

(1994) 12 DEL CK 0034

In the Delhi High Court

Case No : Civil Writ Petition No. 588 of 1993

V.S. Rahi

APPELLANT

Vs

Lt. Governor of Delhi

RESPONDENT

Date of Decision : 08-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 10

Citation : (1994) 4 AD 1190 : (1994) 56 DLT 698 : (1995) 32 DRJ 35

Hon'ble Judges : K. Shivshankar Bhat, J; J.K. Mehra, J

Bench : Division Bench

Advocate : E.X. Joseph, Mithilesh Kumar, Adarsh Goel and S. Mukherjee, for the Appellant;

Judgement

K. Shivashankar Bhat, J.

(1) Petitioner seeks a direction to the respondent to grant him permission with effect from 1.4.1992, with interest. Petitioner served the 3rd respondent-Cambridge School - as a teacher from 1.2.1985 to 31.3.1992. The 3rd respondent is a private, unaided school, governed by the provision of Delhi School Education Act 1973 (the Act, for short). As per Section 10 of the Act, the scales of pay, pension, gratuity, etc. of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority, as defined in Section 2(e) of the Act. The "appropriate authority" defined herein, for all practical purposes will be the state or its instrumentalities. Petitioner refers to an advertisement invited by the Directorate of Education, stating that the employees of recognised private (unaided) schools in Delhi/New Delhi are eligible to have the privileges detailed therein, which include,

"TO get as per of the Government employees the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits".

(2) As per Notification No.7-4/u(56)/74 - dated 23.6.1980, opportunity was afforded to employees of private recognised schools to specify their options within a period of six months for either Contributory Provident Fund benefits (CPF, for short) or Triple Pension Benefit Scheme ("Pension Scheme", for short). The Notification, also stated that in case the option was not given, the provisions of the Central Civil Services (Pension) Rules 1972 and/or Gratuity Rules etc. would automatically become applicable to these employees. On 18.12.1980, petitioner opted for the pension rules. But after the retirement of petitioner on 31.3.1992, he was not given the pension. His representation dated 16.9.1992 made to the manager of the respondent school was forwarded to the Director of Education. Thereafter petitioner sent a notice to the Director through his counsel, on 7.11.1992, Petitioner received no reply. Hence the writ petition.

(3) The respondent school contends that (1) the writ petition is essentially filed against it and Therefore it is not maintainable (2) there is a difference between a government employee and an employee of a unaided school; employees working in Government School are not entitled to C.P.F. However, provisions of the Employees Provident Fund and Miscellaneous provisions Act has been extended to the private schools and that the employees of the respondent school have been receiving the benefit C.P.F. and all other advantages including E.P.F. Scheme which is in-built into the said C.P.F.(3). The writ petition is belated and hit by the principle of laches since the petitioner has been accepting the application or C.P.F. in terms of a Government Notification No.2459 for a period of 10 years or more up to 1992 and the petitioner has thus acquiesced in the C.P.F. Scheme for a decade. (4) No direction to extend the Pension Scheme was issued to the respondent school u/s 10 of the Act; and no such direction could be issued "after taking into account the entire circumstances."

(5)The petitioner received an amount of Rs.50,375.00 by way of gratuity without any protest or reservation; (6) Petitioner, during the period of service, was fully aware of the fact that he was governed by the C.P.F. and he submitted various forms, declarations, etc. there under and took benefit of the equal contribution paid by the school management.

(4) Respondents 1 and 7 supported the contention of the respondent- school. They have stated that the private recognised school including the Cambridge School are entitled to C.P.F. Scheme and are governed by the Employees Provident Fund and Miscellaneous Provisions Act and that the Notification dated 17.10.1976 was applicable only to private aided school and the Notification on dated 23.6.1980, Therefore did not govern the unaided schools.

(5) The respondent school placed a "few documents, Along with an additional affidavit to show that the petitioner accepted and acquiesced in the "prevailing system" of C.P.F. as the private school pattern and was never claiming the government school pattern and of G.P.F. and pension. On 11.4.1988, petitioner wrote to the Principal of the School seeking withdrawal of Rs.66,000.00 from the C.P.F; in this letter he stated that he had completed 33 years of service and that

he was aged 56 years and that he wanted to construct a house and as per para 68-B of Employers Provident Fund Scheme, an employee is entitled to withdraw both the shares from the fund for the construction of a dwelling house. Petitioner submitted an application in the prescribed form to enable him to withdraw the sum of Rs.66,000.00 from the C.P.F. A letter was addressed to the Assistant Provident Fund Commissioner by the petitioner, in this regard. This letter shows that a sum of Rs.67,000.00 was in his account in the C.P.F., which is " inclusive of his contribution as well as that of the employer. Thereafter the petitioner was paid Rs.66,000.00 . The option purportedly exercised by the petitioner in December 1980 for pension, was never acted upon and the petitioner, in fact, did not pursue it; instead, he contributed to the G.P.F. and availed of its benefit. The petitioner's wife, Mrs. Santosh Rahi who was also a teacher in the school, also availed of C.P.F. benefit at the time of her retirement in June 1991. After over 18 months, she tried to claim the pension, but all the teachers of this school have accepted the" benefit of C.P.F. Scheme.

