IN THE HIGH COURT OF JUDICATURE AT MADRAs

ORDER RESERVED ON : 13.03.2024
ORDER PRONOUNCED ON : 03.06.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.33847 of 2019
and
W.M.P.No.34368 of 2019

1. National institute of Port
Management Employees Union,
Rep. by its General Secretary,
Regd. No. 2129/MDS,
East Coast Road, Uthandi,
Chennai-600 119.

2. G.Marimuthu ...Petitioners

Vs.

1. Government of India,
Rep. by the Secretary,
Ministry of Shipping,
No.1, Sansad Marg,
New Delhi- 110 001.

2. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai- 600 001.

3. Indian Maritime University,
Rep. by its Registrar,
Chennai Campus,

East Coast Road, uthandi,
Chennai- 600 119.

4. The Regional Provident Commissioner,
Employees Provident Fund Scheme,
Royapettah High Road,
Chennai-600 014. ...Respondents

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records pertaining to the orders of the 3rd respondent in proceedings in EC 2016-34-40 dated 23.05.2016 which was served by letter dated 23.07.2019 and to quash the same as illegal, incompetent and ultravires and consequently direct the 3rd respondents to frame a provident fund scheme and pension scheme for its employees at Chennai as per the provisions of the IMU Act, 2008.

For Petitioner : Mr.R.Jayaprakash
for M/s.M.Guruprasad

For Respondents: M/s.ME.Sarashwathy
for R1
M/s.Niranjan Rajagopalan
for R2
M/s. K.Srinivasamurthy
for R3
M/s.V.Sundareswaran
for R4

ORDER

The writ petition is filed by the petitioner Union for a Writ of Certiorarified Mandamus to quash the proceedings of the 3rd respondent in EC 2016-34-40 dated 23.05.2016 and to further direct the 3rd respondent to frame a provident fund scheme and pension scheme for its employees in Chennai as per the provisions of the Indian Maritime University Act, 2008 (Hereinafter called ad IMU Act).

2. The brief facts of the case are as under.

The National Maritime Academy (Originally called NIPM) before coming under the Indian Maritime Act, 2008 was a society registered under the Societies Registration Act. The NIPM was established on 20.11.1984. The funds were provided by the Central Government and it was administered by the governing body of the society. The society had 32 employees among which 3 died, some retired and the present strength is 22. The general body of the society resolved to frame its rules and regulations on the basis of the Madras Port Rules and Regulations. The NIPM society applied for exemption from the Employees Provident Fund Act, the same was rejected and as a result the NIPM society could not apply the pension and Provident Fund Rules of the 3rd respondent, which were on par with the Central Government Rules. It was the grievance of the petitioner that though the 3rd respondent granted pension on par with the Central Government employees to some of its employees, it declined to extend the same benefit to the petitioner's members. The petitioner contends that its members are entitled to pension as per Section 38 of the IMU Act and also because it was extended to the employees of four institutions *viz.,* 1) Training Ship Chanakya, Mumbai, 2) Marine Engineering and Research Institute, Kolkata, 3) marine Engineering and Research Institute, Kolkata, 4) Lalbahadur Shastri College of Advanced Maritime Studies, Mumbai, which are also covered by the IMU Act. The petitioner's case is that denial of pension to its members is discriminatory and violative of Article 14. The petitioner would also contend that the various Resolutions and proceedings annexed to the type set of papers would clearly establish that the 3rd respondent University had approved in principle for introduction of the pension scheme (on par with the Central Government Pension benefits) to the erstwhile employees of NIPM who joined on or before 01.04.2004. Even the IMU (Chennai campus) had accorded its willingness for setting up the pension fund as approved by the EC and the FC. While things stood thus the 3rd respondent passed the impugned proceedings. Hence the petitioner filed the above writ petition with the aforesaid prayer.

