(2016) 01 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 16190, 17092, 8339, 10041, 9986, 11222, 11178, 11215, 12246, 12257, 7400, 7414, 22385, 22351, 10869, 22939 and 18798 of 2015 and 23770 of 2014

G. Eswara Reddy and Others APPELLANT

Vs

State of A.P. and Others RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 — Section 1, Section 2, Section 3, Section 3(1)

Constitution of India, 1950 — Article 309

Citation : (2016) 01 AP CK 0003

Hon'ble Judges : R. Kantha Rao, J.

Bench : Single Bench

Advocate : W.B. Srinivas, P.V.S.S.S. Rama Rao, P. Giri Krishnna and V.S.K. Rama Rao, for the Appellant;

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—1. The petitioners, who are the employees of the religious institutions of 8 temples specified in Rule 36 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000 (hereinafter referred to as the Rules) were directed to retire at the age of 58 years by various proceedings mentioned in the respective writ petitions. Challenging the said action, they filed the present writ petitions seeking a Writ of mandamus to declare the impugned proceedings whereunder the petitioners were directed to retire from service at the age of 58 years as illegal, arbitrary, contrary to Rule 43 of the Rules issued in G.O.Ms. No. 888, Revenue (Endowments-I) Department, dated 08-12-2000 and contrary to Act 4 of 2014 and consequently to declare that the petitioners are entitled to continue in service till the completion of 60 years of age in terms of The Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 (Act 4 of 2014) [the Superannuation Act, for short] and further direct the respondents to continue the petitioners in service till they complete the age of 60 years with all consequential benefits.

2. The material facts pleaded by the petitioners in the writ petitions may be stated as follows:

"(a) The 1st respondent issued the Rules through G.O.Ms. No. 888, dated 08-12-2000, whereunder separate provisions were made applicable to certain temples (called special Eight Temples) special rules were framed which start from Rule 36 onwards, Rules 1 to 35 are general provisions, which apply to all the temples and there are special provisions for eight temples specified in Rule 36, which are applicable only to eight temples. The general provisions specified in Rules 1 to 35 except Rules 5 and 16 apply to eight temples specified in Rule 36, in addition to the special provisions from Rules 37 to 47.

(b) As per Rule 43(3) of the Rules, Fundamental Rule 56 as in force and amended from time to time, in addition to the other Fundamental Rules specified therein, shall apply to the employees of eight institutions. F.R. 56 is omitted and in its place, The Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 was enacted. As per Section 3(1) of the Superannuation Act, every government employee not being a workman and not belonging to Last Grade Service, shall retire from service on the afternoon of the last day of month in which he attains the age of 58 years. The Government of Andhra Pradesh has amended the said Act through Act 4 of 2014 which was published in the Government Gazette on 27-6-2014. As per the amended Act, the age of superannuation is raised from 58 to 60 years, in addition to other amendments to the main Act. The contention of the petitioners is that in view of the amendment to the Fundamental Rules, the Superannuation Act and Rule 43 of the Rules, they are entitled to continue in service till completion of the age of 60 years. Their version is that for employees of the eight institutions specified in Rule 36, the service conditions of the employees of these institutions are governed by the State Government Rules insofar as pay scales, allowances and age of retirement. Their grievance is that even though as per Rules they are entitled to continue in service in the respective temples till completion of the age of 60 years, the 3rd respondent-Devasthanam directed them to retire from service on completion of 58 years.

(c) The grievance of the petitioners is that the respondents 2 and 3 having observed that the Rules in G.O.Ms. No. 888, dated 08-12-2000, hold the field and are applicable to the petitioners and inspite of the interim orders passed by this Court in W.P. No. 9986 of 2015 and batch, observing that the special provisions under the Rules in G.O.Ms. No. 888, dated 08-12-2000, apply to the special eight institutions and therefore, Fundamental Rules are applicable to the employees of the said eight institutions as per Rule 43 of the said Rules, passed orders directing the petitioners to retire from service on attaining the age of 58 years, which is contrary to law. It is submitted by the petitioners that the Rules framed in G.O.Ms. No. 888, dated 08-12-2000, apply to their case whereunder

Rule 43 clearly states that the age of superannuation of the employees of the special eight institutions are governed by the Fundamental Rules as amended from time to time which are made applicable to these institutions. Therefore, according to them, in view of Act 4 of 2014 made effective from 02-6-2014, the same is applicable to the employees of special eight temples. They contended that Rule 43 of the Rules makes it clear that the Fundamental Rules of the State Government of Andhra Pradesh as amended from time to time apply to the special eight institutions with regard to the age of retirement. Now the Government of Andhra Pradesh has enforced Act 4 of 2014 brought into force from 02-6-2014 and therefore, the same would automatically apply to the respective temples wherein the petitioners were working. Thus, they contended that there is no need of any further orders to be given by the Government to these eight institutions enhancing the age of retirement. They stated that Rule 40 of the Rules clearly stipulates that the employees of the special eight temples would retire on par with the Government employees of the State of Andhra Pradesh and the Rules are so clear and that the respondents 2 and 3 issued orders illegally directing the petitioners to retire from service.

