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Court : Mumbai

Decided On : Dec-17-2002

Reported in : 2003(1)ALLMR936; 2003(3)BomCR387; (2003)IILLJ683Bom; 2003(2)MhLj95

Judge : C.K. Thakker, C.J. and ;Ranjana Desai, J.

Acts : [Constitution of India](#) - Articles 14, 19 and 21

Appeal No. : W.P. No. 2774 of 1999 with Suo Motu W.P. No. 2788 of 2000

Appellant : Children's Aid Society Employees Union and Anr.

Respondent : Children's Aid Society and Ors.

Advocate for Def. : K.R. Belosey, Assistant Government Pleader in Writ Petition No. 2774 of 1999, ;P. Janardhanan, Addl. Adv. General and ;Y.R. Singh, Assistant Government Pleader in Writ Petition No. 2788 of 2000

Advocate for Pet/Ap. : Mihir Desai, Adv. in Writ Petition No. 2774 of 1999 and ;Party in person in Writ Petition No. 2788 of 2000

Disposition : Petitions dismissed

Judgement :

C.K. Thakker, C.J.

1. Both the petitions have been filed by the petitioners for an appropriate writ, direction or order directing the respondents to extend pension, gratuity and other retiral benefits to the employees of Children's Aid Society, as have been made available to other employees of the aided special schools for disabled, as per Government Resolution dated February 1, 1984.

2. A prayer is made in the cognate petition to pay dues of Smt. Sulochana S. Salvi, petitioner of that petition.

3. In the first petition (W. P. 2774 of .1999), the case of the petitioners is that petitioner No. 1 is a registered trade union having registration No. BY/ II/8839. The union was registered in 1956 and is the only union existing at the Children's Aid Society. It was stated that the Children's Aid Society was formed by the Government with the Home Minister as its ex-office Chairman. The Governing Council consists of six members nominated by the State Government. In addition, there are six elected members and 15 ex-officio members including the Municipal Commissioner, Police Commissioner, Mayor of Mumbai and other persons from Government and semi-Government bodies. The Institute receives 100 per cent grant-in-aid from the Government for payment of salary and other allowances of its employees. The children's aid society has various institutions. Their names have been mentioned in the Petition. The grievance of the petitioners is that employees of Children's Aid Society have not been extended pensionary benefits as well as benefits of gratuity, despite the fact that similarly situated aided institutions have been granted such benefits.

4. According to the petitioners, on 20th December, 1982, the Social Welfare and Sports Department of Government of Maharashtra passed a Resolution extending pension and gratuity scheme and other retiral benefits to the recognised teaching and non-teaching staff of the aided recognised private primary Ashramshalas. Thus, employees of Ashramshalas are held entitled to pensionary benefits. By a Resolution dated 1st February, 1984, the Ministry of Social Welfare extended pension scheme for the full-time teaching and non-teaching staff of the aided recognised special schools for disabled and hostels for disabled children.

Similarly, by a Resolution dated 27th December, 1985, such benefits have been granted to aided Maharashtra State Probation and Instructions Organisation. Thus, several aided schools and institutions have been granted benefits of pension, gratuity and other benefits but they have not been made available to the employees of petitioner No. 1. There is no justification on the part of the State Government in not extending those benefits to employees of petitioner No. 1 and the action is arbitrary, unreasonable and violative of Article 14 of the Constitution.

5. It was stated in the petition that various representations were made individually by the employees demanding implementation of pension scheme but the State Government paid no heed.

6. Mrs. Sulochana S. Salvi (petitioner of Suo Motu Writ Petition No. 2788 of 2000), who retired as Deputy Superintendent with effect from 1st December, 1995, after completing 33 years service, had not been paid her retiral benefits including pension.

7. In view of illegal and arbitrary attitude by the State Government, the petitioners were constrained to approach this Court.

8. On July 4, 2001, a Division Bench of this Court passed an order, inter alia, observing therein that the grievance in the writ petition related to non-formulation of pension scheme for the employees of petitioner No. 1, who were working in institutions dealing with care of children. The court noted that it was aware of the fact that no pension scheme had been formulated for employees of such institutions but taking into account the fact that in similar institutions, pension scheme had been introduced, the Government, was directed to consider the question, whether it would introduce such scheme for the employees of the institution in question. The matter was, therefore, adjourned by the Court directing the Government as to whether the government intended to frame a scheme for grant of pension to such employees.

9. Since the Government had taken a decision not to formulate such scheme and to extend pensionary benefits to the employees of the petitioner No, 1 institute, it is challenged by the petitioners.

10. An affidavit in reply is filed by the Chief Officer of the Children's Aid Society on 4th July, 2001. A counter is also filed by the Under Secretary, Government of Maharashtra, Women and Child Development Department, on 1st August, 2001.

