
(2015) 12 AHC CK 0092
In the Allahabad High Court
Case No : Special Appeal No. 123 of 2013

U.P. Senior Basic Shikshak Sangh Sindhi Vidyalaya	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2016) 1 ADJ 667

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : G.C. Verma, for the Appellant

Final Decision : Dismissed

Judgement

1. The appellant - association through its Secretary is representing the cause of Teachers of recognized Senior Basic Schools (Junior High Schools) privately managed and aided by the State Government for setting aside the judgment of the learned single Judge dated 4.1.2013 dismissing the writ petition of the appellant wherein the appellant had made a prayer for quashing of the Government Orders dated 1.4.2015 and 8.4.2009 whereby the State Government, launching the new pension scheme, had made it applicable to the employees of all schools that came under grant-in-aid after 1.4.2005 and as a consequence thereof denied the benefit of the applicability of the previous scheme and its savings to such teachers, who, even though had been appointed and confirmed prior to 1.4.2005, were not teachers in Schools that were receiving grant-in-aid on the said date. The teachers of such institutions, which were brought under the grant-in-aid after 1.4.2005 even though appointed prior to the said date, were not extended any benefit of option of previous services being counted as clarified by the impugned Government Order dated 8.4.2009.

2. At the outset it may be put on record that prior to the enforcement of the new pension scheme dated 1.4.2005, the U.P. State Aided Educational Institution Employees Contributory Provident Fund Insurance Pension Rules w.e.f. 1.10.1964

were governing the benefits available to teachers of aided institutions.

3. The appellant had challenged the said action as arbitrary and violative of Article 14 of the Constitution of India on the ground that this was being done on account of a policy decision taken by the State Government and promulgation of the new pension scheme notified on 28.3.2005 effective from 1.4.2005 for which necessary amendments were also made in the General Provident Funds (Uttar Pradesh Amendment) Rules, 2005. This brought about the creation of two classes of recipients under the new scheme even though they were appointed regular teachers prior to 1.4.2005, the only difference being that one, who were appointed in an aided institution and the other whose cause is being espoused were appointed in an institution that come under aid after 1.4.2005.

4. The appellant has urged that the subscription to contributory funds was prohibited in respect of such employees who had entered into service on or after 1.4.2005. This was in relation to government servants only was on account of the entry in service after 1.4.2005. This amendment in the rules, therefore, did not impose any distinction in respect of teachers of aided institutions on the ground of aid being received before or after the cut off date 1.4.2005.

5. The petitioner - association is espousing the cause of such teachers who had already entered into service and had been confirmed prior to 1.4.2005 and had been working since long but their institution was brought under aid after 1.4.2005.

6. Accordingly, it was contended before the learned single Judge that the cut off date would be applicable provided the teacher had not entered into service before 1.4.2005 and not otherwise. The appellant urges that this cause is for all teachers who had already entered into service prior to 1.4.2005 which fact has not been appreciated correctly by the learned single Judge.

7. While implementing the policy in respect of teachers of aided institutions, as in the present case, a clarification was issued on 8.4.2005 that the new pension scheme prohibiting such subscription to the contributory funds in the case of such State aided institutions would apply to the institutions that have been brought under the grant-in-aid after 1.4.2005. Thus, a teacher, even though appointed and confirmed and in regular services prior to 1.4.2005 was not entitled to make any contribution under the new scheme as per the option under the then existing scheme, if the institution was brought under the grant-in-aid scheme after 1.4.2005.

8. This dispute, therefore, is confined in relation to such teachers, who were in regular service prior to 1.4.2005 but whose institutions were brought under the grant-in-aid list after 1.4.2005.

9. The facts as disclosed indicate that vide Government Order dated 2.12.2006 about 1000 Junior High Schools were brought on the grant-in-aid w.e.f. 1.12.2006. Prior to this, such schools were unaided but were recognized. It is in

respect of such teachers, who were already appointed and confirmed as regular teachers in these institutions without any benefit of grant-in-aid, that the present cause is being espoused.

10. The learned single Judge on an appreciation of the relevant Government Orders and the Scheme came to the conclusion that Article 14 has not been violated inasmuch as the institutions, to which such teachers belong, came under the grant-in-aid only after 1.4.2005 and the same was held to be a rational classification. It was also held that even if such teachers are not new entrants, their institution was not under the grant-in-aid on the date when the new scheme was promulgated and, as such, these teachers would be entitled only to the benefit of the new scheme and any benefit extended under the old scheme would not be available as the Members of the petitioner - association were not found to have been qualified or eligible to seek such a benefit.