3. The 3rd respondent filed a detailed counter denying the contentions raised by the petitioner. The respondent contented among others, that the contention of the petitioner that a decision was taken to accord pension to the employees of the erstwhile National Maritime Academy (NIPM) was wrong. The respondent further contented that in the finance committee meeting dated 16.05.2013 relied on by the petitioner, it was only resolved to address other campus directors on their support to the pension scheme by raising funds from the individual campus as the Central Government declined to release funds. Even otherwise, the highest statutory authority (i.e) the Executive Committee had resolved against the conversion of PF into pension vide the impugner order. The respondent referring to the provisions of the 49 and 38 of the IMU Act contended that as the petitioner's member's failed to exercise their option in terms of Section 49(iii) and preferred to stay with their basic pay, they were not entitled to the service benefits of IMU. With reference to Section 38, it was contended

that the said provision provided for either PF or pension and not both. The petitioner's member's joined IMU with PF and as they chose to be protected under Section 49(ii) they could not complain. It was also contended that the Central Government had itself done away with old pension rules by formulating the NPS scheme for its employees vide notification dated 22.12.2003 operative from 01.01.2004. The IMU adopted the NPS scheme for all recruits since 14.11.2008. With regard to the employees of the four Government maritime institutes namely 1) Training Ship Chanakya, Mumbai, 2) Marine Engineering and Research Institute, Kolkata, 3) marine Engineering and Research Institute, Kolkata, 4) Lalbahadur Shastri College of Advanced Maritime Studies, Mumbai, who were recruited prior to 01.01.2004 the GPF cum gratuity cum pension scheme continued as they were taken on deemed deputation basis. It was contended that the members of the petitioner continued with the CPF scheme as they retained their service conditions of NIPM. Further change over from CPF to GPF scheme and vice versa was not permitted by the Government of India, any more. Referring to the disparity in the salary of the member's of the petitioner with the employees of the IMU, it was contended that as they failed to exercise their option under Section 49 (iii) they continued with the service benefits of NIPM only. On the aforesaid contentions the respondent contended that the writ petition was meritless.

4.The petitioner filed a reply to the counter denying all the averments. The petitioner referring to the meetings of the FC and EC contended that the statutory authorities of IMU had also deliberated the issue and approved the proposal for reversion of GPF/ Pension scheme. The respondent relying on the proceedings in the 13th to 17th meeting contended that the governing body approved the GPF scheme with pension for NIPM employees in its 17th meeting and also contributions were taken from the employees towards GPF in the initial years (i.e.) 1989 – 1996. The petitioner contended that for reasons best known to the respondent the important service condition namely GPF with pension benefits was changed to Employment Provident Fund Organisation (EPFO). The respondent contended that the employees contribution was available with the EPFO and hence if the proposed pension scheme was approved, the EPFO could return the contribution and the same could be utilised for pension by either creating a pension fund with minimum investment and interest distributed as pension or by withdrawing the accumulated funds and creating a fund for disbursing the pension. On these and other contentions the petitioner prayed that the writ petition be allowed.

Contentions of Rival Counsels:

5. The learned counsel for the petitioner relying on the various Resolutions, proceedings and other documents filed in the voluminous type set contended that the petitioner's members were entitled to Provident Fund and Pension. The learned counsel relying on the provisions of Section 38 of the Act contended that the 3rd respondent was bound to frame Pension cum Provident Fund scheme for its member's. The learned counsel relying specifically on the circular dated 12.08.1981 contended that the petitioner's member's contributed to GPF as deductions were made towards the same as evidenced by the salary slips. The learned counsel further submitted that the respondents were bound by the principles of promissory estoppel to frame the pension scheme as the various proceedings clearly showed that approval was given and deductions made towards contribution to GPF. The counsel further submitted that the respondent by denying pension to the petitioner's

member's was discriminating its employees by allowing pension to some and denying the same to others. The counsel relied on few Judgments in support of promissory estoppel.

6.The learned counsel for the 3rd respondent on the other hand contended *inter alia,* that the reliance placed by the petitioner on the FC meeting held on 16.05.2013 was misplaced. The learned counsel submitted that in the said meeting all that was resolved was to get the support of the other campus directors to find out if they would support the pension scheme with their individual funds as the Central Government refused to fund the pension scheme. Moreover the decisions of the FC were to be considered and accepted by the EC which was the highest statutory authority. In the absence of EC approval the decision of the FC was not binding. According to the counsel the EC resolved not to convert the PF into pension and hence the contentions of the petitioner were unsustainable. The counsel for the respondent countered the argument of the petitioner regarding discrimination by referring to the provisions of Section 49 of the IMU Act. The counsel further submitted that the question of framing a scheme under Section 38 was unfeasible because Section 38 provided for either pension or PF but not both and as the petitioner's were covered by PF they could not claim pension. The counsel further submitted that at the time of joining the IMU, the petitioner was given an option in terms of Section 49 (iii) which he failed to exercise and hence the petitioner could not complain. The counsel submitted that the Central Government itself had done away with the old pension scheme by adopting the NPS and therefore there was no possibility of switching over. The counsel lastly submitted that the IMU adopted NPS to all its employees recruited after 14.11.2008 and as the petitioner's member's joined IMU with CPF scheme there was no question of conversion to GPF as the Government of India did not permit the same. The counsel therefore submitted that the writ petition was meritless and deserved to be dismissed.

