
(2008) 09 GAU CK 0025
In the Gauhati High Court
Case No : Writ Appeal No. 08 (AP) of 2008

Dotum Lollen

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16
State of Arunachal Pradesh Act, 1986 — Section 46(2)

Citation : (2009) 1 GLT 537

Hon'ble Judges : K. Meruno, J; I.A. Ansari, J

Bench : Division Bench

Advocate : T. Son, N. Danggen, S. Sarkar, C. Chapo, B. Sonam and T. Bam, for the Appellant; G. Deka, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—We have heard Mr. T. Son, learned Counsel for the Appellant, and Ms. G. Deka, learned Counsel appearing on behalf of the Respondents.

2. The Appellant herein is aggrieved by the judgment and order, dated 28.02.2008, passed in WP (C) 438 (AP) 2006, whereby his writ petition has been dismissed.

3. In order to appreciate the issues involved in this appeal, it is necessary to take note of the case of writ Petitioner-Appellant. The case of the writ Petitioner was, in brief, thus: Before Arunachal Pradesh attained its Statehood in the year 1987, it was a Union Territory and, during this period, its employees were governed by the laws and rules framed by the Govt. of India. After attaining Statehood, the State of Arunachal Pradesh adopted, vide notification, dated 16.02.1989, some statutory rules including the Fundamental Rules and Supplementary Rules (hereinafter referred to as the "FR" and "SR" respectively). When the FR and SR were adopted, in the year 1989, by the State of Arunachal Pradesh, the age of superannuation of a State Govt. employee was 58 years. By notification, dated 13.5.1989, as the Govt. of India had amended FR 56 and increased the age of

superannuation of its employee from 58 to 60 years, this amendment, raising the age of superannuation of the Central Government employees, shall also be applicable to the case of the employees of the Government of Arunachal Pradesh inasmuch as the Government of Arunachal Pradesh had already adopted, amongst Ors. , the provisions contained in FR 56. By amending FR 56, while the Central Government, vide notification, dated 13.5.1998, aforementioned, has increased the age of retirement from 58 years to 60 years, the Government of Arunachal Pradesh has, vide notification, dated 06.01.1999, kept restricted the age of superannuation to 58 years in respect of all its employees except school teachers, which is arbitrary, unfair, illegal and discriminatory.

4. In the backdrop of what have been pointed out above, we may take note of the notification, dated 16.02.1989, whereby the Government of Arunachal Pradesh had adopted various rules framed by the Central Government. The notification, dated 16.02.1989, reads as under:

NOTIFICATION

THE STATE OF ARUNACHAL PRADESH ADOPTION OF LAWS ORDER (NO. 4) 1989

The 16th February, 1989

No. FIN/E/47/87 (Pt.): Whereas by Sub-section (2) of Section 46 of the State of Arunachal Pradesh Act, 1986 (Act No. 69 of 1986) for the purpose of facilitating the application of any law in relation to the State of Arunachal Pradesh as the appropriate Government is empowered by order, to make such adaptations and modification of the law, whether by way of repeal or amendment, as may be necessary or expedient.

Now, therefore, in exercise of the power aforesaid the Government of the State of Arunachal Pradesh hereby makes the following order, namely:

1. (1) this order may be called the State of Arunachal Pradesh Adoption of Laws Order (No. 4), 1989.

(2) It shall be deemed to have come into force on the 20th day of February, 1987.

2. (1) In their application to the State of Arunachal Pradesh or part thereof, the following rules, namely:

1. The Fundamental Rules and Supplementary Rules (Central);
2. The Central Treasury Rules;
3. House Building Advance Rules;
4. Central Civil Services (Extra-ordinary Pension) Rules;
5. The Central Provident Fund (Central Services) Rules 1962;

