

(2014) 07 MP CK 0109
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 67 of 2014

The Principal, Sainik School

APPELLANT

Vs

Rajan Bandiwar

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Citation : (2014) 07 MP CK 0109

Hon'ble Judges : Rajendra Menon, J;Alok Verma, J

Bench : Division Bench

Advocate : Mrigendra Singh, Senior Advocate and Amit Khatri, Counsel,
Advocate for the Appellant; M.P.S. Chuckal, Counsel, Advocate for the Respondent

Judgement

1. In this appeal under section 2(1) of the MP Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, challenge is made to order-dated 1.10.2013, passed by the learned Writ Court in W.P(S) No. 142/2006.

2. Facts, in nut-shell, go to show that respondent Dr. Rajan Bandiwar was working as a Master in Chemistry in Sainik School, Rewa. He filed the writ petition on 2.1.2006, with a grievance that the Sainik School is a society registered the Society Registrikaran Act, 1860, and the employees of the school were entitled to Contributory Provident Fund under the CPF Scheme with effect from 1.4.1988. Subsequently, the Governing Body of the Society decided to apply the Pension Scheme to employees of the Society, as is applicable to the employees of the Central Government and, therefore, vide communication dated 3.3.1989 employees who were in service of the Sainik School Organization as on 1.4.1988 were given a right to exercise their option either for continuing with the existing CPF Scheme or to switch over to the Pension Scheme, alongwith the GPF. Accordingly, a School Routine Order (SRO) dated 3.3.1989 was issued. As far as Dr. Rajan Bandiwar is concerned, it is stated that he could not opt for the Pension Scheme at that point of time, but subsequently, another communication was received whereby the Board of Governors of the Sainik School Society decided to give one fresh chance to the employees to exercise their option to

switch over from the CPF Scheme to the Pension Scheme on or before 31.1.1992. It is the case of Dr. Rajan Bandiwar that after this letter was issued on 22.7.1991 by the authorities of the Sainik School, he submitted a representation on 22.3.2001, and forwarded certain further request, but the same was rejected on 24.8.2001 and again on 27.7.2001. However, he kept on representing and finally filed the writ petition in the year 2006.

3. In the writ petition, it was his contention that the communication with regard to extension of cut-off date for submitting the option i.e.. 31.1.1992, vide letter dated 22.7.1991, was never brought to his notice, it was not intimated to him and without proper intimation of this second option, as his right to switch over from the CPF Scheme to the Pension Scheme was adversely affected, he filed the writ petition. He claimed benefit in accordance to a judgment rendered by the Himachal Pradesh High Court in Writ Petition No. 1712/2008 (J.P. Vashishtha Vs. Sainik School Society and another). The Himachal Pradesh High Court in the aforesaid case held that if an employee has not been communicated about the second option available, which was to be exercised upto 31.1.1992, benefit was granted to such of the employees and accordingly basing his claim on the said judgment, the writ petition was filed. The writ petition having been allowed, this appeal by the Sainik Society.

4. Shri Mrigendra Singh, learned Senior Advocate for the appellants, argued that the only reason given by the learned Single Bench for allowing the writ petition of the respondent/petitioner was that the communication dated 9.12.1991, wherein the second option was permitted to be resorted upto 31.1.1992, was not communicated to the respondent/petitioner employee and basing its finding on paragraphs 9, 10, 11, 12 and 16 of the judgment in the case of J.P. Vashishtha (supra), the writ petition was allowed. It is stated that the judgment in the case of J.P. Vashishtha (supra) was reconsidered by the Himachal Pradesh High Court in an LPA filed before the Division Bench; and, the Division Bench has set aside the order of the Single Bench passed on 26.7.2011 and, therefore, now in the light of the subsequent judgment of the Division Bench of the Himachal Pradesh High Court, no benefit can be extended to the employee.

5. Learned Senior Advocate argued that the contention of the employee that every individual should be noticed about the extension of time and the availability of second option is rejected by the Division Bench and as the learned Single Judge has based its judgment solely on the law laid down in the case of J.P. Vashishtha (supra), which is no more good law, interference into the matter is sought for.

6. Ms. M.P.S. Chuckal, learned counsel for the respondent/employee, submitted that the judgment in the case of J.P. Vashishtha (supra) is distinguishable and she argues that in paragraph 21, the Himachal Pradesh High Court has clearly held that the judgment of the Division Bench relied upon by Shri Mrigendra Singh will not apply to cases of employees who have retired like the present petitioner. She tries to justify the same by referring to paragraph 21 of the judgment in LPA

No.682/2011 and various other judgments, decided by a common order passed on 17.6.2014. That apart, learned counsel submits that as the communication of the letter dated 22.7.1991 giving a second option upto 31.1.1992 was never communicated to the respondent/employee, the employee is entitled to the benefit and in granting the benefit the learned Single Judge has not committed any error.

