

Neutral Citation No. - 2024:AHC-LKO:14650-DB

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 21 of 2024

Appellant :- Narendra Singh And Others

Respondent :- State Of U.P. Thru. Prin./ Addl. Chief Secy. Basic Education U.P. Govt. Civil Sectt. Lko And Others

Counsel for Appellant :- Mohd. Ali, Ravindra Kumar Yadava

Counsel for Respondent :- C.S.C., Ran Vijay Singh

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Attau Rahman Masoodi, J.

- (1) Heard Sri Ravindra Kumar Yadav, learned counsel for the appellants-petitioners, Sri Indrajeet Shukla, learned Additional Chief Standing Counsel for respondent No.1 and Sri Ran Vijay Singh, learned Counsel appearing for the respondent Nos.2 and 3.
- (2) The intra-Court Appeal filed under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 is directed against the judgment and order dated 13.12.2023 passed in bunch of writ petitions, leading writ petition being Writ-A No. 83 of 2023 whereby the entire bunch of writ petitions has been dismissed, including the Writ-A No. 882 of 2023, *Narendra Singh and 330 others v. State of U.P. and others* filed by the appellants-petitioners, on the ground that they were unable to establish their claim that they had entered into service prior to 1st April, 2005, which is an essential ingredient for entitlement of Old Pension Scheme.
- (3) In nutshell, the case of the appellants-petitioners is that before the Writ Court, the appellants-petitioners had assailed the validity of impugned Notification dated 28.03.2005 whereby the State Government has mandated for applicability of New Pension Scheme to the Assistant Teachers/Head Masters

employed in Primary Schools in the State, who joined their post after 01.04.2005.

- (4) In furtherance of the impugned Notification dated 28.03.2005, the State Government has passed consequential order dated 16.12.2022 whereby in para 3 (v), it has been mentioned that without registration of Permanent Retirement Account Number (PRAN) under New Pension Scheme for new entrants who joined their services after 01.04.2005, their salary may not be drawn. Consequently, the State Government has issued orders on 21.03.2012, 21.11.2022, 28.11.2022 and 16.12.2022 for registration of PRAN of employees who joined their services after 01.04.2005. All the aforesaid Government Orders were challenged by the appellants-petitioners before the learned Single Judge, who, in turn, dismissed all the writ petitions vide impugned judgment and order dated 13.12.2023.
- (5) Main submission of the learned counsel for the appellants-petitioners is that learned Single Judge has not considered the dictum of 5-Judges Bench of Hon'ble Supreme Court given in ***D. S. Nakara and others v. Union of India and others [(1983) 1 SCC 305]***, wherein it was held that quantum of pension is a certain percentage correlated to the average emoluments drawn during several years of service rendered.
- (6) Besides the above submission, learned Counsel for the appellants-petitioners has argued that the issue of granting Old Pension Scheme has not been considered in right perspective. Further, it has been argued that the purpose and objective of the pension scheme is lost which is violative of Articles 14 and 16 of the Constitution of India.
- (7) Sri Indrajeet Shukla, learned Additional Chief Standing Counsel for respondent No.1 and Sri Ran Vijay Singh, learned

Counsel appearing for the respondent Nos.2 and 3 both have submitted that the State Government has introduced New Pension Scheme w.e.f. 01.04.2005 vide notification dated 28.03.2005. Pursuant to this, the U.P. Retirement Benefit Rules, 1961 and U.P. General Provident Fund Rules, 1985 have also been amended w.e.f. 01.04.2005. Since all the appellants-petitioners have joined their service after 01.04.2005, they all are covered under New Pension Scheme and as per the Scheme framed by the State Government, they are bound to opt for New Pension Scheme. Accordingly, the State Government has issued Government Order dated 21.03.2012 directing the authorities concerned to take action for registration of PRAN. When they did not pay any heed, the State Government issued another three Government Orders on 21.11.2022, 28.11.2022 and 16.12.2022 for registration of PRAN of employees who have joined the services of Assistant Teachers after 01.04.2005. Lastly, he has submitted that the condition imposed in the Government Order dated 16.12.2022 that till registration of PRAN, the salary may not be drawn is also relaxed vide Government Order dated 27.01.2023. However, the said order has not been challenged by the appellants-petitioners in the writ proceedings.