7. I have heard both the learned counsels and I have perused the entire materials on record. Though the petitioner has filed voluminous type set, having gone through the same, I am of the view that most of the documents only add paper.

8. The core issue to be decided in this case is whether the proceedings dated 23.05.2016 have to be quashed and whether the petitioner's members' about 22 in number are entitled for framing of a pension scheme as prayed for in the writ petition.

9. It is the petitioner's contention that a decision was taken to extend the benefit of pension to its member's who were originally the employees of NIPM (IMA). The petitioner further contends that in terms of Section 38 of the Act, the 3rd respondent was bound to frame pension scheme to its members as a decision was already taken in its FC and EC meetings. The petitioner further contends that as the contributions were deducted from the petitioner's member's salary towards GPF, the respondent was estopped from declining pension to the petitioner's member's. The petitioner also complains of discrimination as according to the petitioner the following institutions i.e. 1) Training Ship Chanakya, Mumbai, 2) Marine Engineering and Research Institute, Kolkata, 3) marine Engineering and Research Institute, Kolkata, 4) Lalbahadur Shastri College of Advanced Maritime Studies, Mumbai were extended pensionary benefits, but the same was denied to its members. The adoption of

different yardstick for the employees of the aforesaid institutions was violative of Article 14, according to the petitioner.

10. The respondent on the other hand contends that the EC as the highest statutory authority had never approved a pension scheme for the petitioner's member's. It is further contended that the petitioner's member's are not entitled to claim pension as they failed to exercise their option under Section 49 (iii) of the IMU Act. As the petitioner's member's joined IMU with EPF coverage only, they cannot claim switchover and further the Government of India does not allow for conversion any longer. As regards Section 38, the counsel contended that Section 38 does not provide for pension and EPF but only for pension or EPF.

11. Before embarking on a discussion of the contentions raised by the counsels, I am of the view that Section 49 and Section 38 of the IMU Act have to be referred to at the outset.

> *"49. Notwithstanding anything contained in this Act, or in the Statutes or the Ordinances, consequent upon merger of the Training Ship Chanakay, Mumbai, the Marine Engineering and Research Institute, Mumbai, the Marine*

Engineering and Research Institute, Kolkata, Lal Bahadur Shastri College of Advance Maritime Studies, Mumbai, the National Maritime Academy, Chennai, Indian Institute of Port Management, Kolkata and the National Ship Design and Research Centre, Visakhapatnam into the Indian Maritime University, all the assets and employees shall stand transferred to the University and such employees shall have the following options:

(i) the employees of the four training Institutes under Indian Institute of Maritime Studies who shall stand transferred to Indian Maritime University shall have the option to continue on deemed deputation in Indian Maritime University on the terms and conditions in force of the Central Government and also continue to retain or to be allotted government residential accommodation on turn and avail of the Central Government Health Scheme facilities till their retirement;

(ii) the employees of the National Maritime Academy, Chennai, Indian Institute of Port Management, Kolkata and the National Ship Design and Research Centre, Visakhapatnam shall have the option to continue on the terms and conditions of their respective institutes till their retirement; and

(iii) All employees shall have the option to join University as per the service conditions of the University."

Section 38 of the IMU Act reads as follows:

> *"38. (1) The University shall constitute for the benefit of its employees such provident or pension fund or provide such insurance schemes as it may deem fit in such manner and subject to such conditions as may be prescribed by the Statutes. (2) Where such provident fund or pension fund has been so constituted, the Central Government may declare that the provision of the Provident Funds Act, 1925 shall apply to such fund, as if it were a Government provident fund."*

12. A bare reading of Section 49 of the Act brings out that there are 3 categories of employees covered under the provision. Section 49 (I) relates to employees from the four institutions 1) Training Ship Chanakya, Mumbai, 2) Marine Engineering and Research Institute, Kolkata, 3) marine Engineering and Research Institute, Kolkata, 4) LalbahaduShastri College of Advanced Maritime Studies, Mumbai, who were deputed to IMU on terms and conditions in force of the Central Government. Section 49 (ii) relates to employees who were given option to continue on the terms and conditions of their respective institutes till their retirement and Section 49 (iii) relates to all employees who were given option to join the University as per the service conditions of the university.

