
(2003) 04 PAT CK 0003
In the Patna High Court
Case No : L.P.A. No. 856 of 2002

The State of Bihar and Another

APPELLANT

Vs

Gopal Lall and Others

RESPONDENT

Date of Decision : 15-04-2003

Acts Referred:

Bihar State Universities Act, 1976 — Section 34, 36

Citation : (2003) 3 PLJR 119

Hon'ble Judges : R.S. Garg, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Azfar Hassan, for the Appellant; Prabhu Nath Rai and M.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

1. The appeal is barred by limitation.
2. After having heard learned Counsel for the parties and taking into consideration the averments made in the limitation petition we are satisfied that sufficient ground has been made out to condone the delay in filing this appeal. Accordingly, the delay in filing this appeal is condoned.
3. The State of Bihar is the Appellant against the order dated 16.12.2001 passed by the learned Single Judge whereby he has allowed the writ application being CWJC No. 6780 of 2001 [reported in 2002 (1) PLJR 445] filed by writ Petitioner Respondent No. 1 holding that he is entitled to get all pensionary benefits as per Appendix-A of the Triple benefit Scheme which has already been accepted by the University and given benefit to him and the action of the University in stopping the same is illegal and further directing the University authorities to revive the pensional benefits under Appendix A of the aforesaid scheme and all arrears of pensionary benefits together with interest at the rate of 9% per annum should be paid to the writ Petitioner-Respondent No. 1 from the due date till the date of realisation.

4. Admitted fact is that writ Petitioner-Respondent No. 1 Gopal Lall was appointed on 14.7.1947 as Lecturer in R.K. College, Madhubani which was affiliated to Old Patna University. On 21.11.1955 he joined as Lecturer in Old Bihar University and continued as such till 20.4.1975 and on 21.4.1975 through the process of selection by the Bihar Public Service Commission he was appointed as Professor and Head of the Department of Commerce in L.N. Mithila University, Darbhanga. On 1.12.1986 he superannuated.

5. In terms of the provisions of the Bihar State Universities Act, an Statute for the grant of retirement benefits to employees of the Bihar/Ranchi/Bhagalpur/Magadh/L.N. Mithila/K.S.D. Sanskrit Universities was framed and was approved by the Chancellor in terms of the provisions of the aforesaid Act and came into force on 14th November, 1980. It provided three alternative schemes to the teachers and other whole time employees belonging to the teaching and non-teaching staff of the Universities as well as employees of the Constituent colleges who joined the service on or before 1.4.1972. Scheme No. (a) was General Provident Fund-cum-Pension-cum-Gratuity Scheme (given in Appendix-A). Scheme No. (b) was Contributory Provident Fund-cum-Gratuity Scheme in which employer's contribution to Provident Fund shall be limited to 8% of pay of the employee (given in Appendix-B) and Scheme No. (c) was Contributory Provident Fund only, in which the employer's contribution shall be 10% of pay of the employee.

6. Article 3 of the Statute contained a provision with regard to application of the Statutes. Article 4 contained a provision with regard to exercise of option, according to which all the employees to whom Articles of the statute is applicable shall exercise their option within three months from the date of notification and option once exercised shall be final. Article 5 contained a provision with regard to allowing retirement benefit to the employees in respect of past service. However, it was made clear that the employees will not be allowed to change over from the scheme which they have already opted in the old University.

7. The said Statute was amended on 25.11.1982 and the relevant amended provisions of the Articles 4 and 5 are reproduced below.

4. Exercise of option. - All the employees to whom these Statutes apply and who joined service in the University Constituent Colleges before the 1st April 1978 and are still in service or have retired on or after 1.4.72 and are alive on the date of notification of these rules have to send the option in writing to the Registrar within three months of the date of such notification. The option once exercised shall be final.

5. (i) Transfer/appointment of (sic) employee from the service of any other University of Bihar to this University.-Employees joining the University after leaving the service of another University of Bihar on transfer or appointment shall in the event of the permanent absorption in the University be allowed, if the employee so wishes, retirement benefits in respect of the previous service

rendered under the old University provided that there has been no break in service of the employee during the period of his qualifying service and the service rendered is qualifying as per Clause 2(1). They will, however, not be allowed to change over from the scheme which that have already opted in the old University.

