

(2003) 02 DEL CK 0041
In the Delhi High Court
Case No : Civil Writ No. 3707 of 2000

V.S. Rahi

APPELLANT

Vs

The Lt. Governor and Others

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Citation : (2003) 3 AD 448 : (2004) 109 DLT 644 : (2004) 3 SLJ 65 : (2003) 6 SLR 702

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : R.R. Ojha, for the Appellant; Avinash Ahlawat, Maninder Singh and Kirtiman Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—Petitioner was employed as Senior Art Teacher with respondent No.3 school. Petitioner retired on attaining the age of superannuation on 31.3.1990. Petitioner was contributing to the provident fund and was the member of the Contributory Provident Fund Scheme. An advertisement was issued by the Directorate of Education in June, 1990 that the employees of the recognised private unaided schools in Delhi and New Delhi were eligible to have the privileges, facilities, entitlements and rights pursuant to the provisions of Delhi School Education Act and the Rules made there under. The facilities and privileges to which the employees of recognised private unaided schools were allegedly entitled in terms of the said advertisement, issued by the Directorate of Education included medical facilities, pension, gratuity, provident fund and other prescribed benefits. Acting on this advertisement, the petitioner filed a writ petition in this Court for issue of a direction to the respondents to grant pension to the petitioner. The case of the petitioner was that in terms of Section 10(1) of the Delhi School Education Act, the employees of recognised private schools were entitled to the same pay and allowances, medical facilities, pension, gratuity, provident fund, etc. as those of the employees of the corresponding status in

schools run by the appropriate authority. Submission, Therefore, was that as the employees of the Government schools were entitled to pension such facilities should also have been provided to the employees of the private recognised schools. Writ petition was dismissed by this Court. Aggrieved by the order of the dismissal of the writ petition, petitioner filed a SLP in the Supreme Court. That petition was also dismissed by the Supreme Court, however, liberty was given to the petitioner to take appropriate action u/s 10(1) of the Delhi School Education Act before the appropriate authorities. Pursuant to the liberty granted by the Supreme Court, petitioner appeared to have made a representation to the Lt.Governor claiming the same benefits, including pension, as were available to the employees of the Government schools. This representation was rejected by the Lt.Governor. The Lt.Governor in his order observed that the petitioner was not eligible for pension as he was working in a school where the pension scheme was not enforced in the employees of their institution. The Lt.Governor further observed that since the petitioner had availed the benefits of Contributory Provident Fund Scheme in lieu of pension, there was little that could be done on his part in the case of the petitioner. Aggrieved by the order of the Lt.Governor rejecting the representation of the petitioner, the present petition was filed by the petitioner.

2. The contention of learned counsel for the petitioner is that in terms of Section 10(1) of the Delhi School Education Act, the scales of pay and allowances, medical facilities, pension, gratuity, provident fund, etc. of the employees of the recognised private schools cannot be less than those of the employees of the corresponding status in schools run by the appropriate authority. It is submitted that since the employees of the Government schools in Delhi were entitled to the benefit of pension, there could not be any discrimination in the case of the employees of the recognised private schools and as it was the statutory right of the petitioner to be paid the same pay and allowances and other facilities including the pension and gratuity as those of the employees of the Government schools, the respondents could not deny such pension to the petitioner. Reliance for this is placed by the petitioner upon the judgment of this Court in *Safir Ahmed and Others Vs. Lt. Governor National Capital Territory of Delhi and Others*, and *Kapur Chand and others Vs. Delhi Administration and others*- 1988 (2) D L 245.

3. In *Safir Ahmed and others Vs. Lieutenant Governor, National Capital Territory of Delhi and Others* (supra), the Court was concerned with the writ petition filed by certain employees of a minority institution wherein they had claimed that they should be paid the same pay and allowances and other benefits, as were being paid to other aided and recognised educational institutions. It was in this context that the Court directed that the petitioners in that case were entitled to gratuity and pension according to pay drawn by them at the time of resignation or retirement and, accordingly, the respondents in that case were directed to pay pension and other allowances payable to the petitioner at par with other educational institutions on the basis of the last pay drawn. The court in that case

was not concerned whether an employee who was a member of the Contributory Provident Fund Scheme was also entitled to pension. The court had only directed the payment of salary, pension and gratuity, etc. at par with other educational institutions.

4. In *Kapur Chand and others Vs. Delhi Administration and others*, the Court was concerned with the case of certain drivers who were running the bus of the school and it was held that since school bus was a necessity, it had to be held that petitioners were employees of the school as they were working on the school bus and they were entitled to the same scales of pay and allowances as provided to the drivers and conductors of the school buses being run by the Delhi Administration. The Court in this case was not at all concerned whether such drivers were also entitled to pension. This judgment, in my opinion, will not be of any assistance to the petitioner.

