

[2023 LiveLaw \(SC\) 662](#)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

S. RAVINDRA BHAT; J., ARAVIND KUMAR; J.

CIVIL APPEAL NO. /2023 (@ SLP (CIVIL) NO. 10399/2020) 7 August, 2023

STATE OF HIMACHAL PRADESH & ANR. versus SHEELA DEVI

CCS Pension Rules, 1972; Rule 2(g) and 17 - Past service as a contractual employee is to be taken into account for pension. (Para 9)

WITH SLP(C) Nos. 8012-8013/2021, SLP(C) No. 13683/2021, SLP(C) No. 12999/2021, SLP(C) No. 13413/2021, SLP(C) No. 13699/2021, SLP(C) No. 13001/2021, SLP(C) No. 13004/2021 and SLP(C) No. 13439/2021.

(Arising out of impugned final judgment and order dated 26-12-2019 in CWPOA No. 195/2019 passed by the High Court of Himachal Pradesh at Shimla)

For Petitioner(s) Mr. Abhinav Mukerji, AOR Mr. Varinder Kumar Sharma, AOR Mr. Anup Rattan Ag. H P. Sr Adv, Mr. Varinder Kumar Sharma Adv, Adv. Mr. Ravi Bakshi Adv, Adv.

For Respondent(s) Mr. Viplav Sharma, AOR Mr. Ajay Singh, Adv. Mr. Amit Kumar, Adv. Ms. Tamanna Malik, Adv. Mr. M. C. Dhingra, AOR Mr. Ashwani Kumar Gupta, Adv. Mr. Gaurav Dhingra, Adv. Mr. Dipanker Pokhriyal, Adv. Mr. A.K. Singh, Adv. Ms. Shobha Gupta, Adv. Mr. Raghvendra Shukla, Adv. Ms. Bina Madhavan, Adv. Mr. S. Udaya Kumar Sagar, Adv. Mr. Tushar Singh, Adv. Mr. Sohil Shaik, Adv. Mr. Narayana Kumar Relangi, Adv. M/S. Lawyer S Knit & Co, AOR

ORDER

SLP (CIVIL) NO. 10399/2020 (and connected petitions referred to above)

Leave granted. With consent of counsel, the appeals were heard.

2. The appellant (hereinafter “State”) is before this Court complaining that the judgment of the Himachal Pradesh High Court, granting relief to the respondents (hereby referred to as ‘employees’) is erroneous.

3. The respondents (or their legal representatives - as is the case in some instances) before this Court were employed on contract basis by the State in its Education and in the Ayurvedic Department. Their services as contractual employees were regularized at different points in time.

4. Many of these contractual employees were engaged prior to the introduction of the Rules framed in 2004 (hereinafter referred to as “2004 Pension scheme”) whereby entitlement of pension *per se* was abolished. On different dates thereafter, the employees were regularized. In some instances, they were employed even after the 2004 Pension Scheme came into force. Their claim was that upon regularization, they were entitled to reckon the period of contractual employment, for the purposes of pension. The State rejected this contention which led them to approach the High Court. The High Court by the impugned judgment allowed the writ petitions and directed the State to extend pensionary benefits on the basis of the benefit of including contractual service claimed by them on the reasoning that upon their regularization, the period of contractual employment was also reckonable for the purposes of future benefits including – whereby applicable, pension.

5. Complaining that of the error, the State has approached this court. During the pendency of these proceedings, the State introduced, what is now termed as a New Pension Scheme (hereby referred to as “NPS”) on 04.05.2023.

6. The NPS Scheme was notified in the Official Gazette on 04.05.2023 and was embodied in rules proviso under Article 309 of the constitution of India. The relevant portion of the NPS reads as follows: -

”(vii) Employees, who were covered under the National Pension System (NPS) and have already retired/died, between the period 15.05.2003 to 31.03.2003 and who fulfil the eligibility criteria under the Central Civil Services (Pension) Rules, 1972, such retired employee and eligible family member of deceased employee, shall be entitled to pension from prospective date i.e. with effect from 01.04.2023, on exercising an option for the same on the prescribed format at Annexure-II and submission of an undertaking at Annexure-III, subject to deposit of the Government contribution and dividend/return, till the date of withdrawal, to the the State Government. The amount of Government contribution and dividend/return shall be deposited under the Receipt Head “0071-Contribution & Recoveries towards pension and other retirement benefit, 01-Civil, 101-subscriptions and Contributions, 03-Accumulated Pension Wealth in respect of National Pension System Subscribers and 04-Accumulated dividend on Government Contribution of National Pension System employees converted into Old Pension Scheme”.

(viii) Employees’ own contribution alongwith dividend/return earned thereon, shall be retained by such employees who have opted for the Central Civil Services (Pension) Rules, 1972.

(ix) The employees covered under National Pension System and opting for the Central Civil Services (Pension) Rules, 1972 i.e. Old Pension Scheme, shall also furnish an undertaking for adjustment of the Government contribution and dividend earned thereon, from the gratuity/leave encashment/GIS, if they fail to deposit such amount to the Government Account.

