

(2014) 08 MAD CK 0248

In the Madras High Court

Case No : Writ Appeal Nos. 453 and 587 of 2014 and M.P. Nos. 1, 1, 2 and 2/2014

Correspondent Rev. Fr. John Alexander

APPELLANT

Vs

J. Lourduraj

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Constitution of India, 1950 — Article 30, 30(1)

Citation : (2014) 4 LLN 517 : (2014) 6 MLJ 647

Hon'ble Judges : Satish K. Agnihotri, J; M.M. Sundresh, J

Bench : Division Bench

Judgement

1. The instant appeals are directed against the common order dated 14.03.2014 passed by the learned Single Judge in W.P Nos. 17370 and 19908 of 2013. The bone of contention in these matters is the policy decision taken by the Provincial Council of the appellant school to reduce the retirement age of its staff members from 60 years to 58 years and thereafter, the decision dated 03.11.2012 taken in the staff meeting of the appellant school.

2. The first respondent in W.A. No. 587 of 2014, viz., Tarmon E. Fernandez (for short "Fernandez") was working as P.G. Assistant in the Commerce and Accountancy Department of Don Bosco Matriculation Higher Secondary School, Egmore. Likewise, the first respondent in W.A. No. 453 of 2014, viz., J. Lourduraj (for short "Lourduraj") was working as a Post Graduate teacher in the said school. On account of the policy decision, the service of Fernandez would come to an end on 27.06.2013 and the service of Lourduraj would come to an end on 19.09.2013 on their attaining the age of 58 years. These respondents filed writ petitions challenging the decision of the Management to reduce the age of retirement from 60 years to 58 years on the following grounds:

"(1) The school management is bound by Clause 18 of the Code of Regulations for Matriculation Schools (for short "the Code");

(2) The provisions of the Code prescribed by the State Government cannot be done away with, without proper amendment in the Regulations;

(3) The Regulation prescribing 60 years by the Government does not violate fundamental rights of the minority institutions as enshrined in Article 30 of the Constitution of India."

3. The learned Single, having heard all the parties, relying on a Division Bench judgment of this Court in *Venkateswaran Vs. The Director of School Education and Others*, , allowed the writ petitions by a common order, holding that the appellant school is bound by Clause 18(i) of the Code. Challenging the same, the school Management has preferred these two appeals.

4. Mr. P.S. Raman, learned Senior Counsel appearing for the appellant school Management would submit that Clause 18 of the Code infringes the fundamental right of the unaided minority institutions and as such, the same is not binding on the school. It is further contended that 11-Judge Constitution Bench of the Supreme Court, in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, has considered specifically, the question of control over service conditions of employees in unaided minority institutions in clear terms holding that the Management should have the freedom in case of appointment of staff, both teaching and non-teaching as well as administrative control over them. It is further contended that the Management has not challenged Clause 18(i) of the Code as the Government, in its counter affidavit, has clearly stated that the State Government cannot compel the Management to fix a particular age of retirement. In respect of the undertaking given by the Management at the time of grant of recognition, the learned Senior Counsel would contend that admittedly, the appellant school Management had given an undertaking at the time of recognition to abide by the provisions of the Code, however, after judicial pronouncement of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka and Others* (supra), the regulatory measure in respect of fixing the age of superannuation has become illegal and the Government had also taken a view that the undertaking to that effect does not hold good. Lastly, it was contended that the appellant school, being a minority institution, while exercising its fundamental right, cannot be said to have violated the legitimate expectation of the teachers, particularly, when it is within the domain of the employer to fix the age of superannuation of its staff members.

