
(2006) 01 AHC CK 0102

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 57044 of 2005

Bihangesh Nandan Sharan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-01-2006

Acts Referred:

Reserve Bank of India Act, 1934 — Section 15(1), 2, 5, 58(1), 7(2)
Uttar Pradesh Jal Nigam Services of Engineers (Public Health Branch) Regulations,
1978 — Regulation 31
Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 15, 3, 31, 31(1), 37

Citation : (2006) 5 AWC 4830 : (2006) 1 UPLBEC 390

Hon'ble Judges : V.M. Sahai, J;Sabhajeet Yadav, J

Bench : Division Bench

Advocate : V.M. Zaidi, for the Appellant; Q.H. Siddiqui and S.C., for the Respondent

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—The only question that arises for our consideration in these batch of cases is as to whether amendment made in Rule 56(a) of Uttar Pradesh Fundamental Rules (in short "the Rules") by Notification dated June 27, 2002 enhancing age of superannuation of government servants from 58 years to 60 years would be applicable to the employees of Uttar Pradesh Jal Nigam (hereinafter referred to as "the Nigam").

2. The petitioners of these batch of writ petitions while working on the posts of Assistant Engineers/Executive Engineers in the Nigam have been retired from service on attaining 58 years of their age of superannuation. Since identical question in controversy based on similar facts are involved in this batch of writ petitions, therefore, the writ petitions are taken up together for hearing and disposal.

3. The brief facts having material bearing with the question in controversy involved in the case are that the petitioners were initially employed in the Local

Self Government, Engineering Department of Government of Uttar Pradesh. In the year 1975, the State Legislature enacted an Act, viz., Uttar Pradesh Water Supply & Sewerage Act. 1975 (hereinafter referred to as "the Act"), u/s 3 whereof, the State Government was empowered to issue notification to constitute a corporation by the name of the Uttar Pradesh Jal Nigam pursuant to which a notification was issued establishing the same with effect from 18th June, 1975, From the date of the establishment of the Nigam, which is the appointed date as enumerated in Section 31 of the Act, all properties and assets which immediately before the appointed date were vested in the State Government for the purposes of Local Self Government Engineering Department were vested in and stood transferred to the Nigam and all rights, liabilities and obligations of the state Government pertaining to the said Department became the rights, liabilities and obligations of the Nigam. u/s 37 of the Act, every person who was employed in the Local Self Government Engineering Department of the State of Uttar Pradesh shall on and from the appointed date, i.e., 18th June, 1975 would become employee of the Nigam and shall hold his office or service therein by the same tenure, at the same remuneration and upon same other terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed date if this Act had not come into force and shall continue to do so until his remuneration or other terms and conditions of service are revised or altered by the Nigam under or in pursuance of any law or in accordance with any provision which for the time being governed his service. Before the appointed date i.e. 18th June, 1975, the age of superannuation of these employees under Rule 56(a) of the rules was 58 years which could be extended in exceptional circumstances up to the age of 60 years. Thereafter, the State Government issued order to the Nigam under its letter dated October 31, 1975 wherein it was clearly stated that in accordance with Section 37 of the Act the service conditions of such employees of the Nigam would continue to remain the same so long the same are not altered by the Nigam in accordance with law. Thereupon, Nigam took a decision on 4th April, 1977 in conformity with the provisions of Section 37 of the Act wherein specifically it was mentioned that the rights and responsibilities as were enjoyed by the officers of the then Local Self Government Engineering Department under the Financial Hand Book. PWD Manuals, Manual of Government Orders, Civil Services Regulations. Government Conduct Rules and other Manuals of Government Orders that have been passed or shall be passed by the Government from time to time shall be deemed to be applicable to the officers of the Nigam provided any other order in this regard is not passed by the Nigam,

4. Section 97 (2)(c) confers power upon the Nigam to make regulations with the previous approval of the State Government on matters, inter alia, the salaries and allowances and other conditions of service of employees of the Nigam. In exercise of the aforesaid powers u/s 97 of the Act, regulations were framed by the Nigam on 1st September, 1978 as Uttar Pradesh Jal Nigam Engineers (Public Health Branch) Service Regulations, 1978 (hereinafter referred to as "the

Regulations") which came into force with immediate effect and Regulation 31 thereof laid down that the pay, allowances, pension, leave, imposition of penalty and other terms and conditions of service of the employees of the Nigam shall be governed by such rules, regulations and orders which are equally applicable to other serving government servants functioning in the State. On 17th July, 1985, the State Government issued a general order under its Memo No. 665/44-1/85 directing thereunder that the public sector undertakings should not give the benefit of extension of age as provided to the government servants under Rule 56 (a) of the Rules without the permission of the State Government.

