

(2005) 12 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 45847 of 2004

Dr. Radhey Shyam Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Uttar Pradesh State Universities Act, 1973 — Section 50(C), 52(C)

Citation : (2006) 1 AWC 371 : (2006) 1 UPLBEC 428

Hon'ble Judges : Prakash Krishna, J; Amitava Lala, J

Bench : Division Bench

Advocate : Bhagwati Prasad Singh and V.K. Singh, for the Appellant; Ashok Khare, Anil Tiwari, Aditya Kumar Singh and N.B. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—According to the petitioner, he is the senior most teacher (Reader) in Tilakdhari Post Graduate College, District Jaunpur, Uttar Pradesh (here in after referred to as the "College"). It is a Post Graduate College affiliated with Veer Bahadur Singh Purvanchal University, Jaunpur. The affairs of the college are managed by a duly recognized committee of management. The provisions of Uttar Pradesh State Universities Act, 1973, First Statute of the University and Uttar Pradesh Higher Education Service Commission Act, 1980 are applicable for the purpose of administration of the college, selection and service conditions of the teachers. It receives financial aid from the State Government. Liabilities for the purpose of payment of salary lies with the State Government.

2. The regular Principal of the college had reached his age of superannuation on 30th June, 2000. The petitioner by virtue of his seniority was appointed as Officiating Principal by a resolution of the committee of management dated 09th July, 2000. The petitioner continued as Officiating Principal. By a judgement and order dated 12th January, 2004 passed in Civil Misc. Writ Petition No. 34816 of 2001 (Dr. Radhey Shyam Singh v. Director of Higher Education and Ors.), this

High Court directed to pay the regular pay scale of the Principal to the petitioner. The date of birth of the petitioner is 11th December, 1943. Statute 15.23 of the University lays down the age of superannuation as 60 years. Statute 15.24 provides that in case date of birth of the teacher falls after 30th. June then he shall continue till the end of next academic session. In such case, such continuation will be treated as re-employment. The petitioner reached his age of superannuation on 10th December, 2003 and he was treated on re-employment after such period. As an Officiating Principal being on re-employment he was not in a position to hold any administrative post. On 04th February, 2004 the State Government issued a departmental order enhancing the age of superannuation of the teachers of the University and affiliated colleges from 60 years to 62 years. The University adopted the Government Order in its meeting of the executive council dated 20th February, 2004. According to the petitioner, due to such Government Order he is entitled to continue as Principal till 10th December, 2005, when he will reach to 62 years. The petitioner made a representation to the committee of management for handing over the charge of Officiating Principal to the petitioner in consequence of the Government Order since he is entitled to continue as Officiating Principal till the age of superannuation i.e. 10th December, 2005. The University issued two orders dated 27th March, 2004 and 18th June, 2004 to the Manager of the College to consider the petitioner's request for continuance as Officiating Principal. However, the State Government, by a further order dated 17th June, 2004 made an amendment to the earlier order dated 04th February, 2004, whereby Clause 3 (Ka) and (Kha) were inserted. There it was provided that the teachers, who are working on the post under the session benefit and were holding administrative post prior to the amendment dated 04th February, 2004 shall not be given administrative post. According to the petitioner, intention of the State Government was very clear to the extent that the age of superannuation will be extended upto 62 years and senior most teacher will continue to the post of Officiating Principal till he reaches the age of 62 years or regular Principal selected by the Commission comes and joins in the post. Despite various representations of the petitioner, the committee of management illegally given the charge of the Principal to the respondent No. 6, who is junior to the petitioner and stands at serial No. 6, whereas the name of the petitioner stands at serial No. 1. The petitioner contended that imposition of Clause 3 (Kha) of the Government Order dated 17th June, 2004 is violative of Article 14 of the Constitution of India. All the teachers, who have got the benefit of extension of two years of age, form separate class and no further class can be made out by them. Such distinction is unreasonable and arbitrary. Once the statute of all the Universities have been amended by the State Government as u/s 52 (C) of the Act, both the Government Orders have lost their efficacy.

3. Ultimately, the petitioner prayed for issuance of writ in the nature of mandamus commanding the respondents to permit the petitioner to function as Officiating Principal of the college till his age of superannuation i.e. 10th December, 2005.

4. The contesting private respondent, respondent No. 6 herein, contended that the State Government passed the order in exercise of the powers delegated to it u/s 50 (C) of the Uttar Pradesh State Universities Act, 1973. It has a prospective effect. Such Government Order can not be revived. It has extinguished. Second Government order dated 17th June, 2004 clearly specified that no benefit therein can accrue for claiming entitlement to an administrative post on the part of a person, who stood superannuated at the age of 60 years." The executive council of the concerned University accepted the position in a meeting held on 05th August, 2004. The representation filed by the petitioner is on the basis of erroneous fact and misconception of legal position. Direction of the Government order dated 17th June, 2004 for amending the statute of the University has been acted upon. A Division Bench of this Court in Civil Misc. Writ Petition No. 8739 of 2004 (Chandra Shekhar Ojha v. State of U.P. and Ors.) already held that the government policy in the clarification dated 17th June, 2004 does not suffer from any such arbitrariness and unreasonableness as to call for interference by the Court under Article 226 of the Constitution of India. The Division Bench of this Court also held that policy of the Government laid down in the clarification dated 17th June, 2004 is proper, rational and reasonable policy.

