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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5885 OF 2010

Jawale Vinod Haribhau and ors .... Petitioners
Vs.
Union of India and ors. ... Respondents

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Mr. D.J. Bhange for the Petitioners.
Mr. Vinay Masurkar a/w. Ms Neeta Masurkar a/w. Mr. Anand O. singh for Respondent Nos.1 to 3.

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CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.
DATE : JULY 01, 2016.

P. C.

1] The challenge in this petition is to the common judgment and order dated 11 March 2010 in Original Application No. 286 of 2004 and Original Application No. 367 of 2005 made by the Central Administrative Tribunal (CAT), Mumbai. By the impugned judgment and order, the CAT has dismissed the petitioners' original applications seeking benefits of General Provident Fund (GPF) and Pension Schemes.

2] The petitioners are/were the employees of Film and Television Institute of India (FTII). The FTII, a society registered under the Societies Registration Act, 1860 and came into being from 1 October 1974. The petitioners came to be appointed to various posts at the FTII post 1 October 1974.

3] Prior to 1 October 1974, the activities undertaken by FTII were discharged by the Central Government Department of the Ministry of Information and Broadcasting. In 1967 or thereabouts, Estimate Committee of Parliament recommended that an institute be established, preferably under an Act of Parliament to discharge such functions. The Committee under the Chairmanship of Justice G.D. Khosala in 1972 submitted a report making various recommendations in this regard. Ultimately, however, with effect from 1 October 1974, the FTII was established as an Autonomous Institution (a society registered under the Societies Registration Act, 1860).

4] The employees of Central Government engaged in the concerned department were offered an option to either continue to remain in Government Service or to join the FTII. Several Central Government employees opted to join FTII, relying upon assurance in matters of protection of their service conditions. None of the petitioners belong to this category. The petitioners, as noted earlier, are post 1 October 1974 employees, appointed to various posts at the FTII after 1 October 1974.

5] The record indicates that the Rules and Regulations with regard to the employees of FTII were under preparation and therefore, at least upto 1983, even post 1 October 1974 employees, like the petitioners were covered the GPF scheme, which in turn, involved payment of pension. The erstwhile Central Government employees, who had opted to join the FTII, by virtue of protection granted to their service conditions, were already covered under the GPF Scheme and the Pension Scheme.

6] By Circular dated 7 September 1985, the Acting Director circulated a proposal and invited options in the matter of applicability of GPF and Pension Schemes instead of the existing system of Contributory Provident Fund Scheme (CPF) in respect of employees appointed on or after 1 October 1974. This proposal was to be clubbed alongwith the proposal for reducing the age retirement from 60 to 58 years. Though, options were invited from post 1 October 1974 employees, this circular clarified that the proposals contained in the circular were not binding either on the Governing Council of the FTII or the Government of India. The petitioners claim that they opted coverage under for the GPF and Pension Schemes. However, nothing much turn on this. Particularly, as by circular dated 7 September 1985, only a proposal was put forward, making it clear that such proposal had no sanction either from the Governing Council or the Government of India.

7] The Central Government, by Office Memorandum dated 1 May 1987, invited options from the Central Government employees in the matter of switch over from CPF Scheme to Pension Scheme, in pursuance of the implementation of the recommendation of the 4th Central Pay Commission. It is pertinent to note that the circular made it clear that switch over will be offered only to such of the Central Government employees, who were prepared to refund the benefits already obtained by them under the CPF Scheme, together with interest thereon, at the time of settlement of CPF account.

8] The FTII, by Circular dated 30 September 1987 circulated the aforesaid Central Government's O.M. dated 1 May 1987 to the employees of FTII, requiring them to exercise options referred to therein. This circular bears the signature of Superintendent (Establishment). The petitioners claim that they have exercised the option to switch over to the GPF Scheme and Pension Scheme from existing CPF Scheme.

