

(2016) 10 Supreme Court Cases 77

(BEFORE JAGDISH SINGH KHEHAR AND CHOCKALINGAM NAGAPPAN, JJ.)

a STATE OF HIMACHAL PRADESH
AND OTHERS .. Appellants;

Versus

RAJESH CHANDER SOOD AND OTHERS .. Respondents.

Civil Appeals Nos. 9750-9819 of 2016[†], decided on September 28, 2016

b **A. Service Law — Pension — Pension Scheme — Withdrawal of Pension Scheme — Pension Scheme introduced by Government, not in capacity of employer but as a welfare measure for respondent employees of Government-controlled independent corporate bodies to be operated on self-sustaining basis — But pursuant to subsequent administrative review, Government finding scheme to be financially non-viable, sought to revoke the same prospectively by fixing a cut-off date — Legality and constitutionality of, upheld**

c — Held, although as soon as employees came to be governed by Pension Scheme a contingent right vested in them which was to crystallise upon their acquiring qualifying service for claim of pension, but such contingent right is not irrevocable in instant case — In absence of any employer-employee relationship between appellant State Government and respondent employees of corporate bodies, employees' challenge to withdrawal of Pension Scheme by Government in exercise of its administrative review power and their claim for pension under that Scheme was not based on any right or obligation between the parties — Once Pension Scheme had become operational administrative review by Government was permissible and such review was based on due considerations — No right of respondent employees under Arts. 14, 16, 21 and 300-A of the Constitution violated — Legality and constitutionality of government notification revoking Pension Scheme, upheld — Public Sector — Employment and Service matters — Pension Scheme — Constitution of India, Arts. 14, 16, 21 and 300-A

f Consequent upon the creation of the State of Himachal Pradesh, employees engaged by the corporate sector, on their retirement, were being paid provident fund, under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The Central Government framed the Employees' Provident Funds Scheme, 1995, whereby, it replaced the earlier statutory schemes, framed under the Provident Fund Act. This scheme was adopted for the corporate sector employees, engaged in the State of Himachal Pradesh. In order to extend better retiral benefits to these employees, the Himachal Pradesh Government framed another scheme on 29-10-1999 — the Himachal Pradesh Corporate Sector Employees Pension (Family Pension, Commutation of Pension and Gratuity) Scheme, 1999 (the 1999 Scheme). Its application extended to employees of some of the corporate bodies functioning as independent entities, under the Departments

h [†] Arising from SLPs (C) Nos. 10864-10933 of 2014. From the Judgment and Order dated 19-12-2013 of the High Court of Himachal Pradesh at Shimla in CWP No. 1577 of 2009

of Industries, Welfare, Horticulture, Forest, Food and Supplies, Tourism, Town and Country Planning, Housing and General Administration. Out of the corporate bodies concerned, almost all were fully owned by the State or the Central Government, and the share capital of the general public in the remaining, was less than one per cent. Therefore, the corporate bodies concerned were found to be eligible for the exemption, and were accordingly exempted from the applicability of the Provident Fund Act. The 1999 Scheme was made operational w.e.f. 1-4-1999.

The 1999 Scheme provided that it would apply to such of the employees who opted or deemed to have opted for the benefits under the Scheme upon their failure to exercise their option within the prescribed period. It was imperative for all employees concerned, to express their option, to be governed by the Employees' Provident Funds Scheme, 1995, in case the employees concerned, desired to avoid the 1999 Scheme. The 1999 Scheme further provided that those regular employees, who were entitled to the benefits postulated by the 1999 Scheme, would automatically forfeit their claim, to the employer's contribution in their provident fund account (including interest thereon), under the prevailing Employees' Provident Funds Scheme, 1995, to the Government. The forfeited amount would include the amount due and payable, under the Employees' Provident Funds Scheme, 1995, up to 31-3-1999. The forfeited amount was to be transferred to a corpus fund, to be administered and managed by the Government of Himachal Pradesh. The corpus fund, was to be treated as the pension fund, for payment of pension under the 1999 Scheme. A claim for pension by an employee governed by the above Scheme, would arise only at the time of the employee's retirement, on attaining the age of superannuation, or when he was retired from service by the employer, or in case of his death in harness.

After the implementation of the 1999 Scheme, a High-Level Committee was constituted by the Finance Department of the State Government, on 21-1-2003. The Committee was comprised of four Managing Directors of State public sector undertakings and corporations. The Committee was entrusted with the task of examining the financial viability of the 1999 Scheme. The Committee submitted its report on 15-11-2003. It arrived at the conclusion that the 1999 Scheme, would not be financially viable on a self-sustaining basis. After considering the report of the High-Level Committee, the State Government took a decision on 29-11-2004 to repeal the 1999 Scheme. While repealing the 1999 Scheme, it was decided that regular employees who had retired from corporate bodies, during the period of the subsistence of the 1999 Scheme from 1999 to 2004, would not be affected. For the implementation of the decision of the State Government dated 29-11-2004, a Notification dated 2-12-2004 was issued, repealing the 1999 Scheme. A number of employees who had been deprived of the benefit of the 1999 Scheme by the Notification dated 2-12-2004, challenged the repeal notification, by filing a number of writ petitions, before the High Court of Himachal Pradesh.

The High Court concluded that there was no merit in the contention that the 1999 Scheme could not be implemented due to financial crunch. It observed that the State was aware of the financial implication at the time of issuance of Notification dated 29-10-1999 and that it was the sovereign responsibility of the State to garner revenue to take welfare measures, including payment of pensionary/retiral benefits. Accordingly the High Court allowed the writ petition and declared the cut-off date

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