A RAJASTHAN AGRICULTURE UNIVERSITY, BIKANER

v.

STATE OF RAJASTHAN & ORS.

(Civil Appeal No. 7160 of 2013)

AUGUST 27, 2013

B

[ANIL R. DAVE AND DIPAK MISRA, JJ.]

Service Law:

C *Retiral benefits – CPF Scheme and Pension Scheme – Belated option of employee for CPF scheme accepted by employer – After getting retiral benefits accordingly, employee claiming benefit of Pension Scheme – Held: A special favour was done to respondent by appellant University by accepting his option even after the prescribed period was over, and,* D *therefore, he cannot be permitted to take undue advantage of the same – Notification No. Pension/RAJAU/C/91/F-75/ 3668-768 dated 17.8.1991.*

Respondent No. 2, while in employment of the E **appellant-University, belatedly opted for the C.P.F. Scheme, which was accepted by the appellant-University. On his retirement from the appellant-University, he was paid all his retirement benefits payable to him under the C.P.F. Scheme. Thereafter, he approached the University** F **stating that as he had not exercised his option within the prescribed period of 3 months from the date of the Notification dated 17.08.1991, as per the conditions incorporated in the said Notification, he should have been deemed to have opted for the Pension Scheme and, therefore, he should be paid pension as per the Pension** G **Scheme. The University did not accept the prayer. Respondent No. 2 then filed a writ petition, which was allowed by the single Judge of the High Court, giving a direction to the appellant-University to consider his case. The Division Bench of the High Court directed the**

H

appellant-University to give pension to respondent No. 2. A

Allowing the appeal, the Court.

HELD: Though, respondent No. 2 had not exercised his option within the period prescribed under the Notification dated 17.8.1991, but when he exercised the B **option on 3.1.1992, for continuing to be under the C.P.F. Scheme and the appellant-University accepted the same, he would not get benefit under the deeming fiction incorporated in the Notification. It was his conscious effort to see that he continues with the C.P.F. Scheme. A** C **special favour was done to respondent No. 2 by the employer by accepting his option ever after the prescribed period was over, and, therefore, he cannot be permitted to take undue advantage of the same. The High Court was in error by giving a direction to the appellant-** D **University that respondent No. 2 should be given pension as if he had opted for the Pension Scheme. [para 22,24 and 25] [282-B-C, F-G]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7160 of 2013. E

From the Judgment & Order dated 20.01.2011 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal (W) No. 32 of 2008.

Dr. Manish Singhvi, AAG, Pragati Neekhra, H.D. Thanvi, Rishi Motoliya, Preeti Thanvi, Sarad Kumar Singhania, S.S. F Shamshery, V.M. Vishnu, Arun Bhardwaj, Bharat Sood, C.S. Ashri, Milind Kumar for the appearing parties.

The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Leave granted.

2. Being aggrieved by the judgment delivered in D.B. Civil G Special Appeal (Writ) No. 32 of 2008 in S.B. Civil Writ Petition No. 1738 of 2003 dated 20th January, 2011, by the High Court of Rajasthan, the Rajasthan Agriculture University has filed this appeal.

3. The facts giving rise to the present appeal, in a nutshell, H

A are as under :-

Respondent No. 2 was in employment of the appellant-University. Prior to his employment under the appellant-University, respondent No. 2 had worked with the State of Rajasthan in Veterinary & Animal Husbandry Department. After
B taking voluntary retirement from his State service, he had joined the erstwhile Mohanlal Sukhadia University, Udaipur. Subsequently, the said university had been bifurcated and the appellant-University was formed. Service of respondent No. 2 had been taken over by the appellant-University.

C 4. The question which is to be decided is whether respondent No. 2 is entitled to pension as claimed by him or he is eligible to get his retirement benefits under Contributory Provident Funds Scheme (for short "the C.P.F. Scheme").

