

PETITIONER:
SMT. SHAKUNTALA MEHRISHI

Vs.

RESPONDENT:
NEW DELHI MUNICIPAL COMMITTEE AND ORS:.

DATE OF JUDGMENT 01/03/1990

BENCH:
OJHA, N.D. (J)
BENCH:
OJHA, N.D. (J)
VENKATACHALLIAH, M.N. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1990 AIR 1229 1990 SCR (1) 753
1990 SCC (3) 521 JT 1990 (1) 386
1990 SCALE (1) 421

ACT:
Civil Services: Delhi School Education Rules, 1973: Rule
126-Pension--Employees of aided Schools--Payment
of--Directions issued.

HEADNOTE:

The petitioner joined as a primary teacher in 1952 in an aided recognised school. She was making contribution towards compulsory provident fund. In 1975, the Delhi Administration, in consultation with the Accountant General, Central Revenue, issued a notification under Rule 126 of the Delhi School Education Rules, 1973, laying down detailed procedure for disbursement of pension and gratuity as also accounting of General Provident Fund in respect of the employees of aided schools. The petitioner opted for the aforesaid scheme in 1976, which was duly counter-signed by the Education Officer.

After the petitioner retired in 1977, she made a number of representations to the authorities concerned for payment of pension and gratuity. She got a reply in 1987 that her case had been referred to the Government for policy decision. Ultimately, Delhi Administration promulgated the pension scheme in the primary aided schools on and effective from 6th December, 1988.

The petitioner in her Writ Petition before this Court relied on the scheme announced by the Delhi Administration and the option exercised by her. She claimed that to deprive her of the pension and gratuity under the said scheme was without any justification.

On behalf of the respondents it was contended that the scheme was brought into force only in 1988 by the said notification whereby the modalities for grant-in-aid to the local authorities were finalised and since the petitioner retired from service in 1977, she was not entitled to pension prior to the said notification.

Allowing the Writ Petition, this Court,
HELD: 1. The school in which the petitioner was working was

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aided school within the meaning of S. 2(d) of the Delhi

Education Act and its employees were entitled to the benefits conferred by the notification dated 17th October, 1975. [757B-C]

2. Since the Central Civil Services (Pension) Rules, 1972 would apply to the petitioner as contemplated by notification dated 17th October, 1975, she is obviously entitled to get pension with effect from the date on which she ceased to be borne on the establishment. of the school in which she was working consequent upon reaching the age of superannuation. [757F-G]

3. The said notification having been issued by the competent authority and the petitioner, who was an existing employee of an aided school on the date of the issue of the said notification, having opted for the pension and gratuity within the stipulated period in the prescribed proforma which was duly countersigned by the Education Officer, she obviously became entitled to the benefits conferred by the said notification. This is so all the more in view of the fact that the notification dated 17th October, 1975 did not contemplate finalisation of the modalities about contribution towards pension fund as a condition precedent to the entitlement of the benefits under the said notification. The finalisation of the said modalities was a matter of details among the authorities concerned and could have no bearing on the entitlement to the benefits of the notification dated 17th October, 1975. Such finalisation could not even defer the date of the entitlement. [758A-C]

4. The respondents are directed to pay to the petitioner pension admissible to her in pursuance of the notification dated 17th October, 1975 with effect from the date of her retirement and also to pay to her the other retirement benefits. They are further directed to finalise the requisite formalities in this behalf within three months and to issue payment orders immediately thereafter. [758H; 759A-B]

JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 623 of 1989.

(Under Article 32 of the Constitution of India).

Rangarajan and San jay Parokh for the Petitioner.

G.B. Pai, V.K. Sharma and R.K. Maheshwari for the Respondents.

