

(1995) 03 AHC CK 0017

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 17267 of 1992

Prakash Chandra Sharma

APPELLANT

Vs

Dy. Director of Education, Bareilly
and Others

RESPONDENT

Date of Decision: March 29, 1995

Acts Referred:

- Uttar Pradesh Intermediate Education Act, 1921 - Chapter 3 Regulation 21
- Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund-Insurance-Pension Rules, 1964 - Para 14, Para 16

Hon'ble Judges: S.R. Singh, J

Final Decision: Dismissed

Judgement

S. R. Singh, J.

The vexed questions surfacing up for consideration by the Court in this writ petition are : (i) whether the option for retirement at the age of 58 years and for consequential benefit of death cum retirement gratuity under the G. O. dated August 10, 1978, read with G. O. dated 29/8/1981, exercised by a teacher serving in State Aided Higher Secondary School, managed by a Private Management, entails its acceptance by the Regional Deputy Director of Education as a condition precedent for attaining finality and irrevocability and/or (ii) whether the option exercised by a teacher for superannuation at the age of 58 years and for consequential benefit of death cum retirement gratuity in addition to such pensionary benefits as are available to a teacher retiring at the age of 60 years the age of superannuation prescribed under Regulation 21 of Chapter III of the Regulations made under the U. P. Intermediate Education Act can be recanted at any time prior to being accepted by the competent authority ?

2. Petitioner entered into service as Asstt. Teacher in L. T. grade on 17/10/1970 in S. R. M. Inter College Pilibhita recognised and State Aided Secondary Institution controlled by Private Management in accordance with the scheme of Administration

approved under Section 16A of the U. P. Intermediate Education Act, 1921. He was later on promoted to the post of Lecturer in English. At the time of his entry into service, the petitioner was governed by TripleBenefitScheme for postretiral benefits.

3. It may be observed that prior to the introduction of Triple Benefit Scheme, vide Government Order Shiksha (Ka) Vibhag No. A 5355/XV/31331962, Lucknow dated 17th December, 1965, the employees serving in State Aided Educational Institutions controlled by Private Managements, were enjoying the benefits of the Contributory Fund only. But on the basis of the recommendations of the Secondary Education Commission appointed by the Government of India under the Chairmanship of Dr. A. L. Mudaliar, the State Government introduced, w.e.f. 1101964, a scheme known as Triple Benefit Scheme with a view to relieving the employees, serving in the State Aided NonGovernment Educational Institutions, of the solicitude after retirement. The Triple Benefit Scheme comprised(i) the Contributory Provident Fund ; (ii) Compulsory Life Insurance, and (iii) Pension including family pension and was made available to employees serving in the State Aided Primary Schools, Junior High Schools, Higher Secondary Schools, Degree Colleges and. Training Colleges run either by the Local Bodies or Private Managements excepting the inferior staff of these Institutions and the Ministerial Staff of the Institutions maintained by the Local Bodies. The Regional Deputy Director of Education (in case of Higher Secondary Schools) was vested with the power to sanction pension/family pension and a duty is cast on the Regional Deputy Director of Education under the G. O. aforestated to ensure that all the relevant papers have been properly verified before pension is finally sanctioned under the Uttar Pradesh State Aided Educational Institution Employees Contributory Provident Fund Insurance Pension Rules, 1964 enforced on 1101964.

4. It may be stated that the pensionary benefits under the said rule were not at par with those admissible to teachers in Government Colleges.

5. Teachers serving in State Aided NonGovernment Educational Institutions run by the Private Managements were however, agitating for grant of better pensionary benefits at par with their counterparts in Government Colleges and in consideration of their demand, the State Government issued Government Order No. 5310/1583004(2)/1924 Shiksha (8) Anubhag Lucknow dated March 31, 1978 thereby providing that permanent whole time teachers in State Aided Secondary Educational Institutions run by the Private Managements and Local Bodies retiring on or after 131977, would be entitled to get pension calculated at the same time and in the same manner as admissible to their counterparts employed in Government Colleges in the equal rank and grade. This benefit was, however, extended subject to the conditions, inter alia, that benefit of deathcumretirement gratuity of family pension to dependants of a teacher after his death available to teachers in Government Colleges would not be available and the Contributory Provident Fund Scheme in relation to such teachers would be supplanted by General Provident Fund Scheme

with effect from March 1,1977. The Triple Benefit and Contributory Provident Fund Schemes were deemed to be amended accordingly in respect of such teachers.