5. On 28th November, 2001, the State Government issued a notification notifying thereunder approval of the Governor for increasing the age of superannuation of government servants from 58 years to 60 years in public interest and steps were required to be taken for making suitable amendment in Rule 56(a) of the Rules, pursuant to which rules were amended by Uttar Pradesh Fundamental (Amendment) Rules, 2002 by notification dated 27th June, 2002 which came into force with effect from 28th November, 2001 and thereunder the age of retirement of government servants was enhanced from 58 years to 60 years. In the meantime, after the issuance of notification dated 28th November, 2001, on behalf of Nigam a letter was written to the State Government on 31st December, 2001 making inquiry thereunder as to whether enhancement in the age of superannuation from 58 years to 60 years would be applicable to the employees of Nigam and in reply thereto, on 22nd January, 2002, Special Secretary to the Government in the Department of Local Self Government communicated that the employees of the Nigam shall not be entitled to enhancement of superannuation age from 58 years to 60 years as the same would be applicable only to the government servants. On receipt of the said order, the Nigam resolved on 11th July, 2002 that enhancement in the age of superannuation from 58 years to 60 years would not be applicable to the employees of the Nigam. Thereupon orders were issued to the petitioners in the writ petitions to the effect that they would retire upon completing the age of 58 years.

6. Counter and rejoinder affidavits have been exchanged between the parties and the case is ripped for final disposal, therefore, with the consent of learned Counsel for the parties the petitions were heard for final disposal.

7. We have heard learned Counsel for the petitioners and Sri Q.H. Siddiqui appearing for the Nigam as well as learned Standing Counsel for the State Government and also perused the records.

8. It is necessary to point out that it is not in dispute that the petitioners were initially employed in the Local Self Government, Engineering Department of the Government of U.P.. On establishment of Nigam their services stood transferred from the aforesaid department of Government to the Nigam by virtue of section 37 of the Act from the appointed date, consequently they became employee of the Nigam and since then they were continuously working on the posts of Assistant Engineers and/or Executive Engineers. It is also not in dispute that the

petitioners were working on their respective posts on the date of commencement of the amended Fundamental Rules 56 (a), which came into force on 28th November 2001 but they were retired from service after the aforesaid cut of date on attaining 58 years of their age, without permitting them to continue in service till attaining 60 years age of superannuation.

9. To appreciate the point in issue, it would be necessary to refer to the relevant provisions of Sections 15, 31(1), 37, 89 and 97 of the Act and Regulation 31 of the Regulations which read thus:-

15. Powers of the Jal Nigam. (1) The Nigam shall, subject to the provisions of this Act have power to do anything which may be necessary or expedient for carrying out its Junctions under this Act.

(2) Without prejudice to the generality of the foregoing provision, such power shall include the power:

(i) to inspect all water supply and sewerage facilities in the State by whomsoever they are operated;

(ii) to obtain such periodic or specific information from any local body and operating agency as it may deem necessary:

(iii) to provide training for its own personnel as well as employees of the local bodies;

(iv) to prepare and carry out schemes for water supply and sewerage;

(v) to lay down the schedule of fees for all services rendered by the Nigam to the State Government, local bodies, institutions or individuals;

(vi) to enter into contract or agreement with any person, firm or institution, as the Nigam may deem necessary, for performing its junctions under this Act;

(vii) to adopt its own budget annually;

(viii) to approve tariffs for water supply and sewerage services applicable to respective local areas comprised within the jurisdiction of Jal Sansthan and such local bodies as have entered into an agreement with the Nigam u/s 46;

(ix) to borrow money, issue debentures to obtain subventions and grants and manage its own funds:

(x) to disburse loans to local bodies for their water supply and sewerage schemes;

(xi) to incur expenditure and to grant loans and advances to such persons or authorities as the Nigam may deem necessary for performing the functions under this Act.

