
(2003) 03 AHC CK 0112
In the Allahabad High Court
Case No : C.M.W.P. No. 2817 of 1995

Brijendra Prakash Kulshreshtha

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 21

Citation : (2003) 3 AWC 1873(2)

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : G.K. Singh, R.N. Singh, A.P. Sahi and V.K. Singh, for the Appellant;
S.S. Sharma, Raj Kumar and Enakshi Sharma and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

R.B. Misra, J.—Heard Sri G.K. Singh, learned counsel for the petitioner as well as Sri S.S. Sharma, Sri Raj Kumar and Miss Enaksht Sharma, learned standing counsel for the respondents.

2. In this writ petition, the orders dated 1.12.1994 and 8.12.1994 passed by the District Inspector of Schools, Jhansi and the authorised controller, i.e., (Annexures-8 and 9) respectively are challenged. The prayer of the petitioner to retire him at the age of 60 years has been rejected whereby the second option form submitted by the petitioner opted to retire at 60 years of age has been rejected.

3. The petitioner was appointed as an L.T. grade teacher in Saraswati Inter College, Sipri Bazar, Jhansi, duly recognised and is governed by the provisions of U. P. Secondary Education Services Commission and Selection Board Act, 1982 and U. P. Intermediate Education Act, 1921. As per the provisions laid down under Regulation 21 of Chapter III of U. P. Intermediate Education Act, 1921, the age of superannuation of a teacher is 60 years. It has also been provided the date of superannuation falls during the mid of session, the teacher would be

entitled to continue till 30th June of following session. As such, the petitioner was to be retired on 30.6.1997. The Government order dated 6.10.1990 (Annexure-1) where the option was given to the teachers to retire them at the age of 58 years for this purpose, the options were submitted and were sent to the D.I.O.S. for making necessary scrutiny and the order of acceptance shall be communicated by the Deputy Director of Education concerned to the teacher concerned in writing within a period of one month. Another Government order dated 30.10.1990 (Annexure-2) was issued whereby such option forms were to be received by Deputy Director of Education through D.I.O.S. In pursuance to the above Government order, the petitioner gave his option showing his willingness to get retirement at the age of 58 years. According to the petitioner, before acceptance and communication by Deputy Director of Education, the State Government issued another Government order dated 4.11.1991 (Annexure-4) and another opportunity was given to submit option form for seeking retirement. It appears, petitioner later on submitted another form by letter dated 1.2.1992 opted to retire at the age of 60 years in place of 58 years. The second option form was duly received in the office of D.I.O.S. on 1.2.1994 and was transmitted to the Deputy Director of Education subsequently for proper action. When no action was taken, he made representation on 21.9.1994 (Annexure-5) before the Deputy Director of Education and 23.11.1994 before the D.I.O.S. showing his willingness to seek retirement at the age of 60 years. On 1.12.1994 (Annexure-8) the D.I.O.S. rejected the second option form submitted by the petitioner by saying that there was no provision under which the second option form could have been accepted.

4. Counter-affidavit has been filed by the respondents. According to para 11 of the same, it appears that the petitioner has already been informed the matter of approval and acceptance of his application by D.O. letter dated 15.7.1991 issued by the D.I.O.S., Jhansi. As per Para 13 of the counter-affidavit, it has been submitted that no alleged second option by way of application dated 1.2.1992 was received by the office of D.I.O.S. and in the matter of petitioner, the approval of Deputy Director of Education, Jhansi Region, Jhansi, has already been obtained by order dated 2.2.1992 as such, the representation of the petitioner dated 21.9.1994 and 23.11.1994 have nothing to do with earlier decision taken on 2.2.1992.

5. According to the petitioner as contended in the rejoinder-affidavit that the petitioner had submitted the application on 1.2.1992, i.e., before acceptance of previous option form ; as such Deputy Director of Education was not justified once it has been withdrawn. According to the petitioner, the petitioner had right to withdraw option forms before he retires from service. According to the petitioner, learned counsel has placed reliance on Smt. Prabha Kakkar v. Joint Director of Education, Kanpur and Ors. 2000 (2) ESC 1118 (FB). where the question of retirement of teachers and in his option while working under the secondary school was considered in reference to the scheme provided under Government orders dated 10.8.1978, 6.10.1990 and 4.11.1991 and the Rules of

1981 and it was found that the act of option by the Deputy Director of Education and communication to employee was necessary in order to give its final effect and the counter signature of D.I.O.S. on such option could neither be taken as acceptance nor could it attach any kind of finality to it. The question was raised before Full Bench of this Court in Smt. Prabha Kakkar (supra), was considered as below :

"(1) Whether in the scheme provided in the Government order dated 10.8.1978, 6.10.1990 and 4.11.1991 and the Rues of 1981 acceptance of the option exercised by the teacher and its communication was necessary to make it final and irrevocable?

(2) Whether the option exercised by teacher became final and irrevocable after it was counter-signed by the District Inspector of Schools?"

and it was observed by this Court (Full Bench) that the act of acceptance of the option by the Deputy Director of Education and its communication to the employee was necessary in order to make it final. The counter-signature of District Inspector of Schools on such option could neither be taken as acceptance nor could it attach any kind of finality to it. The question Nos. 1 and 2 were considered and answered accordingly. Therefore, on the basis of above analogy here the petitioner is entitled to continue at the age of 60 years as such he was entitled to continue upto 30.3.1997 and if he had worked for that time, then he is entitled to the post retirement benefit.

6. In view of the above, the writ petition is disposed of.