6. The Contributory Provident Fund Rules (India), 1962;
7. The General Financial Rules, 1963;
8. The Central Civil Services (Pension) Rules, 1972;
9. The Delegation of Financial Powers Rules, 1978;
10. The Central Civil Services (Joining Time) Rules, 1979;
11. The Central Civil Services (Commutation of Pension) Rules, 1981;
12. The Union Territory Employees' Group Insurance Scheme, 1984;
13. The Central Civil Services (Revision of Pay) Rules, 1986, shall, unless the context otherwise requires have effect and be deemed to have had effect as if reference therein to the Government Central Government;
14. Government of India, Government Department, authorities mentioned in the first column of the table hereunder set out were references to the Government, State Government, Government Departments authorities mentioned opposite to that in the second column of the Table:

	1	2
-----	1. President	1. Governor of Arunachal Pradesh
-----	2. Government of Central Government of India	2. State Government of Arunachal Pradesh
-----	3. Union/Union of India/India Pradesh	3. State of Arunachal Pradesh
-----	4. Central Services/ Arunachal Services/ Central Civil Services	4. Central Services/ Arunachal Civil Services
-----	5. Union Public Services Commission	5. Arunachal Pradesh Public Service Commission
-----	6. Prime Minister's Chief Minister's Secretariat	6. Secretariat Secretariat.
(2) All the Schedules/Forms/Appendixes appended in the Principal Rules mentioned in (1) above shall mutatis-mutandis apply under the respective Principal Rules.		

(3) Reference to any Government Departments or authorities, other than those specified in the Table in Column 2, shall be construed as referring to the corresponding Government Departments or authorities exercising corresponding power or authority in Arunachal Pradesh.

5. Before proceeding further, we turn to the notification, dated 06.01.1999, whereby the State Government has allegedly kept restricted the age of superannuation of its employees to 60 years. This notification is reproduced below:

NOTIFICATION

It is hereby notified for general information that the provisions of FRs-56, "Chapter-X" (Sic IX) relating to "Retirement" as adopted by this Government,

vide No. FIN/E/47/07 (pt.) dated 15th February, 1989 will continue to be applicable to all the Government employees of the Government of Arunachal Pradesh.

By order and in the name of the Governor of Arunachal Pradesh.

(P.K. Nandi) Under Secretary (Finance) Government of Arunachal Pradesh, Itanagar.

6. A careful reading of the notification, dated 16.02.1989, aforementioned, makes it clear that the State of Arunachal Pradesh had, by notification, dated 16.02.1989, adopted some of the existing rules including Fundamental Rules and Supplementary Rules as the same had existed on 20.02.1987. The notification, dated 16.02.1989, nowhere, reflected that the State Government had undertaken to adopt any and every amendment or change, which may be made by the Central Government in any of the said statutory rules subsequent to the date on which the rules had been so adopted by the State Government. It is, therefore, clear that notwithstanding any change or amendment, which may be introduced by the Central Government in any of the rules, which the Government of Arunachal Pradesh had adopted by the notification, dated 16.2.1989, the State of Arunachal Pradesh remains free to adopt or not to adopt such amendment or change. Consequently, even when the Central Government had enhanced the age of superannuation of its employees from 58 years to 60 years by amending FR 56, the State of Arunachal Pradesh remained completely free to either adopt or not to adopt the amendment so made in FR 56 by the Central Government.

7. In fact, the State of Arunachal Pradesh remains free to reduce the age of superannuation from 58 years to any such other age, which it may deem necessary as the age of superannuation of its employees or it may increase the age of superannuation of its employees even beyond the age of 60 years if it deems so necessary and proper.

8. What, thus, emerges from the above discussion is that a mere amendment by the Central Government of any of the statutory rules, which the State Government has adopted with effect from 20.02.1987, by virtue of notification, dated 16.02,1989, would not automatically and ipso facto apply to, and govern the service conditions, of the employees of the State of Arunachal Pradesh.

