

(1993) 07 AHC CK 0010

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6896 of 1993

Girija Prasad Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group D Employees) Rules, 1984 — Rule 20

Citation : (1993) 3 AWC 1592

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : Gajendra Pratap, for the Appellant;

Judgement

M. Katju, J.—This Writ Petition has been filed with a prayer that the Petitioner be continued in service till he attains the age of 60 years.

2. The Petitioner is a clerk in Sri Nrisingh Singh Junior High School, Dinapur, Ghazipur, which is a recognised Junior High School, His grievance is that he is being retired at the age of 58 years on 31-7-1993 in pursuance of Rule 20 of the U.P. Recognised Basic Schools (Junior High Schools) Recruitment and Condition of Service of Clerks and Rule "Gha" Employees Rule 1984. The said Rule 20 reads as follows.;

Adhismita kisi manyata prapta school ka pratyek lipik ka samooch "Gha" ka karmachari us dinak ko sewa nibrit ho ga jab uske aayu kramash 58 aur 60 varsh ho jai. Yadi aisa dinank mas ke bich me parta ho to mas ke antim dinank ko sewa nibrit ho ga.

3. Heard learned Counsels for the parties.

4. The learned Counsel for the Petitioner has urged that Rule 20 is unconstitutional as it is arbitrary and discriminatory. Learned Counsel has invited

my attention to Regulation 21 of Chapter III framed under the U.P. Intermediate Education Act, 1921, which states that the age of superannuation of Principal or Head Master, Teachers or Clerks or Librarian and inferior servants of a High School or Intermediate College shall be 60 years. Learned Counsel has urged that there is no good reason for discriminating against clerk of recognised Junior High Schools, and they should also be allowed to continue in service till the age of 60 years. In my opinion, this argument is correct. I see no good reason for discriminating between clerks of Junior High School and Clerks of recognised Intermediate Colleges and High Schools. It may be mentioned that a clerical job is of routine nature which does not call for any special skill. Hence in the case of clerks there should not be two different age limits of retirement. What difference does it make whether a clerk is working in a High School or in a Junior High School ? The nature of functions will be basically the same. Moreover, now when the longevity of people has risen, and clerks are fit to work upto the age of 60 years, it would be unfair to retire them at the age of 58 years. After all a clerk does not have to do strenuous physical work like a soldier or labourer. Hence there is no good reason to retire him at the age of 58 years. It may be noted that the Hon. Supreme Court has in All Indian Judges Association v. Union of India 1991 UPLBEC 1387. directed that the age of retirement of District Judges should be raised from 58 years to 60 years. The ratio of the said decision will apply to the case of clerks also. One of the reasons given by the Supreme Court for raising the age of retirement of a District Judge from 58 years to 60 years was that the work of Judicial Officers is usually sedentary while that of the Executive Officers involves a lot of Physical movement (vide-para 20). By the same reasoning the retirement age of clerks should also be raised to 60 years as their job is mainly sedentary. Hence in my opinion Rule 20 of the U.P. Recognised Basic Schools (Junior High Schools) Recruitment and Condition of Service of Clerks and Rule "Gha" Employees Rule 1984 to the extent that it lays down that the clerks in the Junior High Schools should be retired at the age of 58 years is violative of Article 14 of the Constitution for the reasons given above. A mandamus is issued to the Respondents to allow the Petitioner to continue in service till the age of 60 years and pay him salary accordingly. The Writ Petition is allowed. No order as to costs.

5. Before parting with this case I would like to make a recommendation to the State Government to amend the service rules in all departments and raise the age of retirement of clerical and other Class III employees in all services upto 60 years, except where the nature of work requires special physical effort, This way the government will benefit by the experience of these senior employees. Of course the provisions for compulsory retirement can be retained in prematurely retire an employee who is incapable of working, but normally all Class III employees should continue till the age of 60 years. Let a copy of this judgment be sent to the Chief Secretary, U.P. Government Home Secretary, Central Government for suitable action.