9] Thereafter, the FTII, by yet another Circular dated 7 March 1988 clarified that the Central Government's O.M. dated 1 May 1987, applied only to the Central Government employees and since the employees of FTII are not Central Government employees, the aforesaid O.M. dated 1 May 1987 does not apply to them. The circular went on to add that before effecting any change in service condition of the FTII employees, prior approval of the Governing Council as also the Government of India is necessary. Since, neither the Governing Council nor the Central Government had given any approval in the matter of switch over, the earlier Circular dated 30 September 1987, inviting options from the employees of FTII was irregular, invalid and issued without proper authority. Accordingly, the Circular dated 7 March 1988 declared that the earlier Circular dated 30 September 1987 be treated as cancelled.

10] There are neither any pleadings nor any documents placed on record as to what transpired between 7 March 1988 and 1 April 1999, i.e., period of almost eleven years. There is no dispute however, that during the said period the petitioners continued to be governed under the CPF Scheme and not GPF Scheme or Pension Scheme. There is no record of the petitioners agitating the issue of denial of coverage under the GPF and Pension Schemes within some reasonable period post Circular dated 7 March 1988, by which the earlier Circular dated 30 September 1987 came to be withdrawn. It appears that the petitioners had accepted this position, but reviewed their demands for coverage under GPF and Pension Schemes only in the year 2004.

11] In order to complete the narration of facts, reference can be made to the proposals dated 24 May 1994 and 1 April 1999 forwarded by the FTII to the Central Government proposing the introduction of GPF and Pension Schemes for the employees of FTII appointed after 1 October 1974. It is necessary to note that these were only proposals and all parties were quite clear that such proposals by themselves, create no right or obligation, unless until such proposals are actually accepted by the Central Government.

12] The Central Government by communication dated 15 February 2001 addressed to the FTII made it clear that the proposals cannot be accepted and the matter be treated as closed. Based upon such communication, the Governing Council of FTII in its 98th Meeting of the Governing Council held on 16 January 2003, formally rejected the proposal for coverage of post 1 October 1974 employees under the GPF and Pension Schemes. This was communicated to the President of the Staff Association of FTII on 5 February 2004. It is at this stage, that the petitioners instituted Original Application No. 286 of 2004 and Original Application No. 367 of 2005 before the CAT , questioning *inter alia,* the communication dated 15 February 2001, resolution dated 16 January 2003 and the communication dated 5 February 2004 and seeking coverage under the GPF and Pension Schemes in respect of post 1 October 1974 employees. The CAT, by the impugned judgment and order has dismissed the two original applications. Hence, the present petition.

13] Mr. D.J. Bhange, learned counsel for the petitioners, has submitted that there is no appreciable difference between the Central Government employees, who opted to be absorbed in the FTII with effect from 1 October 1974 and the petitioners who came to be appointed upon various date, post 1 October 1974. He submitted that if the absorbed Central Government employees could continue to be covered under the GPF and Pension Schemes, then there was no reason as to why the same coverage could not be extended to the petitioners. Mr. Bhange submitted that the classification between two sets of employees is quite unreasonable, since, the two sets of employees, in fact, constitute the homogeneous class of employees of the FTII. Amidst such a class, the respondents are not entitled to practice any discrimination. The denial of coverage to the petitioners under such circumstances amounts to violation of Article 14 of the Constitution of India. Mr. Bhange placed reliance upon the decision of the Hon'ble Supreme Court in case of ***D.S. Nakara V/s. Union of India.***[1]

14] Mr. Bhange further submitted that assuming that classification between pre 1 October 1974 employees, who were absorbed in FTII and the petitioners, who are post 1 October 1974 is held to be valid, even then the denial of coverage under GPF and Pension Schemes is quite arbitrary and based upon no rational principle. Mr. Bhange submitted that upto 1983, the petitioners were

1 (1983)1 SCC 305

in fact covered under the said schemes. There was no justification to switch over to the Contribution Provident Fund Scheme. The material on record clearly establishes that the FTII was itself keen to revert to coverage under the GPF and Pension Schemes. There are resolutions of the Governing Council to this effect. The Governing Council, in fact, made rules and forwarded the proposals in this regard. This means that the FTII, which is otherwise an Autonomous Institution was ready to bear the financial responsibility of such coverage of its employees under the GPF and Pension Schemes. Rejection of such proposal by the Central Government, is unreasoned and based upon no rational principle whatsoever. For all these reasons, Mr. Bhange submitted that there is a good case made out to interfere with the impugned judgment and order and further for issuance of directions to the respondents to cover the petitioners under the GPF and Pension Schemes.

