

W.P.(S.). No. 4946 of 2008

In the matter of an application under Article 226 of the Constitution of India.

Shri P.N.Mishra Petitioner
Versus
The Union of India & others Respondents

For the Petitioner : Mr. Manohar Lal Sharma
For the respondents : Md. Mokhtar Khan, Prabhash Kumar.

**Present: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE APARESH KUMAR SINGH**

C.A.V. on: 09.02.2012

Pronounced on: 02.03.2012

Reportable

I.A. NO. 3585 OF 2011

Aparesk Kumar Singh, J. The instant Interlocutory application has been filed on behalf of the petitioner praying therein to implead 8598 employees of the Navodaya Vidyalaya Samiti as petitioners in the present writ petition.

The petitioner has unnecessarily, at the fag end and at a very late stage sought to implead about 8598 employees/ staffs of the Navodaya Vidyalaya Samiti situated in different parts of the country as petitioners in the present writ petition. Moreover, petitioner has unnecessarily without any such authorization taken upon himself as representative and implead all the employees of the Navodaya Vidyalaya Samiti as co-petitioners, although non of them has come forward on their own before this court.

The said prayer is totally misconceived and cannot be allowed. Accordingly, the said I.A. No. 3585 of 2011 seeking impleadment of 8598 employees of the Navodaya Vidyalaya Samiti is, therefore dismissed as without any basis.

W.P.(S.). No. 4946 of 2008

1. This writ petition has been preferred by the sole petitioner Sri P.N.Mishra seeking issuance of writ, direction, directions commanding upon the respondents to implement and adopt uniform and consistent pension Rule for entire teaching and non-teaching staffs of the Navodaya Vidyalaya as has been adopted in respect of other educational institutions of the Human Resource

Department, Government of India.

2. Petitioner has further assailed the pension scheme approved w.e.f. 1.1.2004 and prayed to declare it as ultravires to article 14, 16 and 21 of the Constitution of India and not framed under article 309 of the Constitution of India. It is stated that the aforesaid scheme has been published by a gazette notification dated 31.7.2008, so far as staffs of Navodaya Vidyalaya Samiti is concerned.

3. Facts of the case are that petitioner claims to be an executive member of Jawahar Navodaya Vidyalaya, B.I.T. Mesra, Ranchi Branch represented through All India Navodaya Vidyalaya Staff Association. It is stated that Jawahar Navodaya Vidyalaya schools have been established all over India by Human Resource Department, Government of India in the year 1985. It is further stated that by office memorandum no. 4/1/87-PIC-1 dated 1.5.1987, the Human Resource Department, Government of India decided to implement the Rules including all the service benefits and pensionary benefits for teaching and non teaching staffs of Navodaya Vidyalaya Samiti. As per the petitioner the executive committee of the Navodaya Vidyalaya Samiti in its meeting held on 17.1.1992 decided to adopt the Rules and Regulations, circular and procedures applicable to the central government Mutatis & Mutandis till such time the Navodaya Vidyalaya Samiti formulates its own Rules, which is annexed as annexure-2 to the writ application. However, in the subsequent paragraphs of the writ petition itself it has been stated on behalf of the petitioner that a parliamentary standing committee of Human Resource Department in its 154th report presented before the Lok Sabha and Rajya Sabha on 2.3.2005 and 3.3.2005 respectively strongly recommended the pensionary benefits to be given to the teaching and non-teaching staffs of the Navodaya Vidyalaya Schools and Jawahar Navodaya Vidyalaya Schools and that the said benefits to be extended at par with other schools governed by the Human Resource Department, Government of India. He has further referred to strong recommendation made by the Parliamentary standing

committee on 30.11.2006, 17.8.2007 in its 184th and 198th reports. It is further submitted that the report has been submitted by a review committee of the Human Resource Department, Government of India on 29.1.2004 suggesting similar treatment to the employees of the Jawahar Navodaya Vidyalaya Schools with those of the teaching and non-teaching staffs of Kendriya Vidyalaya Schools for extending and admitting such pensionary benefits.

4. It also appears from the averments made in the writ petition that the commissioner of Navodaya Vidyalaya Schools, who is controlling authority of Navodaya Vidyalaya Schools, New Delhi had made recommendations on 29.12.2006 for enforcement of pensionary benefits to the teaching and non-teaching staffs of Navodaya Vidyalaya Schools / Jawahar Navodaya Vidyalaya Schools at par with the employees of the other educational institutions governed by the Human Resource Department, Union of India. The said recommendation is annexed as annexure-3 series.

5. Based on the aforesaid submissions of facts it is submitted on behalf of the petitioner that teaching and non-teaching staffs of Navodaya Vidyalaya Schools / Jawahar Navodaya Vidyalaya Schools are being discriminated arbitrarily denying their pensionary benefits and other benefits as given to similarly situated educational institutions of Human Resource Department, Government of India. In the circumstances, it is submitted that the notification contained in annexure-1 is highly prejudicial to the teaching and non-teaching staffs of Jawahar Navodaya Vidyalaya Samiti, who has been appointed before 1.1.2004 and as such may be declared ultravires violating article 14, 16 and 21 of the Constitution of India. The government has come out with a condition that on account of notification contained in annexure-1 there remain uncertainty with respect to pensionary benefits for those employed in Jawahar Navodaya Schools prior to 1.1.2004. Based upon the aforesaid facts the writ petitioner has prayed for the reliefs as made in para 1 of the writ petition.

