2026:AHC:45134

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HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 4877 of 2021

Rekha Singh

.....Petitioner(s)

Versus

Union of India and others

.....Respondent(s)

Counsel for Petitioner(s)	:	Anurag Khanna (Senior Adv.), Mohd. Atif, Pradeep Kumar Upadhyay, Rahul Sahai, Sanjay Singh
Counsel for Respondent(s)	:	A.S.G.I., Chandan Sharma, Rijwan Ali Akhtar

Court No. - 32

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Petitioner has worked as Assistant Director/ Director in Institute of Correspondence Courses and Continuing Education, University of Allahabad and she has retired also.

2. Earlier she has approached this Court by filing Writ-A No. 31696 of 2016 when she was in service and sought a direction commanding University to pay arrears of salary to her from

November, 2014. The said writ petition was allowed vide order dated 13.04.2018 that petitioner be paid salary from November, 2014 till her retirement in 2017 and taking note that meanwhile, she has attained age of superannuation. Relevant part of the order is mentioned hereinafter:

> *"In view of the aforesaid facts and circumstances, we are of the opinion that in exercise of powers under Section 28(3) of the Act, 2005 the Visitor has no authority of law to deny or refuse grant of assent to the proposed amendment to the Statues as resolved by the Executive Council and that the power of withholding the assent is not unfettered so as to permit him to keep it pending or withheld for years together as withholding of the assent is permissible only for a limited period which may be fair and reasonable in the given facts and circumstances of the case.*
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> *Accordingly, the Ministry of Human Resource Development, Department of Higher Education, Shastri Bhawan, New Delhi is directed to place the matter once again before the Visitor and to have his final opinion for the grant of assent or for remittance of the matter to the Executive Council of the University for reconsideration, if necessary.*
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> *Since the ICC&CE is a Self-Financing Institute of the university, we do not certainly like to burden the public exchequer or the Government with the liability to pay salary and the emoluments admissible to the petitioner as Assistant Director of the ICC&CE but are of the clear opinion that as the petitioner had continuously worked there from November, 2014 till her retirement in 2017, there is no justification not to pay her salary/remuneration admissible to her otherwise it would amount to Begar which is not only prohibited under Article 23 of the Constitution of India but is also punishable.*
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> *Accordingly, we direct the University to make immediate arrangement for payment of salary and emoluments to the petitioner for the period November, 2014 till 2017 and to make the entire payment within a period of two months of the receipt of the copy of this order failing which criminal action for punishing the erring officers shall be taken in accordance with law.*
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> *The Writ Petition is allowed as above."*

3. Aforesaid order was challenged at behest of University of Allahabad before Supreme Court by way of filing a Special Leave to Appeal (C) No. 25675 of 2018, which was dismissed vide an order dated 04.07.2019 and a Review Petition thereof was also dismissed by Supreme Court vide an order dated 19.09.2019.

4. After the petitioner got retired on 31.08.2017 she again approached this Court by way of filing Writ-A No. 23048 of 2018 being aggrieved for non payment of her post retiral dues. The said writ petition was disposed of vide an order dated 27.10.2018 that her representation be considered in accordance with law. Relevant part of order is mentioned hereinafter:

> "*4. Since the aforesaid claim involves factual aspect, no useful purpose would be served in keeping this writ petition pending or calling for counter affidavit. Hence, the same is disposed of with the following observations and directions:*
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> *(i) since the petitioner has already filed a representation on 05.07.2018, he may also file a certified copy of this order before the respondent no.3 -Registrar, Allahabad University, Allahabad within a period of two weeks from today;*
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> *(ii) in the event the said respondent is of prima facie view that the representation deserves to be rejected, he may issue a prior show cause notice to the petitioner specifying the points on which the petitioner's representation is proposed to be rejected within two weeks therefrom;*
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> *(iii) the petitioner shall be at liberty to file his final reply to such notice, if issued, within two weeks and no more from the date of receipt of that notice;*
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> *(iv) the respondent no.3 may proceed to hear and decide the same strictly, in accordance with law and pass a reasoned and speaking order within a period of one month from the date of filing of last reply by the petitioner, if any;"*

