

Mukesh Prasad Singh Vs. The then Rajendra Agricultural University (Now Dr. Rajendra Prasad Central Agricultural University) & Ors.

Civil Appeal No. _____ of 2025 arising out of SLP (C) No. 4644 of 2023 · Supreme Court of India · 2025-03-04 · Pamidighantam Sri Narasimha · Manoj Misra · F2J-C-1507

Full judgment text

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[Civil Appeal No. _____ of 2025 arising out of SLP (C) No. 4644 of 2023]

1. Leave granted.

2. The present appeal arises from High Court order dated 24.11.2022 that dismissed the appellant's writ appeal against the learned single judge's order dated 27.02.2019, by which the appellant's writ petition to be included in the University's General Provident Fund-cum-pension-cum-gratuity scheme of retiral benefits was dismissed.

3. The short facts necessary for adjudication are that the appellant was appointed as Junior Scientist cum Assistant Professor by the respondent-University in 1987. At the time of his appointment, the University was governed by the Rajendra Agricultural University Statutes, 19761. Chapter 16 of the University Statute is relevant for our purpose, and the relevant portion reads:

"16. Pensions, General Provident Fund and Contributory Provident Fund.

16.1 (a) In accordance with item no. (10) of Section 35 of the Act, the scheme for pensions, General Provident Fund and Contributory Provident Fund for the benefit of the officers, teachers and other employees of the University shall be as mentioned in this chapter.

(b) The University employees shall be allowed the benefit of pension as below:

(i) Employees as have been appointed by the University will be entitled to the pension provided they do not opt for subscribing to the Contributory Provident Fund.

(c) The pensionary entitlements of the University employees will accrue on their attaining age of superannuation under the University or to their families in the event of death and will comprise of the following:

(i) Monthly Pension or terminal gratuity, as the case may be;

(ii) Death-cum-retirement gratuity; and

(iii) Family Pension. The above benefits shall be allowed by the University in accordance with the general rules, orders and principles regulating such payments under the State Government.

Provided that the terminal gratuity and Death-cum-Retirement Gratuity will be admissible as shown in the Schedule attached at the end of this Chapter.

(e) The University shall allow the benefit of the General Provident Fund to such employees as are not admitted to the Contributory Provident Fund. The General Provident Fund of the University will be governed by the rules and orders of the State Government."

4. A reading of Chapter 16 of the University Statute makes it clear that there are two schemes of retiral benefits:

(i) Contributory Provident Fund, which employees must opt for and which disentitles employees from receiving pension and General Provident Fund as per Chapter 16.1(b)(i) and 16.1(e); and

(ii) General Provident Fund, pension, and gratuity for those employees who do not opt for Contributory Provident Fund.

5. In order to implement these provisions, the respondent- University invited options from its employees at various points, including by Office Order Memo No. 2306/RAU, Pusa dated 21.02.2008, which reads as follows:

"I. In terms of the decision taken on dated 15.12.2017 in 72nd meeting of the Management Council of the Rajendra Agriculture University, Pusa, which was held in the premises of Bihar Veterinary Medical University, Patna and for fully implementing the provisions of Chapter 16.1 of the University Act and to complete the exercise of automatically providing the benefit of Pension Scheme by including the employee in the General Provident Fund-Cum-Gratuity Pension Scheme where no option was given by the employee to opt for the Contributory Provident Fund Scheme under Triple Benefits Scheme, the employees who were appointed before 1st September 2005 and who are not getting the benefits of the Pension in terms of the University Rules, are hereby given opportunity to exercise their option to opt to any of the following two types of Contributory Provident Fund Scheme:

1. Contributory Provident Fund Scheme 10% deduction (of basic pay) with 10% contribution by the University

2. Contributory Provident Fund- Cum-Gratuity Scheme 8% deduction (of basic pay) with 8% contribution by the University.

II. That an opportunity is hereby given to the employee who are willing to get the benefit of any of the above two Contributory Provident Funds to submit their option in the prescribed form, in duplicate, before their Controlling Officer/Unit within one month from the issue of this Office Order.

III. Vide this Office Order, the Controlling Officer/Unit are directed to collect the option letters from the employee working in their subordinate offices and send it along with a List to the Comptroller, Rajendra Agriculture University, Pusa by a special messenger within one week after the last date of giving option.

IV. After scrutiny of the above received option letters, the employees who don't give their option for Contributory Provident Fund, shall be included in the Pension Scheme in terms of the Chapter (16.1) of the Act, after passing appropriate order of the Comptroller and shall be forwarded to all the concerned Officers/Units for taking necessary action and to all the concerned non-teaching employee/scientist/officers for information."

6. The appellant did not submit his option to opt into the Contributory Provident Fund within the time stipulated in Clause (II) of the Office Order. At this stage, the natural consequence as per Clause (IV) of the Office Order itself, as well as Chapter 16.1(b)(i) of the University Statute, should have been that the appellant is included in the second scheme of retiral benefits, i.e., General Provident Fund-cum-pension-cum-gratuity.

However, when the respondent-University published a list of employees in this scheme on 12.04.2008, the appellant found that his name was not included. After submitting several representations for his name to be included, the appellant preferred a writ petition before the High Court under Article 226 of the Constitution to be included under the scheme for pension, gratuity, and General Provident Fund on superannuation. During the pendency of this writ petition, the appellant superannuated on 30.01.2019.

