STATE OF U.P. AND ORS. ETC. A

v.

PURUSHOTTAM PANDEY AND ORS. ETC.

OCTOBER 24, 1996

[K. RAMASWAMY, G.B. PATTANAIK, JJ.] B

Service Law :

Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund—Insurance—Pension Rules, 1964 (Triple Benefit Scheme) Rules 3 and 17—Applicability of—Only to certain category of institutions—Agricultural institution—Not falling within the category—Held, Rules not applicable to employees of Agricultural institutions, since not covered under Rule 3—Therefore applicability of Rule 17 does not arise. C

Constitution of India, Art 136 : D

Dismissal of Special Leave Petition against interim order of High Court wherein applicability of the Rules, was not considered—Disposal of the main Petition by High Court, in view of the order of the Special Leave Petition—Without examining applicability of the Rules—Held, the dismissal of Special Leave Petition would not tantamount to a definite conclusion of this Court with regard to the applicability of the Rules—It only meant that there was no justification to interfere with the interim direction. E

Respondents were employees of an agricultural institution, imparting 2 years Agricultural Extension diploma course, which was run by private management recognised by the State Government. State Government decided to abolish the said diploma course and the institution was asked to be stopped. Though the government was intending to bring such institutions under the Triple Benefit Scheme Rules, but no final decision emanated. In view of the stoppage of the institutions, the services of the respondents were terminated. Respondents made representation to the State Government, praying that provisions of Triple Benefit Scheme be made available to them. The representation was rejected. Respondents filed writ petition before High Court, for grant of post retiral benefits under the Triple Benefit Scheme. High Court by its interim order directed State Government to pay the retiral benefits under the Scheme, because the State F G H

A had not filed the counter to the petition within time.

The State approached this Court by way of Special Leave Petition against the interim order, which was dismissed, without interfering with the order.

B The High Court allowed the writ petition, without considering the applicability of the scheme, on the ground that since Supreme Court had dismissed the Special Leave Petition against the interim order, the writ petition must succeed.

In appeal to this Court, the appellant State contended that the in-
C stitution being not one of the categories of institutions mentioned in Rule 3 of the Scheme, the Scheme is not applicable to the respondent and that the dismissal of Special Leave Petition against the interim order, cannot be construed to mean that this Court had held that the Scheme is applicable to respondents.

D Allowing the appeal, this Court

HELD : 1.1. The Triple Benefit Scheme has no application to the employees of the agricultural institutions like respondents and the High Court committed gross error in making the said rule applicable.
E [730-H, 731-A]

1.2. A plain reading of Rule 3 unequivocally indicates that only five categories of institutions mentioned therein would be covered by the Triple Benefit Scheme Rules provided those categories of institutions are either run by a local body or by a Private Management and are recognised by Competent Authority for the purpose of payment of grant-in-aid. The in-
F stitution in question, though run by Private Management and was in receipt of grant-in-aid, but the same is neither a Primary School nor a Junior High School, nor a Higher Secondary School, nor a Degree College, nor a Training College and, therefore, the said institution and the employees serving in the said institution cannot be said to be covered under Rule 3 of the
G Rules. [728-H, 729-A-B]

1.3. Neither the Triple Benefit Scheme applies to the institution where the respondent were serving proprio-vigore, nor the government has taken any final decision making the Scheme applicable. [730-F]

H 2. The earlier order of dismissal of the Special Leave Petition by this

Court against an interim direction of High Court would not tantamount to a definite conclusion of this Court that Triple Benefit Scheme is applicable to the respondents. The High Court committed serious error of law in disposing of the Writ Application solely on that ground, without examining the question whether the Triple Benefit Scheme is at all applicable to the respondents. During the pendency of the Writ Application when the High Court issued an interim-direction, there had been no adjudication nor any conclusion has been arrived at by the High Court as to the applicability of the Scheme to the respondents. When the State challenged the said interim direction by filing the Special Leave Petition, dismissal thereof would mean that this Court found no justification to interfere with the interim direction. **[731-B-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13265 of 1996 etc.

From the Judgment and Order dated 13.12.93 of the Allahabad High Court in W.P. No. 12363 of 1989.

W. Waziri and Irshad Ahmad for the Appellants.

Sunil Gupta, B.M. Sharma and T.N. Singh for the Respondents.

The Judgment of the Court was delivered by

PATTANAIK, J. Delay condoned in cc no. 27625 of 1994.

Leave granted in both the SLPs.