5. According to us, the moot point of the controversy is effective date under the First Statute of the University. According to the petitioner, since the First Statute is amended giving date with effect from 01st July, 2003, there should not be separate treatments between the teachers, whose tenure of service period has been extended as a matter of course and whose service has been extended following the Statute 15.24 for extension of service prior to enhancement of the age of retirement. Since the Government orders are already merged into the statute, those have no existence whatsoever in respect of operation of the Statute. According to us, the petitioner is proceeding within the wrong premises. Two sets of teachers are different by birth. Such difference arose not only from the Government orders being dated 04th February, 2004 and 17th June, 2004 but even prior thereto under Statute 15.24 of the University. Such statute did, not evaporate by enhancement of the age of retirement under the Statute. The petitioner enjoyed the benefit of Statute 15.24. Surrender of the administrative post i.e. Officiating Principal occurred prior to introduction of enhancement of age by way of Government orders. Such extra benefit was made available not to all but to few lucky persons going to retire subsequent to 01st July, 2003. The Government wanted only to accommodate them following the Statute 15.24 but not to disturb them. This is nothing but a beneficial piece of legislation to such people, who were getting the benefit prior to extension of the age of retirement. The petitioner has accepted the same as well as the Government orders and acted upon. He has neither challenged the vires of the Government orders nor he can do so. He has usurped the fruits of statute and Government orders but when new age of retirement is introduced in the Statute turned around and challenged the same. The intention of the petitioner can not be said to be bonafide.

6. When we read the law, we have to read as a whole not on piecemeal basis.

Therefore, when we find an amendment giving a cut off date of enhancement of service period from 01st July, 2003, we have to know the historical background of the same. Every law is to be interpreted on the basis of its internal aids or external aids or by both. Internal aids are available if we read introduction of effective date under the Statute along with 15.24. To interpret on the external aids historical background is necessary. In order to arrive at the intention of the legislature, the state of the law and judicial decisions antecedent to and being handed down at the time the statute was being passed are material matters to be considered. Evidence of matters relating to such surrounding circumstances and historical investigation, including report of any committee and statements of objects and reasons, can be resorted to for ascertaining such antecedent law and for determining the intention of the legislature. It is settled position that under the Government orders the teachers, whose tenure of service is not expired, will get all benefits including their seniority, appointment in the administrative post, etc. but the same is not applicable in case of others, who were enjoying extension prior to introduction of the Government orders but subsequent to 01st July, 2003 either by the internal aids or by the external aids. It is not a discrimination but intelligible differentia to give benefit to both type of teachers. Admittedly, both have accepted the position and acted upon. Therefore, the petitioner should stand by decision and not to disturb what is settled following the maxim *stare decisis et non quieta movere*.

7. The source of giving cut off date on 01st July, 2003 has a little background in the two Government orders. In the first Government order two categories of teachers are differentiated in the Paragraphs- 2 and 3 of it. In paragraph-2 immediate effect was given to the teachers, who have not retired. But in paragraph-3 effect was given to the teachers, who are already in extension subsequent to 01st July, 2003. The statute has made retroactive effect by giving solitary date i.e. 1st July, 2003 which could cover both. But for giving such effective date, Statute 15.24 is not repealed. It still exists. Therefore, if harmonious construction in between the two parts of the statute as well as Government orders are made, we shall find out that insertion of the cut off date has got nothing to do with regard to right of administrative functions of one set of teachers vis-a-vis no such right to other set of teachers. A substantive provision can not be retroactive unless the provision itself so indicates. The indication in the statute is to give cut off date but no substantive provision has been made to retroactive effect to give administrative authority to the person, who retired subsequent to 01st July, 2003 but before 04th February, 2004. If it is given, only upon seeing the cut off date in the statute that will be double benefit to a small section of teachers ignoring others. Extension of the age is only meant a case of re-employment with regard to the persons, who have retired subsequent to 01st July, 2003 but before 04th February, 2004. This is a limited sanction towards the minor section of the teachers. They can not overcome the right of the majority taking the loopholes of the statute, if any. We have to think about welfare of the majority of the people. If today the enhancement of age and

administration both are given to the teachers, who are minority in number enjoying the extension having been retired subsequent to 01st July, 2003, then the entire chain of seniority of majority of teachers will be substantially affected. A third party may face a natural death of service without getting an appropriate opportunity of seniority for nothing. There will be blockage at the top. Therefore, we can not propose to pass any order in favour of the petitioner.

8. We have been enlightened with two Division Bench judgements of this Court. One is dated 15th March, 2005 in Civil Misc. Writ Petition No. 8739 of 2004 (Sri Chandra Shekhar Ojha v. State of UP. and Ors.) declaring the policy of the Government laid down in clarification dated 17th June, 2004 is proper, rational and reasonable policy. We follow the ratio as laid down therein. But in the other Division Bench judgement dated 12th May, 2005 delivered in Civil Misc. Writ Petition No. 34649 of 2004 (Prof. (Smt.) Adesh Agarwal v. Din Dayal Upadhyaya Gorakhpur University and Ors.), we do not find any consideration, of the point as discussed hereunder. Court had only proceeded with the introduction of the cut off date in the statute. There is no analysis as made herein. Therefore, the second judgement of the division Bench dated 12th May, 2005 in the Civil Misc. Writ Petition No. 34649 of 2004 (Prof. (Smt.) Adesh Agarwal v. Din Dayal Upadhyaya Gorakhpur University, Gorakhpur and Ors.) held as per incuriam.

9. In totality, the writ petition stands dismissed. Interim order, if any, stands vacated.

10. However, no order is passed as to costs.