11. Dr. L.P. Mishra, learned Counsel for the appellant, has urged that the learned single Judge has failed to appreciate that it is the point of entry in service which is relevant for the purpose of applying the cut off date of 1.4.2005, and therefore bringing the institution on the grant-in-aid is not the relevant criteria at all. For this, learned Counsel has relied on the Government Orders dated 23.5.1998, 17.2.1999 and 8.3.2002 to urge that so far as fixation of salary of such teachers that were taken under the grant-in-aid list during the said period, the Government Orders provided for extending the benefit of services rendered when the institution was not aided for the purposes of extending such benefit, and also allowed the deposit of provident funds by extending the period from time to time. Dr. Mishra, therefore, contends that this act on the part of the Government itself in extending benefits of such previous services and allowing deposit of contributory funds under the then existing pension scheme clearly demonstrates that the State Government intended to extend such benefit even to such teachers including their service period when the institution was not under the grant-in-aid list. He, therefore, submits that the reasoning given by the learned single Judge without considering the aforesaid aspect of the matter in correct perspective, has arrived at a wrong conclusion. He submits that there is no rationality in creating two classes for the matter of extending the benefit of pension merely on the ground of institution not being on the grant-in-aid list even though the teachers were admittedly employed as permanent staff as per the recognized rules.

12. Learned Counsel for the State has supported the impugned judgment and has urged that the said criteria is founded on a rational basis applying the new scheme to such institutions that have been brought under the grant-in-aid scheme after 1.4.2005 and not extending any such previous benefit on account of such inclusion after the cut off date of the Government Order namely 1.4.2005. He submits that neither Article 14 is violated nor any of the rights of the members of the petitioner - association for whom the relief is being claimed have been infringed.

13. We have gone through the records and pleadings and what we find from reported judgments is that a learned single Judge in the case of *Buddhiram Vs. State of U.P. and Others*, , has directly dealt with this issue in paragraph Nos. 28 to 36, which is extracted here under:--

"28. Now coming to the second category of cases wherein the staff of institution, who have been appointed in the institution prior to 01.04.2005, when it was unaided but after institution has been included in the grant-in-aid w.e.f. 01.04.2005, qua them State Government has taken policy decision that those institutions who have been included in the grant-in-aid list after 01.04.2005 they shall be governed by new pension rules. Once State Government has proceeded to take policy decision that teaching and nonteaching staff in the institution in question would be governed by new pension policy after being included in the grant-in-aid list of the State Government, can grievance be raised by the petitioners on the said score that same is arbitrary or unreasonable. Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund, Insurance Pension Rule, 1964 are not applicable or attracted when the institution in question is not on in the grant-in-aid and the provision of Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund, Insurance Pension Rule, 1964 would be applicable qua the institution from the date when it has been taken into grant-in-aid list of the State Government, as such said rules become applicable in the institution concerned only when it is included in the grant-in-aid list. Admittedly after 01.04.2005, once said group of institution has been included in the grant-in-aid list of the State Government w.e.f. 01.12.2006 and a new pension scheme has been there, then petitioners cannot claim as a matter of right that they should be covered by old pension Rules.

29. This much has been accepted that at the point of time when institution in question has been included in the grant-in-aid list entire benefit of earlier service of unaided stage has been clubbed and benefit of the earlier service rendered has been extended qua grant of pay scale, increment and other benefits etc.

30. The services rendered at unaided stage has not at all been waste, and due care has been taken to extended the benefits admissible in the lieu of the same. Question is can said service be also included as part of the qualifying service specially when appointment in question has been made prior to 01.04.2005 and admittedly institution in question has been brought into the grant-in-aid list of the State Government w.e.f. 01.12.2006.

