
(2002) 11 AHC CK 0021
In the Allahabad High Court
Case No : Special Appeal No. 14 of 2002

Bal Krishan Tripathi

APPELLANT

Vs

U.P.S.R.T.C. and Another

RESPONDENT

Date of Decision : 23-11-2002

Acts Referred:

Citation : (2003) 1 AWC 623

Hon'ble Judges : S.K. Sen, C.J;R.K. Agrawal, J

Bench : Division Bench

Advocate : V.K. Barman and Pankaj Barman, for the Appellant; Samir Sharma, for the Respondent

Judgement

R.K. Agrawal, J.—The present special appeal has been filed against the judgment and order dated 18.12.2001, passed by the learned single Judge wherein the writ petition filed by the appellant writ petitioner has been dismissed.

2. Briefly stated the facts giving rise to the present special appeal are as follows :

"The appellant writ petitioner was an employee of U. P. Government Roadways. On 1st June, 1972 U.P. State Road Transport Corporation, hereinafter referred as the Corporation was formed. The State Government vide Notification dated 5.7.1972 gave an assurance to all the employees of U.P. Government Roadways that those employees who have gone on deputation to the Corporation and they are absorbed their service conditions would not be changed. In August, 1982 the appellant writ petitioner was absorbed in the Corporation. The appellant writ petitioner has been made to retire on 31.12.2001 on attaining the age of 58 years. According to the appellant writ petitioner in the year 1972, the Certified Standing Orders of the Corporation provided the age of superannuation as 60 years and, therefore, he is entitled to continue in service till he completes 60 years of age. "

3. Before the learned single Judge, the appellant writ petitioner has relied upon the judgment passed in Civil Misc. Writ Petition No. 2755 of 1996, D.P. Malviya

and Ors., decided on 29.8.1996, wherein this Court had been pleased to issue a direction that the order is subject to the decision of the SLP pending in the Apex Court or till the petitioner attained the age of 60 years whichever is earlier.

4. The learned single Judge found that the SLP has been decided against the petitioner and the petitioner has failed to demonstrate that he has a right to continue till the age of 60 years. The learned single Judge further held that there is no reason for entertaining the writ petition under Article 226 of the Constitution of India because of the fact that the petitioner has an alternative remedy by way of filing an appeal before the appellate authority contemplated under the provisions of the relevant Service Rules. Accordingly, the writ petition was dismissed.

5. We have heard Shri V.K. Barman, learned senior counsel assisted by Shri Pankaj Barman on behalf of the appellant writ petitioner and Shri Samir Sharma, learned counsel appearing for the respondents.

6. According to Sri V. K. Barman, learned senior counsel appearing for the appellant writ petitioner, despite the Notification u/s 13B of the Industrial Employment (Standing Orders) Act, 1946, issued on 12.4.1991, notifying the Regulations framed by the Corporation, the age of retirement of 60 years fixed under the Certified Standing Orders in December, 1972 which continued even in August, 1982, cannot be altered in view of the assurance held out by the State Government in the Notification dated 5.7.1972. He relied upon the decision of this Court in the case of C.M. Writ Petition No. 3203 of 1991, U.P. State Road Transport Corporation and Ors. v. Chandra Kumar Shukla and Ors., decided on 11.2.1998 and the order passed by the Hon'ble Supreme Court dated 17.8.1998 dismissing the special leave petition. He further relied upon the decision of the Hon'ble Supreme Court in case of S.P. Dubey Vs. M.P.S.R.T. Corpn. and Another, and has submitted that when the notification has been issued by the State Government specifically stating that the existing staff would not be adversely affected with regard to the service condition and at the time of absorption, the age of retirement was 60 years the same cannot be changed.

7. Sri Samir Sharma, learned counsel appearing for the respondent Corporation, however, submitted that undisputedly the age of retirement of the petitioner at the time when he was sent on deputation in the year 1972 as also when he was absorbed in the Corporation in August, 1982, was 58 years as was applicable to the State Government employees and up till such time he was absorbed, he continued to be a Government employee. The Certified Standing Orders no doubt provided the age of retirement to be 60 years but after enforcement of the Regulation by issuing a notification on 12.4.1991 u/s 13B of the Industrial Employment (Standing Orders) Act, 1946, the Regulation which provided for the age of retirement of the employees of the Corporation at 58 years came into existence and shall govern the service conditions of all its employees including the appellant writ petitioner. He submitted that the Regulations which provided the age of retirement at 58 years do not in any way alter the service condition of

the appellant writ petitioner which was available to him in the Government service as the age of retirement is the same, i.e., 58 years. He submitted that the decision in the case of Chandra Kumar Shukla (supra) and the dismissal of the SLP by the Hon''ble Supreme Court would be of no assistance to the appellant writ petitioner as subsequently this Court in the case of Bachai Lal v. U. P. S. R. T. C., Allahabad and others (1991) 2 UPLBEC 1095 had held that the age of retirement of the employees of the U. P. Government Roadways who have been absorbed in the service of the Corporation would be 58 years in view of Regulation 37 of the U. P. State Road Transport Corporation Employees (other than Officers) Service Regulation 1981. This Court had considered the decision of the Hon''ble Supreme Court in the case of S. P. Dubey relied upon by the learned counsel for the appellant petitioner and had further held that the said decision is not applicable. In fact the decision of the Hon''ble Supreme Court in the case of S.K. Siddique Vs. Madhya Pradesh State Road Transport Corporation and another, is applicable.

