
(2003) 08 AHC CK 0144
In the Allahabad High Court
Case No : C.M.W.P. No. 29240 of 2003

Braj Pal Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 237, 238

Citation : (2003) 6 AWC 5141

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : D.P. Singh and S. Niranjana, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—The vexed question that puts forth itself for consideration in the instant petition is whether the employee of Municipal Corporation can claim right to retire at the age of 60 years in terms of Government order issued thereby enhancing the age of Government Servants from 58 years to 60 years.

2. Petitioner in the instant case is indisputably serving in the Zila Panchayat, Kannauj and he is aggrieved by the petition dated 6th March, 2003 impugned herein (Annexure-4 to the petition) by which he has been notified the date of retirement on 31.7.2003 on attaining the age of 58 years. The solitary plea taken in vindication of his stand is that the employees of the Zila Panchayat are Government servant discharging governmental functions and the Fundamental Rules applicable to the Government servants may be applied to the Petitioner and by this reckoning, he should be held to attain the age of superannuation at the age of 60 years. In this connection, the learned Counsel has referred to amendment in U.P. Fundamental Rules effected by means of notification dated 27th June, 2002 and in consequence, canvassed that anterior to amendment in U.P. Zila Parishad Service Rules, 1979, the age of superannuation was 60 years and it was by means of the amendment in the Service Rules, 1979, the age of superannuation of the Zila Panchayat Employees was pruned to 58 years. In the

context of reference to the above history of the Zila Panchayat Service Rules, the learned Counsel propounded that by reason of amendment in the Fundamental Rules by which the age of superannuation has been enhanced to 60 years, the Zila Panchayat Employees Rules should be deemed to be amended as a necessary corollary of the aforestated amendment in the Fundamental Rules. In opposition, the learned standing counsel representing the opposite parties contended emphatically that the Service Rules of Zila Parishad Employees are still intact and have not been suitably amended and that the amendment in the Fundamental Rules cannot be imported for application in the case of Zila Parishad Service Rules, 1979. It is further contended that Zila Parishad is a Corporation and its servants cannot be equated at par with the Government Servants and by this reckoning also, the age of superannuation in the case of a Zila Parishad Employees is still pegged at 58 years.

3. The Court was seized of similar question as has been posed in the instant petition, in various petitions and one such petition related to one Chandra Kumar Shukla which culminated in the filing of Special Appeal No, 14 of 2002. In this matter, the Division Bench of this Court in no Delphic terms converged to the conclusion that the age of superannuation of the employees of the Corporation would be 58 years. The self same view finds its echo in another decision of this Court in Special Appeal No. 14 of 2002. The decisions aforestated have been cited with approval in a recent decision of single Judge of this Court in Writ Petition No. 42582 of 2002 N. B. Hajela v. State of U.P. and others, along with a string of other ex-cathedra decisions of the Apex Court and converged to the conclusion that the Petitioner was not entitled to continue in service beyond the age of 58 years.

4. In so far as challenge to Zila Parishad Service Rules, 1970 and amended Services Rules, 1979 seeking its declaration as ultra vires is concerned, it would suffice to observe that the learned Counsel has not been able to successfully pinpoint any repugnancy as to warrant declaration of the aforestated Rules as ultra vires. Mere ground that it is repugnant to Fundamental Rules, does not commend to me for acceptance. It is not open to challenge that Zila Parishad having complexion of a Corporation is governed by the Rules framed in exercise of powers u/s 237 of the U.P. Kshetra Samitis and Zila Parishads Adhiniyam, 1961. Section 238 envisages power to make regulations as to conduct of business etc. and Clause (i) of the said rules postulates conditions of service including period of service of all servants of a Parishad. This clause being germane to the point involved in this petition is excerpted below:

(i) the conditions of service, including period of service all servants of a Parishad including servants placed at the disposal of any Kshetra Samiti and the conditions under which such servants, or any of them, shall receive, gratuities, annuities or compassionate allowance on retirement or on their becoming disabled through the execution of their duty, and the amount of such gratuities, annuities or compassionate allowance ; and the conditions under which any

gratuities, annuities or compassionate allowances may be paid to the surviving relatives of any such servants whose death has been caused through the execution of their duty.

5. It would thus follow that the Fundamental Rules as amended are not intended for application in so far as period of service of all servants of a Parishad are concerned. Besides, the conditions of service of the Petitioners are governed by the Rules, 1970 as amended by Amendment made in the year 1979 made in exercise of power u/s 237 and this rule having not been amended by separate notification of the Government, the notification amending the Fundamental Rules cannot be imported for application to the employees of the Zila Parishad and thus, the emphatic arguments of the learned Counsel that the Rules be declared as ultra vires do not commend to me for acceptance.

6. As a result of foregoing discussion, the petition fails and is accordingly dismissed.