5. Upon taking voluntary retirement from the State of Rajasthan, respondent No. 2 is getting pension from the State
D of Rajasthan in respect of the services rendered by him to the State of Rajasthan. After being in employment of the appellant-University, along with entire staff of the appellant-University, respondent No. 2 was also asked to give his option whether he was inclined to opt for a Pension Scheme or for a C.P.F. Scheme. The options were invited by the appellant-University
E under Notification No. Pension/RAJAU/C/91/F-75/3668-768 dated 17th August, 1991. It was stated in the said Notification that the employees who were in service of the appellant-University as on 1st January, 1990, shall have to exercise their option in writing, either for the Pension Scheme or for
F continuation under the existing C.P.F. Scheme within 3 months from the date of the Notification. It was further provided in the Notification that the employees, who would not exercise the option within 3 months from the date of the Notification, would be deemed to have opted for the Pension Scheme.

G 6. Unfortunately, respondent No. 2 could not intimate his option to the appellant-University within the period prescribed but by his letter dated 3rd January, 1992, he had opted for the C.P.F. Scheme. He specifically stated in his communication dated 3rd January, 1992 that he did not opt for the Pension Scheme. Perhaps as a special case, the option exercised by
H him had been accepted by the appellant-University and the

acceptance was kept on record after the authorized signatory of the appellant-University had accepted the option. Thus, his option for continuation under the C.P.F. Scheme had been accepted by the appellant-University. A

7. On 30th June, 1997, respondent No. 2 retired from service and as per the record of the University, as he had opted for the C.P.F. Scheme, he was paid all his retirement benefits payable to him under the C.P.F. Scheme. B

8. Respondent No. 2, thereafter made a grievance that as he had not exercised his option within the prescribed period of 3 months from the date of the Notification dated 17th August, 1991, as per the conditions incorporated in the said Notification, he should have been deemed to have opted for the Pension Scheme and therefore, he should be paid pension as per the Pension Scheme. C

9. The request made by respondent No. 2 had not been accepted because the appellant-University had already accepted the option of C.P.F. Scheme exercised by him. D

10. In the circumstances, after about 6 years, respondent No. 2 filed S.B. Civil Writ Petition No. 1738 of 2003 praying for a direction to the effect that the appellant-University should pay pension to him. The High Court allowed the petition by giving a direction to the appellant-University to consider the case of respondent No. 2. Being aggrieved by the aforestated direction, the appellant-University had filed D.B. Civil Special Appeal (W) No. 32 of 2008 and at the same time a decision was taken by the appellant-University not to change its decision with regard to giving benefit of the C.P.F. Scheme to respondent No. 2. E F

11. By virtue of the impugned judgment delivered by the High Court, the appellant-University was directed to give pension to respondent No. 2. Thus, the Division Bench of the High Court has directed the appellant-University to change the manner in which retirement benefits should be calculated and give pension to respondent No. 2 as if he had opted for the Pension Scheme. G

12. The appellant-University has been aggrieved by the aforestated judgment and therefore, this appeal has been filed. H

A 13. The learned counsel appearing for the appellant-University had submitted that having once opted for the C.P.F. Scheme under letter dated 3rd January, 1992 and when the said request made by the respondent No. 2 had been accepted by the appellant-University and as the amount payable to respondent No. 2 had already paid to him, it was not open to B respondent No. 2 to change his stand and ask for pension as if he had opted for the Pension Scheme. The learned counsel had further submitted that the writ petition had been filed after more than 5 years and that too, after accepting the total amount payable to him under the C.P.F. Scheme.

C 14. The learned counsel had submitted that respondent No. 2 could not have been permitted to change his stand after his retirement. He had drawn our attention to the letter of option duly signed and filed before the appellant-University by respondent No. 2 and the said option exercised by him, even though at a belated stage, had been accepted by the appellant-D University. This was a favour done to respondent No. 2 by the appellant-University.

15. According to the learned counsel, it was not a case where no option was exercised by respondent No. 2. It is true that respondent No. 2 did not exercise his option within the E period prescribed but his delay in exercising option had been impliedly condoned and the option exercised by respondent No. 2 was accepted by the appellant-University and therefore, the deeming fiction incorporated in the Notification would not be of any help to respondent No. 2, so as to treat him as if he had opted for the Pension Scheme by default.