8. He further submitted that the aforesaid decision of the learned single Judge had been affirmed by the Division Bench in Special Appeal No. 91 of 1991 decided on 14.12.1992. He also relied upon the Division Bench decision in C.M. Writ Petition Wo. 26243 of 1991, Sabhapati Singh v. U.P.S.R.T.C. and another, decided on 26.3.1993, wherein the same view has been held. He also relied upon the decision of the Hon''ble Supreme Court dated 15.10.1997 in Civil Appeal No. 3933 of 1991. U. P. S. R. T. C. and another v. Bashir Ahmad, wherein the Hon''ble Supreme Court had held that pensionary benefit of the employees of the Corporation must be calculated on the basis that the age of retirement is 58 years.

9. Having heard, the learned counsel for the parties, we find that it is not in dispute that when the appellant writ petitioner was in State Government service, the age of retirement was 58 years. The State Government vide Notification dated 5.7.1972 had only assured that the service conditions of those employees who are absorbed in the Corporation shall not be altered to their detriment. The Certified Standing Orders did provide the age of retirement of 60 years but subsequently when the Regulation was enforced, the age of retirement as provided in Regulation 37 to be 58 years shall be applicable. The Standing Orders lost its efficacy with the enforcement of the Regulation u/s 13B of the Industrial Employment (Standing Orders) Act. Thus, the petitioner has rightly been retired on attaining the age of 58 years.

10. In the case of S. P. Dubey (supra), Hon''ble Supreme Court was considering the case where the company was taken over by the State Government in which the age of retirement was 60 years. In this background, the Apex Court held that the age of retirement of the employees of the erstwhile company would be 60 years and not 58 years. This is not the position here. In the present case, the age of retirement of the State Government employee during the relevant time was 58 years and at the time of absorption also, it was 58 years. This Court in

the case of Bachai Lal has held that the decision of the Hon''ble Supreme Court in S. P. Dubey would not be applicable. In Bachai Lal case, this Court has held as follows :

16. On the creation of the Corporation all the employees of the erstwhile U. P. Government Roadways were sent on deputation with the Corporation with a specific condition that their service conditions including retirement benefits would not be changed. This was done vide G.O. dated 5.7.1972. The result was, that the employees of the U. P. Government Roadways who were retiring at the age of 58 years would retire at the same age even after the formation of the Corporation. This was approved by the Supreme Court in the case in Hari Shankar Gaur and Another Vs. Delhi Transport Corporation and Others, and a Division Bench decision of this Court in Writ Petition No. 3273 of 1982. M. S. A. v. State of U. P.

17. Such a situation was considered by the Supreme Court in the case in S.P. Dubey Vs. M.P.S.R.T. Corpn. and Another, . Dubey had, joined the services as a junior clerk in a company known as Central Provinces Transport Service Ltd. in the year 1947. He worked there from 1947 to 30.8.1955. Admittedly the age of superannuation of the employees of the company was 60 years.

18. The company was taken over by the State Government on 31.8.1955. While doing so it was specifically mentioned that the existing staff of the company would not be adversely affected with regard to their condition of service.

19. There is no dispute that on the date of taking over according to the Government rules the age of retirement was 58 years but since the Government has given an assurance to the employees of the Company that their service condition will not be changed prejudicially to their existing right, the Supreme Court took the view that on the date when the Company was taken over the Government has assured the employees that they will retire at the age of 60 years, the Corporation could not frame regulations contrary to the directions issued by the State Government.

20. In the instant matter when the petitioners joined service, they were the employees of the State Government working in the Roadways Department. Even under Fundamental Rule 56 their age of retirement was 58 years and the same has been retained under the Regulations. Therefore, the decision of S, P. Dubey''s case is no assistance to the petitioner.

21. The controversy involved in the present bunch of cases was exactly similar to one raised in the case of S.K. Siddique Vs. Madhya Pradesh State Road Transport Corporation and another, In that case S. K. Siddiqui had joined the service in the Transport Department of Madhya Pradesh Government in September, 1960. The age of retirement was 58 years. The Corporation was established in June. 1962. He became an employee of the Corporation. According to the Regulations he was to retire on 30.6.1987 on attaining the age of 58 years. He claimed the age of superannuation as 60 years. The Supreme Court considering the earlier

judgment in the case of S.P. Dubey (supra) held :

"We have held that all those employees who had joined service with the Company are entitled to continue in service till they attain the age of 60 years. The petitioner does not belong to that category of employees. He joined service with the State of Madhya Pradesh in September, 1960, when the age of superannuation was 58 years and had continued to be the same till he retired. His case is therefore, distinguishable from that of S. P. Dubey's case. The writ petition is, therefore, dismissed without any order as to costs.

