

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:123608

A.F.R.

Court No. - 9

Case :- WRIT - A No. - 8170 of 2024

Petitioner :- Udai Narayan Sahu

Respondent :- State Of Up And 5 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Subhash Vidyarthi, J.

1. Upon an oral prayer made by learned counsel for the petitioner, he is permitted to implead the Deputy Director of Education (Secondary) Kanpur Region, Kanpur as opposite party no. 7.
2. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Siddharth Khare, learned counsel for the petitioner and Sri Saurabh, learned counsel appearing for respondents no. 1 to 5.
3. By means of the instant writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a direction to the respondents to pay pension to him, as he has retired from the post of Assistant Teacher L.T. Grade in M.M. Ali Memorial Higher Secondary School, Bekanganj, Kanpur Nagar. The petitioner has also sought a direction to the respondents to permit him to deposit the outstanding amount of contribution towards General Provident Fund (G.P.F.) in case the same is to be treated as a condition precedent for sanction payment of pension.
4. In furtherance of an advertisement issued by the Management of M.M. Ali Memorial Higher Secondary School, Kanpur Nagar for making appointments against four posts of Assistant Teacher L.T. Grade in the college, the petitioner had participated in the selection process and he was selected. An appointment letter dated 06.11.2004

was issued to him after seeking approval from the District Inspector of Schools, Kanpur Nagar. The petitioner joined his duties on 08.11.2004.

5. The District Inspector of Schools passed an order dated 17.03.2005 declining sanction for payment of salary to the petitioner. The petitioner filed Writ-A No. 36436 of 2005, which was allowed by means of a judgment and order dated 23.07.2009, passed by this Court directing the D.I.O.S. Kanpur to reconsider the petitioner's case.
6. The D.I.O.S. passed an order dated 20.11.2009, sanctioning payment of salary to the petitioner with effect from the date of the aforesaid order. The petitioner challenged the order dated 20.11.2009 by filing Writ-A No. 6461 of 2011, which was allowed with costs by means of a judgment and order dated 01.04.2016 and the order passed by the D.I.O.S., which limited in payment of salary to the petitioner only from the date of approval granted by him, was quashed and it was ordered that the petitioner would be paid salary since the date of his joining i.e. on 08.11.2004. Thereafter, the D.I.O.S. passed an order dated 05.09.2016 ordering payment of arrears of salary to the petitioner in compliance of an order passed by this Court. However, while paying salary to the petitioner, no deduction was made towards his contribution to the General Provident Fund.
7. On 13.10.2022, the Finance and Accounts Officer (Secondary Education), Office of D.I.O.S. Kanpur sent a letter to the Principal of M.M. Ali Memorial Higher Secondary School, Kanpur Nagar informing that G.P.F. account No. 370407 had been allotted to the petitioner and it was directed that 10% of the basic salary payable to the petitioner be deducted towards G.P.F. contribution. In reply to the aforesaid letter, the Principal of the college wrote a letter dated 19.10.2022 to the Finance and Account Officer stating that the petitioner was scheduled to retire on 31.03.2023 and as per the relevant Rules, G.P.F. deduction stops six months prior to his retirement. Merely 05 months and 13 days remained to petitioner's

retirement and, therefore, monthly deduction towards G.P.F. contribution of the petitioner was not permissible as per rules.