7. The learned single judge of the High Court dismissed the writ petition by order dated 27.02.2019, reasoning that the appellant did not opt for these retiral benefits despite being given the option in 1990, 1995, 1996 and 2008. The appellant's writ appeal came to be dismissed by order dated 24.11.2022, which is impugned herein, on a similar ground that the appellant did not exercise his option, and hence remains under the Contributory Provident Fund scheme.

8. We have heard the learned counsels for the parties. Upon considering the clear provisions of the University Statute and the Office Order, and decisions of the High Court in cases of similarly placed persons that have been relied on by the learned counsel for the appellant, we are of the opinion that the impugned order is liable to be set aside and the present appeal must be allowed for the following reasons.

9. At the outset, Chapter 16 of the University Statute (extracted hereinabove) that was in force at the time of the appellant's appointment clearly stipulates the applicable scheme of retiral benefits for the University's employees. Chapter 16.1(a) provides that scheme for pension, General Provident Fund and Contributory Provident Fund shall be as mentioned in the chapter. Chapter 16.1(b)(i) states that

employees appointed by the respondent-University "will be entitled to pension provided they do not opt for subscribing to the Contributory Provident Fund".

Chapter 16.1(c) provides for various kinds of pension and gratuity and Chapter 16.1(e) provides that those who are not admitted to the Contributory Provident Fund shall get the benefit of General Provident Fund. These provisions clearly show that the default retiral scheme applicable to the University's employees is General Provident Fund-cum-pension-cum-gratuity, unless the employee has specifically opted for the Contributory Provident Fund scheme.

10. The Office Order dated 21.02.2008, which was issued to implement the provisions of Chapter 16 of the University Statute, also has the same effect. It allows the employees to opt for two kinds of Contributory Provident Fund Schemes within 1 month from issuance, and Clause (IV) provides that the employees who do not exercise their option for either scheme "shall be included in the Pension Scheme in terms of the Chapter (16.1) of the Act". Therefore, even under the Office Order, non-exercise of any option to opt into the Contributory Provident Fund automatically entitles the University employees, including the appellant, to be included in the General Provident Fund-cum-pension-cum-gratuity scheme.

11. In fact, the High Court has taken note of this position while disposing of writ petitions with similar prayers by other employees of the respondent-University. In the decision of *Arjun Kumar v. State of Bihar and ors*,² a learned single judge of the High Court allowed the writ petition by holding that the option was to be exercised only by those who wanted to be included in the Contributory Provident Fund Scheme, while other employees would be covered by the General Provident Fund-cum-pension-cum-gratuity scheme as per Chapter 16.1 of the University Statute. The relevant portion of the order is extracted:

"It is evident from the narration of facts that earlier as per unamended Statutes, 1976 the only provision was with respect to CPF for all the employees of the University. However, by the amendment to Clause 16.1 of the Statutes as per Notification No. 1685 dated 17.4.1979 the scheme for pension was introduced in the University along with benefit of gratuity and G.P.F. The Statutes were very clear that all employees appointed by the University would be entitled to pension except those who have opted for subscribing for CPF. There is nothing ambiguous regarding the said point in the Statutes.

In the said circumstances, it was futile action on the part of the University that they have repeatedly sought for exercise of option with respect to employees of the University who have not got the benefit of pension scheme. As a matter of fact, the option was to be exercised only by those who wanted to be in the CPF scheme. From the facts and materials on the record it is the clear stand of the petitioner that he never exercised the option for CPF which fact could not be contradicted by the University by producing anything to show that the petitioner had opted for CPF. The only conclusion, therefore, is that in terms of Clause 16.1 of the Statutes the petitioner would be entitled to benefit of pension."

The High Court has also allowed other writ petitions with similar prayers on a similar reasoning.³

12. Since it is an admitted fact that the appellant did not exercise his option under the Office Order dated 21.02.2008, he did not opt in for the Contributory Provident Fund Scheme. Therefore, as per the University Statutes and the Office Order, he is entitled to retiral benefits under the General Provident Fund-cum-pension-cum-gratuity scheme. The High Court wrongly dismissed his writ petition on the ground that he did not exercise his option. In fact, being included under the second retiral scheme is a consequence of non-exercise of option provided under the Office Order. Further, once the High Court granted relief to similarly placed persons, it ought not to have dismissed the appellant's writ petition.

13. In light of the above, we allow the appeal, set aside the impugned order dated 24.11.2022 in LPA No. 1111/2019 passed by the High Court of Judicature at Patna, and direct that the appellant be provided retiral benefits under the General Provident Fund-cum-pension-cum-gratuity scheme in accordance with law and subject to adjustments of the benefits, if any, availed by the appellant under the Contributory Provident Fund scheme. Necessary computation and disbursement in that regard shall be made within a period of four months from today.

14. No order as to costs.

15. Pending applications, if any, stand disposed of.

.....J. [Pamidighantam Sri Narasimha]

.....J. [Manoj Misra]

New Delhi;

March 04, 2025.

1 Hereinafter 'University Statute'.

2 CWJC 2041 of 2012, order dated 10.12.2012.

3 Dr Vijay Kumar Jaiswal v. Bihar Agriculture University and ors, CWJC 12667/2012, order dated 25.07.2017; Ramjanam Prasad v. Rajendra Agricultural University, Bihar, Pusa and ors, CWJC 2377/2006, order dated 13.02.2018; Dr Surendra Bahadur Singh v. Bihar Agriculture University Sabore, Bhagalpur and ors, CWJC 1941/2014, order dated 20.11.2018.

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