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UNION OF INDIA AND ANR.

v.

S.L. VERMA AND ORS.

NOVEMBER 28, 2006

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Service Law:

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Pension Scheme—Extended to employees of Bureau of Indian Standards with liberty to exercise option to continue with CPF Scheme—Option not exercised—Held, only when an employee consciously opted for to continue with CPF scheme he would not become a member of Pension Scheme—In view of legal fiction they become members of the Pension Scheme—Regulation 16 ipso facto applicable in their case—Bureau of Indian Standards (Terms and Conditions of Service of Employees) Regulations, 1988—Regulation 16—Interpretation of Statutes—Legal fiction.

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Respondents no. 1 to 13 were employees of respondent no. 14—Bureau of Indian Standards and were members of Contributory Fund Scheme (CPF). Government of India issued Office Memorandum dated 1.5.1987 to the effect that all the CPF beneficiaries who were in service on 1.1.1986 and were still in service would be deemed to have come over to Pension Scheme, if no option to continue under the CPF Scheme was exercised. To the same effect was the recommendations of the Fourth Central Pay Commission which was accepted by the Central Government and was made applicable to the employees of respondent no. 14, Bureau of Indian Standards. Accordingly Bureau of Indian Standard (Terms and Conditions of Service of Employees) Regulations, 1988 were framed and the said Pension Scheme was incorporated in Regulation 16. However, respondents 1 to 13 continued to be treated as if they had still been continuing under the CPF Scheme assuming that it was obligatory on their part to give a positive option for that purpose. On 2.2.1999 respondent no. 14 requested the Union of India to grant another chance to these respondents to switch over to Pension Scheme, which request was not acceded to. Respondents no. 1 to 13 thereupon filed a writ petition before the High Court. Single Judge allowed the writ petition. In appeal the Division Bench modified the order of Single Judge to the extent that appellants would consider

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passing of a conditional approval (of the Pension Scheme) stipulating that they would not incur any liability in the event of respondent no. 14 failing to satisfy the pension liability of respondents no. 1 to 13. Aggrieved, the Union of India filed the present appeal. A

Dismissing the appeal, the Court

HELD: 1.1. The Central Government proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions were created, one by reason of the Office Memorandum dated 1.5.1987 and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that respondents no. 1 to 13 did not give their options by 30.9.1987. Thus, these respondents in view of the legal fiction created, became members of the Pension Scheme which a fortiori would mean that they no longer remained in CPF Scheme. Once they became the members of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees) Regulations, 1988 became *ipso facto* applicable in their case also. [774-C-D] B C D

1.2. The Single Judge of the High Court was correct in allowing the writ petition filed by the private respondents with a rider that thereby the Union of India would not be liable to financial liability. [774-H; 775-A] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2723/2005.

From the final Judgment and Order dated 16.9.2004 of the High Court of Delhi at New Delhi in W.A. No. 244/2004.

Vikas Sharma, V.K. Verma and Shreekanth N. Terdal for the Appellants. F

K.K. Rai, B.K. Sood, Bankey Bihar, S.K. Pandey, Abhishek Singh, C.S. Mishra, V.K. Singh and Ms. Indra Sawhney for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. The respondent Nos. 1 to 13 were employees of Bureau of Indian Standards. The said authority was created under the Bureau of Indian Standards Act, 1986. Although a statutory authority, it is said to be under the administrative control of Ministry of Consumer Affairs. Respondent Nos. 1 to 13 were members of Contributory Provident Fund Scheme(CPF H

A Scheme). The respondent No.14 i.e., the Bureau of Indian Standards, which is an Autonomous Body, pursuant to and in furtherance of an Office Memorandum dated 1.5.1987 issued by the Government of India asked its employees to give their option whether to continue under the Provident Fund Scheme or not. The said Office Memorandum dated 1.5.1987 assumes importance in view of the language used therein to which we intend to immediately advert to. The Office Memorandum is prefaced with calling for repeated options in the past asking the employees to switch over to the pension scheme. It was mentioned that such option had been asked for on 6.6.1985. The Central Government notices that despite the same, some of the employees still continued in the CPF Scheme. It further notices the recommendations of the Fourth Central Pay Commission to the effect that CPF beneficiaries in service on 1.1.1986 would be deemed to have switched over to the pension scheme on that date unless they specifically opt out to continue under the CPF Scheme. It is not in dispute that the said recommendations of the Fourth Central Pay Commission had been accepted by the Central Government and the same is applicable to the employees of the respondent No.14- Bureau of Indian Standards. Paragraph 3 and paragraph 3.2 of the said Office Memorandum read as under:

“3. All CPF beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the Pension Scheme.