31. Vesting and transfer of property to Nigam. (1) As from June, 18, 1975, the date of establishment of the Nigam hereinafter in this Chapter referred to as "the

appointed date".

(a) all properties and assets (including water, work, building, laboratories, stores, vehicles, furnitures and other furnishing) which immediately before the appointed date were vested in the State Government for the purposes of the Local Self Government Engineering Department shall vest in and stand transferred to the Nigam; and

(b) all the rights, liabilities and obligations of the State Government whether arising out of any contract or otherwise pertaining to the said departments shall be the rights, liabilities and obligations of the Niga.

37. Transfer of employees to Nigam. (1) Save as otherwise provided in this section every person, who was employed in the Local Self Government Engineering Department of the State Government shall on and from the appointed date become employee of the Nigam and shall hold his office or service therein by the same tenure, at the same remuneration and upon same other terms and conditions, and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed date if this Act has not come into force, and shall continue to do so until his employment in the Nigam is terminated or until his remuneration or other terms and conditions of services are revised or altered by the Nigam under or in pursuance of any law or in accordance with any provision which for the time being governs his service.

89. Directions to the Nigam on questions of policy. (1) In the discharge of its functions, the Nigam shall be guided by such directions on questions of policy as may be given it by the State Government.

(2) If any question arises whether any matter is or is not a matter as respects which the State Government may issue a direction under Sub-section (1), the decision of the State Government shall be final.

97. Regulations. (1) The Nigam and a jal Sansthan may, with the previous approval of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Nigam or a Jal Sansthan.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely;

a) xxxx xxxx xxxx xxxx

b) xxxx xxxx xxxx xxxx

c) the salaries and allowances and other conditions of service of employees of the Nigam or a Jal Sansthan other than employees employed on contract basis.

Regulation 31. Besides the provision made under these regulations, the pay and allowances, pension, leave, imposition of penalty and other terms and conditions

of service shall be governed by such rules, regulations and orders which are equally applicable to other serving government servants concerned functioning in the State .

10. At this juncture it would also be useful to extract the text of Notification dated 27th June 2002 whereby the amendment in Uttar Pradesh Fundamental Rules have been enforced as under :-

1. Short title and commencement- (1) These rules may be called the Uttar Pradesh Fundamental (Amendment) Rules, 2002.

(2) They shall be deemed to have come into force on November 28, 2001.

2. Amendment of Fundamental Rule 56.- In the Uttar Pradesh Fundamental Rules, contained in the Financial Handbook, Volume-11, Parts 11-IV in Rule 56.-

(a) For Clause (a) the following clauses shall be substituted, namely:-

56. (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 day of a month, shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided further that a Government servant, who has attained the age of fifty-eight years on or before the first day of November, 2001 and is on extension in service, shall retire from service on expiry of his extended period of service.

(a-1) No Government servant shall be granted extension in service beyond the age of retirement of sixty years:

Provided that a Government servant dealing with budget work or working as a full time member of a committee which is to be wound up within a short period of time may be granted, by the Government, extension of service for a period not exceeding three months in public interest:

Provided further that the Government shall have the right to terminate the extension of service before the expiry of such extension by giving a notice in writing of not less than three months in the case of a permanent or, of one month in the case of a temporary Government servant, or pay and allowances in lieu of such notice.

(b) Note 3 shall be omitted.