8. The University issued a letter on 1.2.1980 inviting option from the employee to whom they said Statute was applicable. The writ Petitioner/Respondent No. 1 and for the benefit of scheme No. (a) in the period prescribed under Article 4 the Statute. Thereafter the Statute was (sic)ended as stated above and in pursuance of the amended provision the writ Petitioner-Respondent No. 1 opted for the (sic)efit of Scheme No. (b), i.e. Contributory Provident Fund-cum-Gratuity Scheme on (sic)2.1983 within the prescribed period pro(sic) in the amended Article. Thereafter the writ Petitioner-Respondent No. 1 super-(sic)uated as stated above on 1.12.1986 to took the benefit under scheme No. (b). Subsequently, it appears that the writ Petitioner-Respondent No. 1 moved before the University for shifting him from Scheme No. (sic) to scheme No. (a) and that appears to have been allowed without specific order of the University. On 16.1.1998 on the order the Vice-Chancellor of the University, the registrar again ordered for fresh option (sic) the teaching and other staffs of the University and the writ Petitioner-Respondent No. 1 opted for the benefit under Scheme No. (a) and appears to have re(sic)ned the retirement benefit under Scheme (sic) (b) after an order was passed for (sic)ting the pensionary benefit under scheme No. (a) in 1991. It appears that large number University"s Professors were allowed to change their option as and when requested them. The matter came to the notice of the Chancellor of the University and vide order dated 13.10.2000 the Office of the chancellor informed the University that af(sic) the expiry of the period fixed for exercised option under Article 4, the University (sic) no power to allow the employees to change their option and as such steps are wrongly taken and accordingly directed it to take appropriate action in this regard and thereafter benefit under Scheme No. (a) given to the writ Petitioner-Respondent No. 1 was stopped. Hence the writ application out of which the appeal arises.

9. At this stage it is to be mentioned that at no point of time the writ Petitioner-Respondent No. 1 was posted in Magadh University. After 1975 he remained in the L.N. Mithila University and he exercised both the options while posted in the said University. The learned Single Judge after hearing the parties allowed the writ application and held that the case of the writ Petitioner-Respondent No. 1 will be governed by Article 5 of the Statute and not by Article 4 of the Statute and once his option under Scheme No. (a) has been accepted while he was posted in Magadh University, the same cannot be changed under scheme No. (b) by the L.N. Mithila University and thus the second option given by the writ Petitioner-Respondent No. 1 was nullity and he was entitled to get the benefit under scheme No. (a) as per his previous option.

10. The un-amended provision of the Statute provided that once option is

exercised it shall be final. Thereafter the Statute was amended and it was made retrospective from the date of operation of the earlier Statute and Article 4 and the note appended to Article 8 of the Statute clearly provided that the option referred to in Article 4 of the Statute may be exercised afresh by the person concerned within 90 days from the date of approval of these amendments by the Chancellor. Thus, a person who has already opted under the un-amended Statute was given fresh opportunity to change his option within the period prescribed therein.

11. Admitted fact is that the Appellant exercised the option prior to amendment of the Statute and again when Article 4 was amended a fresh opportunity was given. He opted for the benefit under scheme No. (b) instead of scheme No. (a) which was opted by him earlier and the same was accepted by the authority and thereafter he superannuated and took the benefit of the same. The case of the writ Petitioner-Respondent No. 1 is thus covered by the amended provision of Article 4 which clearly states that option once exercised shall be final. There is no question of applicability of Article 5 in the case of the writ Petitioner-Respondent No. 1, as at no point of time he was posted in the Magadh University and the said fact is admitted by the counsel appearing for the writ Petitioner-Respondent No. 1 during course of argument. Both the options were exercised by him while he was posted in L.N. Mithila University. The learned Single Judge, thus, in our view, erred in law in holding that the case of the writ Petitioner-Respondent No. 1 is covered by Article 5 of the Statute.

12. The Statutes framed by the University become effective after approval of the Chancellor in terms of the provisions contained under Sections 34 and 36 of the Bihar State Universities Act and according to the provisions of the Statutes the option given by the person concerned within the prescribed period shall be final. The Vice Chancellor of the University has no power to amend/modify the provisions of the Statute, nor has he any authority of law to permit the employees to change their option from one scheme to other contrary to the provisions of the Statutes. Thus, the option asked by the Vice-Chancellor for change of option which has been allowed in favour of the writ Petitioner Respondent No. 1 was wholly illegal and unauthorised action and the same will not confer any benefit on the writ Petitioner-Respondent No. 1. The Chancellor has power to issue direction to rectify the mistake committed by the University contrary to the provisions of the Statutes. A learned Single Judge of this Court in the case of Prof. (Dr.) Ram Nirajan Kedia and Others and Parashuram Singh and Others Vs. The State of Bihar and Others has considered the similar matter arising out of the same University and held that the letter of the Chancellor date 13.10.2000 was valid one and once the option has been exercised under Article of the Statute the same cannot be allowed to change. We approve the view taken by the learned Single Judge.

13. In view of the admitted fact that writ Petitioner-Respondent No. 1 has already opted for the benefit under Scheme No. (b) in 1983 and thereafter he took

the benefit of the scheme after superannuation in 1986, he could not be allowed to change his option at his own sweet will as and when he liked. The direction given by the Vice-Chancellor to change the option was illegal and impermissible in law and as such on that ground the writ Petitioner-Respondent No. 1 cannot take the benefit of Scheme No. (a).

14. Accordingly, we hold that the vice-Chancellor has no power to change the option in terms of the Statutes and as such the writ Petitioner-Respondent No. 1 can be allowed to change his option for scheme No. (b) which has attained fine to scheme No. (a).

15. In the result, the appeal is allow and the order passed by the learned S(sic) Judge is set aside.