

(1967) 12 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 508 of 1967

Bhagwat Prasad Sukhainram Choube

APPELLANT

Vs

The State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 12-12-1967

Acts Referred:

School Teachers (Absorption in Government Service) Act, 1963 — Section 10(2)

Citation : (1968) MPLJ 171

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari and M.L. Chinsoria, for the Appellant; K.A. Chitale, Advocate-General and K.K. Adhikari, for the Respondent

Final Decision : Dismissed

Judgement

ORDER

P.V. Dixit, C.J.

The Petitioner in this case, who is employed as Head-Master in Primary School, Sunarhai, Jabalpur, challenges the validity of an order passed by the District Education Officer, Jabalpur, with regard to his retirement from service as a result of the amendment of Rule 56 of the Fundamental Rules reducing the age of retirement from 58 to 55.

The applicant was before 1st October 1963 in the employment of the Municipal Corporation, Jabalpur, as a primary-school teacher. In 1963 the State Government raised the age of superannuation of Government servants from 55 to 58. Following this action of the State Government, the Municipal Corporation also decided to raise the age of retirement of its employees from 55 to 58. On 24th April 1963 the Standing Committee of the Corporation passed a resolution deciding to raise the age of retirement in conformity with the Government's decision. On 1st October 1963 the Petitioner was absorbed in Government service under the Madhya Pradesh Local Authorities' School Teachers (Absorption

in Government Service) Act, 1963.

On 10th October 1967 the State Government promulgated an Ordinance entitled the Madhya Pradesh Shasakia Sevak (Adhivarshiki Ayu) Adhyadesh, 1967, fixing the age of superannuation of Government servants at 55. That Ordinance has now been replaced by an Act in terms similar to those of the Ordinance. The Ordinance provided, inter alia, that Government servants who have already attained the age of 55 on 15th December 1967 would stand retired with effect from 15th December 1967, or, in the event of their taking leave due to them, from 15th December 1967 upto a maximum of four months, on the expiry of the leave period. On 25th October 1967 the District Education Officer, Jabalpur, addressed a communication to the Petitioner informing him that as a result of reduction of age of retirement effected by the Ordinance if he proceeds on leave from 15th December 1967 he would stand retired on the expiry of the leave period, or, if he did not choose to avail himself of the leave due to him, he would stand retired from 15th December 1967.

It was argued by Shri Dharmadhikari, Learned Counsel for the Petitioner, that the reduction of the age of superannuation effected by the Ordinance or the Act replacing it could not be applied to the applicant as the conditions of service which were applicable to him immediately before his absorption in Government service on 1st October 1963 under the M.P. Local Authorities' School Teachers (Absorption in Government Service) Act, 1963, could not be varied to his disadvantage as laid down by the proviso to Section 10(2) of the School Teachers (Absorption in Government Service) Act, 1963. It was said that the age of retirement was one of the "conditions of service"; that the Standing Committee of the Jabalpur Municipal Corporation by its resolution dated 24th April 1963 had raised the age of superannuation of its employees to 58; and that, therefore, this was the age of retirement when the applicant was absorbed in Government service and this age could not be altered to the disadvantage of the applicant.

In our judgment, this petition must be dismissed. The applicant founds himself solely on the proviso to Section 10(2) of the School Teachers (Absorption in Government Service) Act, 1963, and the resolution passed by the Standing Committee of the Corporation on 24th April 1963. Section 10 of the aforesaid Act is as follows:-

10. "Terms and conditions of Absorbed employees.-(1) The absorbed employees shall be governed by the Madhya Pradesh New Pension Rules, 1951:

Provided that an absorbed employee may, within such period as may be prescribed, opt from the provident fund or, as the case may be, pension scheme applicable to him immediately before the appointed date.

(2) Except as provided in Sub-section (1), the conditions of service including the salary, scales of pay, leave rules etc., applicable to the absorbed employees shall be such as may be prescribed by the State Government:

Provided that the conditions of service applicable immediately before the appointed date to any such employee shall not be varied to his disadvantage.

