
(2009) 04 RAJ CK 0109
In the Rajasthan High Court

Agarwal Shiksha Saimiti (Shri) and Another	APPELLANT
Vs	
Sh. Nand Kishore Sharma and Others	RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 16, 18

Citation : (2009) 4 RLW 3393

Hon'ble Judges : G.S. Sarraf, J;Asok Parihar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Parihar, J.—Since, on similar set of facts, common order passed by the learned Single Judge is under challenge in the above appeals, the same have been heard together and are being decided by this common judgment.

2. The orders of compulsory retirement dated 27.6.1994 came to be challenged by the concerned employees before the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur. After considering entire facts and circumstances, the Tribunal, dismissed the appeals filed by the concerned employees by a common order dated 30.5.1995 holding that since it was subjective assessment of the management there was no illegality in the orders of compulsory retirement. The learned Single Judge, however, while allowing the writ petitions challenging the orders of compulsory retirement as also the order of the Tribunal, quashed the order of compulsory retirement and set aside the order of the Tribunal. Directions were issued to the appellants to reinstate the concerned employees with all consequential benefits. The learned Single Judge, though, held that a bonafide action taken in the public interest by the appropriate authority for compulsory retirement, the interference of the court is not called for, however, observed that in absence of any particular rule in regard to compulsory retirement the action of the management cannot be sustained in the eyes of law.

3. After having considered submissions of learned Counsel for the parties, we

have carefully gone through the material on record.

4. The service condition of the employees of Rajasthan Non-Government Educational Institutions are governed by the Rajasthan Non-Government Educational Institutions Act, 1989 (for short "the Act") and the Rules made thereunder namely; Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc) Rules, 1993 (for short "the Rules"). Section 16 of the Act makes a reference to compulsory retirement and the same is reproduced hereinafter:

16. Power of the State Government to regulate the terms and conditions of employment (1) The State Government may regulate the recruitment and conditions of service, including conditions relating to qualifications, pay, gratuity, insurance, age of retirement, entitlement of leave, conduct and discipline, of persons appointed as employee of aided institutions in the State:

Provided that the rights and benefits accruing to an employee of an existing institution under the grant-in-aid rules in force at the commencement of this Act shall not be varied to the disadvantage of such employee: Provided further that every such employee shall be entitled to opt for such terms and conditions of service as were applicable to him immediately before the commencement of this Act:

Provided also that, irrespective of the age of retirement prescribed, action may be taken for compulsory retirement of such an employee after completion of 25 years of service or on attainment of the age of 50 years whichever is earlier, in accordance with the procedure as may be prescribed.

(2) Every recognised institution shall constitute a provident fund for the benefit of its employees in such a manner and subject to such conditions as may be prescribed and contribute to such fund and any interest on the deposited amount at such rate as may be prescribed from time to time.

5. As per above section, it is clear that irrespective of age of retirement action may be taken for compulsory retirement of an employee after completion of 25 years of service or on attaining the age of 50 years, whichever is earlier in accordance with the procedure as may be prescribed.

6. Section 18 of the Act provided for removal, dismissal or reduction in rank of employees and the same is reproduced hereunder:

18. Removal, dismissal or reduction in rank of employees - Subject to any rules that may be made in this behalf, no employees of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken:

7. Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this

behalf has been obtained:

Provided further that this section shall not apply,-

(i) to a person who is dismissed or removed on the ground of conduct which led to his conviction on a criminal charge, or

(ii) where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of Director of Education has been obtained in writing before the action is taken, or

(iii) Where the managing committee is of unanimous opinion that the services of an employee can not be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing.

8. Accordingly, a Rule 39 under the Rules of 1993 has been framed which is also reproduced hereasunder:

39. Removal or Dismissal from Service.-(1) the services of an employee appointed temporarily for six months, may be terminated by the management at any time giving atleast one month's notice or one month's salary in lieu thereof. Temporary employee, who wishes to resign shall also give atleast one month's notice in advance or in lieu thereof prescribed.

9. Section 18 of the Act provides for removal, dismissal or reduction in rank of employees and the same is reproduced hereasunder:

18. Removal, dismissal or reduction in rank of employees Subject to any rules that may be made in this behalf, no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken:

10. Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained:

Provided further that this section shall not apply,-

(i) to a person who is dismissed or removed on the ground of conduct which led to his conviction on a criminal charge, or

(ii) where it is not practicable or expedient to give that employee an opportunity of showing causing, the consent of Director of Education has been obtained in writing before the action is taken, or

(iii) Where the managing committee is of unanimous opinion that the services of an employee can not be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six

months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing.

11. Accordingly, a Rule 39 under the Rules of 1993 has been framed which is also reproduced hereasunder:

39. Removal or Dismissal from Service - (1) the services of an employee appointed temporarily for six months, may be terminated by the management at any time after giving atleast one month's notice or one month's salary in lieu thereof. Temporary employee, who wishes to resign shall also give atleast one month's notice in advance or in lieu thereof deposit or surrender one month's salary to the management.