11. At this juncture it is necessary to point out that the aforesaid provision of Act inasmuch as Regulations have been considered by Hon"ble Apex Court in a decision rendered in Harwindra Kumar Vs. Chief Engineer, Karmik and Others, wherein Hon"ble Apex Court while dealing with the aforesaid provisions of the Act of Regulations referred herein before has held that so long as regulation 31

of the Regulations is not amended, 60 years, which is age of superannuation of Government Servant employed under State of Uttar Pradesh shall be applicable to the employees of Nigam. The observations of Hon''ble Apex Court made in para 8 to 12 of the decision are as under :

8. From the aforesaid- provisions, it would be clear that the appointed date for the purposes at the Act was 18th June, 1975 when the Nigam was established and u/s 37 of the Act, conditions of service of the appellants petitioners who were employed in the Local Self Engineering Department of the Government of Uttar Pradesh before the appointed date, were continued to remain the same as they were before the appointed date unless and until the same are altered by the Nigam under the provisions of the Act. Section 97 confers power upon the Nigam with the previous approval of the State Government to frame regulations in relation to service conditions of employees of the Nigam and acting thereunder, Regulations were framed by the Nigam in the year 1978, Regulation 31 whereof provides that service conditions of the employees of the Nigam shall be governed by such rules, regulations and orders which are applicable to other serving government servants functioning in the State of Uttar Pradesh. Thus, from a bare reading of Section 37 and Regulation 31, it would be clear that the service conditions of the employees of the Nigam would be the same as are applicable to the employees of the State Government under the Rules, Regulations and Orders applicable to such government servants so long the same are not altered by the Nigam in accordance with the provisions of the Act. If Regulations, would not have been framed, the Nigam had residuary power u/s 15(1) of the Act whereby under general power it could change the service conditions and the same could remain operative so long regulations were not framed but in the present case, regulations were already framed in the year 1978 specifically providing in Regulation 31 that the conditions of service of the employees of the Nigam shall be governed by the Rules, Regulations and Orders governing the conditions of service of government servants which would not only mean Rules then in existence but any amendment made therein as neither in Section 37 nor in Regulation 31, it has been mentioned that the Rules then in existence shall only apply. After the amendment made in Rule 56(a) of the Rules by the State Government and thereby enhancing the age of superannuation of government servants from 58 years to 60 years, the same would equally apply to the employees of the Nigam and in case the State Government as well as the Nigam intended that the same would not be applicable, the only option with it was to make suitable amendment in Regulation 31 of the Regulations after taking previous approval of the State Government and by simply issuing direction by the State Government purporting to act u/s 89 of the Act and thereupon taking administrative decision by the Nigam u/s 15 of the Act in relation to age of the employees which would not tantamount to amending Regulation 31 of the Regulations.

9. Reference in this connection may be made to a decision of this Court in the case of V.T. Khanzode and Others Vs. Reserve Bank of India and Another, In that

case, u/s 58(1) of the Reserve Bank of India Ad, powers were conferred upon the Central Board of directors of the bank to make regulations in order to provide for all matters for which provision was necessary or convenient for the purpose of giving effect to the provisions of the Act which section in the opinion of their Lordships included the power to frame regulation in relation to service conditions of the bank staff. In that case, instead of framing regulations, the bank issued administrative circulars in relation to service conditions of the staff acting u/s 2 of the Reserve Bank of India Act which was a general power conferred upon the bank like Section 15(1) of the present Act. It was laid down that "there is no doubt then a statutory corporation can do only such acts as are authorized by the statute creating it and that, the powers of such a corporation cannot extend beyond what the statute provides expressly or by necessary implication." It was further laid down that "so long as staff regulations are not framed u/s 58(1) It is open to the Central Board to issue administrative circulars regulating the service conditions of the staff, in the exercise of power conferred by Section 7(2) of the Act." As in the said case, no regulation was at all framed u/s 5 of the Reserve Bank of India Act, as such, the administrative circulars issued by the Central Board of Directors of the Bank u/s 7(2) of the Reserve Bank of India Act in relation to service conditions were held to be in consonance with law and not invalid.

