

Central Administrative Tribunal Principal Bench, New Delhi

T.A.No.15/2011
(C.W.P. No.711/2001)

Reserved on 09th September 2016

Pronounced on 20th September 2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Yoga Employees Association (Regd.)
1053, DDA (J) Flat,
Nanda Nagari, Delhi – 93
Through its Secretary
2. Mr. S.O.D. Bhatnagar
Research Officer (Biochemistry) Retd.
Morarji Desai National Institute of Yoga
68, Ashoka Road
New Delhi – 01

..Applicants

(Mr. Sukant Vikram, Advocate)

Versus

1. Union of India through Secretary
Ministry of Health
Red Cross Building
New Delhi -01
2. Mr. Morarji Desai National Institute of Yoga
Through its Director
68, Ashoka Road
New Delhi – 01
3. Union of India through its Secretary
Ministry of Finance
North Block, New Delhi
4. Union of India through its Secretary
Ministry of Ayush
Ayush Bhawan
B Block, GPO Complex
INA, New Delhi - 23

..Respondents

(Mr. Gyaneshwar, Advocate)

O R D E R

Mr. K.N. Shrivastava:

This is a Transferred Application from Hon'ble High Court of Delhi. The applicants had earlier filed C.W.P. No.711/2001 in the Hon'ble High Court, who, vide its order dated 25.04.2011, transferred the case to this Tribunal on the ground of jurisdiction. The said order reads as under:-

“1. The petitioners inform that the respondent no.2 Sh. Morarji Desai National Institute of Yoga has since filing of the writ petition been notified under Section 14 (2) of the Administrative Tribunal Act, 1985 and the writ petition as per Section 29 of the said Act is required to be transferred to the Central Administrative Tribunal, New Delhi.

2. The counsel for the respondents appearing on advance notice confirms the said position.

3. The writ petition is accordingly transferred. The parties to appear before the Principal Registrar, Central Administrative Tribunal, New Delhi on 16th May, 2011.

4. The Registry to immediately forward the file of the writ petition.”

2. The main prayer made in the T.A. reads as under:-

“(a) issue a writ in the nature of mandamus directing the respondents to immediately implement the pension scheme and make it applicable to the employees of respondent No.2; and

(b) issue such other order or direction as deemed fit in the circumstances of the case.”

3. The Morarji Desai National Institute of Yoga (MDNIY), which was earlier known as Central Research Institute for Yoga (CRIY), is a Society registered under the Societies Registration Act, 1860. The applicant No.1 is an Association, whereas applicant No.2 is a Research Officer (Biochemistry) working in MDNIY.

3. The Governing Body of MDNIY, in its meeting held on 19.03.1982 on the subject of 'Introduction of Pension-cum-Gratuity Scheme in the CRIY', has resolved as under:-

“The proposal was agreed to in principle and it was decided that the Instt. would send a self-contained proposal to the Ministry of Health with complete financial implications for further consideration.”

4. The Governing Council of MDNIY, in its second meeting held on 21.05.1999, considered the proposal for Pension-cum-CPF-cum-Death-cum-Retirement Gratuity Scheme, including Family Pension Scheme for the employees of MDNIY and resolved as under:-

“If the scheme of Pension-cum-GPF-cum-Death-cum-Retirement Gratuity Scheme including Family Pension Scheme exists in other National Institutions, it should be implemented in MDNIY also. A detailed proposal in this regard may be sent to the Ministry for approval.”

5. Based upon the resolution of the Governing Council dated 21.05.1999, respondent No.2, vide Annexure C letter dated 15.09.1999, wrote to the Ministry of Health & Family Welfare, Department of ISM&H (respondent No.1) for the approval of the Pension Scheme etc. for the employees of MDNIY. The said letter reads as under:-

“Subject : Request for approval of the Pension Scheme etc. for the employees of MDNIY.

Sir,

I am to say that the employees of this Institute are presently entitled for C.P. Fund Scheme and payment of Retirement Gratuity. In order to provide job satisfaction and a feeling of social security to the employees and their family members, a Pension Scheme has been prepared as annexed hereto at Annexure 'A'. This Scheme is based mainly on the following lines:

1. The existing member of CPF Scheme shall be asked to exercise their option for the Pension Scheme.

2. The existing employer contribution in the C.P. Fund Scheme (Rs.53.55 lakhs as on 31.3.99) invested in long term deposit in respect of those employees who opt for Pension Scheme will be transferred to a Pension Fund to be created under the Scheme.
3. Those who do not opt for the Pension Scheme will continue to be govern by the CPF Rules only.
4. The Pension Rule for MDNIY are not liberal than the Pension Rules applicable to the employees of Central Government.
5. Pension Fund will be maintained by the Institute and Pension/ Family Pension will be distributed from the Pension Fund accumulated from existing share of Employer's Contribution in the C.P. Fund, annual share of Employer's contribution equivalent to contribution being paid to C.P. Fund due to future and interest earned on the investments.
6. The scheme may not involve any additional expenditure/ Liability on the Institute.

