

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 542 OF 2023**

**National Institute of Rural Development**

**...Appellant**

**v.**

**Shyam Sunder Prasad Sharma & Ors.**

**... Respondents**

**J U D G M E N T**

**ABHAY S. OKA, J.**

**FACTUAL ASPECTS**

1. The issue involved in this Civil Appeal is of entitlement of respondent no.1 to pensionary benefits. The appellant is an autonomous organisation working under the Ministry of Rural Development, Government of India. The appellant has more than 100 faculty members drawn from about 20 disciplines. It trains about 4,000 officials as well as non-officials engaged in the field of

rural development. It is also conducting international programmes for the benefit of third world countries.

**2.** With effect from 14<sup>th</sup> August 2002, the appellant appointed respondent no. 1 as an Associate Professor. Though the post was admittedly a regular post, he was appointed on a contract basis for a period of three years which was extendable to five years. Offer of contract appointment was issued on 22<sup>nd</sup> July 2002 and the agreement was executed by the appellant on 14<sup>th</sup> August 2002. Respondent no.1, after his appointment, opted for the Contributory Provident Fund Scheme of the appellant and submitted the necessary documents.

**3.** On the basis of an application made by respondent no.1, he was offered a contract appointment to the post of Professor by the appellant for a period of three years which was extendable to five years. The offer dated 1<sup>st</sup> May 2007 records that respondent no.1 will be entitled to benefits of the Contributory Provident Fund Scheme (CPF) as per the rules of the appellant.

**4.** On 18<sup>th</sup> February 2009, the Executive Council of the appellant decided to regularise services of such faculty members

who were employed on a contract basis on regular posts as a one-time measure. Accordingly, NIRD Rules, 2011 for Regular Appointment of the Academic Staff (Appointed on Contract Basis) (for short “the Regularisation Rules”) were framed. By order dated 4<sup>th</sup> May 2012, the appointment of respondent no.1 was regularised on the post of Professor. The order itself records that the appointment of respondent no.1 was made to a sanctioned post. The order records that respondent no.1 will be entitled to pensionary benefits under the new pension scheme.

**5.** On 10<sup>th</sup> September 2012, a representation was made by respondent no.1 to the Director of the appellant for the grant of benefits under the old pension scheme to him. It was recorded that the new pension scheme was applicable to those who were appointed on or after 1<sup>st</sup> January 2004. Even subsequently, representations were made by respondent no.1 in the years 2013 and 2014.

**6.** Original application was filed by respondent no.1 before the Central Administrative Tribunal challenging the action of applying the new pension scheme to him. The Tribunal held that

respondent no.1 was initially appointed as an Associate Professor through direct recruitment against a permanent post on a contract basis. Even his appointment as a professor on a contract basis was on a permanent post. The Tribunal noted that respondent no.1's appointment was regularised from 14<sup>th</sup> August 2012. However, his service under the contract employment was required to be considered for the purposes of determining pensionary benefits. Therefore, the Tribunal proceeded to hold that the action of the appellant of applying the new pension scheme was illegal. A direction was issued to the appellant to consider the case of respondent no.1 under the old pension scheme. It is this order which has been confirmed by a Division Bench of Telangana High Court by the impugned judgment and order.

### **SUBMISSIONS**

7. The learned counsel appearing for the appellant urged that respondent no.1's first appointment as an Associate Professor on 14<sup>th</sup> August 2002 was on a contract basis which came to an end after he was appointed as a Professor on a contract basis in the year 2007. Her submission is that as the order of regularisation

was passed in the year 2012, he is not entitled to claim a pension under the old scheme with effect from the year 2002. The learned counsel further submitted that the Regularisation Rules under which the service of respondent no.1 was regularised clearly provided that all the academic staff members who were regularised under the Regularisation Rules will be entitled to benefit of pension only under the new pension scheme. She submitted that without challenging the Regularisation Rules, respondent no.1 cannot claim that the old pension scheme will apply to him. The learned counsel urged that respondent no.1 accepted the Regularisation Order dated 4<sup>th</sup> May 2012 which clearly provides that he can claim the benefit of only the new pension scheme. She pointed out that respondent no.1 continued to contribute to CPF throughout his employment. She submitted that it was not open for respondent no.1 to opt for the old pension scheme as it was not open for him to exercise the option of joining the old pension scheme. The learned counsel urged that Rule 6 of the Regularisation Rules has not been correctly interpreted both by the Tribunal and by the High Court. She submitted that there are similarly placed 20 academic staff members of the appellant and

therefore, if the impugned judgment is upheld, the financial burden on the appellant will be of more than Rs. 8 crores.

**8.** The learned counsel appearing for respondent no.1 in reply submitted that after respondent no.1's employment was regularised, in view of clause 4 of Bye-law 52 of the National Institute of Rural Development (Service) Bye-laws (for short "the said Bye-laws"), respondent no.1 on regularisation of his service was entitled to opt for old pension scheme though earlier he had joined CPF scheme. He submitted that as interpreted by the Tribunal and the High Court, Rule 6 of the Regularisation Rules carves out an exception in the case of an employee who was initially appointed on a regular post and was holding a high academic post on a contract basis who had subscribed either to CPF or GPF-cum-Pension Scheme of the appellant. The learned counsel appearing for respondent no.1 submitted that only 6 staff members were beneficiaries of the Regularisation Scheme and not 20 as contended by the appellant. He pointed out that two Associate Professors employed on a contract basis who are at serial nos.1 and 2 in Annexure-I to the Regularisation Rules have

been given the benefit of the old pension scheme. He pointed out that as soon as the order of regularisation was served to respondent no.1, he immediately made a representation disputing the correctness of the clause which provided that he will get the benefit only of the new pension scheme. He submitted that he continued to submit the representations till the year 2014. He submitted that therefore, it cannot be said that respondent no.1 had voluntarily accepted conditions imposed in the order of regularisation. The learned counsel would submit that the Tribunal and High Court have made a reasonable interpretation of the rules and in particular, the Regularisation Rules which calls for no interference. Even the learned senior counsel appearing for the third respondent - Union of India has made submissions in support of the appeal.

### **OUR VIEW**

**9.** It is an admitted position that on 14th August 2002, respondent no.1 was appointed as an Associate Professor by the appellant on a contractual basis as per the order dated 22<sup>nd</sup> July 2002 and in terms of the agreement dated 14<sup>th</sup> August 2002. The

said contractual appointment was extended till 13<sup>th</sup> August 2007. After joining the employment, respondent no.1 opted for CPF.

**10.** Contract appointment to the post of Professor was offered to respondent no.1 on 1<sup>st</sup> May 2007 on the terms and conditions set out in the written offer. Respondent no.1 joined on 3<sup>rd</sup> May 2007. Clause 5 of the Offer of Contract Appointment dated 1<sup>st</sup> May 2007 clearly recorded that respondent no.1 will be entitled to benefit of CPF. It is not the case of respondent no.1 that any grievance was made by him before accepting the appointment about Clause no.5 which limits his entitlement only to the CPF. The appointment of respondent no.1 was regularised on the basis of the Regularisation Rules. Rule 4 of the Regularisation Rules provides for the regularisation of the appointment of the academic staff appointed on a contract basis. It provided that academic staff appointed on a contract basis in terms of Bye-law 2(2)(a) of the said Bye-laws shall be deemed to have been appointed on regular basis against their respective sanctioned posts subject to being found fit by the selection Committee after evaluating their performance. Rule 6 of

the Regularisation Rules has been interpreted by the High Court and the Tribunal. Rule 6 reads thus:

**“In the event of deemed appointment of the services of the academic staff appointed on contract basis, no pensionary benefits would be given other than as available under the New Pension Scheme of the Government of India is made applicable with effect from 01.01.2004. This will not affect employee who was initially appointed on a regular post and presently holding his/her high academic post on contract basis and already subscribing to either “CPF or GPF cum Pension scheme” of the institute from the date of their initial regular appointment. Their existing status will remain unchanged. No arrears of pensionary and related allowances for the past service will be paid in case of deemed appointment. However, past service rendered by these academic staff appointed on contract basis may be taken into consideration for their future promotions, if any, as per norms/eligibility prescribed by the Institute for other academic staff appointed on regular basis, for this purpose, as made applicable from time to time, with the approval of competent authority. The deemed appointment will have no impact on existing basic pay and allowance presently being drawn by these academic staff appointed on contract basis and they will continue to draw their existing pay and allowances as per norms.”**

(emphasis added)

**11.** We may note here that the employment of respondent no.1 was regularised by the office order dated 4<sup>th</sup> May 2012 which specifically records that the order will take effect from the date of issue of the order. The said condition has not been challenged by respondent no.1. Therefore, he cannot claim that his employment has been regularised with retrospective effect from the year 2002 when he was appointed on a contract basis as an Associate Professor. The exception carved out in Rule 6 provides that the main part of Rule 6 will not affect an employee initially appointed on a regular post who was presently holding a high academic post on a contract basis and who was subscribing to either CPF or GPF-cum-pension scheme of the appellant from the date of his initial regular appointment. This exception is applicable to a member of the academic staff who was regularly employed (not on a contract basis) earlier but was holding a high academic post on a contract basis when the Regularisation Rules came into force. The exception will not apply to an employee like respondent no.1, whose first appointment was also on a contract basis and the appointment to a higher academic post was also on a contract basis. Even assuming that the exception carved out is applicable

to the case of respondent no.1, the exception does not permit a change of option from CPF to GPF-cum-Pension Scheme (old pension scheme). The exception protects the option earlier exercised by the employee so that the employee continues to be governed by the scheme for which he has already opted. Respondent no.1 had admittedly exercised the option of the CPF scheme.

**12.** Reliance was placed on clause (a) of Bye-law 52 of the Bye-laws which reads thus:

**“52. Application and eligibility of the schemes:**

**a) Persons appointed after the date of commencement of the schemes under bye-laws 48 and 49.**

1) A person appointed on contract under Service bye-law 2(2) shall be eligible to be governed only by the Contributory Provident Fund Scheme under Bye-law 50.

2) A person initially appointed on contract under Bye-law 12 to a post referred to in Bye-law 3(a) shall be eligible to be governed by the Contributory Provident Fund Scheme under bye-law 50, for the period he holds the appointment on contract (vide sub-clause 4).

3) A person appointed to a post otherwise than on contract shall be eligible to be governed only by the Pension-cum-Gratuity-cum-Family Pension Scheme referred to in bye-law 48 and the General Provident Fund Scheme referred to in bye-law 49.

4) An employee of the category referred to in sub-clause (2) shall, on his appointment on a regular basis in the post held by him or any other post under bye-law 12, have the option to elect either.

i) the Pension-cum-Gratuity-cum-Family Pension Scheme referred to in bye-law 48 and the General Provident Fund Scheme referred to in bye-law 49 or

ii) to continue to be governed by the Contributory Provident Fund Scheme referred to in bye-law 50.

Provided that he shall exercise and communicate his option in writing to the Registrar and Accounts Officer within three months of the date of the order appointing him on a regular basis, and if he is on leave on that date within three months from the date of his return from leave, and the option so exercised shall be final.

Provided further that if a person does not communicate his option in the manner aforesaid, he shall be deemed to have elected the Pension-cum-Gratuity-cum-Family Pension Scheme and the General Provident Fund Scheme.

Where a person elects or is deemed to have elected the Pension-cum-Gratuity-cum-Family Pension Scheme and the General Provident Fund

Scheme, he shall forego the Institute's contribution to his contributory Provident Fund account together with interest thereon, which shall be paid back to the Institute, and shall thereupon be entitled to count towards pension the service rendered by him prior to his appointment on a regular basis to the extent permissible under the Pension-cum-Gratuity-cum-Family Pension Rules of the Institute, and the accumulated balance of his subscriptions in the Fund together with interest thereon standing to his credit shall be transferred to his General Provident Fund Account."