11. In the affidavit filed by the Chief Officer, it was stated that the employees of the Children's Aid Society are not entitled to pension as pension scheme does not apply to them. Similarly situated employees of Life Insurance Corporation of India, Maharashtra State Electricity Board, etc. are also not entitled to pension. However, the employees of the Children's Aid Society are covered under the contributory provident fund scheme and hence pension scheme has not been made applicable to them.

12. It was further stated that the petitioner institute is a school which receives grant from education Department separately and exclusively. Such statutory institutions receive Rs. 500/- per child per month and 100 per cent grant on staff salaries whereas grant-in-aid pattern for the Bal Kalyan Nagari (Balsadan) is Rs. 500/- per child per month which includes salaries. Moreover, the house mothers are provided with free food and lodging under the scheme. According to the deponent, after retirement, the society's employees are entitled to contributory provident fund and gratuity under the relevant rules. They are, however, not entitled to pensionary benefits.

13. Regarding Ashramshalas, it was stated that the employees of Ashramshalas are not covered under contributory provident fund scheme as they are covered under the pension scheme. The employees of the Children's Aid Society thus stand on different footing than the employees of other organisations. It is denied that the petitioners had not been extended benefits to which they are entitled. Payment of contributory provident fund and gratuity benefits were duly paid to all the employees on retirement as per society's rules. Since the employees were not covered by pension scheme, they cannot claim pensionary benefits.

14. Regarding Smt. Sulochana S. Salvi, it was stated that she retired with effect from 1st December, 1995, as Deputy Superintendent, Observation Home, Umerkhadi. She had been paid her retirement dues to the tune of Rs. 1,09,907/- as contributory provident fund and Rs. 30,000/- as gratuity. The payment had been

made and duly received by her on the very next day of her retirement i.e. on 2nd December, 1995. Copies of acknowledgement of the contributory provident fund and gratuity paid to Smt. Sulochana S. Salvi have been annexed at Exhibits-A and B respectively to the counter affidavit. It was, therefore, submitted that the petition was liable to be dismissed.

15. A similar stand has been taken by the State Government through an affidavit in reply filed by Under Secretary to the Government of Maharashtra, Home and Child Development Department. It was contended that the petitioner-society is not similarly situated with other aided institutions as claimed. The employees of the petitioner-society were not entitled to benefits of pension. Such benefits have also not been awarded to employees working in L.I.C., M.S.E.B., etc. The Children's Aid Society receives grant from the Government, at the rate of Rs. 500/- per child per month and 100 per cent grant on staff salaries whereas other grant-in-aid pattern institutions receive only Rs. 500/- per child per month including staff salaries. It was then stated that the Government considered the question of extending benefits of pension scheme, service gratuity scheme and other benefits to employees of Children's Aid Society. But considering all the issues and continuous increasing pensionary liability on the State exchequer and critical financial position of the State Government, it was decided not to extend pension scheme to such institutions.

16. In paragraphs 3 and 4, it was stated;

'I say that Government has considered the problem of employees of the Children's Aid Society and the question of providing Pension Scheme, Service Gratuity Scheme and other retirement benefits to the full time approved teaching and non-teaching staff for the recognised aided special schools for disabled persons and disabled children's hostel was under consideration of the Government and it was decided that out of approved full-time teaching and non-teaching staff of the recognised aided special schools for the disabled and hostels for disabled children in the State (which are approved by the Director, Social Welfare) and who retired on or after 31st March, 1981, have been covered under the said scheme under the Maharashtra Civil Services (Pension) Rules, 1982 and the Family Pension

Scheme under Rule 116 thereunder as they are applicable to the Government servants.

4. It was resolved pursuant to para 3 (1) of the said Govt. Resolution dated 1st February, 1984 that members of teaching and non-teaching staff of the recognised and aided special schools for disabled who were in service till 30th March, 1981 and then who had completed 58 years, but with the previous sanction of the competent officer (Director of Social Welfare) they were in service after 31st March, 1989, should be given option of either contributory provident fund or the pension scheme. Those who retired on or after 31st March, 1981 and also covered by the scheme under the said Govt. Resolution, were directed to exercise their option within 6 months from the date of issue of the order. Those who do not exercise this option within the fixed period shall be treated that they are willing to enjoy the same benefits which they were availing before 31st March, 1981.'

17. We have heard the learned counsel for the parties. It was strenuously urged by Mr. Desai, learned counsel for the petitioners, that the employees of petitioner No. 1 institution are entitled to all pensionary benefits as have been allowed to other institutions. If other grant-in-aid institutions have been granted such benefits, there is no reason to deprive the employees of petitioner No. 1 such benefits. The action is arbitrary, discriminatory, unreasonable and violative of Articles 14, 19 and 21 of the Constitution.

