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**(1993) 03 AHC CK 0005**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 6696 of 1993

Dr. K.K. Gupta

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

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**Date of Decision :** 23-03-1993

**Acts Referred:**

Constitution of India, 1950 — Article 14

Uttar Pradesh State Universities Act, 1973 — Section 3, 31, 31(1), 33, 49

**Citation :** (1993) 3 AWC 1411

**Hon'ble Judges :** S.C. Mathur, Acting C.J.; R.A. Sharma, J

**Bench :** Division Bench

**Advocate :** Ravi Kant, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

S.C. Mathur, A.C.J.

1. By our short order dated 23rd March, 1993 we dismissed this writ petition and reserved reasons. We now proceed to give the reasons.

2. The dispute in the petition pertains to the age of superannuation of teachers working in State Medical Colleges. On 26th December, 1992 the State Government issued order mentioning therein that the Petitioner, whose date of birth was 25-2-1935 and who would attain the age of 58 years on 24-2-1993, would retire from service on 28th February, 1993. Aggrieved by this order, the Petitioner approached this Court asserting that his age of retirement should not be governed by Fundamental Rule 56 and should be 60 years as is the age of retirement prescribed for teachers in Medical Colleges run by Universities.

3. The controversy raised in the present petition was raised before this Court in several petitions, leading petition being Civil Misc. Writ No. 12222 of 1990 Dr. V.K. Agarwal v. State of U.P. decided on 24th February, 1992. This Petition was dismissed and the applicability of Fundamental Rule 56 to the teachers in State owned Medical Colleges was upheld. The learned Counsel for the present

Petitioner, however relies upon certain observations made in Dr. v. K Agarwal's case for asserting that in the change situation, the Petitioner is entitled to relief.

4. In the writ petition of Dr. V.K. Agarwal (supra) It was asserted that the teachers of Medical Colleges exclusively owned by the State Government did the same work of teaching, preparing students for medical degrees and holding examination in accordance with the directions of the University as the teachers of the Medical Colleges maintained by the University did and there was no distinction of work at all between the two classes of teachers yet teachers falling in the former category retired on attaining the age of 58 years while their counter-parts falling in the latter category continued in service upto the age of 60 3 cars. It appears that in support of the plea of discrimination, it was asserted that King George's Medical College, Lucknow was maintained by Lucknow University which had prescribed 60 years as the age of superannuation for its teachers and this age applied to the teachers of King George's Medical College also. The Division Bench noticed that King George's Medical College had been taken over by the State Government and the teachers working in that Collage had also become Government servants governed by !be age of superannuation prescribed by Fundamental Rule 56. The Bench was, therefore of the opinion that the plea of discrimination had vanished While dismissing the writ petition the Bench made an observation of which the Petitioner seeks to take advantage, the observation reads as under:

It is no doubt true that if the work and duties to be performed by the teachers of the Constituent College maintained by the University and those maintained by the State Government are same, then to retire teachers of Medical Colleges maintained by the Stale Government at an early age would be clearly discriminatory bat this argument is not now open to the Petitioner.

After making this observation, the Division Bench proceeds to say that in the State of Uttar Pradesh, there was only one Medical College which was maintained by the University viz King George's Medical College. Lucknow, which was a constituent College maintained by the Lucknow University, but this College was later taken over by the State Government through the King George's Medical College and the Gandhi Memorial and Associated Hospital (Taking over) Act, 1983. Validity of the Taking Over Act was challenged successfully before this Court at the Lucknow Bench The consequence of the judgment of this Court was that King George"; Medical College again reverted to the Lucknow University. On the basis of the extracted portion of the judgment in Dr. V.K. Agarwal's case, the submission of the learned Counsel for the Petitioner is that if the Taking Over of had not been in existence at the time of the disposal of Dr. V.K. Agarwal's writ petition, this Court would have proceeded to allow that writ petition. This is the main basis on which the present writ petition has been filed.

5. Material question to be decided, therefore, is whether prescription of age of retirement for teachers of the Medical College maintained by the State Government different from the age of retirement prescribed by a University,

which is an autonomous body, will be hit by the doctrine of discrimination contained in Article 14 of the Constitution of India.

6. The Petitioner, in effect is claiming parity with the teachers working in Medical Colleges maintained by an autonomous University, it cannot be disputed that the employers of the Petitioner and of the teachers working in Medical Colleges maintained by an autonomous University are different. The employer of the Petitioner is the State Government while that of the teachers working in medical colleges maintained by an autonomous University is the University. u/s 3 of the U.P. state Universities Act, 1973, the University is a body corporate having perpetual succession and a common seal and is entitled to sue and be sued by its name. u/s 7(9) the University has the power to institute teaching post and to appoint persons to such posts. Under Clause (17) of Section 7 the University enjoys the residuary power to do all such acts and things as may be requisite in order of further the object of the University. u/s 31 the Executive Council of the University is vested with the power to appoint teachers. Sub-section (1) specifically excludes the jurisdiction of the Executive Council in respect of Colleges maintained exclusively by the State Government. In other words, while the teachers of an autonomous University are to be appointed by the Executive Council, the teachers of Colleges maintained by the State Government are not to be appointed by the Executive Council. u/s 33 the University enjoys the power to constitute, for teachers and other employees, such pension, insurance or provident fund as it may deem fit including a fund from which such teachers or their heirs may be paid pension or gratuity, u/s 50(2) the Executive Council is empowered to frame Statutes. u/s 49 (e) Statutes may be framed for prescribing minimum qualifications and experience for recruitment and for fixation of emoluments and other conditions of service including provisions relating to compulsory retirement of persons appointed to posts under the University Under Clause (f) Statute may be framed for constitution of a pension or provident fund From these provisions it is abundantly clear that an autonomous University has the power to prescribe conditions of service for its employees Admittedly, the Petitioner was not appointed by the University. He was appointed by the State Government. He is a government employee. Accordingly the age of retirement prescribed in the Statutes, which is 60 years, will not be applicable to the Petitioner.