(d) Thus, under these circumstances, they filed the present writ petitions to set aside the orders whereunder they were directed to retire from service and to issue a direction to the respondents to continue them in service till they complete the age of 60 years."

3. The respondents 2 and 3 filed separate counters. The principal contention of the respondents 2 and 3 in their respective counter affidavits may be stated as follows:

"(a) As per Rule 9 of the Rules, the petitioners will attain the age of superannuation on completing 58 years of age. The 3rd respondent issued 30 days mandatory notice directing the petitioners to retire from service on the respective dates mentioned therein. The notice was issued as per Rule 9 of the Rules framed under G.O.Ms. No. 888, dated 08-12-2000. These Rules are in vogue for the employees working in the Hindu Religious Institutions and Endowments except the servants of Tirumala Tirupathi Devasthanam. It is submitted that the Rules framed under G.O.Ms. No. 888, dated 08-12-2000, are applicable to all the temple employees and special provisions are made applicable to the 8 major temples from Rule 36 onwards. Even Rule 36 makes it clear that the Rules from Rule 36 are made in addition to the other Rules and except Rules 5 and 16, the other Rules shall be applicable to 8 major temples and institutions. Therefore, according to the respondents, Rule 9 of the said Rules is applicable to the petitioners and the petitioners shall retire at the age of 58 years.

(b) Nextly, it is contended that Rule 43 of the Rules deals with Pay, Dearness Allowance (DA), House Rent Allowance (HRA) and other allowances which are on par with the State Government employees. Further, Rule 43(2) of the Rules mandates that a former approval from the Commissioner of Endowments shall however be obtained for fixing DA, HRA and other allowances. Further, Rule 43(3) of the Rules specifies about the application of provisions of Fundamental Rules to the 8 major temples which states that F.R. 56 shall apply to the employees. F.R. 56 is omitted and the Superannuation Act was made applicable to the Government employees for their retirement. This Act was amended by Act 4 of 2014 by inserting the words Sixty Years in place of Fifty Eight Years. The superannuation of temple employees is governed by Rule 9 of the Rules issued in G.O.Ms. No. 888, dated 08-12-2000. Till the amendment is carried out to the Rules, the age of retirement has to be considered as 58 years and not 60 years. Therefore, the contention of the petitioners that as F.R. 56 was omitted in the Superannuation Act i.e. Act 4 of 2014, the same would apply to the 8 major institutions cannot be accepted by any stretch of imagination. It is further contended that the amended Act 4 of 2014, dated 27-6-2014, is not applicable to the petitioners as the Rules framed under G.O.Ms. No. 888, dated 08-12-2000, particularly Rule 9 of the Rules prescribes the age of superannuation of the temple employees as 58 years which is applicable to the petitioners. Therefore, it is contended that the amendment to the Superannuation Act cannot be applied to the petitioners as the petitioners are not Government employees and they being the temple employees are governed by G.O.Ms. No. 888, dated 08-12-2000. In respect of the Government employees, Act 4 of 2014 enhanced the age of retirement by two years i.e. 58 years to 60 years but the similar amendment is not brought to the Rules governing the service conditions of the temple employees and therefore, the temple employees have to retire by 58 years as per the Rules framed thereunder. Thus, the version of the respondents is that unless an amendment is brought to the Rules and G.O.Ms. No. 888, dated 08-12-2000, the petitioners, who are the employees of 8 major temples, cannot seek extension of the age of superannuation beyond 58 years. A policy decision to enhance the age of Government employees has been taken by the State Government by enacting Act 4 of 2014 but the said Act is not applicable to the employees of 8 major temples. Unless the said Act 4 of 2014 is specifically made applicable to the employees of the 8 major temples, they have to retire on attaining the age of 58 years but they cannot claim the age of superannuation in terms of Act 4 of 2014.

