

(2002) 10 AHC CK 0053

In the Allahabad High Court

Case No : C.M.W.P. No's. 28561 and 28563 of 2002

Gayatri Prasad Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Uttar Pradesh Fundamental (Amendment) Rules, 2002 — Rule 56

Citation : (2002) 5 AWC 4280

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Arvind Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—By means of the above writ petitions, Petitioners have challenged the orders dated 28.6.2002, passed by Principal, Government Jubilee Inter College, Gorakhpur, informing them that they have attained the age of superannuation on 30.6.2002 and as such they be retired. The Petitioners have further claimed the relief to declare the proviso of Fundamental Rule 56 (a) of the Financial Hand Book Volume II, Parts 2 to 4, as ultra vires to the provisions of the Constitution of India.

2. By orders dated 25.7.2002, time was given to the learned standing counsel to file counter-affidavit but no counter-affidavit has been filed so far.

3. Learned Counsel for the Petitioners has submitted that since the points raised in the writ petitions are purely questions of law and do not involve any investigation of facts the same may be decided without the counter-affidavit. The learned standing counsel does not seem to oppose this prayer.

4. I have heard Sri Arvind Srivastava, learned Counsel appearing for Petitioners in both writ petitions and learned standing counsel for Respondents.

5. Petitioner Gayatri Prasad Tiwari in Civil Misc. Writ Petition No. 28561 of 2002 was appointed as lecturer in Physics in Government Jubilee Inter College, Gorakhpur, on 29.6.1968 and has completed 58 years of service on 4.7.2001. Petitioner Zamal Ahmad, in Civil Misc. Writ Petition No. 28563 of 2002, was appointed as teacher in L.T. grade in the same college. He was promoted as lecturer in 1981 and has completed 58 years of service on 5.8.2001. According to Government order dated 21.3.1984, the teachers are to continue in service upto the end of next session, i.e., till 30.6.2002. Following the said order-Petitioners were allowed to continue in service upto the end of academic session 2001-2002, i.e., upto 30.6.2002. In the meantime, the State Government decided to increase the retirement age of Government servants from 58 years to 60 years and for this purpose, Government order dated 28.11.2001, was issued to be operative with immediate effect. Paragraph 3 of the order states that Fundamental Rule 56 of Financial Hand Book, Volume II, Parts 2 to 4 shall be amended suitably by the finance department.

6. By Uttar Pradesh Fundamental (Amendment) Rules, 2002, made by the State Government under Article 309 of the Constitution of India, notified on June 27 2002, Fundamental Rule 56 was amended by increasing the retirement age from 58 to 60 years for those Government servants, who have not completed 58 years on or before the 1st November 2001. Amended Sub-rule (2-1) provides that no Government servant shall be given extension in service beyond the age of retirement of sixty years provided that if any Government servant dealing with budget work, or working as a full time member of a committee which is to be wound up within a short period of time, may be given extension of service for a period not exceeding three months. It is further provided that the Government shall have a right to terminate the extension of service before the expiry of such extension by giving a notice in writing of not less than three months in the case of a permanent and in case of temporary service, one month notice or one month pay in lieu of notice.

7. Sri Arvind Srivastava, learned Counsel appearing for Petitioners, submits that by Government order dated 21.3.1984, the age of superannuation of all the teachers, working in Government educational institutions, was extended till the end of academic session, i.e., 30th June ; for those, who are retiring in the middle of academic session, i.e., after 1st July and before 30th June, of the year, in which they are attaining the age of 58 years and thus, the Petitioners were in service on 28.11.2001 when the State Government decided to increase the retirement age of Government servants to sixty years. The Petitioners, according to him, have a right to continue in service till attaining the age of sixty years. He further submits that these Government teachers, having received the benefits of increased age, beyond the age of their retirement on completing 58 years, are a class within the class and in case the rights, given to the Government servants in respect of increasement of age by Government order dated 28.11.2001, is not provided, they shall be discriminated which is in violation of Articles 14 and 16 of the Constitution of India.