6. The benefit aforesaid was later on extended, vide G. O. No. 750/1583051/1977Shiksha (8) Anubhag, Lucknow dated 28/7/1978, also to teachers who had retired between 30/6/1974 and 28/2/1977 (both dates inclusive). This parity as to the rate of pension as also the manner of its computation was however, open only to such teachers as could opt for the same within 690 days of the G. O. dated 28/7/1978 subject, of course, to fulfilment of other conditions postulated by paras 2 and 3 of the G. O. aforesaid, which are quoted below:

7. The teachers serving in State Aided Secondary Educational Institutions controlled by Private Managements, however, continued to agitate for more pensionary benefits and in consideration of their demand, the State Government issued another G.O. as it being G.O. No. 2523/153070/77, dated August 10,1978, thereby extending the benefit of deathcumretirement Gratuity to teachers of State Aided NonGovernment Secondary Institutions on their opting for retirement at the age of 58 years and also subject to the fulfilment of other conditions stipulated therein. It may be usefully observed that benefit of deathcumretirement gratuity was available to the teachers in Government colleges and it was by means of the said G.O. that the said benefit was extended for the first time to the teachers in the State Aided NonGovernment Educational Institutions.

8. In order to appreciate the import and ambit of the aforesaid G.O., dated August 10, 1978, the relevant paragraphs thereof may be quoted below :

9. It is evident from the above quoted G.O. that in order to avail of the benefit of deathcumretirement gratuity, a teacher in State Aided NonGovernment Educational Institution was required to give his option for retirement at the age of 58 years which, it may be stated, is the prescribed age for the retirement of "teachers in Government Colleges as against 60 years which is the prescribed age of superannuation for teachers in State Aided NonGovernment Secondary Institutions. According to the G.O., dated 10/8/1978, teachers willing to opt for gratuity, were required to give their options in a prescribed pro forma, in accordance with a Niyamawali which was required to be prepared by the Director of Education and publicised with the approval of the State Government as would be evident from paragraph 4 of the G.O. aforesaid. The Niyamawali known as "Uttar Pradesh Rajya Sahayata Prapt Uchhatar Madhyamik Vidyaleyon Ke Adhyapakon Ki Mratiyu Tatha Sewa Nibritti Anutosh Niyamawali" prepared by the Director of Education, as comprehended by Paragraph 4 of the G.O., dated August 10, 1978, was published/issued/notified vide G.O. No. 3218/1583070/77Shiksha (8) Anubhag, Lucknow dated 29th August, 1981. It would be worthwhile to quote the salient features of the Niyamawali as below :

