

## **INTERPRETATION AND DEFENCE OF SUPREME COURT DECISION**

Jawahar Navodaya Vidyalaya was conceptualized in 1985 and two model schools were started, one each at Jajjhar in Haryana and Amravati in Maharashtra. However, the Jawahar Navodaya Vidyalaya Samiti was established under the Registration of Societies Act, 1960 on 28-02-1986.

Jawahar Navodaya Vidyalaya schools have been established under the aegis of the Ministry of Human Resource Development, Government of India. The employees of Jawahar Navodaya Vidyalaya Samiti ("JNVS") demand that they be brought under the GPF-cum-Pension Scheme like their counterparts in other educational institutions, like Kendriya Vidyalaya Samity ("KVS"), IITs, Sainik Schools, NCERT etc. However, they have continued to be governed only by CPF Scheme and are excluded from the Pension Scheme till 2004.

### **1. OLD PENSION SCHEME to NVS employees FAVOURED by HRD Ministry, Various Committees and Commissions etc.**

In any case, the demands of the employees of JNVS have been supported as well as voiced by various Government functionaries including Ministry of Human Resource and Development through its letter to the Finance Ministry in 1998 seeking approval of the Finance Ministry to introduce the Pension Scheme to JNVS, **Y.N. Chaturvedi Committee Report** on Review of Management Structure and Operating Mechanism of Navodaya Vidyalaya Samiti, **Parliamentary Committee** on Functioning of Navodaya Vidyalaya Samiti through its 154th, 184th and 198th Reports. All these committees have strongly recommended that the employees of JNVS be brought at par with the employees of Kendriya Vidyalaya and be given similar service benefits, including pension under 1972 Rules.

Review Committee set up by the Ministry of HRD under Chairmanship of Shri Y.N. Chaturvedi to review the Management Structure and Operating Mechanism of JNVS, 154th report of the Department Related Parliamentary Committee on functioning of JNV which was laid before Lok Sabha on 02-03-2005, Cabinet Note prepared by the Ministry of HRD in March 2006 which specifically pointed out the need to extend the Pension Scheme under 1972 Rules to the employees of JNVS, 198th Report of the Department Related Parliamentary Committee submitted on 17-08-2007 which strongly recommended for implementing the Pension Scheme to the employees of JNVS. Even the Ministry of Labour and Employment by its O.M. dated 07-09-2006 to the Ministry of HRD, recommended extension of Pension Scheme to NVS.

### **2. RESOLUTION BY EXECUTIVE COMMITTEE OF NVS**

The Executive Committee of JNVS had adopted a resolution which proposed the application of Central Government Service Rules to its employees mutatis mutandis till the Samiti framed its own rules. But the resolution has not been shown to have been approved by the Government or District Inspector of Schools, contends Supreme Court Verdict.

However, the major hurdle in implementation of Pension Scheme to the employees of JNVS has been the financial constraints as the Finance Ministry never gave a go-ahead for such implementation.

### **3. ACTUARY CONFIRMS FINANCIAL FEASIBILITY BY NVS EMPLOYEES' OWN CONTRIBUTION & FUND.**

To substantiate their claim, **JNVS engaged an actuary** to determine the financial feasibility of implementing the Pension Scheme to JNVS employees and it was found that if the employees contribution upto 31.03.2005 is transferred to the Pension Fund by 31.03.2005 and annual contribution of @18% of salary on monthly basis from 01.04.2006, the implementation of the scheme is financially viable.

Joint Commissioner (Admn) thereafter vide letter dt. 6-3-2006 apprised the Director UT (1) Ministry of Human Resource Development Department of secondary and Higher education of this.

### **4. NVS Employees objects the NEW PENSION SCHEME:**

The Government of India introduced the New Pension Scheme for the NVS employees effective from 1-4-2009. Those who were appointed prior to 1-4-2009 were given an option to join the New Pension scheme or continue with the existing CPF scheme of NVS .

The employees claim that New Pension Scheme was also discriminatory as it is not at par with the Pension Scheme under 1972 Rules. The existing employees were put under Tier-II of the New Pension Scheme and the employer's contribution was not available to them. Further, the New Pension Scheme did not include any family pension, medical benefits and death gratuity.

But those who have joined NVS before 1-1-2004 will never get new Pension Scheme.. They will have to accept only CPF Scheme.