15] Ms Neeta Masurkar, learned counsel for respondent Nos.1 to 3, defended the impugned judgment and order by submitting that there is neither any jurisdictional error nor any perversity in the making of impugned judgment and order. She submitted that the decision regards coverage under GPF and Pension Schemes is a policy matter. She submitted that such policy cannot be implemented by the FTII without approval of the Central Government. At one stage, the Governing Council of the FTII had forwarded such proposals to the

Central Government. However, such proposals were rejected by the Central Government. The FTII, upon reconsideration of the matter, has resolved not to pursue such proposals. There is no illegality or arbitrariness on the part of either Central Government or Governing Council of FTII.

16] Ms Masurkar submitted that the classification between the Central Government employees, who were absorbed in FTII and the petitioners who came to be recruited after 1 October 1974 is based upon rational criteria. The pre 1 October 1974 employees, were in fact, Central Government employees, who had opted for absorption in FTII subject to protection of their service conditions. As such, they constituted a completely separate class and there was no question of the petitioners comparing themselves with such class of employees. Ms Masurkar pointed out that even the appointment orders were issued to the petitioners, made it clear that their service conditions to be determined on the basis of rules that may be formulated by the FTII from time to time and the petitioners accepted employment subject to such conditions. For all these reasons, Ms Masurkar submitted that there is no merit in this petition and the same may be dismissed.

17] The rival contentions now fall for our determination.

18] There can be no comparison between the Central Government employees, who were earlier engaged in the department of the Information and Broadcasting Ministry (IBM) and discharging functions now discharged by the FTII and the employees like the petitioners, who came to be recruited directly to the FTII post 1 October 1974. The erstwhile Central Government employees were actually given an option to continue in Central Government service or to be absorbed in the FTII, subject to the protection of their service conditions. Some of the Central Government employees exercised their option to be absorbed, subject to protection of their service conditions. One of the service conditions included coverage under the GPF and Pension Schemes. It is on this basis such absorbed employees continued to be covered under the GPF and Pension Schemes.

19] The position with regard to the petitioners who are post 1 October 1974 employees is quite different. Prior to their appointments in the FTII, they were not the Central Government employees. There was no option granted to the petitioners and there was absolutely no question of protection of their services conditions. Accordingly, the petitioners cannot claim any parity visa-vis the Central Government employees, who came to be absorbed in the FTII. The submission with regard to homogeneous class of FTII and the employees, is quite misplaced, in the facts and circumstances of the present case.

20] There is no question of any discrimination involved, particularly as the petitioners have failed to establish that pre 1 October 1974 employees and the petitioners constitute one homogeneous class. The decision in case of ***D.S. Nakara (supra)***, is not at all applicable to the peculiar facts and circumstances of the present case. In the said case, on the basis of an artificial cut off date, an artificial classification was sought to be brought about within one class of homogeneous employees. The cut off date, was based upon no rational principle. In the present case, assuming that 1 October 1974, is to be styled as the cut off date, it cannot be said that such cut off date, has been fixed without there being any principle or rational. The FTII, as an Autonomous Institution, came into existence with effect from 1 October 1974. Prior thereto, the functions of the FTII were discharged by the Central Government employees, as a Department of the Central Government. Such Central Government employees were given an option of either continue as Central Government employees or be absorbed subject to protection of their service conditions. In contrast, the petitioners came to be recruited to the FTII, after its incorporation with effect from 1 October 1974. The petitioners, under such circumstances, can neither claim for any parity of service conditions with the Central Government employees, who may have been absorbed in FTII nor can the petitioners complain of any discrimination on the basis of any arbitrarily determined the cut off date. The principle in case of ***D.S. Nakara*** (*supra*), therefore, does not assist the case of the petitioners.