5. The respondents in their counter affidavit have submitted that the petitioner has filed this petition on the basis of an option allegedly submitted by him on 18.12.1980 claiming that as he had opted for Pension Rules at that time, he was entitled to be paid pension as was being paid to the employees of the Government schools. It is submitted that no option whatsoever was called from the employees of the private schools and the option was called only from the employees of the aided schools and since respondent No.3 school was not an aided school, the pensionary scheme was not applicable to the employees of such school. It was also submitted that the petitioner was a member of the Contributory Provident Fund Scheme and since he had availed the benefits repeatedly under the Scheme, he was not entitled to or was rather estopped from relying upon the alleged option dated 18.12.1980. It is submitted that employee can either avail the benefits of the Contributory Provident Fund Scheme or he could be entitled to pension but he could not take benefit of both the schemes. It is also submitted that Pension Scheme was not made applicable to the employees of the private recognised schools and in any case the claim of the petitioner was otherwise barred by time. It is also submitted that the earlier petition of the petitioner having been dismissed and the SLP against the order of dismissal having also been dismissed by the Supreme Court, the present petition was otherwise barred by the principles of *resjudicata*.

6. Learned counsel for the respondents have relied upon the judgment of this Court in the earlier writ petition of the petitioner himself where the Court was concerned with the same question as to whether the petitioner was entitled to the benefits of pension. While dealing with this matter, the Division Bench of the Court held that the conduct of the petitioner was such that he was not entitled to any relief in that petition. It was held by the Court that though the petitioner had purported to opt for the Pension Scheme on one occasion, he acquiesced in accepting the CPF and he did not protest against the contributions to the CPF from his salary made every month. It was also observed by the court that the petitioner having taken advantage of the employers' contribution and withdrawn

the amount from the fund to enable the construction of a dwelling house., it was not open to him now to disown the scheme on the ground that the same was contrary to the statutory provisions. It was held that if the employees willingly participate in an alternative scheme of Contributory Provident Fund and did not insist for the enforcement of Pension Scheme, a direction to pay pension for which no provision was made by the institution, would affect its resources. The writ petition was, accordingly, dismissed by the Court.

7. Reliance by the respondents is also placed upon the judgment of the Supreme Court in *Committee for Protection of Rights of ONGC Employees and others Vs. Oil and Natural Gas Commission, Dehradun and another, and Chander Sain Vs. State of Haryana and others*, . Reliance is also placed upon the judgment of this Court in *S.S. Nayar Vs. Chairman, ONGC and others* 88 (2000) D L T 77.

8. In *Committee for Protection of Rights of ONGC Employees and others Vs. Oil and Natural Gas Commission (supra)*, it was held by the Supreme Court that the scheme for Contributory Provident Fund by way of retiral benefit, envisaged by the Provident Fund Act was in the nature of substitution for old age pension because it was felt that in the prevailing conditions in India, the institution of a Pension Scheme could not be visualised in the near future. It was held that it was not the intention of the Parliament that the Provident Fund benefit envisaged by the Act would be in addition to the pensionary benefits. Under the Central Civil Services Pension Rules, Rules regarding the payment of pension would not apply to the persons entitled to the benefit of Contributory Provident Fund. It is thus clear that the persons who are members of a Contributory Provident Fund Scheme, would not be entitled to pension in terms of the Pension Rules.

9. In *Chander Sain Vs. State of Haryana and others (supra)*, it was again held by the Supreme Court that the staff of the college would not be entitled to pension as they were having provident fund by way of retirement benefit. It is thus clear that in case an employee is a member of the Contributory Provident Fund Scheme and is entitled to provident fund by way of retiral benefits, he will not be entitled to pension under the Pension Rules. Relying upon the judgments of the Supreme Court this Court in *S.S. Nayar Vs. Chairman, ONGC and others* 88 (2000) D L T 77 has also held that Contributory Provident Fund Scheme was a scheme in the nature of a substitute and is not meant to be in addition to the Pension Scheme and the petitioner having voluntarily accepted the Contributory Provident Fund Scheme and made contribution towards the said scheme he would be deemed to have opted for the Contributory Provident Fund Scheme in place of Pension Scheme. Learned counsel for the petitioner submits that he was given liberty by the Supreme Court to make a representation to Lt.Governor and his representation has not been decided by the Lt.Governor by a speaking order. A perusal of the order of the Lt.Governor shows that he has clearly mentioned in his order as to why the petitioner was not entitled to the benefits of pension. It is observed by the Lt.Governor in his order that as the petitioner had availed of the benefits of the Contributory Provident Fund Scheme, he was not entitled to the

benefits of pension. I, Therefore, do not find any force in any of the submissions made by the petitioner that the order of the Lt.Governor is not a speaking order.

10. For the foregoing reasons, I am of the opinion that not only that this petition was barred by principles of resjudicata but even otherwise the petitioner was not entitled to the benefits of pension as he had availed of the benefits of Contributory Provident Fund Scheme. The benefits of the Contributory Provident Fund Scheme are in the nature of substitution and not in addition to the pension and since there is no pension scheme applicable to the private unaided schools in Delhi, in my opinion, the petitioner would not be entitled to any such pension. The petition is wholly misconceived and is, accordingly, dismissed with no order as to costs.