8. The college forwarded the requisite papers for payment of pension to the petitioner on 20.03.2023. The petitioner retired on 31.03.2023, but pension has not been paid to him and the instant writ petition has been filed by the petitioner for the aforesaid reason.
9. The D.I.O.S. has filed his personal affidavit *inter alia* stating that the Government Order dated 31.03.1978 provided for payment of pension to teachers who had worked in Government-aided secondary institutions and it further provided that 10% of their basic salary shall be deducted towards GPF. Since, the G.P.F. account number was allotted to the petitioner on 13.10.2022 and he was going to retire on 31.03.2023 i.e. after merely 05 months and 13 days whereas as the rules deduction of G.P.F. has to stopped six month prior to the date of retirement of a teacher, no deduction towards G.P.F. could be made from the petitioner's salary and pension is not payable to him for this reason.
10. A copy of a Government Order dated 31.03.1978 has been annexed with the personal affidavit of the D.I.O.S., which provides that all the permanent, full-time and regular teachers of aided Higher Secondary Schools run and managed by private managements or local bodies who retire on 01.03.1977 or thereafter, will be entitled to get pension at the same rate at which it is payable to the teachers of similar category of government schools. This Government Order also provided that in place of Contributory Provident Fund, deduction towards G.P.F. will be made from the salary of such teachers on the rates applicable to the teachers of Government Schools. The contributions made by the private managements or local bodies towards Contributory Provident Fund of such teachers till 28.02.1977, alongwith interest accrued thereon, will be deposited the Government treasury under a specified account and no contribution will be made by the Government / Management with effect from 01.03.1977.

11. The aforesaid Government Order dated 31.03.1977 further provided that only such teachers would be entitled to benefit of parity in pension, contribution payable by the management / local body in respect of whom and interest thereon is deposited in the Government treasury.
12. The petitioner has retired while working as an Assistant Teacher in a private Government-aided High School and payment of General provident fund from insurance and pension to him is governed by the provisions of U.P. General Provident Fund, Insurance, Pension Scheme Rules. Chapter III of the aforesaid rules deals with General Provident Fund and Rule 6 falling in this Chapter provides that: -

“6. The employee of the State aided privately managed institutions as well as the employees of the institution maintained by a Local Body shall continue to be governed by the existing Contributory Provident Fund Rules applicable to them.”
13. However, the Contributory Provident Scheme ceased to exist with effect from 28.02.1977 and it was replaced by the General Provident Fund Scheme with effect from 01.03.1977.
14. The relevant provisions of the Uttar Pradesh State Aided-educational Institution Employee’s Contributory Provident Fund-Insurance-Pension Rules are being reproduced below: -

CHAPTER V

Pension

“17. An employee shall be eligible for pension on-

(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 services;

(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 or closure of an institution due to withdrawal of recognition or other valid causes.

Note - (1) The age of compulsory retirement of an employee shall be such as prescribed in the relevant rules applicable to him.

The date of superannuation shall be reckoned from the date of birth of an employee as entered in his Service Book or other records. In case the year of birth only is known, but not the month, the first July of the year shall be taken as the date of birth, similarly when both the year and the month of birth are known, but not the date, the 16th of the month shall be taken as the date of birth.

(2) An employee may retire from service voluntarily any time after completing 25 years of qualifying service, provided that he shall give in this behalf a notice in writing to the management at least 3 months before the date on which he wishes to retire.

18. The amount of pension that may be granted shall be determined by the length of qualifying service, vide Rule 31 below. Fractions of a year shall not be taken into account in the calculation of pension under these rules. Pension shall be calculated to the nearest multiple to 5 paise :

(a) The full pension admissible under these rules will not be sanctioned unless the service rendered has been considered satisfactory and is approved by the Controlling Authority.

(b) If the service has been thoroughly satisfactory the authority sanctioning the pension may order such reduction in the amount as it thinks proper.

19. (a) Service will not count for pension unless the employee holds a substantive post on a permanent establishment.

(b) Continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service. (See also C.S.R. Para 422).

(c) Leave without allowance, suspension allowed to stand as a specific penalty, overstayed of joining time or leave not subsequently regularised, and period of breaks in service shall not be reckoned as qualifying service.

(d) Period of breaks between 2 periods of service due to termination of service, for no fault of the employee shall not be treated as interruption involving forfeiture of post qualifying service. In other cases breaks due to other causes shall result in forfeiture of past service unless condoned by Government.

(e) Time passed on earned leave shall fully count as qualifying service, but time passed on other kinds leave with allowances shall count as qualifying service as follows :

(i) If the total service is not less than 13 years, but less than 30 years, one year of such leave shall count as qualifying service;

(ii) If the total service is not less than 30 years, two years of such leave shall count as qualifying service.

Notes - (1) The term 'Earned Leave' means leave on full average pay.