(c) It is submitted that Rule 43(3) of the Rules speaks of the application of pay and allowances but not the age of superannuation. In Rule 9 of the Rules, it is categorically mentioned that the age of superannuation of every office holder or servant shall be 58 years except in the case of attenders and watchmen whose age of superannuation shall be 60 years. Since as per Act No. 23 of 1984, F.R. 56 is completely omitted and in view of the fact that Rule 43(3) of the Rules provides that provisions of Fundamental Rules as in force and amended from time to time shall apply. The petitioners are governed by Rule 9 of the Rules framed under G.O.Ms. No. 888, dated 08-12-2000. Thus, it is asserted by the respondents that except Rule 9 of the Rules, there is no other provision available in respect of the age of superannuation of the petitioners and therefore, they have to retire on completing the age of 58 years in terms of Rule 9 of the Rules.

(d) It is further submitted that the Government issued orders in G.O.Ms. No. 147, Finance (HRM-IV) Department, dated 30-6-2014 by extending the age of superannuation to the Government employees from 58 to 60 years and in the said Government Orders, it is categorically specified that the extension of age from 58 years to 60 years is applicable only to the categories mentioned in Clauses (i) to (iv) read with sub-section (6) of Section 2 of the Superannuation Act and hence the petitioners cannot claim the benefit of extension of age on par with the Government employees. The petitioners did not mention about the Government Orders issued in G.O.Ms. No. 147, dated 30-6-2014, whereunder the Government have categorically stated that the said G.Os are applicable only to the categories mentioned in Clauses (i) to (iv) read with sub-section (6) of Section 2 of the Superannuation Act. The category of temple employees does not come under the purview of the Superannuation Act and hence the petitioners cannot claim the benefit of extension of the age of superannuation on par with the Government employees.

(e) Contending as above, the respondents sought to dismiss the writ petitions."

4. I have heard Sri W.B. Srinivas, learned counsel appearing for the petitioners in W.P. Nos. 16190, 11178, 11222, 8339, 9986, 10041, 12257, 12246, 11215, 22351, 7400, 7414, 18798 and 22385 of 2015, Sri P.V.S.S.S. Rama Rao, learned counsel appearing for the petitioners in W.P. Nos. 10869 of 2015 and 23770 of 2014, Sri P. Giri Krishna, learned counsel appearing for the petitioner in W.P. No. 22939 of 2015, Sri V.S.K. Rama Rao, learned counsel appearing for the petitioner in W.P. No. 17092 of 2015, the learned Government Pleader for Endowments appearing for the respondents 1 and 2 in all the writ petitions except for the 2nd respondent in W.P. No. 23770 of 2014, Sri A. Srikanth Reddy, learned Standing Counsel for the 3rd respondent-temple in W.P. Nos. 10041, 9986 and 11222 of 2015, Smt. K. Lalitha, learned Standing Counsel for the 3rd respondent-temple in W.P. Nos. 22385, 18798, 22939, 7414, 7400, 22351, 11215, 12246, 12257, 8339 and 11178 of 2015, Sri V. Venu Gopal Rao, learned Standing Counsel for the 3rd respondent-temple in W.P. Nos. 17092 and 10869 of 2015 and Sri V.T.M. Prasad, learned Standing Counsel for the 1st respondent-temple in W.P. No. 23770 of 2014.

5. It is argued on behalf of the petitioners that 8 temples enumerated in Rule 36 of the Andhra Pradesh Charitable and Hindu Religious Institutions Office Holders and Servants Service Rules, 2000 framed under G.O.Ms. No. 888, Revenue (Endowments-I) Department, dated 08-12-2000, are governed by special provisions contained in Rules 36 to 47. Rule 43 of the Rules makes it clear that the Fundamental Rules of the Government of State of Andhra Pradesh amended from time to time shall apply to the special 8 institutions with regard to the age of superannuation. Subsequently, F.R. 56 is omitted and in its place, the Andhra Pradesh Public Employment Regulation of Age of Superannuation Act, 1984 is enacted. Under the Superannuation Act, 1984, the age of superannuation is 58

years. The Government of Andhra Pradesh amended the Superannuation Act, by Act 4 of 2014 which came into force with effect from 27-6-2014 and under the said Act, the age of superannuation of the Government employees is raised from 58 years to 60 years. Therefore, it has to be necessarily understood that by virtue of the Superannuation Act of 2014, the age of superannuation of the employees working in the 8 special institutions is 60 years but not 58 years and therefore, the orders passed by the respondents directing the petitioners to retire from service at the age of 58 years have to be set aside in these writ petitions and the petitioners shall be allowed to continue in service till they attain the age of 60 years.

