

(1999) 04 MAD CK 0096
In the Madras High Court
Case No : Writ Petition No. 901 of 1991

Dr. G.A. Rahmathulla Khan

APPELLANT

Vs

The Director in-charge, Centre for Animal Health Studies,
Madras Veterinary College, Vice Chancellor, Tamil Nadu
Veterinary and Animal Sciences University and The Registrar,
Tamil Nadu Veterinary and Animal Science University

RESPONDENT

Date of Decision : 12-04-1999

Acts Referred:

Tamil Nadu Agricultural University Regulations — Regulation 24
Tamil Nadu Agricultural Veterinary and Animal Sciences University Act, 1989 — Section
40(1), 41, 43(1), 43(2), 43(3)

Citation : (1999) 04 MAD CK 0096

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Advocate : S. Vadivelu, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

T. Meenakumari, J.—The writ petition is for the issue of writ of certiorarified mandamus to call for records of the impugned proceedings i.e. Retirement Notice No. ESTT/5961/BI/90 dated 4.9.1990 issued by the first Respondent herein and quash the same and direct the Respondents to continue the Petitioner in service as Professor. Department of Animal Disease Investigation and Control, Madras Veterinary College or in any other equivalent post till he attains the age of 60 years which is the correct age of superannuation of the Petitioner.

2. The case of the Petitioner is that he was appointed in the service of the Tamil Nadu Government as Veterinary Assistant Surgeon in 1957. Subsequently he was promoted as Assistant Research Officer for Investigation and as Assistant Lecturer. Consequent to the establishment of the Tamil Nadu Agricultural University by the Tamil Nadu Agricultural University Act, 1971 (Tamil Nadu Act 8 of 1971) with effect from 1.6.1971, the Petitioner was allotted to the Tamil Nadu Agricultural University on 1.12.1976. He was promoted as Associate Professor in

the Department of Animal Disease and Veterinary, Madras Veterinary University on 4.9.1979. The Tamil Nadu Agricultural Veterinary and Animal Sciences University Act, 1989 was passed by the Tamil Nadu Legislature and it came into force on 20.9.1989. The Madras Veterinary College also comes under the jurisdiction of the Tamil Nadu Agriculture University as per Section 41 of the Act. It is also stated in the affidavit that as per Sub-section (3) of Section 43 of the Act, every person referred to in Sub-sections (1) and (2) shall hold office under the University by the same tenure at the same remuneration and upon the same rights and privileges as to pension or gratuity, if any, and other matters as he would have held the same on the appointed day or the date specified in the order under Clause (a) of Sub-section (2) as the case may be, as if this Act had not been passed.

The Petitioner was transferred as Associate Professor of the Madras Veterinary College on 20.9.1989 from the Tamil Nadu Agricultural University to the Tamil Nadu Veterinary and Animal Sciences University. When the Respondent's University sought to retire the Petitioner at the age of 58 years by the impugned notice dated 4.9.1990, the present writ petition has been filed by the Petitioner questioning the same.

3. The main contention of the Petitioner is that by the reason of Regulation 24 of the Tamil Nadu Agricultural University Act, the age of superannuation of the Petitioner should be 60 years. Accordingly, the services of the Petitioner should also be continued upto 60 years. It has been contended on behalf of the Petitioner that the provisions of the Tamil Nadu Agricultural University Act should also be applied to the employees of the Tamil Nadu Veterinary and Animal Sciences University and the age of the retirement of the employees must be 60 years and not 58 years as the services of the Petitioner stood transferred to the Tamil Nadu Veterinary and Animal Sciences University. It has been further contended on behalf of the Petitioner that he became the employee of the Tamil Nadu Veterinary and Animal Sciences University by reason of Sub-section (1) of Section 43 of the Act. By reason of Sub-section (3) of Section 43, the age of superannuation of the Petitioner in the Veterinary University will also be 60 years. Learned Counsel has further contended that Regulation 24 which prescribes the age of retirement as 58 years will not be applicable to the Petitioner as he was not an employee recruited in accordance with the recruitment regulation nor he was transferred and permanently allotted to the Veterinary University. Learned Counsel for the Petitioner has argued that as the Petitioner was working under the Tamil Nadu Agricultural University before his promotion as Associate Professor in the Department of the Tamil Nadu Veterinary and Animal Sciences University, he is entitled to continue upto 60 years.