(6) Primarily two questions require to be considered; (I) Whether the petitioner can invoke the writ jurisdiction to seek a relief which is certain- ly against a private school; and (II) Whether petitioner is entitled to the benefit of pension as contended by him. The first question need not detain us long in view of the decision of the Supreme Court in Miss Raj Soni Vs. Air Officer in Charge Administration and another, in the said case, the Supreme Court entertained a petition filed by a teacher under Article 32 of the Constitution, against a private school which was not receiving any aid, to enforce the provisions of the Act and the Rules, and granted her the benefit of the age of retirement as 60 years, while, under the rules of the school she was to retire at the age of 58 years.

(7) On merits, the petitioner, relies on the decision of the Supreme Court in Frank Anthony Public School Employees" Association Vs. Union of India (UOI) and Others, . The Supreme Court held that even the minority institutions (who are entitled to the rights under Article 30 of the Constitution) are bound by Section 10 of the Act. The Court observed at page 328:

" WE, therefore ,hold that Section 10 of the Delhi Education Act which requires that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees or a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority and which further prescribes the procedure for enforcement of the requirement is a permissible regulation aimed at attracting competent staff and consequently at the excellence of the educational institution."

SECTION 10 reads:

(I)The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding

status in schools run by the appropriate authority:

PROVIDED that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less, than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

PROVIDED further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

(II) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.

(8) Section 10 brings about parity and equality amongst all employees - whether of Government Schools or of Private Schools. If Government employees are entitled to a certain benefit, *prima facie*, same benefit shall have to be extended to the similar employees of private schools. But can it be said that each item of benefit should be separately measured or whether the parities and equalities have to be compared with reference to the totality of the benefits. For example, if the scale of pay of Government teachers is higher than that of private school teachers, but if a private school has a scheme to pay substantial bonus every year which is not available in the government schools, can this aspect be ignored altogether, to hold that by paying a lower salary, private schools are contravening the provision of Section 10 of the Act? We do not venture to decide this question, though, we are inclined to hold that for the purposes of Section 10, the totality of service-benefits shall have to be considered and only when there is a substantial difference between the totality of the benefits enjoyed by the employees of the Government Schools and totality of the benefits enjoyed by the employees of private schools, and the latter is less than the former. Section 10 would be offended.

(9) Proviso to Section 10(1) makes it clear that, it is for "appropriate authority" to consider whether in a given case Section 10(1) is contravened. The employees of the private school shall have to complain to the appropriate authority in this regard. The appropriate authority may also, *suo motto*, on Realizing the contravention, initiate action to enforce the terms of Section 10(1). In the instant case no such complaint was lodged by the employees of the respondent school. Respondents 1 and 2, have asserted that the employees of unaided private schools are given the option, to opt for Provident Fund or for Pension Scheme, which means, *prima facie*, opting for C.P.F. and applying the said scheme by the

private schools would not be contrary to Section 10(1) of the Act.

(10) However, we make it clear that, it is open to the petitioner or other employees of the respondent school, to complain to the appropriate authority against the C.P.F. and in favor of the Pension Scheme and in such a situation, the appropriate authority shall consider the question, bearing in mind all the relevant factors, including the practicality of having a Pension Scheme, as against other benefit of C.P.F. Scheme.

(11) We find the conduct of the petitioner is such that he is not entitled to any relief under Article 226 of the Constitution of India. Though he purported to opt for the Pension Scheme on one occasion, he acquiesced in accepting the C.P.F; he did not protest against the deductions of his contributions to the C.P.F. from his salary, made every month; he took advantage of the employer's contribution and withdrew the amount from the fund to enable the construction of a dwelling house. Having availed the benefit of one scheme, it is not open to him, now, to disown the scheme, on the ground that it is contrary to the statutory provision. It is true, there is no estoppel against the statute. But, this Court exercising its writ jurisdiction is concerned with the conduct of the petitioner for over 10 years. Petitioner, by his conduct, held out himself as agreeable to the benefits C.P.F., and did not pursue the purported option exercised by him. By his conduct, he abandoned the said option. A private institution (like that of the 3rd respondent) shall have to prepare itself financially, to provide for the payments of pensions. If the employees willingly participate in an alternative scheme of C.P.F. and did not insist for the enforcement of Pension Scheme, a direction to pay the pension for which no provision was made by the institution, would affect its resources.

(12) Mr. Joseph the learned counsel for the petitioner was quite fair in his submission; he stated that the petitioner would surrender the entire amount received by him as C.P.F. in case pension is ordered in his favor. But, the petitioner should succeed or fail depending upon his conduct and not the fairness of his learned counsel.

(13) WRIT petition is dismissed.

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NO costs .