6. On the other hand, it is the contention of the respondents that the petitioners are governed by the Rules framed under G.O.Ms. No. 888, dated 08-12-2000. Rule 9 of the Rules mandates that the age of superannuation of every office holder or servant shall be 58 years except in cases of Watchmen and Attenders whose age of superannuation shall be 60 years. According to the respondents, after F.R. 56 was omitted and replaced by the Age of Superannuation Act, 1984, the employees of the 8 special institutions are governed by the Age of Superannuation Act, 1984 but as G.O.Ms. No. 888 was issued by the Government, the petitioners are governed by G.O.Ms. No. 888, dated 08-12-2000, and they cannot claim the age of superannuation at 60 years on par with the Government employments as enhanced by the Superannuation Act, 2014. Their specific contention is unless the Government extends the age of superannuation enhancing the age of the petitioners on par with the Government employees by issuing a G.O., or clarification, the petitioners shall retire at the age of 58 years only.

7. The version of the petitioners is that as per Rule 43 of the Rules, Pay, Dearness Allowance, House Rent Allowance and other allowances of the 8 special institutions are on par with the State Government employees and therefore, the age of superannuation of the said employees also shall be on par with the Government employees.

8. As to this, it is the contention of the respondents that Rule 43(2) does not deal with the age of superannuation, under the Rules made under G.O.Ms. No. 888, dated 08-12-2000, the age of superannuation is dealt with only in Rule 9 and Rule 9 is applicable to the employees of the 8 special institutions on par with all the temple employees except in case of the Last Grade Servants in view of the fact that F.R. 56 is omitted and replaced by the Age of Superannuation Act. They asserted that the Act 4 of 2014 applies to only Government employees and also to the employees mentioned in G.O.Ms. No. 147, dated 30-6-2014, which amended sub-section (1) of Section 3 of the Andhra Pradesh Public Employment Regulation of Age of Superannuation Act, 1984. The amendment is as follows:

"As per sub-section (2) under Section 1 of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, the provisions of the said Act shall apply to the following categories of employees:

(i) persons appointed to public services and posts in connection with the affairs of the state;

(ii) officers and other employees working in any local authority, whose salaries and allowances are paid out of the consolidated fund of the State;

(iii) persons appoints to the Secretariat Staff of the Houses of the State Legislature and

(iv) every other officer or employee whose conditions of service are regulated by the rules framed under the proviso to Article 309 of the Constitution of India before the commencement of this Act, other than the Village Officers and Law Officers, whether appointed before or after the commencement of this Act."

9. Basing on G.O.Ms. No. 147, dated 30-6-2014, it has been argued by the learned Standing Counsel for the respondents that the employees of the 8 special institutions have not been brought under the amendment made by virtue of G.O.Ms. No. 147, dated 30-6-2014, they cannot claim the benefit extended age under the Age of Superannuation Act, 2014 (Act 4 of 2014) and they are governed by Rule 9 of the Rules made under G.O.Ms. No. 888, dated 08-12-2000.

10. In this context, it would be relevant to refer to the judgment in Sureshchandra Singh v. Fertilizer Corpn. of India Ltd. , (2004) 1 SCC 592. The question fell for consideration before the Supreme Court was when the Government of India enhanced the age of retirement to the Central Government employees to 60 years, whether the same shall be applicable to the employees of the Public Sector Enterprises (PSEs). The Supreme Court held that the policy decision not to enhance the age of superannuation of PSEs is not malicious. The reasons stated therefor are (i) huge financial losses incurred by the company; (ii) sick unit; (iii) surplus manpower; (iv) financial dependence on Government; (v) inability to pay salaries; and (vi) only incentive was promotion which would also be blocked in case the retirement age is enhanced, besides involving financial implications. The Supreme Court further held that such a decision based on the above-stated premises cannot be said to be arbitrary, unreasonable or unrelated to the question of retirement age. The Supreme Court further held that each PSE is an independent body/entity and is free to formulate its own service conditions. Hence, equality in retirement age cannot be claimed against the employees of the other corporations.

11. In the instant case, since the petitioners, who are the employees of the 8 special institutions, were not brought under the Superannuation Act, 2014, they cannot claim parity with the Government employees merely because F.R. 56 was omitted and was replaced by the Age of Superannuation Act, 1984. The Age of Superannuation Act, 1984 is made applicable only to those categories of employees which were brought under the purview of the amendment made to Section 3 of the Age of Superannuation Act, 1984 by G.O.Ms. No. 147, dated 30-6-2014.