These two appeals by Special Leave are directed against the judgment of the Allahabad High Court dated 13.12.1993 allowing the Writ Petitions filed by the respondents and directing the appellant to make necessary payment as admissible under the Triple Benefit Scheme. The State of U.P. introduced a set of Rules called the Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund-Insurance-Pension Rules, 1964, called the Triple Benefit Scheme conferring certain post-retirement benefits to the employees of specified category of institutions. Rule 3 thereof provides that employees serving in State aided educational institutions of the following categories run either by a Local Body or by a Private Management and recognised by a competent authority as such for purposes of grant-in-aid would be covered by the Rules in question. The categories of institutions mentioned therein are :-

A 1. Primary schools;

2. Junior High Schools;

3. Higher Secondary Schools;

B 4. Degree Colleges;

5. Training Colleges.

The respondents were employees of educational institutions for imparting agricultural education which institutions were registered under the C Societies Registration Act. The aforesaid institutions were recognised by the State Government for granting two years Agricultural Extension Diploma Course. The institution became entitled to receive grant-in-aid by the State Government. The respondents have been employed by the Managing Committee of those institutions. In the year 1985 the State D Government reviewed the necessity of continuing the Diploma Course and took a decision to abolish the said Diploma course. On 16th July 1985 the Agricultural department of the State of U.P. informed all such institutions including the institution where respondents were serving the decision of the State Government that all Diploma Course would be abolished and the institutions were advised not to take any new admission and to stop the E institutions by the end of 1985-86. In view of the aforesaid decision of the State Government the Secretary of the Managing Committee of the institution terminated the services of the respondents on 30th June, 1986. In April 1989 the respondents filed representation before the State Government praying that the provisions of Triple Benefit Scheme should be made F available to them and their retirement benefits may be conferred accordingly. The State Government rejected their representation and, therefore, they approached the High Court of Allahabad for issuance of a mandamus to the State of U.P. to grant the post retirement benefit under the Triple Benefit Scheme *inter alia* on the ground that the institution where they were serving being aided educational institutions the employees thereof should G be governed by the scheme in question. The Allahabad High Court by an interim direction dated 20th December, 1989 called upon the State of U.P. to pay retirement benefits under Triple Benefit Scheme within six weeks from the date of the order and the aforesaid interim order was passed as the State did not file any counter affidavit though time had been granted H for the purpose. Against the aforesaid interim direction the State of U.P.

had approached this Court in S.L.P. (C) No. 18303 of 1992 but this Court by order dated 23rd November, 1992 did not interfere with the direction and dismissed the Special Leave Petition. Thereafter by the impugned judgment the High Court allowed the Writ Petitions and held that since the petitioners before the Court had been paid the post retirement benefits and arrear of salary and the Supreme Court has dismissed the Special Leave Petition which the State had carried against the interim direction, the Writ Petition must succeed. Hence the present appeals.

Mr. N. Waziri, learned counsel for the appellants contended that the Triple Benefit Scheme which has been made applicable to the respondents being intended for categories of institutions mentioned in Rule 3 of the Scheme and the institutions imparting 2 years Diploma Course in agriculture where the respondents were serving not being one of the categories of the institutions mentioned in Rule 3 the High Court committed gross error of law in holding that the Triple Benefit Scheme becomes applicable to the respondents. The learned counsel also contended that the dismissal of the Special Leave Petition against the interim direction of Allahabad High Court cannot be construed to mean that this Court had held that Triple Benefit Scheme is applicable to the respondents and the High Court, therefore, committed gross error in disposing of the Writ Petition on that ground. The learned counsel appearing for the respondents, on the other hand contended, that by the interim direction the High Court having called upon the State to pay up the retirement benefits in accordance with Triple Benefit Scheme and that direction having been upheld by this Court in as much as Special Leave Petition against the same was dismissed both on the ground of limitation as well as on merits, the High Court was fully justified in allowing the Writ Petition on that score. He also contended that the institution where the respondents were serving being aided institutions and were thus State Educational Institutions, the provisions of Triple Benefit Scheme would be applicable to the employees thereof by operation of Rule 3 of the Triple Benefit Scheme Rules and, therefore, the impugned order of the High Court does not merit interference by this Court.

In view of the rival submissions the first question that arises for consideration is whether the Krishnamurthi Foundation of India (KFL) Agriculture School, Rajghat Fort, Varanasi, where the respondents were serving and which institution was imparting two years Agricultural Extension Diploma Course and which course had been recognised by the State

A Government and the institution was receiving grant-in-aid can be said to be covered by the Triple Benefit Scheme Rules. The answer to the aforesaid question depends upon the interpretation of Rules 3 and 17 of the aforesaid Rules which are quoted below in extenso :-

B Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund-Insurance-Pension Rules 1964 (hereinafter referred to as Rules in short) (Triple Benefit Scheme) which are quoted as follows :-

C "*Rule 3* : These rules shall apply to permanent employees serving in State aided educational institutions of the following categories run either by a Local Body or by a Private Management and recognised by a competent authority as such for purposes of payment of grant-in-aid :

D (1) Primary Schools;

(2) Junior High Schools;

(3) Higher Secondary Schools;

(4) Degree Colleges;

E (5) Training Colleges.

Rule 17 : An employee shall be eligible for pension on :-

F (i) retirement on attaining the age of superannuation or on the expiry of extension granted beyond the superannuation age;

(ii) voluntary retirement after completing 25 years of qualifying service;

G (iii) retirement before the age of superannuation under a medical certificate of permanent incapacity for further service; and

(iv) discharge due to abolition of post of closure of an institution due to withdrawal of recognition or other valid causes."