6. A number of affidavits have been filed and exchanged on behalf of the parties. Respondents No. 1 to 4 have appeared and filed number of affidavits

contesting the stands of the respondents. In sum and substance it has been stated on behalf of the respondents that there was no pension scheme in existence for the employees of Navodaya Vidyalaya Samiti. The Navodaya Vidyalaya Samiti Schools in fact had adopted Contributory Pension Fund Schemes. On the repeated demand of the employees , the Government of India has approved the introduction of new pension scheme for all the regular employees joining the Navodaya Vidyalaya Samiti after the date of notification, with an option for the regular employees of Navodaya Vidyalaya Samiti , as on date of notification of New Pension Scheme, to continue with the existing C.P.F. Scheme or to join the New Pension Scheme. In case the employee opted for New Pension Scheme in that case the amount accumulated in the C.P.F account will be transferred to the pension fund under the new pension scheme. As per instruction of Government of India the New Pension Scheme is applicable for all the employees, who joined government service after 1.1.2004 and by allowing employees who had joined Navodaya Vidyalaya Samiti working prior to 1.1.2004 to opt for New Pension Scheme.

7. It is further stated that there are several autonomous bodies in the country where old pension scheme benefit has not been extended to its employees. The employees of the Samiti cannot be allowed to take plea since other institutions have the benefit of pension, the same should be extended as well.

8. Earlier by order dated 7.12.2011 the respondents were directed to give their positive stand whether there was any G.P.F./ Pension Scheme in the year 1986-87 when these appointment were given to the employees of the Navodaya Vidyalaya. This was in context of the reference of a document shown during the course of argument wherein it was stated that G.P.F./Pension Scheme referred to in the document indicating that if the option is not received within the stipulated period it will be presumed that he or she will be opting G.P.F/Pension. In response to that a counter affidavit

was filed by the respondents no. 1 to 4 specifically in respect of the observations made by this court in its order dated 7.12.2011.

9. In para 8 of their affidavit it has been stated that Navodaya Vidyalaya Samiti was constituted and registered under Society Registration Act, 1860 in the month of February, 1986(annexure-A to the counter affidavit) and by ministry of Finance notification dated 11.11.1991 the name of Navodaya Vidyalaya Samiti was added in the Scheduled of Provident Fund Act, 1925 (annexure-B). This was followed by Navodaya Vidyalaya Samiti circular dated 17.12.1991. It is stated that Rules for absorption of deputationists in Navodaya Vidyalaya Samiti are enclosed as annexure-D.

10. It is the categorical stand of the respondents that the petitioner, Sri P.N.Mishra came on deputation from Bihar State Leather Industry Development Corporation, Ranchi to the post of Office Superintendent initially for a period of three years w.e.f 3.3.1990 (annexure-E). Subsequently, on acceptance of resignation from his post in the parent organization, he was absorbed in Navodaya Vidyalaya Samiti w.e.f. 1.7.1995 vide order dated 4.4.1997(annexure-F). The terms and conditions of his appointment were as given in the permanent absorption Rules of the Samiti (Annexure-D). The respondent have submitted that the petitioner is guided by the terms and conditions of his absorption made as per the Rules of the Samiti. It is categorically been stated on behalf of the respondents that ever since the inception of Navodaya Vidyalaya Samiti and after being registered in February, 1986 the employees of Navodaya Vidyalaya Samiti have never been given the option of G.P.F./ Pension under the Pension Rule, 1972. All through till 2008 the employees were governed by the C.P.F. Rules, although, there was persistent demand from the employees for introduction of the Pension. The demands of the employees for introduction of pension were considered by the government from time to time but could not be agreed to since as per the decision taken by the Government of India on the recommendations of Fourth Pay Commission, all the C.P.F beneficiaries in

service as on 1st January, 1986 had been given an option to switch over to Pension / G.P.F/ Scheme. As the Navodaya Vidyalaya Samiti was established as a Society under the Societies Registration Act, 1860, the said recommendations were not applicable to the employees of Navodaya Vidyalaya Samiti.

11. In the circumstances, it is submitted that ultimately it was decided by the Government to give option to the existing employees either to join the New Pension Scheme, 2004 or to continue with the existing C.P.F scheme. For the new recruits joining after 1.4.2009, the New Pension Scheme is mandatory.

