
(1999) 10 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 544, 744, 745, 746, 747 and 891

Dr. Kailash Chandra Mittal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 15

Citation : (2000) 2 WLN 413

Hon'ble Judges : Shivaraj V. Patil, J; Bhagwati Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bhagwati Prasad, J.—in all these writ petitions, a common question of law involved is the interpretation of Ordinance 67A of the Ordinances of the University of Rajasthan, therefore, they are being disposed of by this common order. For the purpose of factual matrix. Dr. Kailash Chandra Mittal v. State of Rajasthan and Ors. (D.B. Civil Writ Petition No. 544/99) is being taken into consideration.

2. The petitioner entered into the services of the respondent College. At the time of entering into the service, an agreement was entered in between the petitioner and the respondent College. In the agreement, the age of superannuation was mentioned as 60 years. The petitioner kept on serving the respondent College. In the meantime, the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter referred to as "the Act of 1989") came into operation and was given effect from 1.1.1993. Under the Act of 1989, Rules were framed which were named as The Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993 (hereinafter referred to as "the Rules of 1993"). Under Rule 45 of the Rules of 1993, a provision was made that a teacher of the Non-Governmental institution will retire at the age of 58. The petitioner was sought to be retired on 14.7.1998 when he completed the age of 58. He preferred a writ petition before this Court. It was observed by this

Court that the petitioner is entitled to the benefit of Government Notification dated 27.6.1999. By this notification, the age of superannuation of all the Government servants was raised from 58 to 60 years and, therefore, the petitioner was not retired. Now, once again the age of the Government Servants has been reduced from 60 to 58 years. Therefore, the petitioner is being retired, whereas he completes the age of 60 years on 30.6.2001 and in this connection, he submitted an application to the respondent College.

3. The case of the petitioner is that his age of superannuation has to be governed by Ordinance 67A of the Ordinances of University of Rajasthan because Maharshi Dayanand University has adopted all the Ordinances of the Rajasthan University. Ordinance 67A provides that whole time teacher in a college affiliated to the University will retire on attaining the age of 60 years. Ordinance 67A reads as under:

0.67A. The date of compulsory retirement of a permanent whole time teacher in a college affiliated to the University other than those maintained by the Government is the day on which he attains the age of 60 years. In special circumstances, however, to be recorded in writing, whole-time permanent teacher of outstanding merit particularly known for his excellence and quality of teaching may be retained in service upto the age of sixty two years provided he continues to be mentally and physically fit for duty. Such an extension shall be granted by the Management with the prior approval of the Vice-Chancellor and the Syndicate.

4. The petitioner submits that in State of Rajasthan, there are the Rules for payment of Grant-in-Aid to Non-Government Educational, Cultural and Physical Education Institutions in Rajasthan, 1963 (hereinafter referred to as "the Grant in Aid Rules of 1963"). Wherein it has been laid down that these Rules are over and above the conditions prescribed by the University and Rule 3(2) specifies the Conditions of grant and in Rule 3(16), it has been provided that the age of superannuation of the teachers shall not ordinarily exceed 58, subject to the provided extension.

5. The petitioner has made reference to Section 40 of the Act of 1989, which reads as under:

Section 40. Overriding effect of the Act.

the provisions of this Act shall have effect notwithstanding anything inconsistent contained in any instrument having effect by virtue of any law.

6. Rule 45 of the Rules of 1993 provides for the age of superannuation of the teachers. The relevant portion of the said Rule 45 reads as under:

Rule 45. The age of Superannuation.-(i) The age of superannuation of teachers and other employee except Class IVth employees shall be the last date of the month in which they attained age of 58 years. In special circumstances, the Government may waive this condition and allow extension in service for a period

not exceeding 5 years for such college teachers who are engaged in post graduate teaching of research work. Any other employee of the Institution may also be allowed extension in service upto the age of 60 years by the State Government.

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7. The petitioner bases his claim on Ordinance 67A and avers that the Grant in Aid Rules of 1963 will not affect the character of the provision made in Ordinance 67A because the Grant-in-Aid Rules of 1963 are administrative in character and Ordinance 67A is statutory in character.

8. Further case of the petitioner is that Ordinance 67A is a special provision relating to the age of retirement of affiliated colleges teachers, whereas, the Grant-in-Aid Rules of 1963 are general, in character, they are not special provisions governing the age of retirement and, therefore, the special provision of Ordinance 67A will exclude the operation of the Grant-in-Aid Rules of 1963, being general in character.