7. It may also be mentioned that the Petitioner's allegations on the basis of which the claim of parity is founded are entirely vague. The Petitioner has not stated the pensionary benefits available to teachers of autonomous Universities. He has merely indicated that teachers of autonomous Universities retire on standing the age of 60 years. Since the Petitioner also performs teaching duties he claims parity with teachers of autonomous Universities. That in our opinion is not sufficient to found the claim of parity.

8. In Imperial Chemical Industries (India) Private Limited Vs. The Workmen, , it has been observed by their Lordships of the Supreme Court In paragraph 10 at

page 1178 as follows:

It is generally recognised in Industrial adjudication that where an employer adopts a fair and reasonable pension scheme that would play an important part in fixing the age of retirement at a comparatively earlier stage. If a retired employee can legitimately look forward to the prospect of earning a pension then the hardship resulting from early compulsory retirement is considerably mitigated; that is why cases where there is a fair and reasonable scheme of pension in vogue would not be comparable or even relevant in dealing with the age of retirement in a concern where there is no such pension scheme.

In order to claim parity it was incumbent upon the Petitioner to have given complete details of the retirement benefits available to government servant and the retirement benefits available to teacher of an autonomous University. Lack of this material disentitles the Petitioner to press his claim on the ground of parity.

9. Learned Counsel for the Petitioner has cited certain authorities which may be noticed. The Workmen of the Bharat Petroleum Corporation Ltd. v. Bharat Petroleum Corporation Ltd. AIR 1934 SC 336, is a case relating to industrial establishment, the industrial workers of a company had claimed parity in age of retirement on the basis of trend in the industry. Relief was granted to the workers not by comparing the service conditions of the workmen of the concerned industry with the service conditions prevailing in other industrial establishments but by comparing service conditions of one class of employees working in the same establishment with the conditions of service of the other class of employees in that very establishment. This case has no application to the facts of the present case.

10. In B.P. Singh and others Vs. Director General, Ordnance Factor and others, , the Petitioners claimed that they were entitled to continue upto the age of 60 years as they were teachers in an establishment of the Central Government and teachers in other establishments of the Central Government were retiring at the age of 60 years. It appears from the report that on behalf of the Respondents it was pointed out that a decision had already been taken to have uniform age of retirement which was reduced from 60 to 38 years. As such the plea of discrimination did not arise for consideration. This authority also is therefore irrelevant.

11. In All India Judges' Association Vs. Union of India and others, , their Lordships of the Supreme Court recognised the rights of members of Judicial Service to continue in service upto the age of 60 years. In this case right to continue upto the age of 60 years was not recognised on the ground that this was the age of retirement prevailing in a comparable institution. The age of 60 years was recognised on the basis of special features of the Judicial Officers which was treated to be a class by itself. Accordingly this authority is also of no assistance to the Petitioner.

12. For government servants the age of retirement has been prescribed in

Fundamental Rule 56. If the Petitioner's plea is accepted there may be discrimination between two classes of government servants, one represented by the Petitioner and the other the rest, there may not be any rational basis of discrimination between the two class of government servants. The Petitioner has referred to the eligibility criteria prescribed for entering government service as Lecturer in a government hospital, the Petitioner and persons like him cannot get entry Into government service until they are sufficiently advanced in age. It is pressed that the Petitioner and others like him do not qualify for maximum pension. The averments in this regard are entirely vague as the Petitioner has nowhere indicated the minimum period of service which qualifies for maximum pension.

13. The Petitioner has stated that Technical, Medical and Legal Services are identical and, therefore there can be no reasonable basis to allow members of the Judicial Service to retire at the age of 60 years and the members of the Medical Service to retire at the age of 58 years. Regarding members of Judicial Service we have already observed that their Lordships of the Supreme Court have recognised special Status of that Service Accordingly the Petitioner cannot claim parity with the members of the Judicial Service. So far as the other Technical Services are concerned members thereof who are in government service also retire on attaining the age of superannuation prescribed in Fundamental Rule 56. Accordingly there is no discrimination.

14. In view of the above we are of the opinion that the petition lacks merit. The observations in Dr. V.K. Agarwal's case (supra) relied upon by the learned Counsel for the Petitioner, do not constitute Ratio Decidendi of that judgment. We have gone through that judgment and we are in agreement with the ratio of that case. Points covered by that judgment are not being reiterated by us.

15. Accordingly the petition is hereby dismissed.