4. There was no representation on behalf of the Respondents and no counter has been filed.

5. Learned Counsel for the Petitioner has relied upon the decision of this Court in W.P. No. 6975 of 1990 dated 16.8.1998 (Dr. R. Ayyavoo v. The Director of

Extension Education, Tamil Nadu Agricultural University, Coimbatore) to substantiate his contention that the Petitioner is entitled to continue upto the age of 60 years. He has also relied upon the Division Bench decision of this Court in Writ Appeal No. 928 of 1990 (The Director of Extension Education, Tamil Nadu Agricultural University, Coimbatore v. Dr. Ayyavoo).

6. In W.P. No. 6975 of 1990 relied upon by the learned Counsel for the Petitioner, the learned Judge was dealing with the situation prior to the promulgation of the Tamil Nadu Veterinary and Animal Sciences University Act, 1989 which was passed on 20.9.1989. The learned Judge relying upon the resolution of the Agricultural University passed by the Board of Management on 15.2.1989 has held that the University employees are entitled to continue upto the age of 60 years. The same view was confirmed in W.A. No. 928 of 1990 dated 20.9.1990. Learned Counsel for the Petitioner has also relied upon the decision of this Court in W.P. No. 10884 of 1990 dated 11.10.1990. That was the case where the Registrar was sought to retire at the age of 58 years. Learned single Judge has quashed the retirement on the ground that the Petitioner therein was appointed as the Registrar by virtue of Section 47 of the Act 42 of 1989, that was only a post for a specified duration and his lien in his parent post as Professor of Obstetrics and Gynaecology had not been brought to an end by severance of the lien which he held in that post. Basing on the above, learned Judge directed the Petitioner therein to continue upto the age of 60 years.

7. In the present case, the Tamil Nadu Veterinary and Animal Sciences University Act has come into force from 20.9.1989. The Petitioner has admitted in the affidavit that he was statutorily transferred as Associate Professor of the Madras Veterinary College from the Tamil Nadu Agricultural University to the Tamil Nadu Veterinary and Animal Sciences University. Sub-Section 1 of Section 43 of the Tamil Nadu Veterinary and Animal Sciences University Act 1989 reads as follows:

43. Transfer of service of certain employees: (1) Every person who, immediately before the appointed day, is serving in the colleges and institutions of the Tamil Nadu Agricultural University specified in Part I of the Schedule shall, as from the said day, become an employee of the University and shall cease to be an employee of the Tamil Nadu Agricultural University.

8. In view of the above, it has to be held that the Petitioner has ceased to be an employee of the Tamil Nadu Agricultural University with effect from 20.9.1989. It is also stated in the affidavit that on 19.9.1990, the Veterinary University has made regulation u/s 48(4) read with Sub-section (1) of Section 40 of the Act. As per the above regulation, the age of superannuation for all such employees who were recruited against permanent or temporary posts of the University and those who are transferred and permanently allotted to the University from Government Department shall be fifty-eight years. It is not in dispute that the age of retirement of the employees of the Tamil Nadu Veterinary and Animal Sciences University is 58 years but not 60 years. It is also not in dispute that the Petitioner has been allotted to the Veterinary University from the Tamil Nadu

Agricultural University after the promulgation of Tamil Nadu Veterinary and Animal Sciences University Act 1989. As per Section 43(1), the Petitioner became an employee under the Veterinary University Act and hence he is bound by the rules and regulations of the Veterinary University Act. As per the Regulations formulated under the Tamil Nadu Veterinary and Animal Sciences University Act, the age of retirement has been fixed as 58 years. The decisions relied upon by the learned Counsel for the Petitioner have no application to the case on hand as the learned Judges dealt with therein dealt with the situation prior to the promulgation of the Veterinary University Act. The Regulations prescribing the age of retirement of the employees of the Veterinary University i.e. 58 years was not brought to notice of the learned single Judge or the Division Bench. In view of the above, it has to be held that the Petitioner is bound by the Regulation prescribing the age of retirement as 58 years being the employee of the Tamil Nadu Veterinary and Animal Sciences University under the Tamil Nadu Veterinary and Animal Sciences University Act 1989. In view of the above, I see no merit in the writ petition. The writ petition is dismissed. No costs. Consequently W.M.P. Nos. 1362 of 1991 and 4260/91 are dismissed.