9. The petitioner's contention further is that as the Ordinances of the University are required to be followed by the affiliated Colleges, such ordinances form the conditions of affiliation. In case the Colleges do not follow these provisions, they make themselves liable to dis-affiliation.

10. From the aforesaid, the petitioner contends that it is only under Ordinance 67A that the petitioner can be governed at the time of his superannuation. The petitioner also submits that under the Grant-in-Aid Rules of 1963, there is no contrariety in between the provisions made thereunder and the Ordinance 67A, because the Grant-in-Aid Rules of 1963 are over and above the conditions prescribed by the University and the dictionary meaning of "over and above" is "besides" and, therefore, giving the harmonious reading to both these provisions, it has to be seen that they can simultaneously go side by side.

11. The case of the petitioner further is that Rule 3(16) of the Grant-in-Aid Rules of 1963 says that 58 should be the age of superannuation of the teachers ordinarily, which implies that Rule 3(16) of the Grant-in-Aid Rules of 1963 is not mandatory in character and it is only ordinarily provided. The petitioner has further averred that the provisions of the Act of 1989, in Section 40, which has the over riding effect and in the Rules of 1993, Rule 45, cannot defeat the effect

of Ordinance 67A, because they are the general provisions. The petitioner has further contended that Rule 45 of the Rules of 1993 is delegated piece of legislation and cannot take away or destroy the accrued rights with retrospective effect. The petitioner has further contended that Section 40 of the Act of 1989 renders the contract taking away the existing rights null and void. It does not render the contract ineffective which conferred rights, otherwise than the Act. The petitioner had the conferment of rights under Ordinance 67A of the University. In any case, the contract binds the Institution in taking the grant in aid, but it does not absolve the institution from the liability created by a valid contract between the parties and that being the position, the Colleges are bound by the contract entered into between the parties.

12. The petitioner has also challenged the validity of Section 22 of the Act of 1989, because according to the petitioner, this Section has created only one Tribunal for whole of the State and the petitioner cannot therefore, redress his grievance in that Tribunal. According to him, there should be Tribunals in every area.

13. The respondents filed reply to the writ petition and submitted that the case of the petitioner is based on misconceived thoughts. This Court has already decided the matter in Mohan Lal Jangid v. State of Rajasthan and Ors., D.B.Civil Writ Petition No. 2244/97 decided on 4th May, 1999, wherein it has been held that the persons like the present petitioner, having opted for the revised pay scales with effect from 1.1.1986, have accepted that their retirement age will be 58 and in that connection, there is a novation of contract in between the petitioner and the respondent College. That being the position, this Court felt persuaded that the petitioner having voluntarily accepted the age of retirement for grant of revised pay scales, cannot raise a grievance and retirement can be made on attaining the age of 58 years. In this background, the learned Counsel for the respondents submitted that there is no question of the petitioner maintaining the present writ petition.

14. It has been further contended by the answering respondents that the University of Rajasthan Act, 1946 (hereinafter referred to as "the Act of 1946") has been adopted by the Maharshi Dayanand University and the provisions of Section 4(7) give a limited scope of interference by the University in the matter of affiliated colleges. Section 4(7) reads as under:

Section 4. The University shall have the following powers, namely:

(7) to inspect affiliated colleges and approved institutions and to take measures to ensure that proper standards of teaching instruction and training are maintained in them.

Therefore, according to the answering respondents, under the Act of 1946, there is no power with the respondent University to fix the service conditions of the teachers of the affiliated colleges. In Statute 30(1) of the Statutes of the University, it has been stated that emoluments and the conditions of service of

the teaching staff will be such as may be approved by the University. In Sub-section (4) of Statute 30, some reference has been made regarding the provisions for the teaching staff. It nowhere speaks for the University providing for the service conditions. Statute 30(1), (4) and (5) reads as under:

Statute 30(1)-Every college shall satisfy the University that the number and qualification of its teaching staff in each subject are adequate, and in accordance with the rules prescribed by the University, and that their emoluments and the conditions of their service are such as may be approved by the University.

(4) Every teacher in a college not maintained by a Government shall be employed under a written contract stating the conditions of his service and the salary to be paid to him; and a copy of his contract shall be given to the teacher and a copy shall be lodged with the University.