5. Ms. D. Nagasila, learned counsel appearing for the first respondent in W.A. No. 587 of 2014 would submit that indisputably, the school Management is bound by the Code which clearly prescribes the age of superannuation as 60 years. The school Management was granted recognition on condition that the school Management would abide by the provisions of the Code. The reduction of age of retirement from 60 years to 58 years from the year 2013, is contrary to the Code and as such, the school Management cannot be permitted to retire the private respondents/writ petitioners before their completion of 60 years. The Supreme Court was not dealing with the service conditions of the teaching and non-

teaching staff of unaided minority institutions in *T.M.A. Pai Foundation v. State of Karnataka and Others* (supra). The issue involved therein was in respect of admission of students to private aided and unaided professional colleges and the fees chargeable. The Supreme Court has held that the right to establish and administer the institution broadly comprises admission of students, setting up of reasonable fee structure, constituting Governing Body, appointing staff members and also taking action, if there is dereliction of duty on the part of any employee. The decisions of the Supreme Court in (i) *D.A.V. College, Vs. State of Punjab and Others*, , (ii) *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, , (iii) *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, and (iv) *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , clearly hold that the Regulations stipulating pay and other benefits of employees do not violate provisions of Article 30 of the Constitution of India, as the same are in the larger interest of the minority institution to ensure efficiency and excellence. It was further contended that in the Government schools, the age of retirement is 58 years, however, it was kept 60 years in Matriculation Schools of Private unaided minority institutions, keeping in view that the service in the said schools are not pensionable. Thus, there is no reason to reduce the age of retirement unilaterally and as such, the impugned order passed by the learned Single Judge is just and proper, warranting no interference.

6. Mr. R. Saseetharan, learned counsel for the first respondent in W.A. No. 453 of 2014, in addition, would submit that the Code was framed for the purpose of regulating the service conditions of the staff members of Matriculation schools. Thus, the school management, unilaterally, cannot take a decision to reduce the age of superannuation, which is contrary to the statutory provisions. There has to be uniform pattern of fixation of retirement age for all teachers in the Matriculation schools. In *The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others*, , it was held that the staff in the minority institutions cannot be placed at dis-advantageous position and as such, Regulations can be framed in the larger public interest to ensure equality with the majority. The retirement also is a condition of service which can be regulated by the State Government. The State Government cannot be allowed to file a counter affidavit contrary to its own regulations and provisions of the Code, without making necessary amendments in accordance with the established procedure of law.

7. The stand of the State Government before the learned Single Judge was that the Code provides only a guidance, but, the same is not binding. The provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 are not applicable to the school. The Supreme Court, in *T.M.A. Pai Foundation v. State of Karnataka and Others* (supra), has clearly held that the Government cannot impose any regulation on the management of private unaided educational institutions in respect of service conditions of staff.

8. Heard the learned Senior Counsel appearing for the appellant school Management, learned Additional Advocate General appearing for the State and the respective learned counsel for the private respondents/writ petitioners and perused the documents.

9. The Code is a compilation of instructions approved by the Board of Matriculation Schools, after consultation with the Heads of Matriculation Schools, for orderly control and regulation of the Matriculation Schools. Clause 18 (i) of the Code provides the age of superannuation for the members of the staff, including the Principal, as prescribed by the University, i.e. 60 years. It further provides that if a staff member is to retire in the middle of the academic year, he will continue till the closure of the academic year, i.e., 31st May. There is a further provision for extension for a period of two years by the Director of Schools. Sub-clause (ii) of Clause 18 of the Code provides for payment of salary to the staff at the rate of Government scales of pay. The proforma of application for recognition of Schools as in Annexure III of the Code, contains a declaration, wherein, the Management has to give a declaration that the Management shall abide by the conditions for recognition in Rule 10 and also the provisions of the Code. Indisputably, the appellant school Management filed a declaration, as prescribed, before grant of recognition. As afore-stated, the appellant school Management took a decision to reduce the retirement age of staff from 60 years to 58 years pursuant to the decision of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka and Others* (supra), as contended by the learned Senior Counsel for the appellant school.

10. The issue with regard to the fundamental right of the minority institutions enshrined in Article 30 of the Constitution of India, came into consideration in several cases. In *Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, , *DAV College v. State of Punjab* (supra), *Ahmedabad St. Xavier 's College v. State of Gujarat* (supra), *The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another*, , *Lily Kurian Vs. Sr. Lewina and Others*, , *All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others*, , *Frank Antony Public School Employees Association v. Union of India* (supra) and *CMC Hospital Employees' Union v. CMC Vellore* (supra), cited by Ms. Nagasila, were referred to and considered by the 11 Judge Bench of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka and Others* (supra). Thus, it is not necessary to deal with each case separately.