The Judgment of the Court was delivered by
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OJHA, J. The gravamen of the grievance of the petitioner is that even though she retired on 3 ist October 1977 on reaching the age of superannuation and even though she was entitled to pension, gratuity and other retirement benefits, the respondents have kept her deprived therefrom without any justification for all these long years. She has made a prayer that the respondents may be directed to make the requisite payments to her at least now when she was almost at the fag end of her life. Brief facts necessary for the decision of this petition are that the petitioner joined R.M. Arya Girls Patshala, New Delhi, which was an aided recognised school, as a primary teacher in the year 1952 and had been making contribution towards compulsory Provident Fund. On 17th October, 1975, the Administrator of the Delhi Administration in consultation with the Accountant General, Central Revenues, issued a notification in exercise of the power conferred on him by Rule 126 of the Delhi School Education Rules, 1973 (hereinafter referred to as the Rules) laying down detailed procedure for disbursement of pension

and gratuity and accounting of General Provident Fund to the employees of the aided schools under the Delhi Education Act 1973 (for short the Act) and the Rules framed thereunder. The said notification, inter alia, provided:

"Further rule 126 of the Delhi School Education Rules 1973 lays down that the Administrator shall, in consultation with the A.G.C.R. specify the detailed procedure for accounting of provident fund and payment of pension and gratuity to the employees of the aided schools.

In order to implement the provision referred to above the detailed procedure is prescribed hereafter. In regard to matters not specified in the procedure the provisions of the Central Civil Services (Pension) Rules, 1972 as amended from time to time and other general provisions of the Act/ Rules shall apply.

The employees of the aided schools shall be entitled to pension and/or gratuity in accordance with the provisions and procedure applicable to the employees of the similar categories of Delhi Administration under the existing pension rules as contained in the Central Civil Services (Pension) Rules, 1972 as amended from time to time. These rules shall be applicable to these employees of the aided schools who were appointed on or after the commencement of the Act/Rules and also to the existing

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employees who opt for the pension and gratuity within the stipulated period in the prescribed proforma."

The school in which the petitioner was working being an aided school under the Act and the notification aforesaid being applicable to its employees the petitioner made the requisite option in the prescribed proforma on 29th January 1976 which was duly countersigned by the Education Officer on 2nd April 1976. After her retirement, the petitioner made several representations for payment of pension and gratuity etc. to the authorities concerned but each time the petitioner did not get any better response than an information that her case was under active consideration. By his letter dated 27th February, 1987, i.e. after nearly 10 years of the petitioner's retirement, the Joint Director of Education (FIN.) Old Secretariat, Delhi, conveyed to her an additional information apart from the usual one namely that her case was under active consideration, that further action in the matter will be taken by the Department soon after the proposal is approved by the Government of India. By a subsequent letter dated September 29, 1987, the petitioner was informed by the Education Officer that the Directorate of Education had referred the case to Government of India on 26th March, 1987 for policy decision. Ultimately the Directorate Of Education, Delhi Administration, promulgated the decision of pension scheme in the primary aided schools on 6th December 1988. This decision, inter alia, provided for payment of grant-in-aid to the local authorities concerned for the implementation of the pension scheme already notified vide notification dated 17th October, 1975. The last paragraph of the decision provides that "pensionary benefits under these orders would apply with immediate effect, i.e. from the date of issue of these orders".

The prayer made in this petition has been opposed by the New Delhi Municipal Committee by filing a counter affidavit. The objection raised by the said Committee is that since the pension scheme was finally promulgated in 1988 and has provided therein that the pensionary benefits were to apply from the date of issue of the requisite order in this behalf namely 6th December, 1988, the petitioner who retired on 31st October, 1977 that is more than 11 years before the

final promulgation of the scheme was not entitled to any of the benefits claimed by her simply on the ground that she had opted for pension before her retirement in pursuance of the scheme notified on 17th October 1975 which was in the process of finalisation at the time of her retirement. It has also been contended on behalf of the said Committee that since modalities for grant-in-aid to the local authorities con-

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cerned for the implementation of the pension scheme were provided for by order dated 6th December 1988 the petitioner was not entitled to any pension before this date in any view of the matter.