5. In aforesaid circumstances, claim of petitioner was considered, however, it was rejected by office order dated 30.05.2019 after giving her an opportunity of hearing and relevant part thereof is mentioned hereinafter:

> *"In compliance of the order dated 27.10.2018 passed in Writ-A No. 23048 of 2018 (Rekha Singh Vs Union of India & others) notice was issued to you to submit your response/reply to that notice.*

You have submitted your reply dated 18.03.2019 to the served notice dated 12.03.2019 sent by the registrar, university of Allahabad. After going through the reply, the undersigned has proceeded to calculate the dues if any deducted from your then salary, as illustrated by you in your reply to the notice in paragraph no. 15, and will be payable to you only after the final disposal of the SLP pending in the Apex court.

As per the averments in the contempt petition, you retired from ICC&CE on 31.07.2018 and thereafter filed the aforesaid writ petition praying for direction to the University to pay retiral benefits i.e. contributory provident fund, gratuity, encashment, general insurance and pension etc. alongwith arrears with interest.

Under Statute 30(2) of the Statutes of the University, the ICC&CE is a temporary self-financed institution and all matters relating to the Institute is provided under Ordinance XXXII of the Ordinance of the University. Clause 5(a) of the Ordinance XXXII provides that the staff of the ICC&CE other than the Director shall consist of persons engaged by the Advisory Board (i) temporarily, on such remuneration, as may be approved by the Executive Council on contractual basis, on such rates and remuneration and through the agency or agencies empanelled for the purpose in accordance with such rule as may be approved by the Executive Council.

Since the Institute is running under the self finance mode, the payment of salary and other emoluments are dependent upon the income of the Institute which is in the form of fees collected by the Institute from the students. Further, except the Director, all engagement of staff of the Institute is made at the level of the Institute itself by the Director and the same is purely temporary in nature. The University is not receiving any grant from the UGC for ICC&CE. None of the employees of the Institute is receiving the post retiral benefits as there is no provision under the Ordinance for payment of post- retiral dues.

You are also aware of the fact, that the issue regarding the payment of salary to you is engaging attention of the Hon'ble Apex Court in the SLP preferred by the University of Allahabad and therefore the university will be giving all your deductions if any as illustrated by you in your reply to the notice dated 12.03.2019, specifically in paragraph no. 15 where it is stated by you that the deductions were done from your salary and are kept in Punjab National Bank only after the final disposal of the SLP by the apex court."

6. Aforesaid order is now challenged by filing present writ petition in the year 2021. Pleadings are exchanged, therefore, the matter has been heard finally.

7. According to impugned order, claim of petitioner for post retiral benefits such as pension etc. was rejected mainly on a ground that Institute concerned is running under Self Finance Mode and payment of salary and other emoluments were depended upon the income of Institute, i.e., from collection of fee from students. Further the Staff of Institute was made the level of Institute itself and was always temporary in nature. It was also declared that none of the employees of Institute have received post retiral benefits. A reference was made that a Special Leave Petition filed by University is pending, though as referred above, it was subsequently dismissed vide an order dated 04.07.2019.

8. Sri G.K. Singh, learned Senior Advocate assisted by Sri Pradeep Kumar Upadhyay, learned counsel for petitioner, submitted that there is no dispute that concerned Institute is a Self Financed Institute. However, it's status was always considered as an integral part of University as well as that Staff of said Institute was borne on the strength of respective University Department and for that learned Senior Advocate referred the Ordinances applicable when University was a State University, i.e., Clauses 2 and 8(b) of Correspondence Courses (Ordinances), which are reproduced hereinafter:

> *"**2.** The Correspondence Courses will be administered by an Institute of Correspondence Courses and Continuing Education which will be an integral part of the University"*
>
> *"8(b) The staff of Correspondence Courses will be borne on the strength of the respective University departments."*

9. Learned Senior Advocate further submitted that when in the year 2005 University become a Central University, then also the nature of service of petitioner was protected in terms of Section 5(d) of University of Allahabad Act, 2005 *(hereinafter referred to as "Act, 2005")* and the same is reproduced hereinafter:

> *"**5(d)-** Every person employed by the University of Allahabad immediately before the appointed day shall hold his office or service in*

the University by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matter as he would have held the same if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the statutes."