It is no doubt true that the proviso to Sub-section (2) of Section 10 saves the conditions of service applicable to absorbed teachers immediately before 1st October 1963. It is not necessary to consider in this petition whether the age of retirement of a Government servant is a condition of service. Even if it is assumed that the age of retirement is a condition of service of a Government servant, still the Petitioner cannot succeed for the reason that before 1st October 1963 the age of retirement prescribed by the Jabalpur Municipal Corporation for its employees was 55 and not 58.

The Standing Committee of the Corporation no doubt passed a resolution on 24th April 1963 deciding to raise the age of retirement in conformity with the Government's decision taken in 1963 to raise the age of superannuation of Government servants from 55 to 58. But this resolution of the Standing Committee was not by itself legally effective for raising the age. Under the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as the Act) it is the Corporation which has the power to fix the age of retirement of its officers and servants by making a bye-law in that behalf. The Standing Committee has no such power. The Standing Committee is one of the municipal authorities as is clear from Section 6 of the Act which says that the municipal authorities charged with carrying out the provisions of the Act shall be-

- (a) the Corporation,
- (b) the Standing Committee, and
- (c) the Commissioner.

Section 69 of the Act provides that the functions of the several municipal authorities shall be such as are prescribed in the Act. There is no provision in the Act giving to the Standing Committee the power to fix the age of retirement of the employees of the Corporation. In this connection, it would be pertinent to refer to Section 58(I) and Section 427 of the Act. Section 58(1) of the Act in so far as it is material here is as follows:-

58. Appointment and salary of City Engineers, etc.-(1) Subject to the provisions of this Act the Corporation shall appoint a City Engineer, a Health Officer, a Revenue Officer, a Municipal Secretary and a Municipal Accountant and may appoint a Deputy Municipal Commissioner and such other officers and servants as are necessary for the efficient carrying out of the purposes of this Act and may assign to them such duties and pay them such salaries and allowances, pensions and gratuities and make on their behalf such payments to the provident or annuity funds as the Corporation may determine by bye-laws made in this behalf u/s 427: Provided that-

- (1) the power of appointing any person on a municipal post which carries a maximum monthly salary exceeding 150 rupees shall vest in the Standing

Committee;

It is plain enough from the substantive part of Section 58(1) that it is the Corporation which has the power to determine by bye-laws made u/s 427 pension and gratuities payable to its officers and servants. The power to determine the amount of pension and gratuity clearly includes the power to fix the age of retirement. The first proviso to Section 58(1) only gives to the Standing Committee the power of appointing any person on a municipal post carrying a maximum monthly salary exceeding Rs. 150. Under that proviso, the Standing Committee has not the power of fixing the age of retirement or fixing the amount of pension and gratuity payable to any employee on his retirement. Shri Dharmadbikari, Learned Counsel appearing for the Petitioner, urged that the power of appointment given to the Standing Committee by the first proviso to Section 58(1) included the power of fixing the age of retirement. In support of this argument, he pressed in service the observations of the Supreme Court in *The General Manager, Southern Railway Vs. Rangachari*, at p. 40 as also the observations of the Patna High Court in *Sukhanandan Thakur v. State of Bihar* AIR 1957 Pat. 617 at p. 632. Those observations do not in any way assist the Petitioner. In *The General Manager, Southern Railway Vs. Rangachari*, at p. 40 the Supreme Court while construing Article 16(1) of the Constitution said that-

the.....matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression "matters relating to employment" in Article 16(1).

Now, Section 427 gives to the Corporation the power to make bye-laws. Sub-clause (b) of Clause (1-C) of Section 427 confers on the Corporation the power to make bye-laws in the matter of the conditions of service of Corporation officers or servants; Sub-clause (h) of that clause gives to the Corporation the power to frame bye-laws with regard to the period of service of Corporation officers and servants. Thus, it is abundantly plain that the Corporation. It is one thing to say that the age of superannuation is a matter relating to employment for purposes of Article 16(1) and quite different to say that the age of superannuation is a condition of service or that the power of appointment includes the power to fix the age of superannuation. The Supreme Court no doubt observed that the "appointment to any office" meant not only the initial appointment to such an office but all the terms and conditions of service pertaining to the said office for the purposes of Article 16(1). This observation was made in the context of the subject in which it was made by the Supreme Court. There is no justification whatsoever for construing the first proviso to Section 58(1) of the Act in the manner Learned Counsel for the Petitioner sought to, when the substantive part of Section 58(1) expressly provides that pensions, gratuities and the age of retirement shall be determined by the Corporation by framing bye-laws in that behalf u/s 427. What has been said here with regard to