- (8) Further submissions of the learned counsel for the respondents are that though the appellants have joined their services after 01.04.2005, but they have not raised their grievance till 2023. More over, the pleas raised by the learned counsel for the appellants-petitioners have been considered by the learned Single Judge extensively and dealt with elaborately and since the grounds taken by them are not tenable, the writ petitions filed by them were dismissed.
- (9) Considered the submissions made by the learned counsel for the parties and perused the record.

- (10) Admittedly, the appellants have joined on the post of Assistant Teachers/Head Masters after 01.04.2005. As per notification dated 28.03.2005, the persons joining in government service shall be entitled for New Pension Scheme w.e.f. 01.04.2005. The Scheme framed by the State Government dated 28.03.2005 reads as under:-

“The State Government, in consideration of its long term fiscal interest and following broadly the pattern adopted by the Central Government, has approved the following proposal of introducing a new defined contribution pension system in place of the existing defined benefit pension scheme, for new entrants to the service of the State Government and of all State controlled autonomous institutions and State-aided private educational institutions where the existing pension scheme is patterned on the scheme for Government employees and is funded by the consolidated fund of the State Government:-

(i) From 1st of April, 2005, the new defined contribution pension system would mandatorily apply to all new recruits to the service of the State Government and of all State controlled autonomous/State aided private educational institutions referred to above. However, employees covered by the existing pension scheme whose service would be of less than ten years on 1st April, 2005 may also voluntarily opt for the new pension system in place of the existing pension scheme.

(ii) Under the new defined contribution pension system, the employee would make a monthly contribution equal to 10 percent of the salary and dearness allowance. A matching employer's contribution would be made by the State Government or by the concerned autonomous institution/ private educational institution. However, the State Government would provide grant to the concerned autonomous institution private educational institution for making employer's contribution until the institutions is at a position to make the contribution itself. The

contribution and investment returns would be deposited in an account to be known as pension tier I account. No withdrawals would be allowed from this account during the service period. The existing provisions of defined benefit pension and GPF would not be available to the new recruits covered by the new defined contribution pension system.

(iii) Since new recruits would not be able to subscribe to GPF, they may also have a voluntary tier II account, in addition to the pension tier I account. However, employer would not make contribution to tier II account. The assets in Tier II account would be invested/managed through exactly the same procedure as for pension tier I account. However, the employee would be free to withdraw part of all the 'second tier' of his money anytime.

(iv) Employee can normally exit tier I of the pension system at the time of retirement. At exit the employee would be mandatorily required to invest 40 percent of pension wealth to purchase an annuity from a recognized insurance company so as to provide for pension for the lifetime of the employee and his dependent parents and his spouse at the time of retirement. The remaining pension wealth would, however, be received by the employee as a lump sum which he would be free to utilise in any manner. In case of employee exiting the pension tier I before retirement, the mandatory annuitisation would be 80 percent of the pension wealth.

(v) There would be several pension fund managers who would offer mainly three categories of investment options. The pension fund managers and the record keeper would jointly give out easily understood information about past performance so that the employee is able to make informed choices of the investment options.

2. The effective date for operationalization of the new pension system shall be 1st of April, 2005.”

- (11) If the above Scheme is viewed microscopically, it reveals that from 1st of April, 2005, the new defined contribution pension

system would mandatorily apply to all new recruits to the service of the State Government. Since all the appellants-petitioners are Assistant Teachers and have entered in Government Service after 01.04.2005, they are mandatorily entitled for New Pension Scheme.

- (12) From the record, it is clear that the State Government has issued Government dated 21.03.2012 directing all concerned to take appropriate action for registration of Permanent Retirement Account Number (PRAN). Thereafter, in the year 2022, three Government Orders have been issued for registration of PRAN of employees who have joined after 01.04.2005.
- (13) It is strange that though the appellants-petitioners have joined their services after 01.04.2005 and till issuance of Government Order dated 16.12.2022, whereby a stipulation has been imposed that till registration of PRAN, salary may not be paid, the appellants-petitioners have not raised their voice for challenging the Notification dated 28.03.2005. However, the said restraint has been relaxed by another Government Order dated 27.01.2023. As to why and under what circumstances, they have not challenged the said Notification dated 28.03.2005 for two decades is neither clear from the record nor from oral arguments.
- (14) More over, when they were directed for registration of PRAN in the year 2012, at that time also, they had not lodged any protest. Since a restraint order has been issued by the Government in the year 2022, they woke up from deep slumber and challenged all the notifications issued in this regard. It is also not clear from the record, whether any deduction has been made towards GPF since the date of their joining.