7. We have heard learned counsel for the parties at length and perused the records.

8. If the order passed by the learned writ Court on 1.10.2013, in the writ petition in question, is analysed, it would be seen that the learned writ Court has found that the circular dated 9.12.1991 ? Annexure P/32 providing a second chance to the employees to exercise their option upto 31.1.1992 was never communicated to the respondent/petitioner employee and placing reliance on the judgment in the case of J.P. Vashishtha (supra), the writ petition has been allowed. In paragraph 7 of the judgment, the learned Single Judge has reproduced the contention of the parties and from paragraph 9 onwards, the entire judgment of the Single Bench of the Himachal Pradesh High Court is reproduced and by holding that notice of Annexure P/32 was not conveyed to the employee and due to lack of information the petitioner/employee could not exercise his valuable right of option, the petition has been allowed. It is clear from the judgment of the learned Single Bench that the Single Bench has allowed the writ petition only because of the judgment rendered by the Himachal Pradesh High Court, in the case of J.P. Vashishtha (supra).

9. However, the judgment in the case of J.P. Vashishtha (supra), which was originally rendered by a Single Bench, has been reconsidered by a Division Bench in LPA No.682/2011 [Sainik Schools Society and another Vs. J.P. Vashistha] alongwith nine other cases; and, by a consolidated order passed on 17.6.2014, it has been held that individual notice to each employee is not necessary. All the employees are in service and they would be knowing about the rights available to them and the option to be exercised and similar contentions advanced have been rejected, and the principle laid down by the Single Bench of the Himachal Pradesh High Court has been over-ruled and set aside. In paragraphs 19 and 22, the learned Division Bench of the Himachal Pradesh High Court has dealt with the matter in the following manner:

?19. We are afraid that we cannot persuade ourselves to agree with the observations and findings recorded by the learned Single Judge. The contents of the letter dated 5.3.2002 could not have been read in isolation without taking into consideration the cumulative effect of all the facts and surrounding circumstances. The learned Single Judge completely missed out on the fact that majority of the employees and officials of the Appellant No.2 had in-fact exercised their option within the stipulated time which would not have been possible in case they had not been informed correctly about the scheme.

20. xxx xxx xxx xxx

21. xxx xxx xxx xxx

22. Once it is not disputed that the writ petitions were in service at the time when the relevant SRO had been issued then there was no requirement of the scheme that the school would be required to give individual notices to the writ petitioners for exercising their option for the pension scheme and also for asking the writ petitioners to refund the employees contribution of CPF at that stage. Moreover, when the notice or knowledge of the pension scheme can be reasonably inferred or gathered from the conduct of the writ petitioners in the ordinary course of business and from surround circumstances, then it would constitute sufficient notice in the eyes of law. ???

10. Thereafter, placing reliance on various judgments of the Supreme Court namely - PEPSU Road Transport Corporation, Patiala Vs. Mangal Singh and Others, , rejected similar contentions as has been raised by the employee herein and held that individual communication and instruction to every employee is not required. In paragraph 29, the final conclusion has been drawn in the following manner:-

?29. Thus, from the analysis above and what can otherwise be reasonably inferred and gathered from the conduct of the writ petitioners and also from the surrounding circumstances leads us to a definite conclusion that the writ petitioners had full and complete knowledge regarding the true import of the instructions issued by the appellants from time to time and yet failed to exercise their option within the cut off date and the findings to the contrary recorded by the learned Single Judge are therefore not sustainable and are accordingly set aside.?

11. From the aforesaid, it is clear that the basis on which the writ petition filed by the employee/petitioner was allowed is wiped out and set aside by the learned Division Bench of the Himachal Pradesh High Court. The reasons and the ground given by the learned Division Bench for taking the aforesaid decision, particularly to the effect that when the employees are in service an inference can be drawn about their knowledge of the existing system, is a reasonable finding and we see no reason to take a different view from that.

12. In this case also till 2006 i.e.. upto filing of the of the writ petition, the respondent/employee was in service and under normal circumstances when many of the employees working alongwith him had switched over to the Pension Scheme and when they were aware of the second option being available, it cannot be assumed that the respondent/employee was not knowing about the circular ? Annexure P/32.

13. That apart, claim of the employee/respondent was rejected in the year 2001 and it is only after a period of about 5 years after making repeated representations that he filed the writ petition. The question of delay was also completely overlooked by the learned writ Court. Taking note of all these circumstances, we are of the considered view that the writ Court has committed

an error in dealing with the matter and now when the Division Bench of the Himachal Pradesh High Court has set aside the judgment on which the learned writ Court had granted the relief, there is no reason for granting any relief to the respondent employee.

14. Accordingly, this appeal is allowed. The judgment rendered by the learned Single Bench in WP(S) No. 142/2006 is set aside and the writ petition dismissed.

15. The appeal stands allowed and disposed of.