F 16. The learned counsel for the appellant-University had further submitted that the University has limited funds and if such changes in exercise of option is permitted, the appellant-University would be in great financial difficulties. He had also submitted that the High Court had become unduly lenient G towards respondent No. 2. He had, therefore, submitted that the appeal should be allowed and the direction given by the High Court with regard to payment of pension to respondent No. 2 be quashed.

17. On the other hand, the learned counsel appearing for H respondent No. 2 had vehemently submitted that once respondent No. 2 had not exercised his option within the period

prescribed in the Notification dated 17th August, 1991, he ought to have been treated as if he had opted for the Pension Scheme as per the deeming fiction incorporated in the Notification. He had further submitted that immediately upon retirement, respondent No. 2 had made a grievance that he was wrongly considered to have opted for the C.P.F. Scheme and had written several letters and therefore, in fact, there was no delay as alleged. The learned counsel had also tried to compare provisions with regard to payment of retirement benefits by other universities of the State of Rajasthan and had made an effort to persuade this Court to the effect that respondent No. 2 ought to have been given pension in view of the fact that similarly situated employees of other universities were also paid pension.

18. We have heard the learned counsel and also have considered the relevant record forming part of the paper book.

19. We are of the view that the High Court ought not to have given a direction to the appellant-University to give pension to respondent No. 2 as if he had opted for the Pension Scheme.

20. It is an admitted fact that respondent No. 2 had exercised his option not within the period prescribed but little late. Though late, respondent No. 2 had opted for joining or continuing with the C.P.F. Scheme.

21. The appellant-University accepted the option exercised by respondent No. 2 and therefore, it cannot be said that the deeming fiction incorporated in the Notification would help respondent No. 2. For sake of convenience, relevant extract of the Notification dated 17th August, 1991, is reproduced hereinbelow :-

> "....Thus all employees who were in service on 1.1.1990 shall have to exercise their option in writing, either for the pension scheme under these regulations or for continuance under the existing C.P.F. Scheme, within 3 months from the date of notification of this provision and shall submit the same to the Comptroller, Rajasthan Agriculture University, Bikaner in the prescribed form. The existing employees who do not exercise option within the period specified under these regulations shall be deemed

A to have opted for the pension scheme. Option once exercised shall be final and irrevocable..."

22. Though, respondent No. 2 did not exercise his option within the period prescribed under the aforestated Notification, when he had exercised the option on 3rd January, 1992, for B continuing to be under the C.P.F. Scheme and when the appellant-University had graciously accepted the option exercised by respondent No. 2, he would not get benefit under the deeming fiction incorporated in the Notification. It would be unfair to the University if the submission of respondent No. 2 is accepted. A special favour was done to respondent No. 2 C by accepting his option even after the prescribed period was over. Now, at this stage, after his retirement, respondent No. 2 wants to take undue advantage of the favour done to him by the appellant university, which cannot be permitted. Had respondent No. 2 not exercised his option at all, he would have been surely treated to have accepted the Pension Scheme but D as he had given his option late, which had been graciously accepted by the appellant-University, it cannot be said that respondent No. 2 should be treated to have accepted the Pension Scheme.

23. All averments pertaining to employees of other E universities are not relevant because each employer university would have its own scheme with regard to payment of retirement benefits to its employees.

24. We may add here that respondent No. 2 is a highly literate person and he must have known the consequences, when he had opted for the C.P.F. Scheme under his letter of F option dated 3rd January, 1992. It was his conscious effort to see that he continues with the C.P.F. Scheme and the said effort was respected by the appellant-University by showing special favour, as his option was accepted even after the time prescribed in the Notification was over.

G 25. For the aforestated reasons, we are of the view that the High Court was in error by giving a direction to the appellant-University that respondent No. 2 should be given pension as if he had opted for the Pension Scheme.

26. The appeal stands allowed with no order as to costs.

H R.P. Appeal allowed.