(x) If an employee, who has opted for Central Civil Services (Pension) Rules, 1972 i.e. Old Pension Scheme, fails to deposit Government contribution and dividend earned thereon, to the Government Account, and said amount is also not possible to be adjusted completely against the payment of gratuity/leave encashment/GIS, then such an employee shall not be entitled to any pension under the Central Civil Services (Pension) Rules, 1972.

(xi) The Head of Department/Head of Office shall take up the pension cases of Government employees, who opted for the Old Pension System, with the Principal Accountant General (A&E), Himachal Pradesh, for authorization after following due procedure and codal formalities under the CCS (Pension) Rules, 1972.

(xii) The procedure to regulate the benefits under the CCS (Pension) Rules, 1972, and the General Provident Fund (Central Service) Rules, 1960, shall be same as applicable to the employees appointed on or before 14.05.2003 and these rules will be followed mutatis-mutandis for the employees appointed on or after 15.05.2003 and have opted for the CCS (Pension) Rules, 1972 i.e. Old Pension Scheme, with the conditions as mentioned above.”

7. The State, in justification of its appeal contends through the Learned Advocate General that the High Court’s reasoning is erroneous. It is submitted that Rule 17 of the CCS Pension Rules, 1972 (hereafter called the Pension Rules) is inapplicable, having regard to the exclusionary definition in Rule 2(g). It is further stated that one of the express terms of contract which the employees voluntarily entered into, was that barring specified statutory rules, no other service rules applicable to the regular or permanent employees were applicable to them.

8. At the outset, it would be necessary to extract Rules 2 and 17 of the CCS (Pension) Rules, 1972 (hereinafter “Pension Rules”) which reads as follows:-

“2. Application- Save as otherwise provided in these rules,¹ [these rules shall apply to Government servant appointed on or before the 31st day of December, 2003] including civilian Government servants in the Defence Services, appointed substantively to civil services and posts

¹ Subs. By S.O. 1483 (E), dated 30th Dec. , 2003.

in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to-

- (a) railways servants;*
- (b) person in casual and daily rated employment;**(c) persons paid from contingencies;*
- (d) persons entitled to the benefit of a Contributory Provident Fund;*
- (e) members of the All India Services;*
- (f) persons locally recruited for service indiplomatic, Consular or other Indian establishments in foreign countries;*
- (g) persons employed on contract except when the contract provides otherwise; and*
- (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.*

17. Counting of service on contract.- (1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either-

- (a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service;*
- (b) to agree to refund to the Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.*

(2) The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service or if the Government servant is on leave on the day, within three months of his return from leave, whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in subrule (2), the Government servant shall be deemed to have opted for the retention of the monetary benefit payable or paid to him on account of service rendered on contract.

9. The Learned Advocate General is correct in his interpretation, inasmuch as a facial reading of Rule 2(g) would indicate that contractual employees are excluded from the pale of Pension Rules. However, what is significant is that the rule itself in its opening terms saves the application of other provisions of the pension rules: “*Save as otherwise provided in these rules*”. If the opening phrase of Rule 2 were to be understood in this context, any interpretation of Rule 17 as is urged by the State would render such substantive provision redundant. Rule 17 was engrafted essentially to cater to the eventuality, where the employees working on contract basis were regularized at a later stage. It is only for the purposes of pension that the past service as a contractual employee is to be taken into account.

10. So far as the other arguments with respect to the voluntariness when the employees enters into contractual services is concerned, this Court is unpersuaded by the submission because those terms were applicable as long as the employees remained on contract. However, his or her status ceased upon regularization.

11. In view of the above reasoning, this court is of the opinion that there is no merit in the appeal however, the following directions are issued:-

- (i) The state shall take immediate steps to indicate the mode and manner of exercising option by all the employees concerned (who had been regularized after spells of contractual employment) regardless of the dates on which they were engaged i.e. prior to the year 2003 or subsequently, within a time frame, of within eight weeks from today.

(ii) After receiving the options within the time indicated in the notice, the concerned employee(s) who exercise the relevant options should be notified about the amounts they would have to remit in case any amount towards contribution is required, clearly.

(iii) The options should be processed and completed within eight weeks from the last date of receiving options.

(iv) Time limit for payment too should be indicated and entire process should be completed within four months and all orders fixing pensions or family pension as the case may be, shall be issued.

12. The appeal is disposed of in the above terms. Pending application(s), if any, are also disposed of.

SLP(C) Nos. 8012-8013/2021

13. Learned counsel for the petitioner(s) made a request to permit withdrawal of these Special Leave Petitions.

14. Prayer made is allowed.

15. Accordingly, the Special Leave Petitions are dismissed as withdrawn. All rights and contentions of the parties are kept open.

SLP(C) No. 13683/2021, SLP(C) No. 12999/2021, SLP(C) No. 13413/2021, SLP(C) No. 13699/2021, SLP(C) No. 13001/2021, SLP(C) No. 13004/2021 and SLP(C) No. 13439/2021

16. All these petitions are disposed of in terms of the orders in civil appeal arising from SLP (CIVIL) NO. 10399/2020.

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