10. The petitioner, it is admitted, gave his option or retirement at the age of 58 years by submitting an option form duly filled in the Prescribed Proforma on 25/2/1982. The option was submitted within the stipulated period of six months and it was countersigned by the District Inspector of Schools Pilibhit on 28/7/1982, as found by the Regional Deputy Director of Education in his order dated 9/9/1992 passed in compliance with the direction contained in the interim order dated 14/5/1992 of this Court. There is nothing in the Government Order, dated 10th August, 1978 or in the Government Order dated 29th August, 1981 or in the Niyamawali aforesaid to indicate that the option exercised by a teacher required any formal acceptance by the Regional Deputy Director of Education who is the controlling Authority vested with the power to grant pension and gratuity as would be evident from paragraph 14 of the Niyamawali aforesaid. On the other hand, paragraph 16 of the Niyamawali, makes it abundantly clear that a teacher could give his option, in the prescribed proforma, to retire at the age of 58 years, to the Prescribed Competent Authority (District Inspector of Schools/Regional Inspector of Girls Schools/District Inspector of Girls Schools) for countersigning nature. The word "countersignature" connotes "the signature on a document witnessing to the authenticity of the main signature". The only requirement of Rule 16 of the Niyamawali aforesaid is that the competent Authority shall, after countersignature, that is to say, after ratifying the signatures of the teacher concerned on the option form, send one copy to the controlling Authority namely, the Regional Deputy Director of Education and another to the Manager for being affixed on the service book of the concerned teacher. One copy of the option form duly countersigned by the competent Authority is to be retained in his/her office, in the absence of there being express or implied requirement of the option form being formally accepted by the Controlling Authority {Regional Deputy Director of Education, I am of the considered view that countersignature by the Competent Authority, namely, the District Inspector of Schools /Regional Inspector of Girls Schools I District Inspector of Girls Schools is sufficient acceptance of the option for the purpose of G.O. dated 10th August, 1978, and Niyamawali issued/published/notified vide Government Order dated 29th August, 1981. This, in my opinion, is the logical conclusion flowing from Rule 16 of the Rules. The option to retire at the age of 58 years, that is to say, the option for the benefit of deathcum retirement gratuity exercised by the petitioner on 25/2/1982, having been countersigned by the District Inspector of Schools on 28/7/1982, became final and irrevocable in terms of paragraph 2 of the G. O. dated 10/8/1978 and paragraph 3 of the Niyamawali notified vide Government Order dated 29th August, 1981.

11. Apropos the question as to who is the Competent Authority to accept an option exercised by a teacher, the learned counsel for the petitioner placed reliance on a decision dated 22/12/1989 by a Division Bench of this Court rendered in Writ Petition No. 13266 of 1989, Committee of Management Hublal Intermediate College Agra and another v. Distt. Inspector of Schools and another. The observation that ".....it is

clear from the Government Order, dated 17th December, 1965.... that the Authority empowered to accept an option of a teacher in Higher Secondary School, in the Deputy Director of Education" made therein clearly indicates that the court was construing the Government Order, dated 17th December, 1965 and not the Government Order dated 10th August, 1978 with which the court is concerned in the present case. As discussed above, the word "countersignature" by Competent Authority referred to in paragraph 16 of the Niyamawali issued vide Government Order, dated 29th August, 1981 is the only requirement for making the option exercised by a teacher, final and irrevocable. In *M. Darai Swami v. Sri Murugan Post Service*, AIR 1986 SC 1981, the Supreme Court which was called upon to construe the word "countersign" occurring in Section 63(i) of the Motor Vehicles Act, 1939, observed as under :

"....To "countersign means" to assign opposite to or alongside of or in addition to another signature or to add one signature to a document (already signed by another) for authentication or confirmation."

12. It is evident from the aforeextracted observation made by the Supreme Court that countersignature by the competent Authority on the option form, under Rule 16 of the Niyamawali, is tantamount to authentication or confirmation of the express provision requiring its acceptance by the Controlling Authority, namely, Regional Dy Director of Education, it cannot be said that the option would not become final unless it is accepted by the Regional Dy. Director of Education. That apart, the present is not a case concerned with the construction of the G. O., dated 17th December, 1965 which was up for consideration before the Division Bench in the case of *Committee of Management, Hub Lai Inter College Agra and another v. District Inspector of Schools Agra and another* (supra).

13. It was then urged for the petitioner that he got an opportunity, in terms of the G.O. No. 437615890/3003/78/90, dated 6101990 read with the subsequent G.O. No. 19/15891/3003/78/90, dated 41191, to revoke the aforestated option given for retirement at the age of 58 years. The submission in my opinion, is untenable and cannot be countenanced. The G.O. dated 6101990 was issued in continuation of G.Os. dated 3131978, 2871978 and 3111978, none of which pertained to deathcumretirement gratuity. The G.O. No. 750/1583054/1977Shiksha (8) Anubhag Lucknow, dated July, 28,1978 only extended the benefit, covered by the GO. dated 31st March 1978 to teachers retiring between 30th June, 1978 and 28th February 1978 (both dates inclusive). It may be recalled that by means of the G.O. dated 31st March, 1978, the teachers of State Aided Non Government Educational Institutions retiring on or after 28th February, 1977, became entitled to get pension at the same rate and computable in the same manner as was admissible to teachers of equal rank and grade in Government Colleges. It is this benefit which was extended, by means of the G.O. dated 28th July 1978, to teachers retiring between 30th June, 1978 and 20th February 1977, (both dates inclusive), subject to the condition that