31. This Court in the case of *Chandra Bhushan Bajpai Vs. Joint Director of Education, Kanpur Mandal, Deputy Director of Education, Kanpur Mandal and State of U.P.*, has taken the view that qualifying service period for pension is to be considered on the parameter as is required under the Rules of 1964. In the said case petitioner was claiming counting of period of service rendered by him in the unaided, Non-Government Junior High School and said claim of the petitioner has not been accepted and service rendered at unaided stage has not at all been

counted. Paragraphs 6,7,8 and 9 of the said judgment being relevant is extracted below:

6. For the purpose of qualifying service U.P. Contributory Provident Fund Insurance Pension Rules are applicable wherein Rule 19(a) and (b) reads as under:

"19 (a) Service will not count for pension unless the employee holds a substantive post on a permanent establishment.

(b) Continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service. (See also C.S.R. Para 422)."

7. The benefit of the aforesaid Rule would have been attracted to the case in hand provided the petitioner would have worked in a institution which was provided grant in aid. Rule 3 of the aforesaid Rules clearly provides that it is applicable to permanent employees serving in State aided education institutions. Rule 3 reads as under:

"3. These rules shall apply to permanent employees serving in State aided educational institutions of the following categories run either by a Local Body or by a Private management and recognised by a competent authority as such for purposes of payment of grant-in-aid.

- (1) Primary Schools;
- (2) Junior High Schools;
- (3) Higher Secondary Schools;
- (4) Degree Colleges;
- (5) Training Colleges."

8. It is clear case of the respondents that the institution in question was brought in grant-in-aid list in March 1961 though the petitioner served therein prior thereto. Therefore, U.P. Contributory Provident-Insurance-Pension Rules which came into force on 1.10.1964 are not applicable at all. Learned counsel for the petitioner could not place any other provision to substantiate his claim that the said service can be counted. Pension is not a bounty but as a matter of fact, a right, yet the mode and manner of its payment is governed strictly by relevant Rules. Unless the Rules provide, no person can claim a particular service in a particular employment for counting as qualifying service. The Apex Court, in D.S. Nakara and Others Vs. Union of India (UOI), while holding pension as a right, observed as follows:

"pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion." (Para 20)

9. Learned counsel for the petitioner could not place before the Court any provision under which the services rendered in a recognised but un-aided Non Government Junior High School could have been counted.

32. This Court in the case of Kunwar Bahadur Sinha v. Director of Education. U.P. Lucknow and others (Civil Misc. Writ Petition No. 13741 of 1990 decided on 05.05.1995) reported in 1995 (2) UPLBEC 1264 has proceeded to mention that Rule 19(b) of Rules 1964 has not at all been considered whereas sub-Rule (b) of Rule 19, provides that continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service. In the said case it has been mentioned that Regional Deputy Director of Education it seems has not noticed clause (b) of Rule 19 of the Rules and has premised the impugned order solely on Clause (a) of Rule which provides that service will not count for pension unless employee holds a substantive post on a permanent establishment. In said case at no point of time issue was raised in respect of institution being grant-in-aid list.

33. New pension scheme has been effectuated w.e.f. 01.04.2005 and it has been mentioned therein that it would be applicable to those set up incumbent who had been appointed after 01.04.2005 and it is true that appointment of petitioners had been made prior to 01.04.2005 but the institution in question has been brought in the grant-in-aid list after 01.04.2005 and benefit of past service when the institution in question was unaided has been extended and the State Government has taken policy decision that new pension scheme shall be applicable qua institutions included in grant-in-aid list w.e.f. 01.04.2005. Pension is a right and the payment of it does not depend on the discretion of the government but is governed by Rules, and once new pension scheme has been enforced w.e.f. 01.04.2005, and conscious decision has been taken to include teaching and non-teaching staff under the new pension scheme, wherein institution has been brought on grant-in-aid list after 01.04.2005, under the new pension scheme, cannot be faulted, as benefit has to be allowed keeping in view the financial resources of the Government, and coupled with this, the teaching and non-teaching staff of institution included in the grant-in-aid after 01.04.2005, form a different class, as prior to said date the provisions of U.P. Contribution Provident-Insurance Pension Rules 1964 was not at all applicable or attracted, and from the date i.e. when the provisions of the said Rule have become available i.e. after 01.04.2005, new pension scheme has been introduced, in view of this said policy decision cannot be faulted, as same is neither arbitrary nor irrational and there is rational basis for framing such a policy.

34. Apex Court in the case of Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, has taken the view that pension is payable to them who fall within the ambit of Rules. Similar view has been taken in the case of Tamil Nadu Electricity Board Vs. R. Veeraswamy and Ors, .