3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30.9.1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.”

Pursuant to and in furtherance of the said Scheme of the Central Government, the respondent No.14 made a Regulation known as “Bureau of Indian Standards (Terms and Condition of Service of Employees Regulation, 1988” , Regulation 16 thereof reads as under:

“16 Pension- The Employees shall be governed by the Central Civil Services (Pension) Rules, 1972; provided that the employees who had specifically elected to be governed by the Contributory Provident Fund Rules, (India), 1962, immediately before the date of commencement

of these regulations shall continue to be governed under the Contributory Provident Fund Scheme.” A

Despite the clear intent and purport of the said Office Memorandum dated 1.5.1987, the respondent Nos. 1 to 13 herein continued to be treated as if they had still been continuing under the CPF Scheme.

The Central Government as also the respondent No.14-Bureau of Indian Standards have proceeded on some legal misconception that it was obligatory on the part of the said employees to give a positive option for the said purpose. For the first time on 2.2.1999, the respondent No.14 requested the Union of India for grant of another chance to the respondents to switch over to pension scheme stating that they purported to have exercised their option for CPF Scheme on the cut off date. B C

The said request of the respondent No.14 was not acceded to by the Ministry of Finance. It was, however, accepted by the respondent No.14 that only 19 employees were left out and the total financial implication therefor would come to about Rs.7.20 lakhs per annum, if all the employees are allowed to switch over to the Pension Scheme. It was made clear that for the said purpose the respondent No.14 would not depend upon the Government grants. Although the Ministry of Consumer Affairs, Food and Public Distribution agreed with the aforesaid suggestion of the respondent No.14, it appears that the Ministry of Finance did not agree thereto stating: D E

“...In view of the above, we have been advising autonomous bodies under various Ministries/Departments of the government of India to continue to follow the CPF Scheme or the autonomous bodies, if they so desire, may work out an annuity, scheme through the life Insurance Corporation of India based on voluntary contributions by the employees and without any contribution from the Government or the employees may join the pension scheme introduced by the Ministry of Labour for the PF subscribers. It may pleased be noted that introduction of pension scheme on GOI pattern to the employees of autonomous bodies should not be agreed to as a rule, any exception in this regard should be referred to this Department.” F G

At that juncture, the respondent Nos. 1 to 13 approached the High Court. Whereas the learned Single Judge allowed the writ *petition directing* that the same would not be subject to any liability on the part of the Union of India, but on an appeal preferred by the Union of India, by reason of the H

A impugned judgment, the Division Bench modified the said order directing as follows:

B “Impugned writ Court order dated 22.10.2003 shall stand modified to the extent that appellants shall consider passing of a conditional approval stipulating that they shall not incur any liability in case respondent No.14 fails to satisfy the pension liability of Respondent nos. 1 to 13 and pass appropriate orders within two months from today. These respondents on their part shall remain bound by all other terms of the writ Court order including the undertaking to be executed by them.

C The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 1.5. 1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by D 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards(Terms and Condition of Service of Employees Regulation, 1988) had become *ipso-facto* applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if E by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No.14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No.1 to 13 was illegal when a request was made by respondent No.14 to the F Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission G with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos.1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF scheme.

H In that view of the matter the Single Judge was correct in allowing the writ petition filed by the private respondents herein with a rider that thereby

the Union of India would not be liable to financial liability but the Division Bench could not have modified the same, as was sought to be done, by its order dated 16.9.2004. **A**

Subject to the aforementioned observations, the appeal is dismissed. There shall be no order as to costs. **B**

R.P.

Appeal dismissed.