

(1993) 08 AHC CK 0067
In the Allahabad High Court
Case No : Special appeal No. 580 of 1993

Dr. Prem Dutt Chamoli

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 30-08-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1994) 1 AWC 259

Hon'ble Judges : S.G. Mathur, Acting C.J.; Sudhir Narain, J

Bench : Division Bench

Advocate : S.N. Singh and R.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

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

1. The question for consideration in these two appeals directed against the common judgment of a learned single Judge rendered in three connected writ petitions is whether the State Government's order dated 6th May, 1982 which provides for retention in service for two years of teachers who have been awarded National or State level awards after attaining the age of superannuation, creates a legally enforceable right in such teachers.

2. It is undisputed that both the Appellants were holding the post of Principal in their respective Colleges when in the year 1992 they were awarded "President's Teacher award". They were due to retire on 30th June, 1993 on attaining the age of superannuation. The Committee of Management of their respective Colleges recommended to the State Government that they may be granted two years extension in terms of Government order dated 6th May, 1982. The State Government considered the matter in accordance with the procedure prescribed in Government order dated 23rd Oct, 1991 and denied extension of service to the Appellants by order dated 8th July, 1993, This is the order which was unsuccessfully challenged by the Appellants before the learned single Judge. The

learned single judge held that the State Government's order did not create legally enforceable right in a teacher to claim continuance in service. In taking this view the learned Single Judge has relied upon :

1. State Bank of Bikaner and Jaipur and others Vs. Jag Mohan Lal, .

2. Smt. Kumud Lata Singh v. State of U.P., (1991) 1 UP LB EC 415 (DB).

3. On behalf of the Appellants, it is insisted that the Government order dated 6th May, 1982 creates an entitlement in the teacher to continue for two more years. The decisions relied upon by the learned Single Judge are sought to be distinguished on the ground that in those cases, the employer himself did not want continuance in service of the employee who had attained the age of superannuation while in the case on hand the employer viz. Committee of Management, was in favour of continuing the Appellants in service. It is also the submission of the learned counsel that right or no right the State Government cannot act arbitrarily and cannot abdicate its obligation to act fairly, as otherwise its action would violate Article 14 of the Constitution. Violation of Article 14 is alleged also on the ground that the State Government has practised discrimination inasmuch as it has granted extension to six teachers out of ten it considered and denied the same to four, including the present two Appellants, although the record of service of the Appellants was not worse than that of those who were granted extension. The main ground for denying extension in service to the Appellants was that during the last five years the examination results of the Colleges headed by them had been poor.

4. The first question that arises for consideration is what the Government order dated 6th May, 1982 seeks to achieve. For ascertaining this, it is necessary to have the language of the Government. Order. Relevant portion of Government Order reads as follow :

Uparukta bishai ki aor aapka dhyanakrisht karte huye yah kahane ka nirdesh hua hai ki varsh 1977 tak pradesh ke rashtriya/rajya puraskrit adhya-pakon ko unke adhiwayata/aayu ke paschat do varsh ki sewa ka bistaran pradan kiya jata iha. Kintu Bharat sarkar ke samjhaw par vareh 1978 me in subidhaon ko wapas le liya gaya.

1 - Bharat sarkar dwara is punarbichar aur vidik parikshan ke uprant yah sujhaw diya gaya hai ki shiksha ke gunatmak vikas ki dristi se yah janhit me boga ki is prakar ke adhyapakon ko sewa ka labh shiksha sansthayon ko kuch aur samay ke liye prapti rahe yadi we saririk abang manasik dristi se purnatya swastha ho.

2 - Samyak rup se vicharoparant sashan ne yah nirnay liya hai ki Uttar Pradesh ke samast rashtriya/rajya puraskrit adhyapakon ko jo saririk abang manasik rup se purnataya swasta adhiwayata aayu ke paschat do varsh ka sewa vistaran pradan kiya jay. Tadanusar Rajyapal mohodaya is sambandh me jari kiye gaye samasta adeshon ka atikraman karte hue yah adesh dete hai ki pradesh samast rashtriya/rajya puraskrit adhyapakon ko yadi we saririk abang manasik dristi se

purnataya swasta hai adhiwastaya aayu ke paschat do varsh ka sewa vistaran pradan kiya jay.

Is prakar se sabhi rnamle samay se uchchadesh ke liye sashan se samban? dhiti anubhagon ko prastut kiye jayenge aur pratyek mamle me sashan ks adesh prapta kiye jayenge.