the teachers desirous of getting said benefit would submit their options in prescribed proforma before the Authority empowered to grant pension within a period of 90 days from the date of issuance of the Government order. The subsequent G.O. dated 3rd November, 1978, referred to in the G.O. dated 6101990, has nothing to do with option as to the deathcumretirement gratuity inasmuch as it was confined to nonteaching staff of State Aided Non Government Educational Institutions retiring on or after 131978 and was issued with a view to giving them pension at the same rate it was admissible to their counterparts in Government Colleges.

14, The G. O. dated 6101990 which was issued in continuation of the G. Os. dated 3131978, 2871978 and 3111978 was in fact, intended to extend the benefit of parity, as to the rate of pension to such teachers and other employees of State Aided NonGovernment Educational Institution as could not give their options for the said benefit in terms of the said G. O. dated 2871978. It was not intended to reopen the options already used and exercised for gratuity in terms of the G.O. dated 1081978 read with the G.O. dated 2981981. This is unequivocally clear from the expression."

The words "Jl: f%*P57" used in this G.O. signify, in the context, a fresh opportunity to those who could not avail of the .opportunity under the G.O. dated 2881978 to give their options for the benefit comprehended thereunder and/or to those who had opted to be governed by the old pension scheme comprehended by the G.O. dated 17124965 known as TripleBenefitScheme. The question of submitting a fresh option by those who had already opted for the benefit under the G.O. dated 2871978 did not arise under the G.O" dated 6101990. It may be observed, at the risk of repetition that the G.Os. referred to in the G.O. dated 6101990, pertained to the rate and manner of computation of pension/family pension and so did the G.O. dated 6101990 which gave fresh opportunity to those who could not avail of the benefit earlier. Right to deathcumretirement gratuity continued to be governed by the G.O. dated 1081978 read with the GO dated 29819^1. However, para 2 of the G.O. dated 6101990 gave rise to some confusion both in regard to pension, family pension and general provident fund as well as gratuity. Paragraph 2 of the G.O. dated 6101990 no doubt, engendered some confusion due to ambiguous and incongruous words employed therein. The tenor of the G.O. however, unambiguously indicates that it was not intended to confer any right in favour of a teacher, to withdraw the option already exercised by him for gratuity and countersigned/accepted by the Competent Authority under and in accordance with the G.O. dated 1081978 read with the Niyamawali issued vide G.O. dated 29th August, 1981.

15. With a view to bringing the point home and to expatiating on the G.O. dated 6101990, read with subsequent G.O. dated 4111991, it would be worthwhile and imperative to quote paragraph 2 of the G.O. dated 6101990 and accordingly, the same is extracted below :

16. It is evident that paragraph 2 of the G.O. dated 6101990 is in three parts. The first part provides that the serving teachers /employees not giving option for the benefits comprehended by the G.Os. dated 3131978, 2871978 and 3111978 within the period extended by the G.O. dated" 6101990, would be deemed to have opted for retirement at the age of 58 years with the benefits of pension, family pension and general provident fund ; provided they arc qualified for the same. The second part postulates that deathcumretirement gratuity would be admissible only to those teachers who would give their options to retire at the age of 58 years. This is only a reiteration of the right already conferred under the GO., dated 1081978. The third part provides that teachers/employees appointed after issuance of the G.O. would be automatically governed by the benefits comprehended by G O. dated 6101990 that is to say, the benefits of getting pension/family pension computed in a manner and at a rate admissible to their counterparts in the Government Colleges. There is no ambiguity in so far as the second and third parts are concerned, but the first part of para 2 of the G.O. was obviously incoherent and incongruous with the rights of teachers/employees to continue upto the prescribed age of superannuation and gat their pension calculated on the basis of full qualifying service rendered upto 60 years. It is this incongruity which was sought to be obviated by the G O. dated 4111991 which reads as below.

