
(2010) 12 AHC CK 0061
In the Allahabad High Court
Case No : Service Single No. 8347 of 2010

Ganga Ram Kanaujia

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 12 AHC CK 0061

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devendra Kumar Arora, J.—Notice on behalf of opposite party No. 1 has been accepted by the learned Chief Standing Counsel while notice on behalf of opposite parties No. 2 to 4 has been accepted by Sri I.P. Singh, Advocate.

2. Heard learned Counsel for the Petitioner and learned Standing Counsel as well as learned Counsel for the U.P. Jal Nigam.

3. Submission of learned Counsel for the Petitioner is that U.P. Jal Nigam Karamchari (Adhivarshita Par Seva Nivarti) Viniyamawali, 2005 (for short "the Regulation of 2005") has been declared to be ultra vires by a Division Bench of this Court in Writ Petition No. 1595 (SB) of 2009. It is submitted that after quashing of the aforesaid Regulation, there is no Rule prescribing the age of retirement of the Petitioner, therefore, the Petitioner is to be retired keeping the parity with the State Government employees as the age of retirement has been accepted by the U.P. Jal Nigam in principle before the promulgation of Regulation, 2005.

4. I have considered the arguments of learned Counsel for the parties and gone through the record.

5. Admittedly, the controversy has been settled by the Division Bench of this

Court by judgment and order dated 29.07.2010 passed in leading Writ Petition No. 1595 (S/B) of 2009 and "the Regulation of 2005" has been declared ultra-vires. The operative portion of the order reads as under:

By considering the totality of the facts and circumstances of the cases in hand and out of abundance of caution as per maximum EX ABUN DANTI CAUTELA, we are of the view that there is no reasonable nexus differentia to create the classification of employees which was created by the Regulation 2005 and same was never published in gazette and it was published first time in the newspaper on 8th November, 2009. So, Regulations 2005 are ultra vires and discriminatory as per Article 14 of the Constitution of India and not sustainable in the eye of law for the reasons mentioned above. Therefore, all the writ petitions are allowed and we set aside the Regulations 2005. So, all the employees of the Jal Nigam shall retire on attaining the age of 60 years like State Government employees.

However, this benefit of the enhancement of age shall be confined to the persons who have filed the writ petition before their retirement and obtained the interim order. But interim order was vacated by an order passed by this Court on 10.02.2010 (by the Bench consisting of Hon"ble Sunil Ambwani, J and Hon"ble Dr. Satish Chandra, J), where it was observed:

The Petitioners appointed after the establishment of the Jal Nigam on 18.06.1975 are covered by the U.P. Jal Nigam (Retirement on Superannuation) Regulation, 2005. They have superannuated and are not entitled to continue up to 60 years. They can be adequately compensated in terms of pay and allowances if the writ petition succeeds. The interim orders in all the writ petitions are therefore Avacated.

Similar benefit is already available to the employees who are continuing in service by virtue of interim order passed by the competent court. They should continue till the age of 60 years.

The law helps those who are vigilant and not to those who go to sleep as per maxim VIGILANTIBUS, ET NON DORMINTIBUS, JURA SUB VENIUNT. So, this benefit will not be given to the employees who peacefully retired on attaining the age of 58 years and never came before the Court. But there may be another class of the employees who came before this Court and could not get the interim order but writ petitions were admitted. Admittedly, these employees have not worked. So, on the basis of no pay no work, they will not be entitled for arrears. However, their back wages will be restricted @ 20% of the basic salary as per the ratio laid down in the case of G. Vallikumari Vs. Andhra Education Society and Others, Lastly, it is clarified that the extended service will be counted for all the purpose to the above mentioned employees. The petitions are allowed. No cost.

6. Admittedly, the controversy has been concluded by the Division Bench of this Court vide judgment and order dated 29.07.2010 passed in Writ Petition No. 1595 (S/B) of 2009 and the case of the Petitioner is squarely covered by the said judgment.

7. In view of the above, the writ petition is allowed in terms of judgment and order dated 29.07.2010 passed in Writ Petition No. 1595 (S/B) of 2009 and the impugned order/notice dated 21.09.2010, contained in Annexure-1 to the writ petition, issued in pursuance of the Regulations, 2005 is hereby quashed. The Petitioner is entitled to continue in service upto the age of 60 years subject to any decision of the Apex Court.