11. The Supreme Court, in *T.M.A. Pai Foundation v. State of Karnataka and Others* (supra), in this respect, inter alia, framed the following question of law, by majority, and answered as under:

"Q. 5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service

conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.... "

12. Further, the Supreme Court, in *Secretary, Malankara Syrian Catholic College case (supra)*, referred to the decision of *T.M.A. Pai Foundation v. State of Karnataka and Others (supra)* with approval, while dealing with the rights of aided minority institutions and considered the issue of unaided minority institutions in the light of the observations made in *T.M.A. Pai Foundation v. State of Karnataka and Others (supra)* and observed as under:

"18. xxxxxxxxx Among the questions formulated and answered by the majority while summarising conclusions, Question 5(c) and the answer thereto have a bearing on the issue on hand. Question 5(c) is extracted below: (SCC p. 589, para 161)

"5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?"

The first part of the answer to Question 5(c) related to unaided minority institutions. With reference to statutory provisions regulating the facets of

administration, this Court expressed the view that in case of an unaided minority educational institution, the regulatory measure of control should be minimal; and in the matter of day-to-day management, like the appointment of staff (both teaching and non-teaching) and administrative control over them, the management should have the freedom and there should not be any external controlling agency. But such institutions would have to comply with the conditions of recognition and conditions of affiliation to a university or board; and a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. This Court also held that fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee x x x x x x x x x x "

19. The general principles relating to establishment and administration of educational institution by minorities may be summarised thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

(a) to choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

(b) to appoint teaching staff (teachers/lecturers and Headmasters/Principals) as also non-teaching staff, and to take action if there is dereliction of duty on the part of any of its employees;

(c) to admit eligible students of their choice and to set up a reasonable fee structure;

(d) to use its properties and assets for the benefit of the institution.

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-?-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation, etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilisation of the aid, without however diluting or abridging the right under Article 30(1)."

13. Thus, the contention of the learned counsel for the private respondents/writ petitioners that the service conditions of staff of minority institutions was not in issue in *T.M.A. Pai Foundation v. State of Karnataka and Others* (supra) is not correct, inasmuch as the Supreme Court has framed a specific issue in the said judgment and answered the same accordingly, as afore-stated.

14. Moreover, it is for the employer to fix the retirement age of an employee and the same cannot be held as unreasonable or arbitrary, unless it is established by cogent reasons. Needless to state that the age of superannuation of the teachers in Government schools is 58 years. The State has taken a categorical stand that the State does not want to exercise its control over the retirement age of the staff in unaided minority institutions, particularly, in the Management schools, in view of the fact that it is a fundamental right of minority educational institutions to regulate the service conditions of their staff, except the educational qualification of the teachers, to maintain academic excellence.

15. It is also worth-mentioning, at this juncture, that the Supreme Court has made it clear that excessive control of service conditions of staff is violative of fundamental right of minority educational institutions enshrined in Article 30 of the Constitution of India.

16. Further, the issue as to whether the staff members of unaided minority institutions are entitled to pay scale at par with the Government employees, as provided under Clause 18(ii) of the Code, came into consideration in this Court in *The Special Officer, Salem Cooperative Sugar Mills, Matriculation Hr. Sec. School, Mohanur, Namakkal District v. All Teachers Front*, represented by its General Secretary, N. Umathan, Coimbatore - 38 and in connected matters in W.A. Nos. 1962 of 2005, etc. batch. A Division Bench of this Court held that the teaching and non-teaching staff are entitled to Government pay scales. Thereagainst, a Special Leave Petition, being S.L.P. (Civil) No. 26743 of 2008 was filed before the Supreme Court, wherein, the order passed by the Division Bench of this Court in W.A. No. 1309 of 2000 was stayed on 17.11.2008 and the same is pending consideration.

17. For the reasons stated hereinabove, the decision of the appellant school Management to reduce the age of superannuation of its staff members from 60 years to 58 years, cannot be faulted with. As such, the common order passed by the learned Single Judge in the writ petitions stands set aside. Resultantly, the writ appeals are allowed and the writ petitions are dismissed. No costs.

Connected Miscellaneous Petitions are closed.