(5) Any difference or dispute of any kind whatsoever arising out of a contract between an affiliated college not maintained by a Government and a member of its teaching staff including the Principal shall be referred to arbitration and determined on the lines of the provisions of the Indian Arbitration Act, 1940....

15. In the scope of statutes, u/s 27 of the Act of 1946, there is no mention of anything regarding the conditions of service being made except that under Clause (15) of Section 27, there is a general power. The said Clause (15) of Section 27 reads as under:

27. Subject to such conditions as may be prescribed by or under the provisions of this Act, the Statutes may, consistently with this Act, provide for all or any of the following matters, namely:

(15). all matters which by this Act, are to be or may be prescribed by Statutes, or which are dealt with in the Statutes set out in the Schedule to this Act.

16. In this Clause (15), there is no scope for laying down the conditions of service of the staff of the affiliated colleges. More particularly when there is no provision made in the Act of 1946 for prescribing the service conditions.

17. Section 29 of the Act of 1946 makes a provision regarding the scope for which the Ordinances can be made and even in this provision, there is no express power conferred on the University authorities to prescribe the service conditions of the teachers of the affiliated colleges, though in Sub-section (6) of Section 29, it has been mentioned that emoluments and conditions of service of University teachers can be prescribed by the Ordinance. So, there is a mention of providence of emoluments and conditions of service of University teachers in general, but not specifically for affiliated colleges teachers. The clauses (6) and (10) of Section 29 of the Act of 1946 read as under:

29. Subject to such conditions as may be prescribed by or under the provisions of this Act, the Syndicate may make Ordinances consistent with this Act and the Statutes, to provide for all or any of the following matters, namely:

(6) emoluments and conditions of service of University teachers;

(10) generally all matters for which provision is, in the opinion of the Syndicate, necessary for the exercise of the powers conferred of the performance of the duties imposed upon the Syndicate by this Act or the Statutes.

This Clause (10) also does not say that any such provision can be made in the Ordinance or Statute regarding service conditions of the teachers of the affiliated colleges.

18. Thus, it is contended by the answering respondents that there was no power with the University authorities to frame Ordinance 67A in relation to the affiliated colleges like the present one. What is interesting to note, according to the answering respondents, is that even the University Colleges have been said to be affiliated colleges, under the provisions of Statute 42A of the Statutes of the University, for certain matters. In this view of the matter, the expression used in Ordinance 67A cannot, therefore, necessarily mean that all colleges will come within the definition of affiliated colleges of the University for being covered for prescribing the age of superannuation of its staff. In Ordinance 67A, it has been said that this age of superannuation should be in the affiliated colleges of university other than those maintained by the Government. According to the answering respondents, the word "maintain" has a definite connotation in the English language. With the help of various authorities, the answering respondents have canvassed that the recipient of grant in aid can be said to be a college maintained by the Government.

19. Thus, the respondent College in getting the grant in aid has been clothed under the definition of maintained by the Government and, therefore, it can safely be said that Ordinance 67A is not applicable to it. The answering respondents have specified that in terms of Rule 45 of the Rules of 1993, the petition has been prescribed to be retired at the age of 58, so also Section 40 of the Act of 1989 has overriding effect and in this background, the writ petition deserves to be dismissed.

20. We have heard the learned Counsel for the parties and perused the record.

21. In our considered opinion, the judgment given by this Court in Mohan Lal Jangid's case (supra) is sufficient authority to lay down that the petitioner was to be retired at the age of 58 because he has voluntarily entered into a personal contract with the respondents for retiring him at the age of 58, as he wanted to get the benefit of the revised pay scales. In view of this judgment, we were not required to go into the question of Ordinance 67A, but in the judgment referred to above, the question of applicability of Ordinance 67A was not gone into, therefore, we permitted the petitioner to address the Court on this aspect as well.