13. From the above, it is clear that the contention of the petitioner as regards discrimination is untenable in as much as the employees of the 4 institutions (i.e) 1) Training Ship Chanakya, Mumbai, 2) Marine Engineering and Research Institute, Kolkata, 3) marine Engineering and Research Institute, Kolkata, 4) LalbahaduShastri College of Advanced Maritime Studies, Mumbai belong to a totally different category and hence the petitioner's member's who do not belong to the said category cannot claim parity with them.

14. The petitioner's member's fall under Section 49(ii) as they opted to continue with the terms and conditions of NIPM. The question is whether in NIPM the pension scheme was available. Admittedly, NIPM opted for CPF scheme for its employees which is evident from the various GB meetings, particularly the 37th, 38th and 39th meetings where it was decided that NIPM should opt for CPF scheme and not pension scheme. The decision in those meetings resulted in passing of circular dated 05.12.1997 and circular dated 16.06.1998, whereunder the decision of the general body meeting was conveyed with instructions that deductions towards CPF would be made from January 1998 vide circular dated

05.12.1997 and nomination forms for CPF were called under circular dated 16.06.1998. Therefore it is clear that when the petitioner's joined IMU, they were covered by CPF scheme only. Further the petitioner's member's having chosen to continue with NIPM benefits cannot claim for any pension or for framing of pension scheme. The type- set of papers contains the option forms of the petitioner's member's conveying their willingness to continue with NIPM terms and conditions till their retirement. The petitioner has failed to establish that when they joined IMU, they had the benefit of pension scheme in NIPM. Therefore it is seen that pension was not one of the terms and conditions of service of the petitioner's in NIPM, hence they cannot claim pension.

15. It is next contended by the petitioner that in the meeting held on 16.05.2013, the Finance Committee and the Executive Committee of the 3rd respondent University approved in principle for introduction of pension scheme (on par with Central Government pension benefits) to the employees of NIPM who joined before 01.04.2004 but without the budgetary support of the 1st respondent. It is seen that it was only a proposal of Finance Committee and it was not considered and approved

by the highest statutory authority (i.e) the Executive Committee. The petitioner states that as the FC had accorded in principle approval, the 3rd respondent was bound to frame a scheme under Section 38. Section 38 is extracted above and a bare reading of Section 38 clearly shows that the university shall constitute either a provident or pension fund and such other insurance scheme as it may deem fit. As the petitioner's member's were already covered by the CPF scheme it is not incumbent on the 3rd respondent to constitute pension scheme also. Section 38 provides for the creation of either provident or pension fund and not both. It is seen that only to bring in uniformity, the proposal to constitute pension fund was mooted by the FC but unfortunately it was not approved by the EC. In my view, the petitioner's cannot complain because it was their option to continue with NIPM terms and conditions. The petitioner's received higher salary only because they opted to continue with NIPM terms and conditions. As rightly contended by the 3rd respondent, the petitioner cannot have the cake and eat it too.. It is pertinent to note here that employees of NIPM who exercised their option under Section 49 (iii) came under IMU services and are conferred benefits thereon. The NPS is adopted and followed by the IMU to employees who were recruited after

14.11.2008 directly. As far as the plea of conversion of CPF to pension fund is concerned as rightly contended by the respondent's counsel, the Government of India does not allow for conversion any more. The petitioner's having missed the bus have laid this writ petition on untenable grounds. In the light of the above facts, I find no merits in the petitioner's contentions.

16. Given the fact situation of the case, I am of the view that the Judgments relied on by the petitioner on the principles of promissory estoppel do not apply.

For all the above reasons, I find no merit in the writ petition and the same is dismissed. No costs. Consequently, connected WMP. is closed.

03.06.2024

Index:Yes/No
Speaking Order:Yes/No
Neutral Citation:Yes/No
dsn/ah

To

1. The Secretary,
Government of India,
Ministry of Shipping,
No.1, Sansad Marg,
New Delhi- 110 001.

2. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai- 600 001.

3. The Registrar,
Indian Maritime University,
Chennai Campus,
East Coast Road, uthandi,
Chennai- 600 119.

4. The Regional Provident Commissioner,
Employees Provident Fund Scheme,
Royapettah High Road,
Chennai-600 014.

N.MALA,J.

dsn

PRE-DELIVERY ORDER IN
W.P.No.33847 of 2019

ORDER DELIVERED ON
03.06.2024