prejudice to the rights and contentions of the respective parties, before appropriate forum and observation made in this order will not have binding reflection in any prospective proceedings.