

(1988) 09 SC CK 0014

In the Supreme Court Of India

Case No : Civil Appeal No. 3276 of 1988

Devi Krishan Goyal

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 16-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 4 JT 201

Hon'ble Judges : Ranganath Misra, J;M. N. Venkatachaliah, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the Appellant. Special leave is granted. In spite of service of notice the Respondent No. 1 does not respond. The Respondent Managing Committee is represented and its counsel is heard.

2. The Appellant, an Inter college teacher whose normal age of superannuation would be 60 years gave his option to retire on attaining 58 years of age by communicating his option on 13th February, 1982, in terms of the Government notification dated 29-8-81. The Management forwarded the option of the Appellant to the District Inspector of Schools for acceptance, but there was no communication from the Respondent No. 1 accepting or rejecting the option. On 20th January, 1987, the Appellant withdrew his option. The Management forwarded the same recommending acceptance of the subsequent revocation to the Respondent No. 1 by letter dated 8th May, 1987. The Respondent No. 1 wrote to the Management Committee stating that it would not be possible to accept the proposal of the Management Committee as per the rules. The Appellant's application under Article 226 of the Constitution has been rejected in limine by the High Court. The relevant rule reads thus:

These rules shall be applicable to the Teachers of those State Government Aided Higher Secondary Schools which are working under any local body or any non

administrative management, within the ambit of Salary Disbursement Act, 1971 on 30th June, 1978 or thereafter and who will give their option in favour of retirement at the age of 58 years, within six months of the publication of these Rules. An option, once used will be deemed to be final. The date of retirement shall be the end of session.

3. We are of the view that the High Court should not have rejected the writ application. It has not been disputed anywhere that option stood withdrawn before it was accepted. The provision in the rule "an option once used will be deemed to be final" would not mean that when an offer is made it is not open to be withdrawn before it is accepted. The Respondent No. 1 obviously acted under the wrong notion and the High Court did not appreciate this aspect. We would accordingly hold that the Appellant was entitled to withdraw the option.

4. We are told, and there is no rebuttal to the submission, that the Appellant would have in normal course superannuated on 19th March, 1989 when he would be of the age of 60 years. Once we hold that the Appellant was entitled to withdraw the offer of option to retire at the age of 58 years, he would be entitled to the benefit of continuing in service till March, 1989. The appeal is allowed and the Respondent No. 1 is directed to continue the service of the Appellant till 19th March, 1989. No costs.