17. It is evident from the aforeextracted G. O. that teacher" right to gratuity by opting for retirement at the age of 58 years continued to be governed by G. O. dated 1081978 read with the G. O. dated 2981981. The words" above benefit" (Ukta Subhidha) occurring in the G.O. dated 4111991 refer to and mean, in the context, benefit of parity in rate and manner of computation of pension as comprehended by the G.Os. dated 2871978 and 6101990.

18. A conjoint reading of the two G.Os. dated 6101990 and 4111991 indicates that they confer at the maximum, a right in favour of those teachers who had not been able to opt for gratuity by giving opting to retire at the age 58 years in accordance with G. O., dated 1081978 and the Niyamawali issued vide G.O. dated 2981981 in addition to a fresh opportunity to give an option for pension to be computed at the rate admissible to their counter parts in Government Colleges under the G.O. dated 2871978 if such an opportunity was not availed of earlier. The G.Os. dated 6101990 and 4111991 read together, do not confer any right, in favour of a teacher who had already exercised his option for gratuity under the G.O. dated 1081978 read with Niyamawali issued vide G. O. dated 2981981 to withdraw the option already exercised by him and countersigned by the competent Authority referred to in paragraph 16 of the Niyamawali issued vide G.O. dated 2981981.

19. The learned counsel for the petitioner placed reliance on a decision of Division Bench in Civil Misc. Writ Petition No. 2326 of 1993, Smt. Kushal Varshney v. Dy. Director of Education, Agra Region Agra, decided on 30121993, wherein it was held that the G.O. dated 411991 gave a right to all the teachers to exercise their option

again. That decision in my opinion, cannot be seized upon in his aid by the petitioner for the reason that the option exercised in that case on 24101990 was withdrawn on 411992, and therefore, it was held by the court that it was not open to the Regional Deputy Director of Education to accept the option exercised on 4 11092 vide order dated 1591992 i.e. after it was withdrawn on 411992. Further the attention of Bench was not invited to relevant G.Os. In the instant case, the petitioner exercised his option on 2521982 and the same was accepted/countersigned by the District Inspector of Schools on 2871983 as held by the Regional Deputy Director of Education. The Supreme Court decision in *Devi Krishan Goyal v. District Inspector of Schools Ghaziabad*, (1990) 13 Administrative Tribunals Cases 155, does not help the petitioner for in that case it was not disputed that option stood withdrawn before it was accepted by the District Inspector of Schools to whom the Management had forwarded the option for acceptance.

20. The conclusions emerging from the above discussion may be summed up as below :

(i) The option to retire at the age of 58 years exercised by a teacher becomes final and irrevocable after it is countersigned by the competent Authority referred to in paragraph 16 of the Niyamawali and copies of the same are endorsed to the Manager of the Institution for being affixed in the Service book and the Controlling Authority namely, the Regional Dy. Director of Education for record as comprehend by Rule 16 of the Niyamawali. The question of withdrawal of the option does not arise thereafter.

(ii) Option to retire at the age of 58 years is, in effect, an option for deathcumretirement gratuity as per Government Order, dated 1081978 read with G. O., dated 2881981. The exercise of option and its acceptance/authentication/confirmation, is governed by the G.O. dated 1081978 read with Niyamawali issued vide Government Order, dated 2881981. The Government Orders dated 4111991 read with G.O. dated 6101990 do not alter the legal position comprehended by the G.Os. aforesaid. At the most they confer a right in favour of those teachers, who had not been able to opt for gratuity by giving their options to retire at the age of 58 years, to give options for the same within the period stipulated in the G. O., dated 4111991. It does not confer any right in favour of a teacher who had already opted for retirement at the age of 58 years and whose option has been countersigned I accepted by the competent Authority, withdraw the same and opt to retire at the statutorily prescribed age 0/60 years.

21. In the result, the petition fails and is accordingly dismissed.