5. From the above Government Order it appears that the scheme of granting extension in service for two years after attainment of the age of superannuation was in force in the State of Uttar Pradesh upto 1977 and this scheme was limited to those teachers who had won state level awards. This scheme was abandoned in the year 1978 on the directions of the Central Government. In paragraph 1 of the Government Order it is mentioned that on reconsideration and after examination of legal implications it has been advised that with a view to ensure qualitative development of education it will be in public interest in the services of such teachers remain available to educational institutions for some time more, provided they are physically and mentally, fit. This is the reason for the decision contained in paragraph 2 of the Government Order. The decision serves public purpose. The public purpose is qualitative development of education. The decision does not serve the interest of an individual. It does not seek to give a second award to the award winner in the shape of extension in service by two years.

6. Once it is held that the Government order does not create any right in the teacher, there is no difficulty in rejecting the appellants' claim as the matter is fully covered by the decision of the apex Court. In *State Bank of Bikaner and Jaipur* (supra) the provision on the basis of which extension in service was claimed by the employee of a Bank mentioned-"should such extension be deemed desirable in the interest of the Bank." Interpreting this clause their Lordships held - "The sole purpose of giving extension of service is, therefore, to promote the interest of the Bank and not to confer any benefit on the retiring officer. Incidentally the extension may benefit retired officials. But it is incorrect to state that it is a conferment of benefit or privilege on officer." The situation in the case on hand is almost identical. The Government Order contemplates benefit to public interest; it does not contemplate benefit to the award winning teacher. Such teacher is benefited only incidentally. The distinction tried to be drawn by the learned counsel for the Appellants between the case on hand and the case decided by their Lordships is without a difference. The State Government may not be employer of the Appellants but it bears substantially the financial burden of their salary, Further the relationship of master and servant is not the basis of the judgment. The view taken by their Lordships was followed by a Division bench of this Court in *Smt. Kumud Lata Singh's case* (supra).

7. In view of the above we are of the opinion that the learned Single Judge rightly held that Government order dated 6th May 1982 did not create any right or entitlement in the teacher to continue in service for two more years.

8. The appellants' plea that the action of the State Government is discriminatory and, therefore, violative of Article 14 of the constitution is entirely vague. In Dr. Chamoli's writ petition the plea as contained in paragraph 13 runs as follows:

That the Petitioner has also reliably learnt that those persons whose services have been extended, their institutions have given no satisfactory result also, as such, the impugned order is discriminatory and violative of Article 14 of the Constitution of India.

The use of the words "reliably learnt" shows that the Appellants-Chamoli has no personal knowledge of the results of the institution in which the concerned teachers are working. In fact, Appellants-Chamoli has not given the percentage of results in his college and the percentage of results in the other colleges. Same is the position of the writ petition filed by Appellants-Browne. In this petition the allegation is contained in paragraph 22 and there also the same expression "reliably learnt" has been used without giving facts. Accordingly the charge of discrimination cannot be sustained.

9. Apart from the Government Order dated 6th May, 1988 the Government issued an Order dated 23rd October, 1991 laying down the procedure to be followed for selecting award winning teachers who were to be continued in service after attaining the age of superannuation. This Government Order contemplates consideration by a Committee of as many as five high ranking officers. These officers are :

1. Principal Secretary, Education (Intermediate). Chairman
2. Concerned Special Secretary, Education Member
3. Director of Education (Intermediate) Member
4. Director of Education (Basic) Member
5. Joint Secretary nominated by Secretary Personnel. Member 10

10. From the constitution of the Committee and the procedure laid down it appears that there is no scope of arbitrariness in selection and rejection of award winning teachers. Accordingly the appellants' plea that the State Government has acted arbitrarily and unfairly; cannot be upheld.

11. We are also unable to uphold the appellants' plea that while considering candidates for extension in service only three factors are required to be considered, namely (i) that the candidate should be national or state level award winner (ii) he should be physically fit and (iii) he should be mentally fit.

12. In our opinion the three factors mentioned herein constitute the minimum requirements for consideration. If a teacher does not possess these minimum requirements he does not qualify for consideration. It is only on fulfilment of these minimum requirements that he is to be considered for extension in service and in this consideration all relevant factors can be taken into

consideration. Since the purpose of giving extension is to achieve qualitative development in education consideration of performance of the candidate in the institution cannot be said to be an irrelevant factor. An award winner may be good academically but he has to be good in administering an institution when he is holding the post of principal. The Appellants as already noticed were holding the post of Principal. The Principal cannot disclaim his share of blame if the results of examination are not satisfactory.

13. In view of the above we are of the opinion that the writ petitions were rightly dismissed by the learned Single Judge. We accordingly dismiss the present special appeals but without any order as to costs.