The decision of the Governing Council of the Institute in its meeting held on 21st May, 1999 vide Supplementary Agenda Item No.3 in this matter is given below:

“If the scheme of Pension-cum-GPF-Cum-Death-Cum-Retirement Gratuity Scheme including Family Pension exists in other National Institute, it should be implemented in MDNIY also. A detailed proposal in this regard may be sent to the Ministry of approval”.

The above referred Pension Scheme already exists in all the councils working under the Ministry besides, National Institute of Ayurveda as confirmed by them vide their letter No.9 (4)/95/NIN/CC/7627 dated 21st July, 1999 annexed hereto as Annexure 'B'.

It is, therefore, requested that necessary approval of the Ministry for implementation of the above referred Pension Scheme may kindly be accorded as soon as possible.”

6. The Annexure C letter of respondent No.2 also contained the draft Scheme as its enclosure. The respondent No.1, vide Annexure F letter dated 30.06.2006 (page 175 of the paper book), wrote to respondent No.2 that in consultation with the Department of Expenditure, Ministry of Finance, it has been decided that the proposal for the introduction of Pension Scheme in MDNIY for its employees cannot be agreed to. The said letter reads as under:-

“The undersigned is directed to refer to your letter No.16-101/2005- Estt. dated 1st May 2006 on the subject mentioned above and to say that the proposal for introducing a Pension Scheme in the Morarji Desai National Institute of Yoga (MDNIY) on the lines of the Pension Scheme which had been introduced in the seven Institutions mentioned by the Delhi High Court in the Order on the Writ Petition has been examined by this Department in consultation with the Department of Expenditure, Ministry of Finance, which is the competent authority in the matter and it has been decided that the proposal cannot be agreed to.

The MDNIY may introduce the new Pension Scheme based on defined contributions which had been introduced in Central Government Organizations to take effect from 1st January 2004.”

The applicants in this T.A. have prayed for a direction to the respondents to implement the Pension Scheme in MDNIY.

7. Pursuant to the notice issued, the respondents entered appearance and filed their reply. The respondents have also filed two additional affidavits. The applicants thereafter filed their rejoinder. With the completion of pleadings, the case was taken up for hearing the arguments of the parties on 09.09.2016. Mr. Sukant Vikram, learned counsel for applicants and Mr. Gyaneshwar, learned counsel for respondents argued the case.

8. The gist of the arguments put forth on behalf of the applicants by their learned counsel was as under:-

8.1 MDNIY is an autonomous body under respondent No.1. It is fully funded by the said respondent.

8.2 Respondent No.1 has already approved a Pension Scheme for Council of Research in Yoga and Naturopathy, which is also an autonomous body working under respondent No.1. On the other hand, the request of the applicants to introduce similar Pension Scheme for MDNIY has been rejected by respondent No.1, which tantamounts to gross discrimination and the same is violative of equality principles enshrined in Article 14 of the Constitution of India.

8.3 Vide order dated 27.05.2004 (page 79 of the paper book), respondent No.1 has already given approval for regularization of Pension Scheme on Government of India pattern in several autonomous bodies working under it, which are:

- i) Central Council for Research in Ayurveda & Siddha, New Delhi
- ii) Central Council for Research in Homeopathy, New Delhi
- iii) Central Council for Research in Unani Medicine, New Delhi
- iv) National Institute of Homoeopathy, Kolkata
- v) National Institute of Ayurveda, Jaipur
- vi) Registrar-cum-Secretary, Central Council of Indian Medicine, New Delhi
- vii) Registrar-cum-Secretary, Central Council of Homoeopathy, New Delhi

8.4 Complying with the directions of this Tribunal in this T.A. dated 20.05.2013, respondent No.1 has given details of the introduction of Pension Schemes in various autonomous / statutory bodies working under it (page 144 of the paper book).

8.5 The respondent No.1, in its internal office notings, has clearly indicated that exclusion of MDNIY from the Pension Scheme was just a slip (page 148 of the paper book).

On the basis of above lines of arguments, the learned counsel for applicants prayed for issuance of direction to the respondents for the introduction of the Pension Scheme in MDNIY.