(2) An employee, other than the employee referred to in Sub-rule (1), may be removed or dismissed from service on the grounds of insubordination, inefficiency, neglect of duty, misconduct or any other grounds which makes the employee unsuitable for further retention in service. But the following procedure shall be adopted for the removal or; dismissal of an employee:

(a) A preliminary enquiry shall be held on the allegations coming into or brought to the notice of the management against the employee.

(b) On the basis of the findings of the preliminary enquiry report, a charge sheet along with statement of allegations shall be issued to the employee and he shall be asked to submit his reply within a reasonable time.

(c) After having perused the preliminary enquiry report and the reply submitted by the employee, if any, if the managing committee is of the opinion that a detailed enquiry is required to be conducted, a three member committee shall be constituted by it in which a nominee of the Director of Education shall also be included.

(e) The enquiry committee, after completion of the detailed enquiry, shall submit its report to the management committee.

(f) If the managing committee, having regard to the finding of the enquiry committee on the charges, is of the opinion that the employee should be removed or dismissed from service, it shall;

(i) furnish to the employee a copy of the report of the enquiry committee.

(ii) give him a notice stating the penalty of removal or dismissal and call upon him to submit within a specified time such representation as he may wish to make on the proposed penalty.

(g) In every case, the records of the enquiry together with a copy of notice given under sub-clause (0 (ii) above and the representation made in response to such notice if any, shall be forwarded by the managing committee to the Director of Education or an officer authorised by him in this behalf, for approval.

(h) On receipt of the approval as mentioned in sub-clause (g) above, the

managing committee may issue appropriate order of removal or dismissal as the case may be and forward a copy of such order to the employee concerned and also to the Director of Education or the officer authorised by him in this behalf:

12. Provided that the provisions of this rule shall not apply:

(i) To an employee who is removed or dismissed on the ground of conduct which led to his conviction on a criminal charge, or

(ii) Where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of the Director of Education has been obtained in writing before the action is taken, or

(iii) Where the managing committee is of unanimous opinion that, the services of an employee cannot be continued without prejudice to the interest of the institution, the service of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing.

13. Section 43 of the Act of 1989 is in regard to powers to make Rules and the same is also reproduced hereasunder:

43. Power to make Rules.-(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for-

(a) the terms and conditions for the grant of recognition to non-Government educational institutions;

(b) the maintenance of recognised institutions;

(c) the giving of grants-in-aid to recognised institutions;

(d) the levy, regulation and collection of fees in recognised institutions;

(e) regulating rates of fees in recognised institutions;

(f) regulating admissions to recognised institutions which are receiving aid out of State funds by making special provision for the advancement of socially and educationally backward classes of citizens and the Scheduled Castes and Scheduled Tribes; (g) the manner in which accounts, registers or records shall be maintained in aided institutions and the authority responsible for such maintenance;

(h) the submission of returns, statements, reports and accounts by Secretaries of the managing committee of recognised institutions;

(i) the inspection of recognised institutions and the officer by whom inspection shall be done;

- (j) the mode of keeping and auditing of accounts of recognised institutions;
- (k) the standards of education and courses of study; and (1) all matters expressly required or allowed by this Act to be prescribed.

14. Learned Single Judge has observed that since no rule in regard to compulsory retirement has been framed by the State Government as per provisions of Section 16, the order of compulsory retirement in the present case cannot be sustained in the eyes of law. However, u/s 16 of the Act of 1989 only a procedure is to be prescribed for compulsory retirement and no specific rule is to be framed, whereas, as per Section 18 the word "Rules" have specifically been mentioned in regard to matters of removal, dismissal or reduction in rank of employees since an opportunity of hearing has to be given to the employee concerned as also in given cases prior approval of the government is required. Once specific powers have been given for compulsory retirement u/s 16, in absence of any prescribed procedure or even rules, a presumption of inherent powers with the authority has to be drawn. Even otherwise, compulsory retirement is total subjective assessment and discretion of the competent authority in the interest of the institution and public at large. The principles of natural justice are also not attracted. Under the circumstances, no specific procedure or even rule is required to be prescribed. The action of the appropriate authority in such circumstances cannot be quashed only on the ground of absence of any procedure or rule prescribed under the statute, more so, when no malafides, whatsoever, have been alleged by the concerned employees. In our opinion, the learned Single Judge has completely failed to appreciate the scheme of the statute. If the reasoning of the learned Single Judge are accepted, the very provisions of compulsory retirement provided under the Act would become redundant. Having once holding that no interference is called for by the court in matters of compulsory retirement the quashing of the orders was not justified. Having considered entire facts and circumstances, in our opinion, the impugned order passed by the learned Single Judge cannot be sustained in the eyes of law.

15. Accordingly, both the appeals are allowed and the impugned order dated 4.4.2000 passed by the learned Single Judge is quashed and set aside and the order dated 30.5.1995 passed by the Tribunal is maintained. There will be no orders as costs.