21] In case of ***T.M. Sampath and ors. Vs. Secretary, Ministry of Water Resources and others***[2]**,** the claim of parity between employees of National Water Development Agency (NWDA), a society registered under the Societies Registration Act and the Central Government employees to the Ministry of Water Resources was rejected by the Hon'ble Supreme Court. In fact, in para 16, it was held that NWDA cannot be treated as a instrumentality of the State under Article 12 of the Constitution of India merely on the basis that its funds are granted by the Central Government. Relying upon decision in case of ***Zee Telefilms Ltd. Vs. Union of India***[3], it was held that autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression *"State"* and each case must be determined on its own merits. In para 17, the Hon'ble Supreme Court held that even if it is presumed that NWDA is *"State"* under Article 12 of the Constitution of India, the appellants have failed to prove that they are on a par with their counterparts, with whom they claim parity. In paragraphs 16,17 and 18, the Hon'ble Supreme Court has observed thus:

> ***"16.*** *On the issue of parity between the employees of NWDA and Central Government employees, even if it is assumed that the 1982 Rules did not exist or were not applicable on the date of the OM i.e. 1-5-1987, the relevant*

2 (2015)5 SCC 333
3 (2005) 4 SCC 649

date of parity, the principle of parity cannot be applicable to the employees of NWDA. NWDA cannot be treated as an instrumentality of the State under Article 12 of the Constitution merely on the basis that its funds are granted by the Central Government. In Zee Telefilms Ltd. v. Union of India, it was held by this Court that the autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression "State" and each case must be determined on its own merits. Thus, the plea of the employees of NWDA to be treated on a par with their counterparts in the Central Government under sub-rule (6)(iv) of Rule 209 of the General Financial Rules, merely on the basis of funding is not applicable.

17. Even if it is presumed that NWDA is "State" under Article 12 of the Constitution, the appellants have failed to prove that they are on a par with their counterparts, with whom they claim parity. As held by this Court in UT, Chandigarh v. Krishan Bhandari, the claim to equality can be claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12. Thus, the employees of NWDA cannot be said to be "Central Government employees" as stated in the OM for its applicability.

18. *Thus, by reason that the employees are governed by the NWDA CPF Rules, 1982, the OM dated 1-5-1987 is not applicable to the appellant employees. Further, as they have not established that they are the Central Government employees, on a par with their counterparts, their claim of parity with the Central Government employees is also defeated."*

22] Further, the Apex Court, in case of ***T.M. Sampath (supra)***, in the context of civil appeals arising out of SLP © No. 19102 of 2012 has also rejected the contention that there was any arbitrariness in the matter of cut off date for applicability of New Pension Schemes. In para 40, the Hon'ble Apex Court has observed thus:

> ***"40.*** *We have carefully perused the judgment of the High Court of Jharkhand in P.N Mishra v. Union of India against which SLP (C) No. 19102 of 2012 has been filed and we concur with the view of the High Court. The cut-off date is a domain of the employer and so the introduction of new scheme of pension will be done considering all the relevant factors including financial viability of the same. No interference is warranted unless there is gross injustice perpetrated. The appellants have failed to prove any arbitrariness and discrimination with respect to the New Pension Scheme".*

23] We see no merit in Mr. Bhange's submission that the Central Government has, without rhyme or reason, refused to grant approval to the proposal of FTII, in the matter of coverage of post 1 October 1974 employees under the GPF and Pension Schemes. It must be remembered that these are basically policy matters. We are satisfied that this is not a case where policies are being implemented in a discriminatory manner. We are informed that the Central Government aids the FTII to the extent of deficit, which it finds in discharge of its functions. The decisions as to whether any aid should be granted or for that matter the extent of such aid by the Central

Government, are all matters in the realm of policy.