22. In this case also when the petitioners joined the service, their age of retirement was 58 years and under Regulation 37 also they are being retired at the age of 58 years. This decision of the Supreme Court squarely covers the present bunch of cases.

23. Though the Corporation came into existence on 1.6.1972 but the Corporation exercising its power u/s 45(2)(c) of the Road Transport Corporation Act, 1950, framed regulations known as "Uttar Pradesh State Road Transport Corporation Employees (other than Officers) Service Regulations, 1981" (hereinafter referred to as the Regulations) with the previous sanction of the State Government superseding all existing rules or orders on the subject. This Regulation was published in the U. P. Gazette vide Notification No. 3517/XXX-2-1981 on 19.6.1981.

24. There is no dispute that the Road Transport Corporation Act is a special Act dealing with the establishment and working of the Road Transport Corporation throughout the country. The regulations, framed under the provisions of the said Act, laying down the terms and conditions of the service for its employees, is a special law and it would prevail over the general law contained in the Model Standing Orders or Certified Standing Orders framed for the industrial establishment.

25. The promise made by the Government on 5.7.1972 vide Notification No. 3414/302-170-N-77 giving assurance to the employees of the Corporation that the service condition would not be changed, has been given effect to while framing the regulations. The said regulations have made no change in the age of retirement. It remained the same which was prior to its formation.

26. The final picture which emerges now is that prior to the formation of the Corporation the age of retirement of the employees of Group "C" was 58 years. The same has been retained under the Regulations."

The aforesaid decision of Bachai Lal case has been affirmed in Special Appeal No. 91 of 1991, Lalta Prasad v. V. P. S. R. T. C. and others, decided on 14.12.1992. The decision given in the case of Lalta Prasad (supra), has been followed subsequently by another Division Bench in Writ Petition No. 26243 of 1991, Sabhapati Singh v. U.P.S.R.T.C. and Anr., decided on 26.3.1993.

11. The Division Bench of this Court in the case of Sabhapati Singh has held as

follows :

"The object of Regulation 83 and proviso to new Regulation 4 as well as the G.O. dated 5.7.1972, is the same namely, that the conditions of service of the Government servants, who were working in U.P. Government Roadways will not be inferior to the conditions before their absorption in the service of the Corporation. Regulation 83 has restated what was contained in the Government Order dated 5.7.1972 and the same thing was reiterated again in the proviso to the new Regulation 4. As is clear from the note appended to Regulation 2, the Government servants working on deputation will be governed by Rules and Regulations of their parent department. Service conditions of these deputationists, before their absorption in the service of the Corporation, will as such be governed by the service rules, which are applicable to the Government servants, according to which, as held by Division Bench of this Court in the Special Appeal of Lalta Prasad (supra), the age of retirement was 58 years on 1.6.1972 as well as on the date of their absorption in 1982. The effect of these provisions is that the Government employees, who were working on deputation in the service of the Corporation, could have been retired upto the date of their absorption at the age of 58 years. After their absorption, it is not open to the Corporation to frame any Rule or Regulation to retire them at the age of lower than 58 years. With effect from the date of absorption in 1982 all the Government servants, who were working on deputation, became the employees of the Corporation and the Standing Orders of the Central Workshop, which were amended in 1978 fixing the age of retirement at 60 years, became applicable to them like any other employees of the Corporation. After the date of absorption, as such, like other employees of the Corporation they could be retired at the age of 60 years only. However, on 12.4.1991, the regulations, which provide for retirement at the age of 58 years, were notified u/s 13B of the Industrial Employment (Standing Orders) Act, 1946. In view of the above position, with effect from 12.4.1991 the employees of the Corporation working in the Central Workshop can be retired at the age of 58 years. This submission of the learned counsel, as such, is devoid of merit and cannot be accepted."

12. We are in respectful agreement with the aforesaid decision. Moreover, we find that the Hon'ble Supreme Court in the case of Civil Appeal No. 3933 of 1991, U. P. S. R. T. C. and Anr. v. Bashir Ahmad, decided on 5.10.1997. had held that the pensionary benefits to the employees must be calculated on the basis that the age of retirement is 58 years. Thus, the contention that the appellant writ petitioner was entitled to continue till he attains the age of 60 years is not Justified. The reliance placed by Shri V. K. Barman, upon the decision of the learned single Judge of this Court in the case of Chandra Kumar Shukla and the dismissal of the SLP by the Apex Court would be of no assistance as the Division Bench of this Court in the case of Lalta Prasad and Sabhapati Singh (supra), have held that those State Government Employees who have been absorbed in the service of the Corporation are also liable to be retired at the age of 58 years and the Apex Court while dismissing the special appeal in the case of Chandra

Kumar Shukla has not decided any thing on merits.

13. In view of the foregoing discussions there is no merit in the special appeal and is dismissed.