

(1998) 07 AHC CK 0036

In the Allahabad High Court

Case No : Writ Petition No's. 3215 and 3219 (S/S) of 1998

Bhagwati Prasad Tewari

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Fundamental Rules — Rule 56

Citation : (1999) 2 AWC 1066 : (1999) 1 UPLBEC 644

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Satya Dev Singh, for the Appellant; C.S.C., for the Respondent

Judgement

R.H. Zaidi, J.—In both these petitions common questions of law and fact are involved. They were, therefore, heard together and are being disposed of by this common judgment.

2. By means of these petitions, under Article 226 of the Constitution of India, petitioners pray for issuance of a writ, order or direction in the nature of mandamus commanding the respondents to adopt the provisions of Fundamental Rule 56 as amended upto date by the Government of India in regard to government service of State of U. P. Prayer for issuing a direction to the State Government to enforce its resolution passed in the year 1988 contained in Annexure-10 to the writ petition, in regard to the parity of pay and allowances to the employees of the State Government holding equivalent posts and also in regard to the age of retirement of the said employees, i.e., 60 years and prayer for mandamus restraining the respondents from retiring the petitioners before they attain the age of 60 years have also been made.

3. Bhagwati Prasad Tewari petitioner in Writ Petition No. 3215 (S/S) of 1998 is serving as Sub-Inspector of Police (Road Transport) while Raghu Raj Singh, petitioner in Writ Petition No. 3219 (S/S) of 1998 is serving as Chief Pharmacist in the District Hospital. Gonda. Both these petitioners are holding class III posts

of State of U. P. Since the petitioners were at the verge of their retirement, they were, therefore, by means of notices dated 19.1.1998 and 19.6.1998 respectively intimated by the competent authorities that they shall retire on 31st of July. 1998 on attaining the age of 58 years, counting from their dates of births as recorded in their service records. They were also called upon to fulfill and complete the formalities for receiving the pension. On receipt of the said notice, petitioners have filed the present writ petitions for the reliefs noted above.

4. Learned counsel for the petitioners vehemently urged that age of retirement of the class III employees of the Central Government in Fundamental Rule 56 as amended upto date is sixty years while the age of retirement of the employees of the State Government of U. P. under Rule 56 of the Fundamental Rules is only 58 years, which is discriminatory and is hit by Articles 14 and 16 of the Constitution of India. It was, in substance, urged that since the similarly situated Central Government employees retire at the age of 60 years, they are otherwise also given better treatment than the employees of State Government in the payment of salaries and allowances for which there was no justification. Learned counsel for the petitioners further urged that it was in the year 1988 that the then State Government adopted a resolution for constitution of Equivalence Committee with a view to remove the disparity between the salaries and allowances and in other service conditions of the Central Government and state Government employees. The said resolution was, however, not implemented in spite of the applications and representations made by the petitioners. The resolution, according to the petitioners, was liable to be implemented. On the other hand, learned standing counsel submitted that the employees of the Central Government and the State Government cannot be equated. They belong to separate cadres, and classes their service conditions are totally different. The employees of the State Government, therefore, cannot seek parity with the employees of Central Government, it was urged that the provisions of Articles 14 and 16 were not at all attracted in the present case. Learned counsel also urged that the resolution alleged to have been adopted in the year 1988 has got no statutory force, the same, therefore, is legally not enforceable under Article 226 of the Constitution of India. It was further submitted that it is always open to the petitioners to approach the competent authority in the State Government for ventilation of their grievances. No case for interference under Article 226 of the Constitution of India was at all made out, therefore, the writ petition was liable to be dismissed.

5. I have considered the submissions made by the learned counsel for the parties and also perused the record of the case.

6. Fundamental Rule 56 of the U. P. Fundamental Rules provides as under :

"Rule 56 : Except as otherwise provided in other clauses of this Rule, the date of compulsory retirement of a Government servant, other than a Government Servant in inferior service, is the date on which he attains the age of 58 years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds, which must be recorded in

writing, but he must not be retained after the age of sixty years except in very special circumstances."

The aforesaid Rule is applicable to all class III and IV servants of the State Government of U. P. There is no distinction or discrimination in the application of the said rules so far as the said servants of the State Government of U. P. are concerned. However, fundamental Rule 56 as amended upto date by the Central Government provides as under :

"(a) Except as otherwise provided in this Rule, every Government Servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years :

Provided that a Government Servant whose date of birth is the first of a month shall retire from service on the afternoon of the" last day of the preceding month on attaining the age of sixty years."

7. Equality before law and that the likes should be treated alike means that amongst equals the law should be equal and should be equally administered. Equality is for equals, that is to say, those who are similarly circumstanced are entitled to equal treatment. The guarantee of equality under Article 14 of the Constitution does not imply that the same Rules should be made applicable to all persons in spite of differences in their circumstances and conditions. A reference in this regard may be made to the decision of Supreme Court *Ramesh Prasad Singh Vs. State of Bihar and Others*, . Equality before the law does not mean that the things which are different shall be treated as that they were the same. What it does mean is the denial of any special privilege by reason of birth, creed or the like and also equal subjection of all individuals and classes to the ordinary law of the land. It is now well-settled in law that the State has the power to make reasonable classifications on the basis of rationale distinctions relevant to the particular subject dealt with. In *Budhan Choudhry and Others Vs. The State of Bihar*, , it was ruled by the Apex Court as under :

"It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases ; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

8. In the present case, the two sets of Rules are applicable to different set of

employees. One belonging to the Central Government, the other to the State Government. The employees of the two Governments stand on absolutely different footings and belonged to different classes. The petitioners being the employees of the State Government, therefore, cannot claim equality with the employees of the Central Government. The concept of two types of Governments in the country is a Constitutional concept. The two types of Governments have got their separate and distinct establishments. They work in different fields within the forecomers of the Constitution of India. The contention of the learned counsel for the petitioners that the petitioners, who admittedly belong to the State Cadre were entitled to claim parity of the employees of the Central Government, therefore, cannot be accepted. The provisions of Rule 56 of the U. P. Fundamental Rules are not in any manner hit by Articles 14 and 15 of the Constitution of India.

9. So far as the question for issuance of a direction to the State Government to implement the resolution alleged to have been passed in the year 1988 to constitute equivalence committee with a view to remove disparity in the salary and allowances of the Central Government and the State Government employees is concerned, the resolution has got no statutory force and is not enforceable under Article 226 of the Constitution of India. Further the petitioners have got no legal right to get the said resolution enforced, nor the State Government under any statutory obligation is to implement the said resolution, therefore, the petitioners are not entitled to the said relief under Article 226 of the Constitution of India.

10. In view of what has been stated above, no case for interference under Article 226 of the Constitution of India is made out.

11. The writ petitions fail and are dismissed in limine.