

Shakuntala Mehrishi, New Delhi

Vs

New Delhi Municipal Committee and Others

Writ Petition (Civil) No. 623 of 1989

(M. N. Venkatachaliah, N. D. Ojha, J. S. Verma JJ)

01.03.1990

JUDGMENT

OJHA, J. -

1. The gravamen of the grievance of the petitioner is that even though she retired on October 31, 1977 on reaching the age of superannuation and even though she was entitled to pension, gratuity and other retirement benefits, the respondents have kept her deprived therefrom without any justification for all these long years. She has made a prayer that the respondents may be directed to make the requisite payments to her at least now when she was almost at the fag end of her life. Brief facts necessary for the decision of this petition are that the petitioner joined R. M. Arya Girls Patshala, New Delhi, which was an aided recognised school, as a primary teacher in the year 1952 and had been making contribution towards Compulsory Provident Fund. On October 17, 1975, the Administrator of the Delhi Administration in consultation with the Accountant General, Central Revenues, issued a notification in exercise of the power conferred on him by Rule 126 of the Delhi School Education Rules, 1973 (hereinafter referred to as the Rules') laying down detailed procedure for disbursement of pension and gratuity and accounting of General Provident Fund to the employees of the aided schools under the Delhi School Education Act, 1973 (for short 'the Act') and the Rules framed thereunder. The said notification, inter alia, provided :

"Further Rule 126 of the Delhi School Education Rules, 1973 lays down that the Administrator shall, in consultation with the AGCR specify the detailed procedure for accounting of provident fund any payment of pension and gratuity to the employees of the aided schools.

In order to implement the provision referred to above the detailed procedure is prescribed hereafter. In regard to matters not specified in the procedure the provisions of the Central Civil Services (Pension) Rules, 1972, as amended from time to time and other general provisions of the Act/Rules shall apply.

The employees of the aided schools shall be entitled to pension and/or gratuity in accordance with the provisions and procedure applicable to the employees of the similar categories of Delhi Administration under the existing pension rules as contained in the Central Civil Services (Pension) Rules, 1972 as amended from time to time. These rules shall be applicable to those employees of the aided schools who were appointed on or after the commencement of the Act/Rules and also to the existing employees who opt for the pension and gratuity within the stipulated period in the prescribed pro forma."

2. The school in which the petitioner was working being an aided school under the Act and the notification aforesaid being applicable to its employees the petitioner made the requisite option in the prescribed pro forma on January 29, 1976 which was duly countersigned by the Education Officer on April 2, 1976. After her retirement, the petitioner made several representations for payment of pension and gratuity etc. to the authorities concerned but each time the petitioner did not get any better response than an information that her case was under active consideration. By his letter dated February 27, 1987, i.e. after nearly 10 years of the petitioner's retirement, the Joint Director of Education (FIN) old Secretariat, Delhi conveyed to her an additional information apart from the usual one namely that her case was under active consideration, that further action in the matter will be taken by the department soon after the proposal is approved by the Government of India. By a subsequent letter dated September 29, 1987, the petitioner was informed by the Education Officer that the Directorate of Education had referred the case to Government of India on March 26, 1987 for policy decision. Ultimately the Directorate of Education, Delhi Administration, promulgated the decision of pension scheme in the primary aided schools on December 6, 1988. This decision, inter alia, provided for payment of grant-in-aid to the local authorities concerned for the implementation of the pension scheme already notified vide notification dated October 17, 1975. The last paragraph of the decision provides that "pensionary benefits under these orders would apply with immediate effect, i.e. from the date of issue of these orders".

3. The prayer made in this petition has been opposed by the New Delhi Municipal Committee by filing a counter-affidavit. The objection raised by the said Committee is that since the pension scheme was finally promulgated in 1988 and has provided therein that the pensionary benefits were to apply from the date of issue of the requisite order in this behalf namely December 6, 1988, the petitioner who retired on October 31, 1977 that is more than 11 years before the final promulgation of the scheme was not entitled to any of the benefits claimed by her simply on the ground that she had opted for pension before her retirement in pursuance of the scheme notified on October 17, 1975 which was in the process of finalisation of the time of the retirement. It has also been contended on behalf of the said Committee that since modalities for grant-in-aid to the local authorities concerned for the implementation of the pension scheme were provided for by order dated December 6, 1988 the petitioner was not entitled to any pension before this date in any view of the matter.