*An organization having contributory Provident fund Scheme should continue to be governed by that scheme as the new Pension Scheme was only applicable to the organizations which earlier had GPF-CUM-Pension Scheme prior to 1-1-04.*

### **MISHRA FILED WRIT PETITION AGAINST NEW PENSION SCHEME:**

JNV employees filed W.P(S) No.4946/2008 seeking the relief of issuance of direction to the respondents to implements CCS Pension Scheme,1972 and also to quash the New Pension Scheme being arbitrary and discriminatory before the Jharkhand High Court which had been dismissed by order dt. 9-2-2012.

The cut-off date 1-1-2004 for New Pension Scheme is the domain of the employer. S.C asserts that there is no arbitrariness or discrimination in respect of New Pension Scheme.

### **5. PRINCIPLE OF EQUAL PAY FOR EQUAL WORK:**

Learned Additional Solicitor General on behalf of UOI stated that it is an administrative decision which is made keeping in mind various determining factors and that it cannot be said all schools and educational institutions constitute one class.

S.C avoided applying the principle of equal pay for equal work. That there should be complete and wholesome identity between the two groups and that the matter should be sent

for examination by an expert committee appointed by the Government instead of the Court itself granting higher pay)”

## **6. 4<sup>TH</sup> PAY COMMISSION**

The IVth Pay Commission in para 9.8 recommended that *“In so far as the CPF beneficiaries still in service on January 1, 1986 are concerned, we recommend that they should be deemed to have come over to the pension scheme on that date unless they specifically opt out to continue under the CPF Scheme. The CPF beneficiaries who decide to continue to remain under that scheme should not be eligible on retirement for ex-gratia payment recommended by us for the CPF retirees.”*

The Ministry of personnel, Public Grievances and Pension vide memorandum dt.1-5-1987 accepted the recommendation and allowed all the central Government employees, including central Autonomous Bodies Pension w.e.f 1-1-86.

**The employees of NVS contends that the Office Memorandum of the Department Public Grievances and Pensions Department of Pensions and Pensioners' Welfare dated 01-05-1987 to the employees of JNVS just like it was applied to the KVS**

JNVS was not in existence at the time of cut-off date 01-01-1986 applicable under the O.M. dated 01.05.1987 The Navodaya Vidyalaya Samiti was established and registered under the Societies Registration Act, 1860 only on 28-02-1986, so its employees cannot be in service as on 01-01-1986 nor CPF Benefacories. Aforesaid OM is applicable to KV because the KVS was established in 1965.

Navodaya Vidyalaya Samiti was formed in 1986 but model schools already existed in 1985. The appointment letters given to employees in 1986, had given the option to join either the CPF Scheme or Pension Scheme. (Testimonials are Appointment letters dt.9-1-86 and 14-2-86 )

## **7. Autonomous Bodies**

Rule 149 (4) (iv) of General Financial Rules of the government of India which provides as follows:

*“All Autonomous Bodies or granted institutions which receive more than 50% of their recurring expenditure in the form of grant –in-aid should formulate terms and conditions of service of their employees so that by and large they are broadly comparable to those applicable to similar categories of employees in Central Government”.*

Navodaya Vidyalaya Samiti is an autonomous body 100% funded by the Central Government in line with Kendriya Vidyalayas, Sainik Schools, Central Schools etc. , which are also cent percentage autonomous bodies .

Its constitutional/fundamental right to equality guaranteed by Articles 14 and 16 of the constitution of India, applicable to financial implications as well.

**JNV employees not totally Central Govt Employees**

JNVS cannot claim as of a right to be governed by the Central Civil Service (Pension) Rules, 1972 as **they are not employees of the Central Government.** In A.K. Bindal (supra), this Court has held that employees of Government companies are not Government servants. JNV employees are employees of the autonomous body that is Navodaya Vidyalaya Samiti which has all the control on the organization.

#### **8. Fundamental rights cannot be violated on the grounds of financial constraints**

The only reason for not providing pension as per 1972 Rules has been the financial implications which becomes apparent from the letter of the Finance Ministry dated 05-02-1999 to the HRD Ministry that an annuity scheme may be formulated with LIC by employees contribution alone without any liability of the Government.

#### **BUT RIGHT TO PENSION NOT A FUNDAMENTAL RIGHT**

Many ingredients go into shaping of the wage structure of any organization, including the economic capability of the employer. Right to pension is not an inherent right of every employee but it flows from the rules of the Government. If the employee is not entitled to the pension as per the rules governing his/her service conditions, he/she cannot claim it. The employees of NVS were not promised any pension at the time of their appointment and no deductions were made during their service towards any pension fund. Hence the employees have not been denied what was rightfully theirs.

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