12. From the submission made on behalf of the petitioner read with averments made in the writ petition and the contention made on behalf of the respondents together with the averments made in the counter affidavits including the last affidavit dated 6.2.2012, one thing is clear that even the petitioner admits that the benefits of pensionary scheme were not available to the employees of the Navodaya Vidyalaya Samiti till the notification of the said scheme in the year 2008 giving option to the existing employees to join the new pension scheme, 2004 or to continue with the existing C.P.F. Scheme. Moreover, from the averments made in the writ petition itself it is absolutely clear that taking note of the repeated demand of the employees of the Navodaya Vidyalaya Samiti even the Parliamentary committee had made strong recommendations for inclusion of the employees of Navodaya Vidyalaya Samiti under the pensionary scheme and for treating them at par with other employees of the educational institutions under the Human Resource Department, Government of India. It appears that based upon the said recommendations itself the Government of India finally decided to come out with a notification in the year 2008 whereby the employees of the Navodaya Vidyalaya Samiti were allowed to join the New Pension Scheme, 2004 or to continue with the existing C.P.F. Scheme. This fact is also clear from the affidavits filed by the respondents as well as the last affidavit dated

6.2.2012.

13. On the other hand petitioner had initially joined as a deputationist under the Navodaya Vidyalaya Samiti, whose services were later on absorbed w.e.f. 1.7.1995 vide Navodaya Vidyalaya Samiti order dated 4.4.1997 (annexure-F to the affidavit dated 6.2.2012). The said order clearly speaks that the petitioner is being absorbed permanently as Office Superintendent in the Samiti w.e.f. 1.7.1995 under the terms and conditions as laid down by the Samiti. Petitioner, thereafter is guided by the Rules framed by the Navodaya Vidyalaya Samiti and are governed by the same.

14. It is a settled principle of law that cut of date of notification of pensionary scheme is within domain of the employer and is not subject to interference ordinarily unless it is arbitrary and unreasonable and some gross case of violation of Article 14 is made out. It would be profitable to quote the observations made by the Hon'ble Supreme Court of India on the choice of cut of date in the matter of grant of benefit of pension etc. on an employee by his employer. Reference may be made to the judgment delivered in the case of **Sudhir Kumar Consul Vrs. Allahabad Bank, reported in (2011) 3 SCC 486** which is as follows:-

“18. Moreover, the fixing of the cut-off date for granting retirement benefits such as gratuity or pension under the different schemes incorporated in the subordinate legislation, thereby, creating two distinct and separate classes of employees is well within the ambit of Article 14 of the Constitution. The differential treatment of two sets of officers appointed prior to the notified date would not offend Article 14 of the Constitution. The cut-off date may be justified on the ground that additional outlay as involved or the fact that under the terms of appointment, the employee was not entitled to the benefit of pension or retirement.

22. In All India Reserve Bank Retired Officers' Assn. v. Union of India, the Retired Officers' Association of Reserve Bank of India questioned the validity of introduction of pension scheme in lieu of Contributory Provident Fund Scheme. The bank employees, who retired prior to 1-1-1986, had not been given benefit of the said Pension Scheme. This Court held that the said cut-off date was neither arbitrary nor artificial or whimsical. It was further observed: (SCC pp. 677-78, para 10)

“10. ... The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily

grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme.”

23. In *UGC v. Sadhana Chaudhary* this Court has observed: (SCC p. 546, para 21)

“21. ... It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark.”

30. In *State of Bihar v. Bihar Pensioners Samaj* this Court held: (SCC p. 71, para 17)

“17. We think that the contention is well founded. The only ground on which Article 14 has been put forward by the learned counsel for the respondent is that the fixation of the cut-off date for payment of the revised benefits under the two notifications concerned was arbitrary and it resulted in denying arrears of payments to certain sections of the employees. This argument is no longer res integra. It has been held in a catena of judgments that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration.”

15. From the discussion of the case of the parties made herein above it is clear that the new pension scheme has come into force w.e.f. 1.1.2004 upon a conscious decision of the employers i.e Navodaya Vidyalaya Samiti on approval of the Government of India in the year 2008. The petitioner has not been able to show any grounds for treating the said cut of date as arbitrary, unreasonable and irrational or in violation of Article 14 of the Constitution of India. The mere fact that other institutions had been governed by different pensionary schemes since earlier point of time will not entitle the petitioner to claim that the Navodaya Vidyalaya Samiti is legally obliged to follow the same as it is an autonomous body, admittedly framed under the Societies Registration Act. As such even the employees in service prior to 1.1.2004 have been granted benefits to switch over to the new scheme as per the

provisions of the scheme. Sympathies have no place in a society governed by the Rule of law as been eminently observed by the Hon'ble Supreme Court in para 31 the judgment delivered in the case of **Sudhir Kumar Consul Vrs. Allahabad Bank** (Supra) which is as follows:-

“31. We have sympathies for the appellant but, in a society governed by the rule of law, sympathies cannot override the Rules and Regulations. We may recall the observations made by this Court while considering the issue of compassionate appointment in public service”.

16. In view of the aforesaid facts and circumstances and the factual position discussed above, we are of the considered view that the writ petitioner has failed to make out a case for issuance of any direction or mandamus upon the respondents in the manner prayed by him in para 1 of the writ petition.

17. The writ petition is without any merit and accordingly, dismissed.

(Aparesh Kumar Singh, J.)

(Prakash Tatia, C.J.)

(Prakash Tatia, C.J.)

Jharkhand High Court, Ranchi
The 2nd day of March, , 2012
A. Mohanty