10. Learned Senior Advocate also referred that according to Section 37 of Act, 2005 petitioner is entitled for pension. He submitted that aforesaid statute and protection of service under Act, 2005 were not considered by concerned respondent, therefore, an illegality was committed.

11. Per contra, Sri Manish Goyal, learned Senior Advocate assisted by Sri Chandan Sharma, learned counsel for Respondent-University, submitted that nature of concerned Institute was always temporary and under Act, 2005 also its temporary status was continued and for that he referred Section 30(2) of Act, 2005. Learned Senior Advocate also referred Clause 1(b) and 1(d) as well as Clause 5(a) of Ordinance XXXII. For reference Section 30(2) of Act, 2005 and Clause 1(b), 1(d) and 5(a) of Ordinance XXXII, are reproduced hereinafter:

*"**30(2)** The Institute of Correspondence Courses and Continuing education shall continue as a temporary self-financing University Institute, and all matters relating thereto shall be provided for by the Ordinances."*

*"**1(b)** The Institute shall have a Director, an Advisory Board and an Academic Committee (hereafter in this Ordinance referred to as "the Director", "the Advisory Board" and "the Academic Committee", respectively)"*

*"**1(d)** The funds of the Institute shall consist of income from assets, endowments and investments, receipts from fees and other dues charged to the students and from publications, facilities, consultancy and other services, revenues from such other activities as are consistent with the provisions of the Ordinances and Regulations, and grants or contributions, for various purposes, received, with the concurrence of the Executive Council, from other sources;*

> *Provided that no such grant or contribution shall be utilized, except in accordance with the terms and conditions governing the same"*
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> *"**5(a)** The staff of the Institute other than the Director (hereafter in this Ordinance referred to as the staff") shall consist of persons engaged by the Advisory Board-*
> *(i) temporarily, on such remuneration, as may be approved by the Executive Council; or*
> *(ii) on contractual basis, on such rates of remuneration, and through the agency or agencies empanelled for the purpose in accordance with such rules, as may be approved by the Executive Council:"*

12. In rejoinder, learned Senior Advocate for petitioner referred a judgment passed by a Coordinate Bench of this Court in the case of Harendra Pratap Singh and others vs. Union of India and others (Writ-A No. 19384 of 2017), decided on 14.05.2018, which was arising out of same Institute and wherein it was held that services of employees of said Institute would continue even after the University become a Central University as it stood prior to 14th July, 2005, by virtue of Section 5(d) of Act, 2005.

13. Learned Senior Advocate for petitioner also referred some documents annexed alongwith second supplementary affidavit filed on 20.03.2025 that some of employees of said Institute were granted post retiral benefits such as, pension, gratuity etc. therefore, the decision of respondents is arbitrary also.

14. I have heard learned counsel for parties and perused the material available on record.

15. The first issue before this Court is to consider the status of Institute and for that the Court takes note of earlier judgment passed by this Court with regard to said Institute. The Court takes note of order dated 13.04.2018 whereby it was specifically held that concerned Institute is a Self Financed Institute of the University.

Therefore, burden of post retiral benefits to petitioner or similarly situated other employees cannot be made on public exchequer or Government and said benefits, if permissible, would be paid only by University concerned and at that stage also even the petitioner was already retired, the Court has only directed for payment of salary for the period of November, 2014 till 2017. Petitioner has not raised at that stage any claim about post retiral dues and aforesaid findings were upheld by Supreme Court also.