12. The learned counsel appearing for the petitioners relied on Maya Mathew v. State of Kerala , (2010) 1 SCC 1078, wherein the Supreme Court held that when there are two provisions of law one being a general law and the other being special law govern a matter, the Court should endeavour to apply a harmonious construction to the said provisions. Where the intention of the rule making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect to.

13. The learned counsel appearing for the petitioners further relied on Chandra Prakash Tiwari v. Shakuntala Shukla , (2002) 6 SCC 127, wherein it is held as follows:

"It is then, an elementary rule that an earlier Act must give place to a later, if the two cannot be reconciled lex posterior derogate priori non est novum ut priores leges ad posteriors trahantur (Emphasis supplied) and one Act may repeal another by express words or by implication; for it is enough if there be words which by necessary implication repeal it."

14. The judgments relied on by the learned counsel appearing for the petitioners do not cover the situation in the present cases. In view of the decisions relied on by the learned counsel appearing for the petitioners, it is true that when F.R. 56 is omitted, the petitioners, who are the employees of 8 special institutions, have to be governed by the Age of Superannuation Act, 1984. But that does not mean that in the absence of any special reference to the employees of the 8 special institutions in the Age of Superannuation Act, 2014, they shall be treated on par with the Government employees or to whom the benefit was extended under G.O.Ms. No. 147, dated 30-6-2014.

15. The learned counsel appearing for the petitioners relied on some other judgments but they do not throw any light on the present issue which relates to age of superannuation of the petitioners, which is not covered by the Superannuation Act of 2014. From the provisions of the Age of Superannuation Act, 2014 and also the amendments brought by G.O.Ms. No. 147, dated 30-6-2014, it has to be necessarily understood that unless the age of superannuation has been specifically extended to the employees by making necessary amendment or by issuing any G.O., this Court is not supposed to extend the age of superannuation by judicial interpretation in exercise of power of judicial review. The Age of Superannuation Act, 2014 does not enhance the age of superannuation to 60 years for all the employees working in Public Sector Undertakings and Government Corporations. Similarly, it has also not been extended to the petitioners, who are working in the 8 special category temples. The Andhra Pradesh Public Employment Regulation of Age of Superannuation Amendment Act, 2014, came into force by amending the provisions of the A.P. Public Employment Regulation of Age of Superannuation Act, 1984. The Age of Superannuation Act, 2014 specifically states as to whom the age of superannuation is extended from 58 years to 60 years.

16. In the considered opinion of this Court, despite the fact that after F.R. 56 was omitted and was replaced by the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984, the provisions of the Act 4 of 2014 cannot automatically be made applicable to the petitioners since their case has not been specifically brought under the purview of the Superannuation Act of 2014.

17. Even in the judgment in Principal Secretary to Government v. Chadavada Koteswara Rao , 2002 (1) ALD 537 (DB) relied on by the learned counsel appearing for the petitioners, the Division Bench of this Court held that fixing the age of superannuation for all the employees in the temples including the archakas at 58 years is valid and all the employees are liable to be retired at the age of 58 years whether they are appointed prior to or after the commencement of the Rules. The judgment was rendered by the Division Bench explaining the scope and applicability of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Rules, 2000 made under G.O.Ms. No. 888, dated 08-12-2000. The Division Bench took the view that the condition mentioned in Rule 9 of the said Rules relating to the age of retirement would be applicable to all cases of office holders and servants of the Endowments Institutions. The Division Bench further clarified that the State was well within its power to fix the age of retirement.

18. This Court is of the considered view that after repeal of F.R. 56 and its replacement by the Age of Superannuation Act, 1984, the retirement age of the 8 special institutions was governed by the Age of Superannuation Act, 1984. But after the advent of the Superannuation Act, 2014, the age of retirement is governed by the said Act which does not extend the benefit to the petitioners. After the passing of the Superannuation Act, 2014, the age of superannuation of the petitioners shall be in accordance with Rule 9 of the Andhra Pradesh Charitable and Hindu Religious Institutions Office Holders and Servants Service Rules, 2000 made under G.O.Ms. No. 888, dated 08-12-2000.

19. For the foregoing reasons, the writ petitions fail and are dismissed. It is, however, made clear that if any of the petitioners were continued in service by virtue of the interim orders passed by this Court shall be paid the salary for the period they worked. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.