4. Having heard learned counsel for the parties, we are of the opinion that the pleas raised on behalf of the Municipal Committee have no substance. As seen above, the requirement under the notification dated October 17, 1975 with regard to the school, the employees of which were entitled to the benefits of the said notification was that it should be an aided school under the Act. The term "aided school" as defined in Section 2(d) of the Act means a recognised private school which is receiving aid in the form of maintenance grant from the Central Government, Administrator or local authority or any other authority assigned by the Central Government, Administrator or a local authority. In paragraph 1 of the petition under the caption "Facts" it has been specifically stated that R. M. Arya Girls Patshala was granted permanent recognition on April 1, 1936 and was also given grant-in-aid. The averments made in this behalf in sub-paragraph (b) and (c) of paragraph III of the counter-affidavit do not seem to seriously challenge what has been stated in paragraph 1 of the petition. It is therefore, apparent that the school in which the petitioner was working was such, the employees of which were entitled to the benefits conferred by the notifications dated October 17, 1975. The said notification as already pointed out above, inter alia, provided that in regard to matters not specified in the procedure the provisions of the Central Civil Services (Pension) Rules, 1972 as amended from time to time shall apply. Rule 35 of these Rules provides that a superannuation pension shall be granted to a government servant who is retired on his attaining the

age of compulsory retirement. Rule 83 of these Rules, on the other hand, inter alia, lays down that the pension shall become payable from the date on which a government servant ceases to be borne on the establishment. Since these Rules will apply to the petitioner as contemplated by notification dated October 17, 1975, she is obviously entitled to get pension with effect from the date on which she ceased to be borne on the establishment of the school in which she was working consequent upon reaching the age of superannuation. Rule 126 of the Rules under which the notification dated October 17, 1975 had been issued gives the power to specify procedure for payment of pay and allowances, pension and gratuity etc. to the Administrator in consultation with the Accountant General, Central Revenues. The very opening words of the said notification make it abundantly clear that the said notification had been issued in exercise of the powers conferred by Rule 126 of the Rules by the Administrator in consultation with the Accountant general, Central Revenues. The notification having thus been issued by the competent authority and the petitioner who was an existing employee of an aided school on the date of the issue of the said notification having opted for the pension and gratuity within the stipulated period in the prescribed pro forma which was duly counter-signed by the Education Officer, she obviously became entitled to the benefits conferred by the said notification. This is so all the more in view of the fact that the notification dated October 17, 1975 did not contemplate finalisation of the modalities about contribution towards pension fund as a condition precedent to the entitlement of the benefits under the said notification. The finalisation of the said modalities was a matter of detail among the authorities concerned and could have no bearing on the entitlement to the benefits of the notification dated October 17, 1975. Such finalisation could not even defer the date of the entitlement.

5. Likewise the said notification did not contemplate any approval by the Government of India as a condition precedent to its enforceability. In his connection, it is also of significance that no statutory provision has been brought to our notice which made approval by the Government of India of the notification dated October 17, 1975 issued by the competent authority as a condition precedent to the enforceability of the said notification. As seen above, for nearly 10 years after her retirement the petitioner was being informed in reply to her various representations that her case was under active consideration. It is only in 1987 that the plea that further action in the matter will be taken by the department soon after the proposal is approved by the Government of India was raised and the case was referred by the Directorate of Education to the Government of India on March 26, 1987 for policy decision. Why it became necessary to do so in 1987 is a matter of anybody's guess. If, at all, it only indicates the callous attitude of the authorities concerned towards the fate of retired employees of aided schools in the matter of grant of pension and other retirement benefits to them. For aught we know, but for the sincere effort made by the Indian Council for Legal Aid and Advice in this case, which apparently deserves commendation, the agony which the petitioner must have suffered during the long years after her retirement may have remained unnoticed and unmitigated. No acceptable justification having been given for denying the pension to the petitioner from the date of her retirement as also the other retirement benefits of the petitioner is obviously entitled to these benefits.

6. In the result, this petition succeeds and is allowed. The respondents are directed to pay to the petitioner pension admissible to her in pursuance of the notification dated October 17, 1975 with effect from the date of her retirement and also to pay to her the other retirement benefits. They are further directed to finalise the requisite formalities in this behalf within three months and to issue payment orders immediately thereafter. The petitioner shall be entitled to her costs from respondents 1 and 2 which is assessed at Rs. 2000.

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