9. *Per contra*, the learned counsel for respondents submitted that the proposal of MDNIY for switching over from CPF Scheme to Pension Scheme-cum-GPF Scheme could not be agreed upon for the reasons given in the letter of respondent No.1 to respondent No.2 dated 01.06.2004 (Annexure –E – page 173 of the paper book). It was also submitted that respondent No.1 had advised respondent No.2 vide letter dated 30.06.2006 (Annexure-F) that MDNIY may introduce new Pension Scheme based on defined contributions, which had been introduced in Central Government Organizations from 01.01.2004.

10. Learned counsel further drew our attention to the Judgment of Hon'ble Supreme Court in a bunch of Civil Appeals and Writ Petitions, popularly known as **T.N. Sampath & others v. Secretary, Ministry of Water Resources & others** case (Civil Appeal Nos.712-713 of 2014 with

connected matters) decided on 20.01.2015, in which it has been held as under:-

“38..... The cut-off date is a domain of the employer and so the introduction of new scheme of pension will be done considering all the relevant factors including financial viability of the same. No interference is warranted unless there is gross injustice is perpetrated. The Appellants have failed to prove any arbitrariness and discrimination with respect to the New Pension Scheme.”

11. Concluding his arguments, the learned counsel for respondents submitted that the employees of autonomous bodies do not have parity with the Central Government employees and that the rules and regulations of different autonomous bodies are different and employees of one autonomous body cannot claim parity with those of other autonomous bodies under the same or any other administrative Ministry/Department, as held by the Apex Court in **T.N. Supra's** case (supra). He further argued that the Government has taken a conscious decision to move away from the non-contributory system of pension to a contributory system of pension based on defined contributions. The introduction of Pension/CPF Scheme is a policy decision of the Government and as such no intervention from Courts could be solicited in it. Hence the T.A. deserves to be dismissed, the learned counsel concluded.

12. We have considered the arguments put forth by the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. Admittedly, the MDNIY is an autonomous body under respondent No.1. The employees of an autonomous body are not government employees and as such their service conditions could be different from those of government servants, as observed the Apex Court in the case of

T.N. Sampath (supra). The introduction or non-introduction of a Pension Scheme in an autonomous body under it, is a policy decision of the Government having financial implications.

13. It is *stare decisis* that the Courts/Tribunals should neither legislate nor interfere with the policy decision taken by the Government. In **Mallikarjuna Rao and others Etc. Etc v. State of Andhra Pradesh and others** 1990 AIR 1251, Hon'ble Supreme Court ruled thus:-

“10. The observations of the High Court which have been made as the basis for its judgment by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution and as such the learned Judge deliberately used the word "advisable" while making the observations. It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowlingly to any such advice.

11. This Court relying on *Narender Chand Hem Raj v. Lt. Governor, Union Territory, Himachal Pradesh* : [1972]1SCR940 and *State of Himachal* [1985]3SCR676 held in *Asif Hameed v. State of Jammu & Kashmir*, [1989]3SCR19 as under (Para 19):

“When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive.

12. The Special Rules have been framed under Article 309 of the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to

legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution.

13. We are therefore, of the view that the High Court in Civil Writ Petn. No. 4532 of 1977 and the Administrative Tribunal in the judgment under appeal transgressed its limits in issuing the impugned directions. We set aside the judgment of the Tribunal and dismiss the Representation Petition No. 578/78 filed by M. Srinivasan and 44 others to the extent indicated above.”

14. The Hon’ble Supreme Court in the case of **P.U. Joshi & others v. The Accountant General, Ahmedabad & others**, 2003 (2) SCC 632 has clearly stated that the Courts cannot interfere in the matter of a policy decision of the Government. The relevant portion of the said Judgment is reproduced hereinbelow:-

“We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or

benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

15. Respondent No.1, in its communication dated 01.06.2004 (page 173 of the paper book) to respondent No.2, has clearly given the reasons for not agreeing to the introduction of Pension Scheme in MDNIY. As observed by us in the preceding paragraphs, the introduction of Pension Scheme or otherwise in the Government or autonomous bodies under it, is within the domain of the Government. As per the principles laid down by the Hon’ble Supreme Court in the cases of **Mallikarjuna Rao** and **P.U. Joshi** (supra), the Courts are not required to interfere in the policy matters.

16. In view of this, the T.A. is dismissed. No costs.

(**K.N. Shrivastava**)
Member (A)

(**Justice M. S. Sullar**)
Member (J)

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