22. The petitioner has canvassed that Ordinance 67A will govern his case, as also the agreement entered into between the petitioner and the respondent College. The reason given by the learned Counsel for the petitioner in this regard is that

Ordinance 67A is a special enactment, whereas the Act of 1989, Rules of 1993 and the Grant-in-Aid Rules of 1963 are general in character and they govern many other things, apart from the service conditions of the teachers. He has placed reliance on the decision of the Supreme Court in *Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Society Ltd. and others*, The petitioner has also canvassed that the Statute should be given that meaning which makes the Act purposeful and meaningful and repaid should be to the spirit of the Act and the mischief it had intended to be cured. Ordinance 67A was enacted to give protection to the employees of the affiliated Colleges, therefore, it should be read as such. *Vide Charan Lal Sahu Vs. Union of India*,

23. The petitioner has not addressed to this aspect of the matter that in the entire scheme of the Ordinance and Statutes, the University has given no express power to itself whereby the consequences for non-following of the provisions of Ordinance 67A have been provided for. On the contrary, what has been provided for in Statute 30 is that the conditions of service of the teaching staff of the affiliated colleges are such as may be approved by the University. The expression used in Clause (1) of Statute 30 is of greater importance. It speaks of the approval by the University and not the prescription by the University. Under the Statutes, if the University only speaks of approval of the conditions of service, then, it cannot be taken that the University ever intended for prescribing the age of superannuation of the teaching staff of the affiliated colleges or for that matter, conditions of their service.

24. Further, under Clause (5) of Statute 30, it has been provided that in case of any difference or dispute of any kind whatsoever arising out of a contract between an affiliated college and its employee, the matter shall be referred to arbitration. Thus, no powers of adjudication of that dispute were kept by the University with it. It is also important that when the parties have expressly entered into a contract for arbitration, any other forum is generally excluded for redressing the grievance. *Vide State of Himachal Pradesh Vs. Raja Mahendra Pal and Others*,

25. It is also important that when the University laws do not provide for any consequence for violation, it cannot be said that the University had desired to enforce Ordinance 67A strictly on the affiliated colleges.

26. The use of term "as may be approved by the University" in Clause (1) of Statute 30 is distinct than the prescribed by the University. The expression used also takes away the vigour of Ordinance 67A. The specific provision in Statute 30 can at best be read as to be a provision which touches the conditions of service of the affiliated colleges teachers. It speaks of the approval by the University only and not prescription by the University. Thus, there appears to be no power in the Statutes to give any right to the University to prescribe the service conditions of the affiliated colleges teachers.

27. As seen above, in absence of any provision under the provisions of the Act

of 1946, we have every doubt that Ordinance 67A is a piece of legislation which if at all intended for the purposes of laying down service conditions of affiliated colleges teachers, then, this is a piece of legislation, which is under the authority of the Act.

28. u/s 4 of the Act of 1946, there are provisions in Sub-sections (1A) and (4A), which read as under:

4. The University shall have the following powers, namely:

(1A) to make such provisions as would enable affiliated colleges "and approved institutions to undertake specialisation of studies and to organise common laboratories, libraries, museums and other equipment for teaching, instruction, training and research.

(4A) to admit colleges and institutions to the privileges of the University and to withdraw such privileges.

These are the only provisions which speak of the powers of the University under the Act of 1946. They do not make any provision regarding service conditions.

29. u/s 27 of the Act of 1946, the scope of the Statutes are defined and in Sub-section (15), a general provision is there, but that does not point towards the service conditions and, therefore, no statute can be framed under the Act of 1946 to give power to the University to prescribe the service conditions of the affiliated colleges teachers.

30. u/s 29 of the Act of 1946, the scope of the ordinances has been discussed, in which, Sub-section (6) speaks of emoluments and conditions of service of University teachers specifically, and as and when there is a specific condition laid down, the general conditions are excluded. Had there been any intention of the Legislature to give specific power to the University to frame an ordinance in relation to the service conditions of the affiliated colleges teachers, then, there was ample scope for including that in Sub-section (6) of Section 29 of the Act of 1946. In this background, we are of the opinion that framing of Ordinance 67A was never authorised by the Act of 1946 to give any power to the University to frame the service conditions of Government aided private colleges teachers.

30A. The argument of the learned Counsel for the petitioner that the special provision will prevail over the general law, is a proposition which is widely accepted. But, the contention of the learned Counsel that Ordinance 67A being special law, be preferred over the Act of 1989, Rules of 1993 and Grant in Aid Rules of 1963, cannot be out rightly accepted. It is to be considered in the light of various provisions contained therein.

31. Ordinance 67A is not an ordinance in isolation. This is one of the ordinances in a bunch of ordinances framed by the University. If it is to be read in isolation and singularly, then, it may be that it makes provision for specific point of laying down service conditions, but if all the ordinances are concerned, they are framed

on a variety of subjects. That is also the situation in the Act of 1989, Rules of 1993 and the Grant-in-Aid Rules of 1963 as well. These enactments make provisions for various aspects of aided institutions. Thus, it cannot be said that Ordinance 67A has to preferred in separation to all other ordinances.