16. In above background, the Court also takes note of earlier Statute that Institute to be an integral part of University and staff of said Institute will be borne on the strength of respective Departments. However, Court is of opinion that aforesaid declaration or status of Institute would not itself mean that petitioner is entitled for post retiral benefits as a regular employee, except if the petitioner is able to show the rules governs their service, provides such post retiral benefits.

17. The Court also takes note that when University became the Central University in 2005, services of the petitioner and others remained same and in case petitioner and similarly situated other employees are entitled for post retiral benefits before Act, 2005 came into force, said entitlement shall be continued otherwise not. However, as referred above none of provisions referred above has specifically indicated that petitioner and similarly situated persons were entitled for post retiral benefits. No service rule is brought on record in support of their submissions.

18. In above background, the Court takes note of a judgment passed by Supreme Court in the case of **U.P. Roadways Retired**

Officials & Officers Assn. v. State of U.P., (2024) 9 SCC 331 and relevant paras 30, 31, 32, 33 and 34 thereof are reproduced hereinafter:

> *"30. The High Court, under the impugned judgment, has observed that the appellants having received retiral benefits including the benefit under the Employees Provident Fund Scheme, cannot be permitted to turn round and contend that they should also be given pension. We have also considered this aspect of the matter and we approve the observations of the High Court on the principle that a party to the litigation cannot be permitted to approbate and reprobate. See National Council of Educational Research and Training vs. Shyam Babu Maheshwari & Ors., (2011) 6 SCC 412 Krishna Kumar vs. Union of India (1990) 4 SCC 207 and Union of India vs. Kailas (1998) 9 SCC 721.*
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> *31. Similarly, in the matter of V.K. Ramamurthy vs. Union of India & Anr., (1996) 10 SCC 73 this Court considered the claim for pension of those who opted for pension after a long gap of retirement and held in para 4 that the contributory provident fund retirees form a different class from those who had opted for pension scheme and as such they are not entitled to claim as of right to switch over from Provident Fund Scheme to Pension Scheme. Similar is the proposition in the matter of All India Reserve Bank Retired Officers Association & Ors. Vs. Union of India & Anr. (1992) Supp (1) SCC 664.*
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> *32. In somewhat similar situation concerning employees of Oil Natural Gas Commission which was earlier run as a department of the Government of India prior to the enactment of Oil and Natural Gas Commission Act, 1959, this Court in The Committee for Protection of Rights of ONGC Employees & Ors. Vs. Oil and Natural Gas Commission, through its Chairman & Anr., (1990) 2 SCC 472 held thus in para 13:*
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>> *"13. This indicates that the scheme of Contributory Provident Fund, by way of retiral benefit, envisaged by the Provident Fund Act, is in the nature of a substitute for old age pension because it was felt that in the prevailing conditions in India, the institution of a pension scheme could not be visualised in the near future. It was not the intention of Parliament that Provident Fund benefit envisaged by the said Act would be in addition to pensionary benefits. Section 12 of the Provident Fund Act seeks to protect the wages of an employee to whom the scheme framed under the said Act applies as well as the total quantum of certain specified*

benefits to which he is entitled under the terms of his employment. With that end in view, Section 12 prohibits an employer from reducing, whether directly or indirectly, the wages of an employee to whom the Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity, provident fund or life insurance to which the employee is entitled under the terms of his employment express or implied. The said section proceeds on the basis that if an employee is entitled to any benefit in the nature of old age pension under the terms of his employment the said benefit would not be denied to him on the application of the Scheme. It is not the case of the petitioners that on June 30, 1961, when the Provident Fund Scheme was made applicable to the Commission, the petitioners had become permanent and were entitled to pension. It cannot, therefore, be said that on the date of the application of the Provident Fund Scheme to the Commission, the petitioners were entitled to pension under the terms of their employment. They cannot, therefore, invoke the provisions of Section 12 of the Provident Fund Act.”

33. In the matter of Prabhu Narain vs. State of U.P., (2004) 13 SCC 662, this Court held that to receive pension the employees must establish that they are entitled to pension under a particular rule or scheme. The following has been held in para 5:

“5. No doubt pension is not a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled to pension under a particular rule or the scheme, as the case may be.”