H A plain reading of Rule 3 unequivocally indicates that only five categories of institutions mentioned therein would be covered by the Triple

Benefit Scheme Rules provided those categories of institutions are either run by a Local Body or by a Private Management and are recognised by Competent Authority for the purpose of payment of grant-in-aid. The Krishnamurthi Foundation of India Agriculture School, Rajghat Fort, Varanasi is no doubt an institution run by Private Management and was in receipt of grant in aid. But the said institution is neither a Primary School, nor a Junior High School nor a Higher Secondary School, nor a Degree College, nor a Training College and, therefore, the said institution and the employees serving in the said institution cannot be said to be covered under Rule 3 of the Rules. Then the question would arise whether the employees serving therein would be entitled to the benefits under Rule 17. But since the institution where the respondents were serving is not one of the category of institutions mentioned in Rule 3 question of considering the applicability of Rule 17 does not arise. It is no doubt true that the Directorate of Agriculture, Uttar Pradesh was contemplating to bring such institutions under the Triple Benefit Scheme launched by the Education Department as is apparent from the letter of the Deputy Secretary to the Government in the Agricultural Department dated 19th July, 1972, but ultimately no final decision of the Government emanated in applying the Scheme to the Agricultural institutions probably because the Government decided to abolish the course which was being imparted by these institutions. The learned counsel for the respondents strongly relied upon the letter of the Deputy Secretary to the Government of U.P. in the Agricultural Department dated 19th July, 1972, and contended that the Government had taken the decision to make applicable the Triple Benefit Scheme to the Agricultural Institutions also. But having examined the said letter we are unable to accept the contention of the learned counsel for the respondents. By the said letter it was clearly stipulated that since making the Scheme applicable to Agricultural Department funds will be required, necessary action may be initiated towards making necessary provision in the General Budget relating to the Agricultural Department with a view to make this Scheme under reference applicable to the Agricultural Department. But infact no Budgetary provision has been made and no funds were made available and, therefore the tentative decision of the Deputy Secretary to the Government in the Agricultural Department dated 19th July, 1972 was never finalised, and on the other hand the Secretary to the Government by his letter dated 21st April, 1987 communicated his decision to the Director of Agriculture, Uttar Pradesh, Lucknow stating therein that the 2 years Diploma Course in Agriculture having been completely stopped

A B C D E F G H

A there seems no need to consider the applicability of the Triple Benefit Scheme. The aforesaid letter of the Secretary to the Government in the Department of Agriculture, Uttar Pradesh is extracted hereinbelow in extenso :-

B

To

The Director Agriculture,
U.P. Lucknow.

Dated 21.4.87

C Sub : Providing the facility of General Provident Fund, Compulsory Group Insurance Scheme and Pension to the Workers of non-government Agriculture schools.

Sir,

D In Connection with the letter number Prasar (ET) 71, dated 9.4.87 of Agriculture Directorate regarding the above mentioned matter, I have been directed to inform you that since the two year diploma course in agriculture and Prasar has been completely stopped in the State, and recognition of the schools has also ended, hence
E there seems no need to consider the abovesaid scheme. The matter be closed.

Faithfully yours,

(B.P. Verma)
F Govt. Secretary.

Thus it is apparent that neither the Triple Benefit Scheme applies to the institution where the respondents were serving *proprio vigore* nor the government has taken any final decision making the Scheme applicable. On
G the other hand it appears that a special set of Rules was invoked for the categories of employees like the respondents called the Rules for a Scheme of Provident Fund for Agricultural School Teachers/clerks and Inspector servants in non pensionable service and the respondents, therefore, would be governed by those set of rules. In the aforesaid premises we have no hesitation to come to the conclusion that the Triple Benefit Scheme Rule
H has no application to the employees of the Agricultural Institutions like

respondents and the High Court committed gross error in making the said rule applicable. A

The next question that arises for consideration is whether the conclusion of the High Court, that the dismissal of the Special Leave Petition by this Court against the interim direction tantamounts to a decision of this Court that Triple Benefit Scheme applies to the respondents is correct in law. The answer to this question must be in the negative. During the pendency of the Writ application when the High Court issued an interim direction of 20th December, 1989 directing the State to pay the Writ Petitioners their retirement benefit under the Triple Benefit Scheme, there had been no adjudication nor any conclusion has been arrived at by the High Court as to the applicability of the Scheme to the respondents. When the State challenged the said interim direction by filing the Special Leave Petition and dismissal thereof would mean that this Court found no justification to interfere with the interim direction. By no stretch of imagination the order of dismissal of the Special Leave Petition by this Court would tantamount to a definite conclusion of this Court that Triple Benefit Scheme is applicable to the respondents. In our considered opinion the High Court committed serious error of law in disposing of the Writ Application solely on that ground without examining the question whether the Triple Benefit Scheme is at all applicable to the respondents or not. In view of our conclusion that the said Scheme has no application to the respondents these appeals are allowed and it is held that the respondents are not entitled to the benefit of the Triple Benefit Scheme. But since they have already received some amount in pursuance to the interim direction of the High Court and dismissal of the Special leave Petition against the same no recovery may be made in respect of the amount already paid. B C D E F

These appeals are allowed with the aforesaid directions, but in the circumstances there will be no order as to costs.

K.K.T. Appeals allowed.