32. Legislature has enacted Section 16 of the Act of 1989. It empowers the Legislature for providing service conditions for affiliated institutions. Section 16 reads as under:

Section 16. Power of the State Government to regulate the terms and conditions of employment. - (1) the State Government may regulate the recruitment and conditions of service including conditions relating to qualifications, pay gratuity, insurance, age of retirement, entitlement of leave, conduct and discipline, of persons appointed as employees of aided institution to the State:

Provided that the rights and benefits accruing to an employee of an existing institution under the Grant-in-Aid Rules in force at the commencement of this Act shall not be varied to the disadvantage of such employees:

Provided further that every such employee shall be entitled to opt for such terms and conditions of service as were applicable to him immediately before the commencement of this Act:

Provided also that....

(2)

33. The Hon''ble Supreme Court in State of Andhra Pradesh, etc., etc. Vs. S.K. Mohinuddin, etc., etc, has recognised such powers of the State Government. In view of the availability of such powers to the State Government under the Act of Andhra Pradesh, the Hon''ble Supreme Court held that such provisions can be made and in the aforesaid decision, the Hon''ble Supreme Court has upheld the fixing of such age for the teachers of the affiliated colleges.

34. In the light of the above decision, it can be unhesitatingly held that the legislature has given power to the State Government to fix the age of superannuation. The State has fixed it as 58. The employees have also opted for 58. In this background, Ordinance 67A of the University has no role to play.

35. Further the Hon''ble Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., has also held to the same effect. The observations made by the Hon''ble Supreme Court in para 195 of the judgment in that case are as under:

Private educational institutions may be aided as well as unaided. Aid given by the Government may be cent per cent or partial. So far as aided institutions are concerned, it is evident, they have to abide by all the rules and regulations as may be framed by the Government and/or recognising/affiliating authorities in the matter of recruitment of teachers and staff, their conditions of service, syllabus, standards of teaching and so on. In particular, in the matter of

admission of students, they have to follow the rule of merit and merit alone-subject to any reservations made under Article 15. They shall not be entitled to charge any fees higher than what is charged in Governmental institutions for similar courses. These are and shall be understood to be the conditions of grant of aid. The reason is simple; public funds, when given as grant-and not as loan-carry the public character wherever they go; public funds cannot be donated for private purposes. The element of public character necessarily means a fair conduct in all respects consistent with the constitutional mandate of Articles 14 and 15. All the Government and other authorities in charge of granting aid to educational institutions shall expressly provide for such conditions (among others), if not already provided, and shall ensure compliance with the same. Again aid may take several forms. For example, a medical college does necessarily require a hospital. We are told that for a 100 seat medical college, there must be a fully equipped 700 bed hospital. Then alone, the medical college can be allowed to function. A Private Medical College may not have or may not establish a hospital of its own. It may request the Government and the Government may permit it to avail of the services of a Government hospital for the purpose of the college free of charge. This would also be a form of aid and the conditions aforesaid have to be imposed-may be with some relaxation in the matter of fees chargeable-as observed. The Governments (Central and State) and all other authorities granting aid shall impose such conditions forthwith, if not already imposed. These conditions shall apply to existing as well as proposed private educational institutions.

36. The aforesaid decision of the Hon'ble Supreme Court in an unequivocal terms says that the conditions of grant in aid are the one which has to give power to the State Government to lay down the conditions of service. They are generated out of the public funds and in this background, if u/s 16 of the Act of 1989 and Rule 48 of the Rules of 1993, a Rule is made, then, nothing can be seen to debar the State Government from making Rules in this concerned and in this background also, the application of Ordinance 67A is seen to be of no consequence to the petitioner.

37. The other points raised about the maintainability of the writ petitions and the constitutional validity of Section 22 of the Act of 1989 have not been decided as the role of Ordinance 67A was of no consequence to the petitioner.

38. The age of superannuation of an employee is a private contract in between the employee and the college. The petitioner is accepting new pay scales, has accepted the age of retirement as 58. The University Ordinance 67A has no role to play as discussed above. In view of the exclusion of Ordinance 67A, the law laid down in Mohan Lal Jangid's (supra) will hold the field.

39. Thus, there is no force in these writ petitions and the same are dismissed.