

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.457 of 2018

Chancellor of Sambalpur University.* *Appellant

Mr. Subir Palit, Senior Advocate

-versus-

Prof. Sarat Kumar Acharya & others.* *Respondents

None

**CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN**

**ORDER
31.10.2022**

Order No.

07. 1. The challenge in the present appeal is to an order dated 16th May, 2018 passed by the learned Single Judge allowing W.P.(C) No.11768 of 2016 filed by the Respondent No.1 and directing that he would be governed by the new pension scheme. Thereby the learned Single Judge quashed the letter dated 25th April, 2016, sent to the Registrar, Sambalpur University declining the request.
2. The background facts are that the Respondent No.1 was initially appointed as Lecturer in the Sambalpur University on 26th October, 1983. He became a Professor sometime in 1999. The Sambalpur University is governed by the Orissa Universities First Statutes, 1990 (1990 Statutes) with effect from 1st January, 1990. In terms of the Statute 289 thereof, an employee of the University is to be provided with an option to choose either to be covered under the Pension Scheme applicable to the employees of the State

Government or by the Contributory Provident Fund (CPF) of the University. Statute 289 of the 1990 Statutes reads as under:

“289 (1) The existing employees who have not already exercised their option under the statutes shall exercise their option in writing either for the pension scheme or the Contributory Provident Fund (C.P.F) Scheme under Statute 288 within a period of six months from the date of these statutes come into force. The employees recruited thereafter to the service of the University shall exercise their option either for the Pension or Contributory Provident Fund (C.P.F) Scheme within a period of six months of their appointment.

Provided that the employees who have crossed the age of 58 years but have not attained the age of 60 years shall also have the right to exercise their option as aforesaid within a period of six months from the date of these Statutes come into force., but not later than one month prior to the date they attain the age of 60 years.

(2) The option as provided above, shall be exercisable once only in respect of either Scheme which shall be final irrespective of any change that may be made in any such scheme from time to time. The fact of exercising such option shall be recorded in the service book of the employee by the Registrar or such other officer nominated by him.

(3) If any employee fails to exercise the option required under these Statute within the prescribed time limit, he/she shall be deemed to have opted for the Pension Scheme”.

3. This exercise of option had to be within a period of six months from the date of coming into force of 1990 Statutes. Under the Statute 289 (3), if any employee fails to exercise the option within

the prescribed time limit, he/she shall be deemed to have opted for the General Pension Scheme (G.P.S.).

4. As far as Respondent No.1 is concerned, he opted for the CPF. In this context, reference is to be made to an Office Order No.16221 dated 30th October, 1990 setting out the names of persons who had opted for the CPF in which the name of the Respondent No.1 figures at Sl. No.45.

5. Since a number of persons sought one more chance to exercise their options, a recommendation was made for extending the time for change from C.P.F. to G.P.S. Accepting such recommendation, the Government of Orissa allowed a last chance for change of the option from C.P.F. to G.P.S. up to a period of one month from the date of issue of the letter dated 22nd August, 1997. However, the said deadline was missed by the Respondent No.1. A few years prior to his retirement, he submitted a representation on 16th September, 2011 to the Registrar, Sambalpur University seeking to switch over to the G.P.S. scheme from the earlier opted C.P.F. scheme.

6. The Respondent No.1 filed W.P.(C) No.19708 of 2015 praying that he be allowed to change over from C.P.F. to G.P.S. in accordance with the Statute 289(3) of the 1990 Statutes. The said writ petition was disposed of by this Court on 20th November, 2015 with a direction to the Appellant to consider representation of the Respondent No.1 in the light of the recommendation dated 19th September, 2011 of the Syndicate. Thereafter, the representation of the Respondent No.1 was rejected on 25th April, 2016 for the following reasons:

- i) choosing of option of either C.P.F. or G.P.S is to be exercised only once in accordance with the Statute 289 of the Statute 1990;
- ii) the Finance Department, Government of Odisha barred change of C.P.F. to G.P.S. after the stipulated period; and
- iii) the resolution dated 19.09.2011 of the Syndicate is beyond the scope of the Statute.

7. For the second time, Respondent No.1 filed W.P.(C) No.11768 of 2016 in this Court challenging the rejection of his representation. A reply was filed to the said writ petition by the Appellant pointing out the statutory impediment in allowing the prayer of the Respondent No.1. The said writ petition was disposed of by this Court on 16th May, 2018 quashing the letter dated 25th April, 2016 and directing the Appellant to deal with the case of the Respondent No.1 in accordance with the latest notification issued by the Ministry of Human Resources Development (MHRD) without any sort of insistence of his option already exercised by him. The said exercise was to be completed within three months.

8. Being aggrieved by the said order of the learned Single Judge, the present appeal was filed. While directing issue notice to the Respondents on 1st May, 2019 this Court stayed the operation of the impugned order of the learned Single Judge.

9. This Court has heard the submissions of Mr. Subir Palit, learned Senior counsel appearing for the Appellant. Despite Respondent No.1 being earlier represented by counsel, today none appears on his behalf.

10. It is seen from the impugned order of the learned Single Judge that the counsel for the Respondent No.1 had referred to a Notification dated 21st July, 2017 issued by the MHRD, in terms of which, those appointed in the Institute prior to 1st January, 2004 will be governed by Central Civil Services (Pension) Rules, 1972 and General Provident Fund (Central Services) Rules, 1960 and the employees appointed on or after 1st January, 2004 will be governed by New Pension Scheme of the Central Government. In view of the said Notification, the learned Single Judge permitted Respondent No.1 to avail the same benefit even though he had exercised his option to be governed by the CPF scheme.

11. The learned Single Judge observed that “Since the latest gazette notification has come, that will govern the petitioner. The option exercised by him to switch over to Contributory Provident Fund Scheme is diluted by operation of law, which has been published in the Gazette of India on 21.7.2017. In terms of the above discussion, the impugned letter dated 25.4.2016 vide Annexure-10 is quashed and the opposite parties are directed to deal with the case of the petitioner in accordance with the latest notification issued by the Ministry of Human Resources Development as aforesaid without any sort of insistence of his option already exercised by him”.

12. This Court has perused the Notification dated 21st July, 2017 issued under Section 26(3) and (4) of the National Institutes of Technology, Science Education and Research Act, 2007 (2007 Act) with the prior approval of the Visitor. The learned Single Judge perhaps failed to notice that the said Notification was specific to the NITs and in fact did not apply to the Universities like the present Appellant. Therefore, it was erroneous for the relief to be granted to the Respondent No.1 in terms of accepting his prayer for switching over to the GPS on the basis of a Notification which did not apply to him at all.

13. On that short ground, the impugned order cannot be sustained in law. In other words, the Appellant is right in issuing the impugned letter dated 25th April, 2016 declining to permit the Respondent No.1 to switch over to the GPS, particularly since he had already exercised his option to be governed by the CPF Scheme.

14. The impugned order of the learned Single Judge is, accordingly, set aside. The writ appeal is allowed but, in the circumstances, with no order as to costs.

15. Issue urgent certified copy as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge