

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 176 of 2014

Indian School of Mines University Teachers Association,  
a Body duly recognized by Indian School of Mines through  
its Secretary Upendra Kumar Singh, s/o Udai Narayan Singh,  
resident of Flat No. 304 Signora City (Middle School Road),  
P.O. P.S. & District-Dhanbad

... .. Writ Petitioner/Appellant

Versus

1. Union of India through the Secretary,  
Ministry of Human Resources Development  
... (Department of Secondary and Higher Education), New Delhi
  2. The Director, Ministry of Human Resources  
Development Department (Department of Secondary  
Higher Education), New Delhi
  3. The Director, Ministry of Finance, Department of  
Expenditure, EV Branch, New Delhi
  4. Indian School of Mines, Dhanbad
  5. The Director, Indian School of Mines, Dhanbad
- ... .. Respondent/Respondents

CORAM: HON'BLE MR. JUSTICE D.N. PATEL  
HON'BLE MR. JUSTICE PRAMATH PATNAIK

For the Petitioner: Mr. Anil Kumar Sinha, Sr. Advocate  
Mr. Saurav Arun, Advocate  
Mr. Deepak Kr. Dubey, Advocate  
For the Respondents: Mr. Anoop Kr. Mehta

**08/Dated 12<sup>th</sup> January, 2015**

**Per D.N.Patel,J.**

1. Counsel for the appellant has argued out the case at length and submitted that as per Office Memorandum dated 01/5/1987 of Govt. of India, General Provident Fund scheme (hereinafter to be referred to as 'G.P.F. scheme' for the sake of brevity) was made compulsory with effect from 01.01.1986. However, as per the said Office Memorandum, employees would have an option to continue under the Contributory Provident Fund Scheme (hereinafter to be referred to as the 'C.P.F. scheme') if they so desire. The option would have to be exercised and conveyed to the concerned head of office by a particular cut off date and if no option is received by that cut off date they will be deemed to have come over to the Pension Scheme. ISM, Dhanbad adopted the said Office

Memorandum and in pursuance of its Notice of the year 1994, some of its employees, who were appointed after 01.01.1986 inadvertently opted for C.P.F. Scheme, while others who were in service of Respondent No. 4 and Respondent No.5 before and on 01.01.1986 were continued in the C.P.F. Scheme since they inadvertently did not exercise the option for switchover. Further, some other employees were also there who were inadvertently continued in C.P.F. Scheme because they gave their option after the cutoff date. The main difference between C.P.F. and G.P.F. schemes is regarding pension and the employees are ready to return the contribution of the employer (Respondent No. 4) towards the C.P.F. Scheme with interest. Similarly, it is expected that amount deposited by the employees in the said scheme will also be paid to the employees by respondent no. 4 and 5 with accrued interest at the same rate.

2. Looking to the scheme floated by the Central Government, it appears that it is compulsory for the employees who are appointed after 01.01.1986 to opt for G.P.F. scheme. The option, in fact, was to be given to those employees, who are appointed prior to 01.01.1986 and not to all the employees. This mistake was committed by Respondent No. 4 and 5 in the year 1994 and later on wisdom prevailed on them and now the employer respondent no. 4 and 5 are ready and willing to allow the employees who are appointed after 01.01.1986 to switch over to G.P.F.-cum-Pension scheme. This permission given by the Respondent No. 4 and 5 is absolutely in consonance with the scheme floated by the Central Government and it is good that Respondent No.4 and 5 are rectifying the error. Now the question remains only of the adjustment of the amount already paid by the employees towards C.P.F. Scheme. It is submitted by the Senior Advocate that apart from accounting aspect of the matter, if it is held by this court that those employees of respondent No. 4 and 5, who are appointed after 01.01.1986, must opt for G.P.F.-cum-Pension scheme, then calculation can be done later on, which is nothing but adjustment of the amount already paid by the employees. If any amount is to be paid or refunded the same will be paid or refunded by the employees with statutory rate of interest and similarly, it is submitted by the counsel for the respondent No. 4 and 5 that if any amount is to be refunded to the employees the same will also be refunded with interest.

Counsel for the appellant and Respondent No.4 and 5 both have

submitted that in fact Central Government should not have any objection because

- (a) There is no financial loss to the Central Government
- (b) Unnecessarily Union of India is taking time in this matter since long.
- (c) The institution in question is an autonomous body and therefore, the decision of Respondent No. 4 and 5 should have been accepted by Union of India, especially when there is no financial loss to the Union of India

3. Counsel appearing for Union of India submitted that entire Financial burden is upon Union of India and therefore, he is seeking time to get further instructions.

4. This matter is, therefore, adjourned on 23<sup>rd</sup> February, 2015.

**(D.N.Patel, J.)**

**(Pramath Patnaik, J.)**

s.m.