the observations of the Supreme Court in *The General Manager, Southern Railway Vs. Rangachari*, at p. 40 applies equally to the observations made by Ramaswami J. (as he then was) in *Sukhnandan Thakur v. State of Bihar* AIR 1957 Pat. 617 at p. 632 with regard to the meaning of the words "employment" and "appointment" used in Article 16(1). In that case Ramaswami J. (as he then was) expressed a view about the meaning of the terms "employment" and "appointment" as used in Article 16(1) similar to that expounded by the Supreme Court in *The General Manager, Southern Railway Vs. Rangachari*, at p. 40 has the power to frame bye-laws fixing the age of retirement of its officers and servants. In fact, as has been provided u/s 58(1), it is only by framing bye-laws u/s 427 that the Corporation can regulate the amount of pension and gratuities and thus fix the age of retirement.

Learned Counsel for the Petitioner also referred us to Section 52(ii) of the Act which is in the following terms:-

52. Proceeding of meeting to be deemed to be good and valid-

Until the contrary is proved-

(ii) where the meeting is a meeting of any Committee, such Committee shall be deemed to have been duly constituted and to have had power to deal with the matter referred to in the minutes.

On the basis of this provision, it was argued that as the Standing Committee did in fact pass a resolution on 24th April 1963 deciding to raise the age of retirement, it must be taken that the Standing Committee had the power to deal with the matter of raising the age of retirement. We are unable to accept this contention. The presumption u/s 52 can be drawn only "until the contrary is proved". It is not necessary that the "contrary" should be proved by evidence. If it is apparent and obvious from the provisions of the Act itself then no presumption with regard to the power of the Standing Committee to deal with the matter referred to it can be drawn.

In *Chandra Sheikhar Khamparia v. Shri L.P. Tiwari, Administrator, Municipal Corporation, Jabalpur* Misc. Petition No. 533 of 1967 decided on 21-12-1967 this Court has expressed the view that the Standing Committee of the Jabalpur Municipal Corporation has no power to fix the age of retirement of the employees of the Corporation. In that case it has also been pointed out that on 20th May, 1966 the Corporation did make a bye-law in exercise of its powers u/s 427 read with Section 58 of the Act regulating the conditions of service of officers and servants of the Corporation, the period of their service, leave etc. The effect of that bye-law was that as from the date the bye-law was notified, the age of superannuation for the employees of the Corporation was raised from 55 to 58.

If, as we think, the resolution passed by the Standing Committee on 24th April 1963 was legally ineffective to raise the age of retirement from 55 to 58 of the

municipal employees, then the very basis of the Petitioner's claim disappears. It was not disputed on behalf of the applicant that before 24th April 1963 the age of superannuation for the employees of the Corporation was 55 as stated in the Fundamental Rules which had been made applicable to the employees of the Corporation. That age of retirement continued to be operative despite the resolution of the Standing Committee deciding to raise the age of superannuation until 20th May, 1966 when the Corporation framed a bye-law making applicable, inter alia, the Fundamental Rules mutatis mutandis to the officers and servants of the Municipal Corporation, Jabalpur, "in the same way as they were applicable to the Government servants of the former State of Madhya Pradesh immediately before the 1st November 1956."

The foregoing discussion leads to the conclusion that immediately before the Petitioner's absorption in Government service on 1st October 1963 the age of retirement in regard to him was 55 and not 58; that being so, the Petitioner cannot complain that by the M.P. Shasakia Sevak (Adhivarshiki Ayu) Adhyadesh, 1967, or by the Act replacing it, the age of retirement has been varied to his disadvantage contrary to the proviso to Section 10(2) of the School Teachers (Absorption in Government Service) Act, 1963. In our judgment, the District Education Officer's order with regard to the Petitioner's retirement on the date indicated in the communication addressed by him to the Petitioner on 25th October 1967 is perfectly legal and valid.

The result is that this petition is dismissed. In the circumstances of the case, we make no order as to costs of this petition.

The outstanding amount of the security deposit shall be refunded to the Petitioner.

Petition dismissed.