34. In yet another judgment rendered in Rajasthan Road Transport Corporation & Anr. Vs. Mohini Devi, (2013) 11 SCC 603 it is held thus in para nos. 7, 8 & 9:

“7. The Division Bench has considered the Regulations but failed to notice that there is apparent error in the order passed by the learned Single Judge. Indisputably, the employees concerned retired from service in 1991 and 1992 and after retirement they were paid CPF including the share of employer's contribution. Hence, as per Regulation 3 of the Regulations, no right accrued to the appellants/employees to claim pensionary benefits without first depositing the amount and complying with the Regulations.

8. The matter was examined by this Court in Pepsu RTC v. Mangal Singh [(2011) 11 SCC 702 : (2011) 2 SCC (L&S) 322] wherein it was held as under: (SCC p. 722, paras 51-52)

"51. The common thread which runs through all these appeals canvassed before us is that the respondents have failed to comply with the terms and conditions of the Regulations, which govern the Pension Scheme. We have already considered the nature and effect of the Regulations, which are made under a statute. These statutory regulations require to be interpreted in the same manner which is adopted while interpreting any other statutory provisions. The Corporation as well as the respondents are obliged and bound to comply with its mandatory conditions and requirements. Any action or conduct deviating from these conditions shall render such action illegal and invalid. Moreover, the respondents have availed the retiral benefits arising out of CPF and gratuity without any protest.

52. The respondents in all these appeals, before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge for non- service of individual notices. In other appeals, although the respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature."

9. We are, therefore, of the opinion that, in the facts and circumstances of the case and in view of the law laid down by this Court in the judgment referred to hereinabove, the impugned orders passed by the learned Single Judge [Madugiri v. Rajasthan SRTC, WP (C) No. 5425 of 1993 (Civil Writ 5425/1993), order dated 5-1-2006 (Raj)] and the Division Bench [Rajasthan SRTC v. Madugiri, Civil Special Appeal (Writ) No. 212 of 2006, decided on 11-10-2006 (Raj)] of the High Court cannot be sustained in law."

19. As referred above, the post retiral benefits could only be granted if rule permits. However, in present case, petitioner is not able to show that any rule or statute provides that petitioner is entitled for post retiral benefits. Only on basis that Institute is an integral part of University or petitioner was granted other benefits, it cannot be held that she is entitled for post retiral benefits. Therefore, on the strength of above arguments the claim of petitioner is not sustainable.

20. The last argument is about the fact that some employees of Institute were granted post retiral benefits and a reference was made on documents annexed alongwith this writ petition.

21. In this regard, the Court is of the view that once petitioner is not able to show any provision in support of her claim of post retiral benefits, there would be no negative parity and, therefore, such argument cannot be accepted. In this regard, the Court takes note of a judgment passed by Supreme Court in the case of **R. Muthukumar and others vs. Chairman and Managing Director, TANGEDCO and others, 2022 SCC OnLine SC 151** and for reference it's relevant part is reproduced hereinafter:

> *"28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In Basawaraj v. Special Land Acquisition Officer14, this court ruled that:*
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> > *"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."*

> *29. Other decisions have enunciated or applied this principle (Ref : Chandigarh Admn. v. Jagjit Singh15, Anand Buttons Ltd. v. State of Haryana16, K.K. Bhalla v. State of M.P.17; Fuljit Kaur v. State of Punjab18, and Chaman Lal v. State of Punjab19). Recently, in The State of Odisha v. Anup Kumar Senapati20 this court observed as follows:*
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> > *"If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision."*

22. In aforesaid circumstances, since petitioner is not able to show that there is any legal provision to support her claim for post retiral benefits and she cannot get any benefit of negative parity also, therefore, there is no ground to interfere with impugned order.

23. The writ petition is accordingly dismissed.

(Saurabh Shyam Shamshery,J.)

February 27, 2026
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