(emphasis added)

**13.** Bye-laws 48 and 49 provide for Pension-cum-Gratuity-cum-Family Pension Scheme (old scheme) and General Provident Fund Scheme respectively. Sub-clause (a)(1) of clause 52 clearly provides that a person appointed on a contract in accordance with Bye-law 2(2)(a) shall be eligible only to CPF which is provided in Bye-law 50. Clause (a)(2) of Bye-law 52 provides that a person who was initially appointed on a contract basis as provided in the Bye-laws to a post (of academic staff) referred to in Bye-law 3(a) shall be eligible to be governed by CPF scheme for the period he holds office. Clause (a)(4) of Bye-law 52 deals with a situation where a person appointed on a contract basis is appointed on a

regular basis. Only in such a case, an option is available to opt for the either old pension scheme and GPF scheme or CPF scheme. There is a difference between appointing a contract employee on a regular basis and regularising the services of the contract employees. Moreover, when the Bye-laws were framed, the Regularisation Rules were not in existence. In this case, we are dealing with the regularisation of the service of the contract employee in terms of the Regularisation Rules and not an appointment on a regular basis. Respondent no.1 has been regularised under Regularisation Rules. Therefore, Clause (a)(4) of Bye-law 52 will not apply to respondent no.1 whose employment has been regularised under the Regularisation Rules.

**14.** As noted earlier, Rule 6 clearly lays down that those who are regularised under the said Rules will not be entitled to benefit of any scheme other than the new pension scheme. Even when the exception carved out to Rule 6 is applicable, it enables the regularised employee to continue with either CPF or the old pension scheme as per the option already exercised by him. The Regularisation Rules under which the employment of respondent

no.1 was regularised do not permit the regularised employee to change his or her option from CPF to the old pension scheme. Clause 52 of the Bye-laws cannot override subsequent statutory Rules in the form of the Recruitment Rules. The Recruitment Rules are made for giving effect to the Resolution of the General Executive Council made on 18<sup>th</sup> February 2009 for the regularisation of the academic staff appointed on a contract basis. After having taken benefits of the Regularisation Rules, the entitlement of respondent no.1 will be governed by Rule 6 and not by Clause (a) (4) of Bye-law 52 of the Bye-laws.

**15.** The Tribunal, as well as the High Court, have proceeded on an erroneous basis that after regularisation, respondent no.1 was entitled to change his option from CPF to the old pension scheme in terms of Bye-law 52. The High Court erroneously observed that regularization would relate back to the date of initial appointment made in the year 2002 when the order of regularisation dated 4<sup>th</sup> May 2012 expressly states that the regularisation will operate from the date of the said order. The High Court came to the conclusion that in view of the second proviso to sub-clause (a) (4) of Bye-law

52 of the Bye-laws, on the failure to communicate the option in the prescribed manner it shall be deemed that the employee has opted for the old pension scheme and GPF. Sub-clause (a)(4) of Bye-law 52, as observed earlier, will not apply to an employee whose service has been regularised under the Regularisation Rules. In the present case, in view of the provisions of the Regularisation Rules, there was no question of making available such an option.

**16.** In the circumstances, we find it difficult to sustain the impugned judgments. It appears that respondent no.1 has returned the benefits received by him under the CPF scheme. As a consequence of setting aside the impugned order, we direct the appellant to pay the amount to which respondent no.1 was entitled to under CPF. The amount shall be paid within a period of two months from today failing which the same will carry interest at the rate of 8% p.a. from the date on which the amount was returned to the appellant by respondent no.1.

**17.** Subject to the above direction, the appeal is allowed. The impugned orders of the Central Administrative Tribunal and the

Division Bench of the High Court are hereby set aside and the original application filed by the appellant before the Tribunal stands dismissed.

.....J.  
(Sanjay Kishan Kaul)

.....J.  
(Abhay S. Oka)

New Delhi;  
February 28, 2023.