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(1991) 01 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 1590 of 1984

Anant Narayan Shikhare — APPELLANT

Vs

University of Bombay and Others — RESPONDENT

Date of Decision : 10-01-1991

Acts Referred:

Bombay University Act, 1974 — Section 11(6), 77A, 77B
Constitution of India, 1950 — Article 226

Citation : (1991) 2 BomCR 151

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : S.B. Naik, for the Appellant; M.B. Palshikar, for respondent No. 1, S.V. Malvankar and Jawale for respondent No. 2 and V.N. Lokur, for the Respondent

Judgement

S.M. Daud, J.—This petition under Article 226f of the Constitution of India solicits a relief pursuant to petitioner not being allowed to continue in service until he attained the age of 60 years. By reason of subsequent happenings that is a relief i.e., continuance which cannot be granted unto him.

2. The short question now surviving is whether the petitioner should be allowed to exercise a fresh option vis-a-vis the alternatives open to the retiring employees. The options are (i) contributory provident fund rule and/or gratuity scheme applicable; and (ii) pension-cum-gratuity scheme as contained in Maharashtra Civil Services (Pension) Rules, 1982, under Government Resolution No. NGC/1283/865 UNI-IV dated 21st July, 1983. Petitioner had initially opted for the first alternative and this on the assumption that he would be retiring at the age of 60 years. Being part of the non-teaching staff of an affiliated college i.e. respondent No. 2, the petitioner expected that he would be allowed to serve till he attained the age of 60 years. The State Government subsequently reduced the age of retirement for non-teaching employees, except class IV servants, to 58 years. Pursuant to an order passed by the School Tribunal, the petitioner was allowed to continue in service even after he had completed 58 years. During that

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period he was paid a salary which under the system of grants was reimbursed by the State Government. Because of the reduction in the age of retirement, petitioner had to leave before completing the age of 60 years. Finding himself in this position, the petitioner wants to change his option to the second alternative. The State Government contends that he cannot. The reasons given by it for the negative attitude are discussed below.

3. The first contention is that the petition is bereft of any prayer which would enable the petitioner to exercise a fresh option. In terms, the petition does not contain such a prayer. But this would not be a reason for denying unto the petitioner a relief to which he is otherwise entitled, having regard to the long pendency of this petition as also the indisputable position in law. The petition prayer column contains an omnibus prayer enabling this Court to grant such directions as may be fit and proper in the circumstances of the case. This is a writ Court and technical rules more appropriate to pleadings in civil suits cannot have precedence over substantial justice here. Therefore, the absence of a prayer in terms permitting petitioner to exercise a fresh option will not be a reason to deny him that relief, if the same be otherwise admissible.

4. Mr. Lokur for the State Government submits that an option could be exercised only once and the petitioner having exercised that option cannot be allowed the luxury of a fresh option. If such a course is permitted, so says the learned Counsel, it would open up a pandora''s box for all manner of persons would think it necessary to go back on an option once given by them. Petitioner had opted for the contributory provident fund rule because the rules then permitted him to retire at the age of 58 years extendable by two more years. Once the concession of extension was taken away, a different situation came into existence. This change of situation is by itself a reason for permitting a reconsideration by the affected employee. The State Government having been responsible for reducing the age of retirement, cannot now turn back and say that the affected employee should be at the losing end in both the situations. The permissibility of exercising the option is to be considered in a reasonable manner. Where a legal change is brought about in the premises governing the exercise of options, it is not warranted that the Court should go by the letter of the law and not its spirit. Lastly, the State Government contends that the G.R. reducing the retirement age was issued on 21st July, 1983, whereas the petitioner exercised his option on 26th March, 1984. At that time he should have been diligent and made proper enquiries to find out the preferable alternative. Now it is true that the G.R. was issued on 21st July, 1983 and that copies thereof were said to have been sent to a number of authorities including the Principals of aided non-Government affiliated colleges. But the University on 24th May, 1983 gave a different version which is to be found in Exh. B. Exh. B permitted non-teaching employees of aided colleges to get an extension for two years after attaining the age of 58 years. The University took its own time to issue a circular to bring to the notice of the affiliated colleges the change brought about by the G.R. dated 21st July, 1983. This it did by its circular dated 26th July, 1984. Being an affiliated college,

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the institution in which the petitioner served i.e. the 2nd respondent, did nothing amiss in going by circulars issued by the University. At the foot of the G.R. dated 21st July, 1983 is a list of authorities to whom copies of the G.R. are to be sent. But whether they were so sent or not and particularly to respondent No. 2 is not known. Petitioner cannot therefore be faulted for going by Exh. B when it came to exercising an option. It was argued that Exh.B. violates section 77-B of the Bombay University Act, 1974 (Act). This section has no application to the case of the petitioner who was an employee in an affiliated college and not an employee of the University. The service conditions of employees working in affiliated colleges could be regulated by the power vested in the State Government u/s 77-A of the Act. But then this could be done only by means of a Standard Code published by means of a notification in the Official Gazette. The G.R. of 21st July, 1983 cannot be treated as a Standard Code, because the said Code came into force on 1st May 1985. There is thus no question of any statutory violation in the issue of Exh. B by the University. Exh.B would be an exercise of the power conferred upon Vice Chancellor by section 11(6)(b) of the Act. Therefore, the same will have legal force and cannot be said to be in derogation of any restriction on the powers exercisable by the Vice-Chancellor.

5. None of the contentions raised by the State Government come in the way of the petitioner being permitted to exercise a fresh option. He has however recovered salary for a period of 9 months and has also received the employer''s share of the provident fund. As a condition for allowing him to exercise a fresh option, some terms should be placed upon him. Hence the order :

ORDER

Petitioner is allowed to exercise a fresh option. The same shall be conveyed to the State Government through respondents 2 and 1 respectively-within six weeks of the receipt thereof by the 2nd respondent. The State Government shall accept that option and pay unto the petitioner his dues pursuant thereto after adjusting therefrom the benefits received by the petitioner under the first option together with interest at rate 9% per annum from the date of receipt until the adjustment is made. This it shall do within 10 weeks of the receipt of the fresh option of the petitioner. Rule in these terms is made partially absolute with parties being left to bear their own costs.

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