(2) In case of a married woman employee time passed on maternity leave may be allowed to count as qualifying service, provided that the period covered by such leave and also earned leave shall not exceed what would have been admissible had she availed of the whole of the earned leave to which she was entitled under the rules.

(3) 'Total Service' means total service reckoning from the date of commencement of service qualifying for pension and includes periods of leave referred to above.

(4) The service put in by an employee before he has completed 18 years of age or after attaining the age of superannuation unless extended by competent authority or on re-employment after retirement shall not qualify for pension.

(5) The entry relating to confirmation of an employee in the service book shall be countersigned.

(6) In cases not covered by these rules qualifying service shall be determined by Government and its decision shall be final.

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29. Cases requiring the grant of any concession not contemplated in these rules shall be submitted to Government for orders.

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34. In matters concerning pension/family pension not provided to specifically in these rules, the corresponding procedure laid down in respect of State Government employees shall apply mutatis mutandis.

15. A bare perusal of the aforesaid Rules makes it manifest that deduction towards C.P.F./G.P.F. is not a condition precedent for eligibility of an employee for receiving pension. Therefore, the mere fact that no deduction was made towards G.P.F. from the salary of the petitioner would not affect his eligibility to get pension after his retirement.
16. Further, although the petitioner has expressed his willingness to pay his contribution towards G.P.F., the reason for non deduction of General Provident Fund from the petitioner's salary was that although

the petitioner was in service since the year 2004, initially he was not paid salary and after he was paid salary in compliance of the order passed by this Court in Writ A No. 36436 of 2005, the same was not paid from the date of his initial appointment. The petitioner was compelled to file another Writ A No. 6461 of 2011 which was allowed with costs on 01.04.2016, after which he was paid salary from the date of his initial appointment in the year 2004, but he was allotted a G.P.F. account number only on 03.10.2022, when less than six months remained to his retirement. The petitioner was not at all guilty for non deduction of the amount of G.P.F. contribution from his salary.

17. It is a rudimentary principle of law that no person can be made to suffer for a fault, for which he is not responsible. Apparently, the petitioner was in no manner responsible for non allotment of G.P.F. account number and for non deduction of contribution towards G.P.F. by the Authority is concerned. Therefore, even if deduction of G.P.F. contribution was necessary, the petitioner was not at fault for non-deduction thereof and he cannot be penalized in any manner for non deduction of General Provident Fund for which he is not responsible.
18. The Contributory Provident Fund Scheme was replaced by General Provident Fund with effect from 01.03.1977. Clause 3 of the Government Order dated 31.03.1978 referred to the teachers, who were earlier covered by the Contributory Provident Fund Scheme and whose contribution had not been deposited. It does not apply to any teacher appointed after 31.03.1978, when Contributory Provident Fund was no more in existence and it had been substituted by G.P.F. Scheme. As the petitioner was appointed in the year 2004 i.e. much after the closure of the Contributory Provident Fund Scheme and its replacement by the G.P.F. Scheme, the provisions of the aforesaid Government Order dated 31.03.1978 are not relevant for deciding the claim of petitioner for payment of retiral dues.
19. Keeping in view the aforesaid discussion, so far as the petitioner's offer of depositing the amount of General Provident Fund, this Court

does not find it necessary to direct the petitioner to deposit the amount of General Provident Fund for more than one reason. Firstly, the deduction toward General Provident Fund is not a condition precedent for eligibility to receive pension. Secondly, the petitioner was not at fault for non-deduction of the contribution by the authorities. Thirdly, having been retired, the petitioner would be entitled to receive the amount of General Provident Fund and directing the petitioner to deposit the amount merely for the amount being refund to him immediately thereafter, would not serve any purpose.

20. Therefore, this Court finds no reason to direct the petitioner to deposit his contribution towards General Provident Fund at this stage when he already stands retired.
21. Keeping in view the aforesaid discussion, the writ petition is **allowed**.
22. The respondents no. 2 and 7 are directed to ensure payment of pension and its arrears to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

(Subhash Vidyarthi J.)

Order Date: 31.07.2024

Ruhi H.