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(2004) 10 AHC CK 0214

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26337 of 2004

Girdhar Gopal Kanchan — APPELLANT

Vs

Pariyojna Nideshak, District Gramya Vikas Abhikaran, Ayukt Gramya Vikas, Chief Development Officer and State of U.P. — RESPONDENT

Date of Decision : 04-10-2004

Acts Referred:
Constitution of India, 1950 — Article 12, 309
Uttar Pradesh Fundamental Rules — Rule 12

Citation : (2005) 6 AWC 5418

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Yasharth, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the petitioner and the Standing Counsel for the respondents.

2. This writ petition has been filed challenging the validity and correctness of the impugned order dated 1.7.2004 (Annexure 1 to the writ petition). By the order he was informed that he would retire w.e.f. 31.7.2004 on attaining the age of superannuation. i.e., the age of 58 years in pursuance of Government order dated 9.3.2004 and the directions contained in a letter of respondent No. 2 dated 26.3.2004 (Annexure 3 to the writ petition).

3. The service conditions of the employees of each Zila Gramya Vikas Abhikaran, i.e., the District Rural Development Agency (hereinafter called as D.R.D.A.) are regulated by the service rules framed under Article 309 of the Constitution. Rule 12 of the Rules provide; that the service conditions of the employees of Zila Gramya Vikas Abhikaran shall be the same as that of the State Government employees. The State Government by a policy decision reduced the age of Superannuation of its employees working in D.R.D.A. from 60 to 58 years as is evident from the letters of the joint Secretary, Government of U.P.. Lucknow

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dated 93.2004 and that of the Commissioner, Gramya Vikas. U.P. Lucknow dated 26.3.2004.

4. It is submitted by the counsel for the petitioner that the date of birth of the petitioner being 12.6.1945 he has already completed 58 years of age on 12.6.2001. It is further submitted that under the rules the petitioner is entitled to be deemed in service up to the age of 60 years. The petitioner would accordingly retire from service on 30.6.2005 if the age of superannuation is treated as 60 years. It is urged that since he has already worked beyond the age of 58 years as such he may be permitted to continue to work up to the age of 60 years in view of the Government Order dated 29.10.1983. The Government Order reads as under:-

? la[;k & ;w?vks? 360 @68-6-83 @ xzk?fo?&6

izs"kd]

izfrek n;ky] fo''ks"k lfpo] m?kj izns''k ''kklu A

lsok esa]

leLr ftykf/kdkjh @ v/;{k] ftyk xzkE; fodkl vfHkdj.k m?kj izns''k A

fo"k;& xzkE; fodkl vfHkdj.kksa esa lh/kh HkrhZ gsrq vf/kdre vk;q lhek A

egksn;]

vkils ;g dgus dk funsZ''k gqvk gS fd Hkkjr ljdkj dh uhfr ds vuq:i ftyk xzkE; fodkl vfHkdj.kks esa lh/kh HkrhZ ls fu;qDr fd;s tkus okys deZpkfj;ksa dks lsok laca/kh ekkeyksa esa vfHkdj.kksa }kjk lHkh lqfo/kk,a mlh izdkj miyC/k djk;h tkrh gS tks jkT; ljdkj ds vLFkkbZ deZpkfj;ksa dks miyC/k gks bl ?e esa ''kklu ds dkfeZd foHkkx }kjk tkjh vf/klwpuk la[;k 1822 @ 1981 dkfeZd&2 fnukad 24 Qjojh] 1986 dh ,d izfr vfHkdj.k ds lwpukFkZ ,oa iFkiznZ''kukFkZ layXud dh tkrh gS A

layXud% ;FkksDr

Hkonh;] izfrek n;ky fo''ks"k lfpo A ?

5. A perusal of the Government Order dated 29.10.1983 speaks about the maximum age limit of the employees for appointment by direct recruitment in D.R.D.A. It provides that such directly appointed employees may be given all facilities to which a temporary Government servant is entitled.

6. By notification dated 28.11.2001 the age of retirement of the Government employees was enhanced to 60 years. It reads as under:-

?m?kj izns''k ''kklu dkfeZd vuqHkkx&1 la[;k&1098 @ dkfeZd& 1@2001y[ku?] fnukad 28 uoEcj] 2001

vf/klwpuk

jkT;k/khu ljdkjh lsodksa dh vf/ko"kZrk vk;q yksdfgr esa 58 o"kZ ds LFkku ij 60

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o"kZ djus dh jkT; iky egksn;] ,rn~}kjk Lohd`r iznku djrs gSaA

2- ;g vkns''k rkRdkfyd izhkko ls ykxw fd;s tk;sxs A

3- fo?kh; gLr iqfLrd [k.M&2] Hkkx&2 ls 4 ds ewy fu;e&36 esa ;Fkko'';d la''kks/ku dh dk;Zokgh izFkd ls foRr foHkkx }kjk dh tk;sxh A

4- mi;qZDr ls lEcfU/kr vko'';d micU/kksa ds ckjs esa foLr`r fn''kk funsZ''k jkT; ljdkj }kjk izfkd ls tkjh fd;s tk;sxsa A

gfjd`".k lfpo A ?

7. By G.O. dated 28.11.2001 the age! of retirement of Government employees was enhanced from 58 years to 60 years with immediate effect.