10. In the present case, as Regulations have been framed by the Nigam specifically enumerating in Regulation 31 thereof that the Rules governing the service conditions of government servants shall equally apply to the employees of the Nigam, it was not possible for the Nigam to take an administrative decision acting u/s 15(1) of the Act pursuant to direction of the State Government in the matter of policy issued u/s 89 of the Act and directing that the enhanced age of superannuation of 60 years applicable to the government servants shall not apply to the employees of the Nigam. In our view, the only option for the Nigam was to make suitable amendment in Regulation 31 with the previous approval of the State Government providing thereunder age of superannuation of its employees to be 58 years, in case, it intended that 60 years which was the enhanced age of superannuation of the State Government employees should not be made applicable to employees of the Nigam. It was also not possible for the State Government to give a direction purporting to act u/s 89 of the Act to the effect that the enhanced age of 60 years would not be applicable to the employees of the Nigam treating the same to be a matter of policy nor it was permissible for the Nigam on the basis of such a direction of the State Government in policy matter of the Nigam to take an administrative decision acting u/s 15(1) of the Act as the same would be inconsistent with Regulation 31 which was framed by the Nigam in the exercise of powers conferred upon it u/s 97 (2) (c) of the Act.

11. For the foregoing reasons, we are of the view that so long Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the

Nigam with the previous approval of the State Government to make suitable amendment in Regulation 31 and alter service conditions of employees of the Nigam, including their age of superannuation. It is needless to say that if it is so done, the same shall be prospective.

12. For the foregoing reasons, the appeals as well as writ petitions are allowed, orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the civil appeals and petitioners of the writ petitions would superannuate upon completion of the age 58 years are set aside and it is directed that in case the employees have been allowed to continue upto the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary for the remaining period upto the age of 60 years which must be paid to them within a period of three months from the date of receipt of copy of this order by the Nigam. There shall be no order as to costs.

12. Thus in given facts and circumstances of the case, we are of the considered opinion that the law laid down by the Hon"ble Apex Court is fully applicable and squarely covers the case of petitioners, therefore, we have no hesitation to hold that the amendment made in Rule 56 (a) of Fundamental Rules referred herein before shall equally apply to the employees of Nigam covered by aforesaid Regulations by virtue of Regulation 31, and the petitioners would be entitled to be superannuated on attaining their age of 60 years. The decision of Nigam dated 11.7.2002 resolving not to apply 60 years enhanced age of superannuation to the petitioners and pursuant impugned order passed by Nigam retiring the petitioners earlier to attaining the age of 60 years i.e. on attaining the age of 58 years only are not sustainable being contrary to law and decision rendered by Hon"ble Apex Court. Accordingly, the decision of Nigam dated 11.7.2002 and orders passed by Nigam retiring the petitioners from service on attaining their age 58 years are hereby quashed.

13. However, it is made clear that since we have interpreted the provisions of Regulation 31 of Regulations in context of provisions of Act and in connection of applicability of amendment made in Rule-56 (a) of U.P. Fundamental Rules by Notification dated 27.6.2002, which have retrospective operation with effect from 28th November 2001. therefore, the observations made in our decision should be understood in context of only those provisions meaning thereby it shall apply to only those employees of the Nigam who are governed by Regulations referred herein before and were in service of the Nigam till the date of commencement of amended provisions of aforesaid Fundamental Rules and have been superannuated on or after 28th November 2001 but in view of the proviso second of amended Rule 56(a) if a Government servant who has attained the age of 58 years on or before the first day of November 2001 and is on extension in service shall be retired from service on expiry of his extended period of service

Thus he would not be entitled to take benefits of amended fundamental Rules.

14. In the result, the petitioners are entitled to be continued in service on their respective posts till attaining 60 years age of their superannuation. In case the petitioners were permitted to continue in service after attaining their age of 58 years at the strength of any interim order passed by this Court and they have also been paid their salary, the respondents are directed to continue them in service till attaining their age of 60 years and pay their salary admissible to their respective posts by treating their age of retirement 60 years. If any of the petitioner has not been permitted to continue in service in absence of any interim order and has not been paid his salary without his fault, the Nigam is directed to reinstate him on his post for remaining period till attaining his age of 60 years and pay his salary alongwith arrears of remaining period within a period of three months from the date of production of certified copy of the order passed by this Court before the Nigam. The Nigam is further directed to finalize post retiral benefits of the petitioners by treating their age of retirement 60 years. With the aforesaid directions, the writ petition succeeds and allowed.

There shall be no order as to costs.

Let a copy of this order be placed on the records of writ petition nos. 58576/2005, 58580/2005, 58578/2005, 45495/2005, 44813/2005, 63752/2005, 61031/2005, 60374/2005, 58584/2005 and 58582/2005.