

(1994) 01 AHC CK 0011

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 39590 of 1993

Chandra Kisfaere Dabey

APPELLANT

Vs

Dupty Director of Education and Others

RESPONDENT

Date of Decision : 07-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 AWC 387

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : Rajesh Tandon, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—By its order dated 6-10-1990, the Government of V.P. required toe teacher of Government aided Intermediate Colleges to give option within the time specified therein regarding the age of their retirement either at the age of 58 or at the age of 60 years. Those, who opt for retirement at the age of 58 years were to be given certain benefits, which were not made "aikble to thosef who were to opt for retirement at the age of 60 years. PeTitioner, who is Principal of Thakkar Bapa Inter College, Hindi Bhawan, (sic) (hereinafter referred to as the college), gave option (sic) within time at the age of 55 years. By another order dated 4-11-1991, the Government extended the time for giving of option about the age of retirement to those teachers. Who could not submit their option of retirement earlier within the specified time. In pursuance of the later order, Petitioner gave another option of retirement at the age of 60 years. . On the basis of his Sriief option for retirement at the age of 58 years, Petitioner was liable to retire on 30-6-1993. He has filed this writ petition for writ of mandamus Sing thi Respondents to accept his second option for retirement at the age of 60 years and permit him to work up to 30-6-1995.

2 Respondents have filed counter affidavit and the Petitioner has filed rejoinder affidavit in reply thereto. Petitioner has also filed a supplemeotory affidavit. I

have heard the learned counsel for the Petitioner and the learned Standing Counsel.

3 Learned counsel for the Petitioner has made two submissions, namely, (i) first option given by the Petitioner in pursuance of the Government Order dated 6-10-1990 was not accepted by the Department till the Petitioner gave his second option under the later Government Order dated 4-11-1991, and as such, it is his later option, which has to be taken into account for fixing the age of retirement; and (ii) as the second Government Order dated 4-11-1991, has permitted all the teachers to give option again and the Petitioner has given his option accordingly for retirement at the age of 60 years, He, should not be retired at the age of 58 years. Learned Standing Counsel has disputed the above submissions.

4 In paragraph 3 of the counter affidavit, it has been stated that the Petitioner has given his option for the retirement at the age of 58 year under the first Government Order dated 6-10-1990, which has been approved and accepted by the Department on 2-2-1992. It has further been stated therein that the alleged second option dated 25-1-1992 under the later Government Order dated 4-11-1991 is FARZI document and this option was neither submitted before the District Inspector of Schools, Jalaun (hereinafter referred to as the D.I.O.S.) nor was it received by him and the endorsement of receipt on this option is forged. Although the Petitioner has denied these allegations in his rejoinder-affidavit, but nothing substantial has been placed on the record so as to enable the Court to hold that the second option under the later Government Order is genuine document and was duly submitted before the departmental authorities. Questions as to whether the second option is a FARZI document and the endorsement of receipt on it is forged are questions of fact, which can only be decided on the basis of oral and documentary evidence and this Court under Article 226 of the Constitution of India is not an appropriate forum for resolving such a controversy.

5. The second submission also lacks merit. By the Government Order dated 4-11-1991 only those teachers, who could not give option earlier under the first Government Order dated 6-10-1990, have been permitted to give option. The persons, who had given option under the first Government Order are not entitled to give option again under the later Government Order dated 4-11-1991. This is clear from paragraph 2 of the later Government Order itself.

6. When this Court declines to interfere on the ground of disputed questions of fact, normally it relegates the Petitioner to agitate the matter before the appropriate forum, but in the instant case, as the Petitioner does not have a right to give the option second time under the later Government Order, it is futile to require him to go to civil Court, because even if it is held that the second option given by him is genuine, no advantage can be given to him on its basis.

7. For the reasons given above, this writ petition is dismissed with costs Stay

order passed by this Court is discharged.