24] In case of ***MHADA Sevanivrutta Karmachari Seva Sangh Vs. Vice President, Maharashtra Housing & Area Development Authority and ors.***[4] and connected matters, decided by the Division Bench of this Court on 19 March 2014, in which, one of us (Shri. V.M. Kanade, J), was party, it has been held that no writ of mandamus can be issued to direct either MHADA or the State Government to cover the employees of MHADA under the Pension Scheme. This was notwithstanding the circumstance that the MHADA authority had earmarked an amount of Rs.56.92 crores towards the financial burden, which might arise on account of coverage of its employees under the Pension Scheme. This Court held that in matters such as these, there is no question of any employees claiming any vested right.

25] Similarly, in case of ***Madhukar s/o. Narayan Gadre and ors. Vs. The State of Maharashtra and ors.***[5]**,** decided on 18 June 2009, another Division Bench of this Court (Nagpur) declined relief to MHADA employees, who were seeking sanction of the State for coverage under the Pension Scheme. In interest of justice, however, the respondent-State was directed to take a decision on proposal dated 24 June 2008 addressed by the MHADA with regard to

4 Writ Petition No. 346 of 2013 (O.S.) alongwith connected matters decided
5 Writ Petition No. 2353 of 1993 (Nagpur Bench)

implementation of the Pension Scheme. This Court, made it clear that the State Government shall be free to take a decision, as it considers appropriate and formulate such a policy as it may consider advisable in regard to the Pension Scheme.

26] Following the aforesaid decisions, we are unable to issue any writ to the respondents directing coverage of the petitioners under the GPF and Pension Scheme. At least of of now, no material was placed before us to demonstrate that the FTII is ready to bear the entire financial burden arising out of switch over to the GPF and Pension Schemes. If, as contended by the petitioners, the FTII, being an Autonomous Institution is in fact in a position to bear the entire financial burden which might arise from the switch over, nothing prevents the FTII, even now from forwarding such a proposal to the Central Government for its approval. We have no doubt that if such proposal is indeed forwarded by the FTII to the Central Government, the same will be considered by the Central Government as expeditiously as possible and in accordance with law. However, taking into consideration the position as it stands of now, we are neither in a position to fault the view taken by the CAT nor ourselves issue any directions to the FTII or the Central Government to cover the petitioners under the GPF and Pension Schemes.

27] Mr. Bhange's submission, on the basis of certain resolutions or rules in the matter of coverage under GPF and Pension Schemes do not take the case of the petitioners any further. At the outset, it is required to be noted that the rules, which were referred to by Mr. Bhange has the General Provident Fund-Cum-Pension-Gratuity Rules, 1977, appear to be only draft Rules. This postion was confirmed by Ms Masurkar. The documents on record also bear out this position substantially. If 1977 Rules, were indeed Rules in force, then it is inexplicable as to why the FTII made resolutions thereafter and forwarded proposals to the Central Government. Accordingly, there is no basis to hold that the petitioners are already covered under the GPF and Pension Schemes by virtue of the 1977 Rules.

28] The CAT, in its earlier order dated 27 July 2001 in T.A.No 4 of 1999, it appears, had already taken the view that the employees recruited after 1 October 1974, are not Central Government employees and therefore, cannot claim either status of Central Government employees or parity with such Government employees. The CAT has noted that this decision was never challenged. We are also satisfied that the petitioners cannot claim to be Central Government employees by virtue of their recruitment at the FTII.

29] Upon cumulative consideration of the aforesaid facts, circumstances and reasons, we are satisfied that the impugned judgment and order made by the CAT does not warrant any interference in the exercise of our extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. This petition is therefore, dismissed and the order of the Tribunal is confirmed. However, it is clarified that in the event the FTII is in a position to and resolves to bear the entire financial burden, on account of switch over of its employees to the GPF and Pension Schemes and the FTII forwards such a proposal to the Central Government for approval, clarifying that FTII will not rely on any funds from the Central Government, we direct that such proposal be considered by the Central Government in accordance with law and as expeditiously as possible.

30] Rule is disposed of, in the aforesaid terms. There shall, however, be no order as to costs.

[M. S. SONAK, J.] [V. M. KANADE, J.]