18. It was also submitted that even this Court, by interim order dated 4th July, 2001, directed the State Government to consider the question, keeping in mind the fact that other institutions have been granted such benefits. Virtually, therefore, submitted the learned counsel, this court was satisfied that similar benefits ought to have been extended to employees of the petitioner-institute and in spite of that, the State Government has taken a decision, not to extend those benefits to the employees of the petitioner institution. The said action thus requires interference by this Court. Reliance in this connection was placed on a decision of the Apex Court in *Jaipal and Ors. v. State of Haryana and Ors.* (1988) 3 SCC 354.

19. Mr. Belosey, learned Assistant Government Pleader, appearing on behalf of the respondents, on the other hand, supported the stand taken by the

respondents. It was submitted that the employees of other schools referred to and relied upon by the petitioners are not similarly situated. Certain benefits which have been extended to the employees of petitioner No. 1-institute are not available to employees of those institutes and hence Article 14 cannot be attracted. It was also submitted that the employees of the petitioner institute are covered by contributory provident fund scheme and hence pension scheme has not been applied to them. Such an action can neither be said to be arbitrary nor reasonable.

20. So far as Smt. Sulochana S. Salvi is concerned, the learned counsel stated that she has been paid her entire dues the very next day of her retirement and in token thereof, two receipts have been issued, which have been annexed to the affidavit in reply. Thus, no case has been made out so far as petitioner of Suo Motu Writ Petition No. 2877 of 2000 is concerned. It was, therefore, submitted that the petitions deserve to be dismissed.

21. In our opinion, it cannot be said that by not extending the benefit of pension, an illegality can be said to have been committed by the respondents or there is violation of Articles 14, 19 or 21 of the Constitution as contended. The employees of petitioner No. 1 institute have been granted contributory provident fund and gratuity benefits. So far as other institutions and grant-in-aid schools are concerned, they were covered by pension scheme. It is also clear that employees of petitioner No. 1 are getting more benefits than the employees of other aided schools and institutions inasmuch as statutory institutions, like petitioner No. 1, are receiving Rs. 500/- per child per month and 100 per cent grant on staff salary. Similar benefits, however, are not available to other institutions like Balsadans. They are getting Rs. 500/- per child per month including staff salaries. Likewise, Ashramshalas are not covered by contributory provident fund scheme as they were covered by pension scheme. The employees of the Children's Aid Society thus stand on a different footing than employees of other organisations.

22. According to State Government, the question was considered by the Government. But taking into account increasing pensionary liability and resultant financial burden which was one of the principal factors, a conscious decision was taken not to extend benefits of pension scheme to the employees of the Children's

Aid Society. They would, however, be entitled to contributory provident fund and gratuity.

23. In our opinion, in the light of the above conscious decision taken by the State Government and benefits available to the employees of petitioner No. 1 such as contributory provident fund and gratuity, it cannot be said that an illegality has been committed by the respondents. It is also clear that certain benefits which have been extended to Children's Aid Society have not been extended to other grant-in-aid institutions. Hence, the petitioner-institution cannot be said to be similarly situated to those institutions. If it is so, obviously, the provisions of Article 14 have no application. Articles 19 and 21 also would not apply as, after keeping in mind all relevant and germane factors, a conscious decision has been taken by the State Government.

24. We therefore, see no substance in the argument of the learned counsel for the petitioners that refusal to extend pensionary benefits to the employees of Children's Aid Society is either arbitrary or unreasonable. The decision in Jaipal and Ors., would be of no help to the petitioners in the facts of the present case. In that case, the Apex Court held that if a person is appointed as a part-timer, but is actually working as full timer, he must be paid salary and benefits on that basis. The ratio laid down therein, therefore, does not take the case of the petitioners anywhere. Thus, the petitioners have not made out a case for interference by this court and the petition deserves to be dismissed.

25. So far as Suo Motu Writ Petition No. 2788 of 2000 is concerned, from the affidavit in reply as also receipts produced along with the counter, it is clear that she has been paid her retiral benefits towards contributory provident fund as well as gratuity immediately after her retirement. As we have held that employees of the Children's Aid Society are entitled to contributory provident fund and gratuity towards the retiral benefits and they are not entitled to benefits under the pension scheme, and as the petitioner has been paid those benefits, no grievance can be made by her for non-payment of pension. She is, therefore, not entitled to any relief and her petition also deserves to be dismissed.

26. For the foregoing reasons, both the petitions are liable to be dismissed and are accordingly dismissed. Rule is discharged, in both the petitions. In the facts and circumstances, however, there shall be no order as to costs.

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