35. Apex Court, in the case of Sudhir Kumar Kansal v. Allahabad Bank 2011 (2)

ESC 243 has, in the matter of grant of pension, either under the old rule or the new rule, proceeded to mention that in society governed by rule of law sympathies cannot override the Rules and Regulations, and in the said case view has been taken accordingly that appellant was not eligible to claim any benefit under Old Pension Scheme.

36. Inevitable conclusion is that once institution in question has been included in grant-in-aid list after 01.04.2005 and thereafter new pension scheme has been introduced and it has been stated that the claim of petitioners would be governed under the new scheme then said category of incumbents as matter of right cannot claim to be governed under old scheme, and their claim of pension will fall within the ambit of Rules as has been introduced w.e.f. 01.04.2005."

14. The learned single Judge in the said decision has also traced the entire legislative history governing the contributory provident funds and pension scheme applicable in Stated aided educational institution including Junior High Schools as presently involved. We may mention here that the respondent - State has also brought on record Chapter VIII of the old education code that existed prior to the Uttar Pradesh State Aided Educational Institution Employees Contributory Provident Funds Insurance Pension Rules, 1964, and have also brought on record the subsequent Government Orders continuing the 1964 Rules and it's implementation. It is, therefore, not necessary to reproduce the said legislative history at all. Suffice it to say that the applicability of the old scheme was clearly dependent upon the institution being on the grant-in-aid list. The learned single Judge has categorically held that the 1964 Rules are not applicable or attracted when the Institution in question is not on the grant-in-aid list and the same would be applicable if the institution is brought under the grant-in-aid list. Admittedly those teachers, who have been appointed and confirmed prior to 1.4.2005 in an unaided Institution, did not have the benefit of 1964 Rules and, as such, these teachers cannot as a matter of right claim that they should be covered by old Rules and extended the benefit thereof by further depositing of contributory provident funds as was done previously under the new scheme.

15. The aforesaid judgment in the case of Buddhiram (supra) that was relied upon by the learned single Judge in another case and the writ petition was disposed of on the same terms, came to be challenged in Special Appeal No. 734 of 2014 which appeal was dismissed on 10.8.2015 upholding the ratio in the case of Buddhiram (supra).

16. We may also point out that the 1964 Rules clearly specify in Rule 3 that the said Rules shall apply to State aided educational institutions. They did not apply to unaided institutions.

17. It is for this reason that the new scheme which has been introduced under the policy dated 28.3.2005 w.e.f. 1.4.2005 also recites that it will apply to State aided Educational Institutions which clearly means that those institutions, which were brought under the grant-in-aid list thereafter, would only be entitled to the

benefit under the new scheme and not of the benefits of the earlier scheme. Thus, if the 1964 Rules provide for extending of benefits to only State aided Institutions, then a mandamus cannot be issued to modify the same to apply it to unaided institutions.

18. This would, however, not preclude the State Government from extending any other benefit but in our opinion the same cannot be claimed as a matter of right. The reliance, which has been placed on the previous Government Orders of extending the benefit of services are concessions, whereas the teachers, whose rights are sought to be presented through the present appeal and the writ petition clearly form a different class of teachers, whose institutions were admittedly brought under the grant-in-aid list after 1.4.2005. This appears to be a rational classification and does not suffer from any constitutional or legal infirmity on the facts mentioned above. There is no challenge or relief prayed that the 1964 Rules are irrational being applied only to aided institutions.

19. It may also be mentioned that in another matter a learned single judge decided a case relying on a judgment in the case of Smt. Shanti Solanki v. State of U.P. and others, Writ Petition No. 75746 of 2006, decided on 6.9.2006. The said judgment was subjected to challenge by the State Government in Special Appeal Defective No. 61 of 2004, where the State also brought to the notice of the Division Bench the decision in the case of Buddhiram (supra). The learned Division Bench observed that the matter required consideration as the judgment in the case of Buddhiram with regard to the observations made in respect of enforcement of the new scheme would create administrative problems. The interim order passed therein is dated 21.1.2004. However the same does not in any way dilute the ratio of the reasons given in the case of Buddhiram (supra) with which we entirely agree.

20. For all the aforesaid additional reasons, we confirm the conclusions drawn by the learned Single Judge and dismiss the appeal.