8. The contention of the counsel for the petitioner is that an opinion was sought by the Project Director, D.R.D.A. Chitrakoot (respondent No. 1), from the Commissioner, Gramya Vikas, U.P., Lucknow (respondent No. 2) about the age of retirement at 60 years in respect of the petitioner, but no opinion or order was passed by respondent No. 2 and the petitioner has been retired on the basis of order dated 18.5.2004 which is produced as under :-

? dk;kZy; & Kki

dkfeZd vuqHkkx&1 m0iz0 ''kklu ds ''kklukns''k la[;k 1098 @ dfeZd&1@2001 y[ku? fnukad 28 ucEcj&201 ds }kjk jkT;k/khu ljdkjh lsodksa dh vf/ko"kZrk vk;q yksdfgr esa 58 o"kZ ds LFkku ij 60 o"kZ djus dh Lohd`r iznku dh xbZ Fkh A

vk;qDr xzkE; fodkl] m0 iz0 y[ku? ds dk;kZy; i= la[;k th0 vk0 & 37 @ LFkkiuk & 5@2004 y[ku? fnukad 26 ekpZ 2004 ds lkFk layXu xkzE; fodkl vuqHkkx & 2 ds ''kklukns''k la[;k 1063 @ 38-2-2003-2 ?91? @ Mh 03 fnukad 9 ekpZ 2004 izkIr gqvk gS] ftlds }kjk }kjk ftyk xzkE; fodkl vfHkdj.kksa esa dk;Zjr lh/kh HkrhZ ds vf/kdkfj;ksa @ deZpkfj;ksa dh lsok fuo`?k dh vk;q 58 o"kZ j[kus dk fu.kZ; fy;k x;k gS A

pw?fd ftyk xzkE; fodkl vfHkdj.k] fp=dwV esa rSukr Jh uugsayky] ys[kkdkj dh tUe frfFk 13-6-1945 ds vuqlkj 58 o"kZ dh vk;q fnukad 30-6-2003 dks gksrh gS] vLrq Jh uUgsa yky] ys[kdkj] ftyk xzkE; fodkl vfHkdj.k, fp=dwV dh vf/ko"kZrk vk;q iwoZ gksus ds QyLo:i budks vk;qDr] xzkE; fodkl] m0iz0 y[ku? ds i= la[;k 378 @ LFkk0&5@2004 fnukad 28-4-2004 ds vuqikyu esa rRdky izhkko ls lsok fuo`Rr fd;k tkrk gS A

g0vi0 ?lksuiky? ifj;kstuk funs''kd ftyk xzkE; fodk vfHkdj.k fp=dwV A ?

9. From a perusal of the impugned order dated 18.5.2004 it is clear that the Commissioner had informed that in view of Government Order dated 9.3.2004 the age of retirement of the employees directly recruited in the Zila Gramya Vikas Abhikarans is 58 years. Admittedly there are no rules governing the service conditions of the petitioner and therefore the executive instructions would not be binding upon the petitioner. Moreover the notification dated 28.11.2001 has not been adopted by the D.R.D.A. Chitrakoot as such the employees of the D.R.D.A.

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would continue to be retired at the age of 58 years and therefore the age of retirement of the employees of District Rural Development Agency would be 58 years. The petitioner has not filed his appointment letter along with the writ petition and there is nothing on record to show that he is a Government employee.

10. The letter of the Commissioner (respondent No. 2) is the communication of the Government Order aforesaid. The D.R.D.A. Lucknow is neither State within the meaning of Article 12 of the Constitution nor is an instrumentality of the State. He is an employee of the society. It is alleged that the salaries of its employees are paid from the joint account of the Project Director and the Commissioner Gramya Vikas. It is further submitted that though the D.R.D.A. is registered under the Societies Registration Act, the officers of the State are appointed in the D.R.D.A. and the District Magistrate is its ex-officio president; that the Government of U.P. has framed service rules under Article 309 of the Constitution. Rule 12 of the Rules provides that the service conditions of the employees of the D.R.D.A. shall be the same as of the employees of the State Government. It is also stated that the rule has not been amended till date and the retirement age has also not been changed; that the earlier Government order dated 28.1 1.2001 fixed the retirement age of the employees at 60 years in place of 58 years which has also not been changed and in this view of the matter the petitioner is entitled to the benefits of service rules as the State of U.P. vide circular dated 17.3.1994 made the service conditions of the employees of D.R.D.A. at par with the State employees granting the same benefits as are granted to the State employees.

11. It is submitted that the rules framed under Article 309 of the Constitution have been adopted by the State vide circulars dated 17.3.1994 and 28.11.2001 and it would be highly arbitrary, discriminatory and against law to retire the petitioner on attaining the age of 58 years in view of the U.P. Fundamental Rules as amended on 27.6.2003. The action of the respondents therefore also is violative of Government Order dated 17.3.1994.

12. The D.R.D.A, is only an Agency and a registered society. It does not conform to any test laid down by the apex court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, & Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,

13. There is no material on record to show that the District Rural Development Agency is an instrumentality of the State within the meaning of Article 12 of the Constitution. There is no material to show that the State Government has deep and pervasive control on day-to-day affairs of the Agency and that the State Government pays the salaries of the employees working under the Agency.

14. For the reasons stated above, the writ petition is not maintainable and is accordingly dismissed. No order as to costs.

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