Having heard learned counsel for the parties, we are of the opinion that the pleas raised on behalf of the Municipal Committee have no substance. As seen above, the requirement under the notification dated 17th October, 1975 with regard to the school, the employees of which were entitled to the benefits of the said notification was that it should be an aided school under the Act. The term "aided school" as defined in Section 2(d) of the Act means a recognised private school which is receiving aid in the form of maintenance grant from the Central Government, Administrator or local authority or any other authority assigned by the Central Government, Administrator or a local authority. In paragraph 1 of the petition under the caption "Facts" it has been specifically stated that R.M. Arya Girls Patshala was granted permanent recognition on 1.4.1936 and was also given grant-in-aid. The averments made in this behalf in subparagraphs (b) and (c) of paragraph III of the counter affidavit do not seem to seriously challenge what has been stated in paragraph 1 of the petition. It is, therefore, apparent that the school in which the petitioner was working was such, the employees of which were entitled to the benefits/ conferred by the notification dated 17th October, 1975. The said notification as already pointed out above, inter alia, provided that in regard to matters not specified in the procedure the provisions of the Central Civil Services (Pension), Rules, 1972 as amended from time to time shall apply. Rule 35 of these Rules provides that a superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement. Rule 83 of these Rules, on the other hand, inter alia, lays down that the pension shall become payable from the date on which a government servant ceases to be borne on the establishment. Since these Rules will apply to the petitioner as contemplated by notification dated 17th October 1975, she is obviously entitled to get pension with effect from the date on which she/ceased to be borne on the establishment of the school in which she was working consequent upon reaching the age of superannuation. Rule 126 of the Rules under which the notification dated 17th October, 1975 had been issued gives the power to specify procedure for payment of pay and allowances, pension and gratuity etc. to the Administrator in consultation with the Accountant General, Central Revenues. The very opening words of the said notification make it abundantly clear that the said notification had been issued in exercise of the powers conferred by Rule 126 of the Rules by the Administrator

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in consultation with the Accountant General, Central Revenues. The notification having thus been issued by the competent authority and the petitioner who was an existing employee of an aided school on the date of the issue of the said notification having opted for the pension and gratuity

within the stipulated period in the prescribed proforma which was duly counter-signed by the Education Officer, she obviously became entitled to the benefits conferred by the said notification. This is so all the more in view of the fact that the notification dated 17th October, 1975 did not contemplate finalisation of the modalities about contribution towards pension fund as a condition precedent to the entitlement of the benefits under the said notification. The finalisation of the said modalities was a matter of details among the authorities concerned and could have no bearing on the entitlement to the benefits of the notification dated 17th October, 1975. Such finalisation could not even defer the date of the entitlement:

Likewise the said notification did not contemplate any approval by the Government of India as a condition precedent to its enforceability. In this connection, it is also of significance that no statutory provision has been brought to our notice which made approval by the Government of India of the notification dated 17th October, 1975 issued by the competent authority as a condition precedent to the enforceability of the said notification. As seen above, for nearly 10 years after her retirement the petitioner was being informed in reply to her various representations that her case was under active consideration. It is only in 1987 that the plea that further action in the matter will be taken by the Department soon after the proposal is approved by the Government of India was raised and the case was referred by the Directorate of Education to the Government of India on 26th March 1987 for policy decision. Why it became necessary to do so in 1987 is a matter of anybody's guess. If, at all, it only indicates the callous attitude of the authorities concerned towards the fate of retired employees of aided schools in the matter of grant of pension and other retirement benefits to them. For ought we know, but for the sincere effort made by the Indian Council for Legal Aid and Advice in this case, which apparently deserves commendation, the agony which the petitioner must have suffered during the long years after her retirement may have remained unnoticed and unmitigated. No acceptable justification having been given for denying the pension to the petitioner from the date of her retirement as also the other retirement benefits the petitioner is obviously entitled to these benefits. In the result, this petition succeeds and is allowed. The respon-

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dents are directed to pay to the petitioner pension admissible to her in pursuance of the notification dated 17th October, 1975 with effect from the date of her retirement and also to pay to her the other retirement benefits. They are further directed to finalise the requisite formalities in this behalf within three months and to issue payment orders immediately thereafter. The petitioner shall be entitled to her costs from respondents 1 and 2 which is assessed at Rs.2,000.

G.N.

Petition

allowed.

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