9. Coming, now, to the question as to whether the State Government, in the present case, shall be directed by this Court to increase the age of superannuation of the personnel of its police force from 58 years to 60 years, it is pertinent to note that though the employment of a Government employee and the employment of a person in a private sector is, originally, contractual in nature, what distinguishes a Government employee from Ors. is that a Government employee acquires, on his appointment to a Government office, a status. As a result of this status, which he acquires, his service conditions are determined on the basis of the relevant provisions of the Constitution and the statute. In consequence thereof, a Government servant's rights and obligations

can be determined by the statutory or the constitutional authority concerned and for such exercise of powers, the authorities concerned do not, unlike the case of a private employee, require consent from the Government employee concerned. In other words, a Government can alter terms and conditions of its employees unilaterally, though, in practice, such alteration may face protests from the employees concerned. This does not, however, mean, we must hasten to add, that the consent of the Government employee is a condition precedent for changing the terms and conditions of his service by the statutory or constitutional authority in terms of the provisions of the relevant statutes and/or the Constitution. We may refer, in this regard, to the case of Advocate General of the The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, wherein the Apex Court held thus:

It is well settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a "status" on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority, which, for its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times, consensus in matters relating to public services is often attempted to be achieved, consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding.

10. What follows from the above is that service conditions of a Government employee can be changed by making changes in the relevant statutes or rules by the statutory or constitutional authority concerned in terms of the statute and/or the Constitution. This power to alter conditions of service, undoubtedly, includes the power to alter the conditions of service with retrospective effect. Such a broadly stated position of law governing the status of a Government employee is, however, subject to the condition that the benefits acquired with regard to the conditions of service, by virtue of the relevant existing statutory or constitutional provisions, cannot, with retrospective effect, be taken away, abridged or withdrawn by amending the statute concerned and/or the Constitution nor can such amendments be allowed if such amendment is arbitrary, discriminatory, unreasonable or violative of Articles 14 and 16 inasmuch as by acquiring such a benefit, the employee is vested with a right and such a right cannot be taken away by a mere change in the statute or the rules with retrospective effect. See Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, See also Malin Kanta Paul Vs. State of Tripura,

11. In the backdrop of the position of law as indicated above, it becomes clear that in the case at hand, it is within the ambit of the powers of the State Government to fix the age of superannuation of its employees. In the present case, since the State Government has chosen not to increase the age of superannuation from 58 years to 60 years, the State Government cannot, in the absence of any law in force, be forced to increase the age of superannuation of

its employees, in all cases, from 58 to 60 years merely because of the fact that the Central Government has increased the age of superannuation of its employees from 58 to 60 years by amending FR 56.

12. Though it has also been contended that in the year 1984, the age of superannuation of the teachers was enhanced, in the Union Territory of Arunachal Pradesh, from 58 to 60 years, on the basis of the increase in age of superannuation of school teachers by the Government of India and that the persons, belonging to other services, such as the police force, which the Appellant belongs to, has not been granted and that such denial of increase in the age of superannuation to persons, such as, the Petitioner, is discriminatory, it has been correctly pointed out by the learned Single Judge that in the year 1984, the State of Arunachal Pradesh was a Union Territory and it was for this reason that when the age of superannuation of the school teachers was increased by the Government of India from 58 to 60 years, the age of the teachers, serving under the Union Territory of Arunachal Pradesh, was also increased to 60 years from 58 years. This apart, the age of retirement of one category of employees need not be necessarily followed in the case of Anr. set of employees, for, determination of the age of superannuation of a given class of employees is dependant on a number of factors, such as, their capacity to remain fit to render the assigned duties of the posts, which they may occupy. Nothing could be presented, on behalf of the Appellant, before this Court, to show that there is any similarity in the nature of duties or responsibilities of the school teachers, on the one hand, and the police personnel, on the other. In such circumstances, we find that the Petitioner's case cannot be held to be suffering from discrimination merely because of the fact that the age of superannuation of the school teachers, in the State of Arunachal Pradesh, stood increased, in the year 1984, when the State of Arunachal Pradesh was a Union Territory.

13. Unless refusal to increase the age of superannuation of a class of Government employee is found in violation of norms of employment planning and/or irrational and/or unreasonable, it would not be possible to hold that the Government's policy to retain the age of superannuation of a member of the police force at 58 years is in violation of the guarantee of equality of treatment as envisaged by Article 14. See K. Nagaraj and Others Vs. State of Andhra Pradesh and Another,

14. Because of what have been discussed and pointed out above, we find no merit in this appeal. The appeal, therefore, fails and the same shall accordingly stand dismissed.

15. No order as to costs.