- (15) Validity of amendment made in Rule 2 (3) of U.P. Retirement Benefit Rules, 1961, wherein it has been provided that these Rules shall not apply to employees entering services and posts on or after April 1, 2005 in connection with the affairs of the State, borne or pensionable establishment, whether temporary or permanent, has been challenged in series of litigations instituted before this Court and in one such matter, a Division Bench of this Court in *State of U.P. and others v. Dukh Haran Singh [2010 (2) AWC 1882 (All)]* affirmed the validity of the amendment made in the aforesaid Rules. When the matter reached the Apex Court, the view taken by this Court has been affirmed and thus it can safely be inferred that the application of the Scheme was not faulted with.
- (16) Of late, a co-ordinate Bench of this Court of which one of us [Attau Rahman Masoodi, J.] is a Member, vide judgment and order dated 30.08.2023, allowed a bunch of Special Appeals filed by the State, leading Special Appeal No. 29 of 2022 wherein issuance of Notification dated 28.03.2005 has been challenged. The observations made by the Court read as under:-

“(47) This Court has no doubt that the classification made is rational and the same 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 and there is equally no challenge to the retrospective amendment in Rule 19 of the relevant Service Rules, 1978.

*(48) The judgment passed in **Budhiram (supra)** was upheld in Special Appeal No. 1843 of 2013 (Ram Yagya Shukla) holding that the Court is unable to agree with the submission that the respondents have made any hostile discrimination against the appellant. It is apparent from the pleadings and materials on record that the benefits of old pension scheme ceased to apply to all the employees of the educational institutions*

which came into grant-in-aid list after 01.04.2005. Thus the notification issued on 28.03.2005 introducing New Pension Scheme (NPS) effective from 01.04.2005 applies to all the educational institutions brought under grant-in-aid subsequent to the cut-off date.

(49) In view of what has been recorded above, this Court is of the considered view that after issuance of notification dated 28.03.2005, all such institutions which came under grant-in-aid after 01.04.2005 shall be regulated under the New Pension Scheme (NPS).

(50) Thus, the reasoning given in the impugned order that since the respondents were appointed prior to 01.04.2005, although the grant-in-aid was provided to their institutions after promulgation of the New Pension Scheme (NPS), are entitled for Old Pension Scheme (OPS) is not tenable in the eyes of law and is contrary to the very spirit of New Pension Scheme (NPS).

(51) For the reasons stated above, all the Special Appeals, except Special Appeal Defective No. 74 of 2022 are allowed and the impugned judgment and order dated 16.06.2021, as corrected vide order dated 07.07.2021 in the bunch of writ petitions, leading Writ Petition No. 3458 (SS) of 2009, U.P. Senior Basic Shiksha Sangh v. State of U.P. and others, passed by the learned Single Judge is set aside, so far as it relates to the educational institutions coming under grant-in-aid after 01.04.2005.

(17) The aforesaid matter pertains to the Basic Education Department wherein the petitioners had challenged the issuance of Notification dated 28.03.2005. The Court after considering all aspects of the matter extensively allowed the Special Appeals filed by the State Government.

(18) Since the issue involved in the instant matter squarely covered by the aforesaid judgment dated 30.08.2003 passed in the Special Appeals filed by the State and the learned Counsel for

the appellants-petitioners has failed to point out any illegality or infirmity in the impugned judgment and order dated 16.12.2023 having redressed the limited grievance, the instant Special Appeal being bereft of merit is hereby **dismissed**.

[Attau Rahman Masoodi, J.] [Arun Bhansali, C.J.]

Order Date :- 19.2.2024
lakshman

Narendra Singh and others v. State of U.P. and others