
(2013) 07 AHC CK 0316

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41265 of 2013

Gopesh Chandra Saxena

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2014) 2 ALJ 785 : (2013) 6 AWC 6015 : (2013) 3 UPLBEC 2564

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : S.D. Shukla, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—The petitioner is an employee of Fish Farmers Development Agency, a society registered under the Societies Registration Act, 1860 (hereinafter referred to as the "Act, 1860"), in which the promoters are the State and its authorities. The dispute relates to age of retirement. The Chief Executive Officer by means of impugned notice dated 21.5.2013 has informed petitioner that he would retire on attaining the age of 58 years, i.e. on 31.7.2013. The submission advanced by Sri S.D. Shukla, learned Counsel for the petitioner is that petitioner's status in all respect is similar to that of employees of District Rural Development Agency (hereinafter referred to as the "DRDA") and in respect thereto there are certain decisions of this Court holding that DRDA being a society formed by State Government, therefore, a State under Article 12 of the Constitution and hence its employees are entitled to continue in service till he/they attained the age of 60 years in accordance with Fundamental Rule 56 which shall be applicable to them. It is contended that petitioner is entitled to continue up to the age of 60 years in view of aforesaid decisions, namely, Kalika Prasad v. State of U.P. and others, Writ Petition No. 45 (SS) of 2005, decided on 9.4.2007; Jai Indra Dutt Sharma v. State of U.P. and others, Writ Petition No. 39043 of 2006, decided on 8.9.2009; and Ram Pal Singh Chauhan v. State of U.P. and others, Writ Petition No. 2917 of 2012, decided on 31.5.2012.

2. It could not be disputed by learned Counsel for the petitioner that in case the employees of DRDA, as per existing law, are not entitled to get protection of Fundamental Rule 56, the petitioner would also liable to meet the same fate. I would now thus proceed to consider as to what is the position in DRDA with regard to age of retirement vis-a-vis various authorities of this Court.

3. DRDA is a society registered under Act, 1860 and employees thereof are not holders of civil post, hence to govern the conditions of their service and their engagement etc., a Government Order was issued on 9.3.2004, wherein besides others, age of retirement of employees of DRDA prescribed was 58 years.

4. A dispute was raised by employees of DRDA that the aforesaid Government Order provides that the conditions of service which are not specifically provided therein may be the same as are applicable to the State Government employees of corresponding status, hence, they are also holders of civil post and Government servant. However, they contended that under Fundamental Rule 56, applicable to State Government employees, age of retirement prescribed is 60 years and, therefore, they are also entitled to continue till 60 years of age and cannot be made to retire on attaining the age of 58 years, as provided in Government Order dated 9.3.2004. This dispute came to be considered before a Single Judge (myself) in Writ Petition No. 32288 of 2008, *Banshi Dhar Mishra v. State of U.P. and others*, but the claim of employees was negated by judgment dated 24.1.2011.

5. However a Single Judge of this Court (Lucknow Bench) in *Kalika Prasad (supra)* held that Fundamental Rule 56 is also applicable to employees of DRDA and the age of superannuation therein being 60 years, the Government Order dated 9.3.2004 cannot modify the age of retirement prescribed in Fundamental Rule 56 and, consequently, quashing the Government Order dated 9.3.2004, it was held that employees of DRDA are entitled to retire on attaining the age of 60 years in accordance with Fundamental Rule 56.

6. This decision was followed by this Court in *Jai Indra Dutt Sharma (supra)* and *Ram Pal Singh Chauhan (supra)*. In Writ Petition No. 10464 of 2009, *Pitamber v. State of U.P. and others*, decided on 23.3.2010, this Court also followed the aforesaid view and there against, the matter came before a Division Bench in intra-Court appeal, i.e., Special Appeal (Defective) No. 687 of 2010, *State of U.P. and others v. Pitamber*. The Division Bench formulated following question:

Whether employees of DRDA are Government employees and are holding civil post in the civil service of State to make applicable Fundamental Rule 56.

7. Two more questions were formulated by this Court as under:

(1) Considering the Bye-laws of the Society and more specifically Bye-laws 19 and 20(h) read with Government Notification dated 17.3.1994, was it open to the State Government to have issued the Government Order dated 9.3.2004 fixing the age of retirement of the employees of DRDA as 58 years.

(2) Whether the employees of DRDA are holding civil posts and/or are Government employees of the State, in order to make applicable Rule 56 of the Fundamental Rules and, consequently, would they be governed by Government Notification dated 28.11.2001, whereby the age of retirement of the Government servants has been fixed as 60 years under Rule 56 of the Fundamental Rules.

8. Answering the above questions in paras 16 and 17, the Division Bench said in its judgment dated 19.8.2010 as under:

16. Considering the above referred judgments and the material on record, it will be clear that firstly the DRDA is a Society registered under the Societies Registration Act. Its funding is 70 percent from the Central Government and 30 percent from the State Government. The members of the Society and also the Working Committee are basically persons holding the posts in Government service, mostly in the State Government and some in the Central Government, as the object is of rural development. Bye-law 20(h) recognizes that the staff are to be appointed by the Governing Body. The accounts are to be approved by the Governing Body in its annual general meeting. Suits are to be filed against the Society. Thus, though there may be funding by the Central/State Governments and control by the State Government, nonetheless they are employees of the Society. Some posts are filled up on transfer by the Governor and in respect of others, appointments are to be made by the Chief Executive Officer, who is the District Magistrate. Considering the tests laid down in *Kanik Chandra Dutta (supra)*, we are clearly of the opinion that the tests laid down in the judgment of the Supreme Court are not satisfied. Once it is held that they are the employees of DRDA and are not holding civil posts in the service of State, Rule 56 of the Fundamental Rule would not apply to them.

17. In the light of that, we are clearly of the opinion that the appeal filed by the State will have to be allowed. The employees of DRDA after 9.3.2004 will have to retire at the age of 58 years. Consequently, we hold that the view taken by the learned Single Judge in the case of *Kalika Prasad (supra)* that Rule 56 of the Fundamental Rules would apply so far as the employees of DRDA are concerned, does not lay down the correct law and, hence, we overrule the judgment in *Kalika Prasad (supra)* and all other judgments, which have taken a similar view.

9. In the light of the view taken by Division Bench the appeal was allowed and the judgment of learned Single Judge was set aside besides overruling the judgment in *Kalika Prasad (supra)*.

10. There are two more writ petitions, i.e., Writ Petitions No. 51679 of 2009, 29195 of 2011, *Shoeb Ullah Khan v. State of U.P. and others*. Both these writ petitions came up before a Division Bench on 4.7.2011. Following the decision in *State of U.P. and others v. Pitamber (supra)*, the Court held that employees of DRDA are entitled to continue till the age of retirement, i.e., 58 years only and not 60 years, therefore, the notice issued to them, informing their date of retirement on attaining the age of superannuation as 58 years were valid.

11. In view of the aforesaid Division Bench judgments the relief sought by petitioner, founded on Single Judge decision in Kalika Prasad (supra), which has already been overruled, cannot be granted.

12. Since the employees of DRDA, as per existing law, are liable to be retired on attaining the age of 58 years and Fundamental Rule 56 is not applicable to them, the petitioner also cannot claim any right otherwise. The writ petition lacks merit. Dismissed.