8. I am unable to accept the submission of learned Counsel for Petitioners. By Government order dated 21.3.1984, the retirement age of all Government servants was not increased. In order to protect the interest of students and to take care of the break in teaching work on retirement in the middle of academic session, it was provided by the State Government under the provisions of Fundamental Rule 56 (a) to give extensions to teachers upto the end of academic session during which they are retired. The benefit of extension was not provided to all the teachers. It was subject to the satisfactory work and conduct during the service period of such teachers, their physical and mental fitness and the fact that they were teaching subjects regularly in the institution. In every such a case before giving such extension, the competent officer was required to obtain the orders of State Government. By the same Government order, it is provided that those officers, who are not teaching, shall not be assigned teaching work for any reason to get this benefit. A special provision was made in respect of teachers, who have received National and State Awards that they be given two years" extension in service, if they are physically and mentally fit and the condition of their retirement at the end of academic session was also extended beyond the age of superannuation at the age of sixty years.

9. The aforesaid Government order dated 21.3.1984, as such, provided a condition of extension of service for the specific purpose subject to the satisfactory work and conduct as well as the fitness and on condition that such beneficiary was teaching the subject regularly. The satisfaction was vested in the Government on the representation of competent authority. In the case of Petitioners, the aforesaid extension was granted by State Government and that the order dated 3.7.2001, issued in favour of Petitioner Gayatri Prasad Tiwari, clearly provided that his services be extended upto 30.6.2002. The substituted Fundamental Rule 56 (a) is quoted as below:

Clause as hereby substituted 56 (a). Except as otherwise provided in this rule every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Government servant, whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years:

Provided further that a Government servant, who has attained the age of fifty eight years on or before the first day of November 2001, and is on extension in service shall retire from service on expiry of his extended period of service.

(a-1) No Government servant shall be granted extension in service beyond the age of retirement of sixty years:

Provided that a Government servant dealing with budget work or working as a full time member of a committee, which is to be wound up, within a short period of time, may be granted by the Government extension of service for a period not exceeding three months in public interest:

Provided further that the Government shall have a right to terminate the extension of service before the expiry of such extension by giving a notice in writing of not less than three months in the case of a permanent and one month in the case of temporary Government servant, or pay and allowances in lieu of such notice.

10. The proviso to substituted Fundamental Rule 56 (a) clearly states that a Government servant, who has attained the age of fifty eight years on or before the 1st day of November 2001 and is on extension of service, shall retire from service on expiry of his extended period of service. It is thus absolutely clear, without any doubt, that the increased age of retirement was not applicable to a Government servant, who had attained the age of 58 years on or before 1.11.2001 and was on extension in service. Since Petitioners were continuing in service on extension granted to them individually in pursuance of the Government order dated 21.3.1984, they are not entitled to the benefit of Uttar Pradesh Fundamental (Amendment) Rules, 2002.

11. Coming to the next submission regarding the validity of Fundamental Rule 56 (a), as amended by U.P. Fundamental (Amendment) Rules, 2002, I do not find any substance in the argument that Petitioners have been discriminated without there being any reasonable basis of classification. According to the Petitioners, since they were continuing in Government service when subsequent rules of fundamental came into force, there was no question in discriminating them by allowing them to retire before completing the age of sixty years, which benefit it was made available to all the Government servants. The argument proceeds on a fallacious assumption that Petitioners were continuing in service and that their age of superannuation was increased upto 30.6.2001, i.e., end of academic session. Petitioners were not serving under the increased age of superannuation but they were given extension in service under Fundamental Rule 56 (a) for specific purpose of protecting the interest of students. An extension of service does not increase the age of superannuation. The services of Petitioners were extended for specific purpose. The extension was dependant upon service condition provided in the Government order and was given on individual basis. The amended Fundamental Rule 56 (a) do not extend the benefit of increased retirement age to those persons, who had attained fifty eight years of age before 1.11.2001 and were on extension in service. The classification is valid and it cannot, therefore, be said to be illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

12. For the aforesaid reasons, both writ petitions are dismissed.