

(2006) 04 UK CK 0029

In the Uttarakhand High Court

Case No : Writ Petition No's. 20, 22, 50, 87, 90, 104 and 264 (S/B) of 2006

G.P. Tyagi

APPELLANT

Vs

Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam
and Others

RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Constitution of India, 1950 — Article 142
Uttar Pradesh Fundamental Rules — Rule 56
Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 3, 31, 37

Citation : (2006) 2 UC 1151

Hon'ble Judges : P.C.Verma, J;B.C.Kandpal, J

Bench : Division Bench

Advocate : Sudhanshu Dhulia, Alok Singh, Dharmendra Barthwal, S.S. Chauhan, P. Singh and Geeta Parihar, for the Appellant; D.S. Patni, K.P. Upadhyay, Standing Counsel and Sudhir Singh, for the Respondent

Final Decision : Allowed

Judgement

1. The controversy involved in all these writ petitions is one and the same hence they all are being disposed of by this common judgment.

2. By means of all these writ petitions, the Petitioners have prayed for writ of mandamus commanding the Respondents to allow the Petitioners to continue in service till they completed the age of 60 till 31-07-2006 and further a writ of mandamus commanding the Respondents to grant all benefits, including salary to the Petitioners till they attain the age of 60 years.

3. Brief facts of the cases as narrated by the Petitioners are that in all these writ petitions, Petitioners were appointed in the Local Self Government Engineering Department of the erstwhile State of Uttar Pradesh. In the year 1975, the State Legislature promulgated an Act viz. Uttar Pradesh Water Supply and Sewerage Act, 1975 (hereinafter referred to as the Act) u/s 3 whereof, the State Government was empowered to issue notification to constitute a Corporation by

the name of Uttar Pradesh Jal Nigam pursuant to which a notification was issued establishing the same w.e.f. 18-06-1975. From the date of establishment of the Nigam, which is the appointed date as enumerated in Section 31 of the Act, all properties and assets which immediately before the appointed date were vested in the State Government for the purposes of Local Self Government Engineering Department shall vest in and stand transferred to the Nigam and all rights, liabilities and obligations of the Nigam. u/s 37 of the Act, every person who was employed in the Local Self Government Engineering Department of the State of U.P. shall on and from the appointed date i.e. 18-06-1975 would become employee of the Nigam and shall hold his office or service therein by the same tenure, at the same remuneration and upon same other terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed date if this Act had not come into force and shall continue to do so until his remuneration or other terms and conditions of service are revised or altered by the Nigam under or in pursuance of any law or in accordance with any provision which for the time being governed his service. Before the appointed date dated 18-06-1975, the age of superannuation of all these Petitioners under Rule 56(a) of the Uttar Pradesh Fundamental Rules (in short the Rules) was 58 years which could be extended in exceptional circumstances up to the age of 60 years. On 28-11-2001, the State of Uttar Pradesh issued a notification notifying there under approval of the Governor for increasing the age of superannuation of government servants from 58 to 60 years in public interest pursuant to which Rules were amended by Uttar Pradesh Fundamental (Amendment) Rules, 2002 by notification dated 27-06-2002 which came into effect from 28-11-2001. After the creation of State of Uttaranchal on 09-11-2000 by virtue of the U.P. Reorganization Act, 2000, Uttaranchal Government on 15-06-2002 also issued a notification notifying there under enhancement of age of retirement of Government servants from 58 to 60 years. It has been alleged in the writ petitions that by virtue of said notification dated 15-06-2002, the Petitioners are also entitled for enhancement of retirement age from 58 years to 60 years. The grievance of the Petitioners is that U.P. Jal Nigam and Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam are not giving the benefit of retirement age from 58 years to 60 years to the employees of respective Nigam saying Government orders of State of U.P. and State of Uttaranchal increasing age of superannuation is only available to Government servants and not to the employees of Nigams. However, on 29-07-2005, Respondent No. 1 issued an office memo dated 29-07-2005 enhancing the age of superannuation from 58 to 60 years in respect of employees of Nigam also. This office memo dated 29-07-2005 has been challenged by the Petitioners on the ground that the cut-off date for enhanced age of superannuation from 58 years to 60 years cannot be fixed for those employees who will be retiring after 29-07-2005. Since all the Petitioners in the writ petitions were retired before the issuance of the office memo dated 29-07-2005, therefore, it has been alleged that these Petitioners should also be given the continuation of service upto the age of 60 years. Therefore, it has been

alleged that all employees of Respondent-Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam are entitled for benefit of enhanced age of superannuation from 58 to 60 years w.e.f. 28-11-2001 and in any case w.e.f. 15-06-2002.

4. A counter affidavit has been filed on behalf of the Respondent Nos. 1, 2 and 3 in which it has been stated the Petitioners have claimed the extension in the age of superannuation as is being given to Government servants in the State of Uttaranchal from 58 years to 60 years after relying on the judgment of Hon''ble Supreme Court in the case of Harvindar Kumar v. Chief Engineer Karmik and Ors. in which the age of superannuation has been extended from 58 years to 60 years. It has been submitted that the present case is entirely different from that of the case which was before the Hon''ble Supreme Court. The Petitioners have accepted the date of superannuation of 58 years and did not move any representation or file any case before any Court of Law till passing the order of the Hon''ble Supreme Court. Hence, it is stated that it is settled position of law that those who sleep over their rights should not be granted indulgence by Court. It has also been stated that the Petitioners preferred their claim for the benefit of two years in service is highly belated. It has further been stated that vide G.O. dated 28-11-2001, the State Govt. enhanced the age of superannuation from 58 to 60 years to its employees and further by Fetter dated 22-11-2002, it was clarified by the State Govt. that the notification dated 28-1-2001 applied to the employees of State Govt. and not to the employees of Corporation/Nigam as they are not the employees of the State Govt. It has further been stated that Corporation vide office memo dated 29-07-2005 has enhanced the age of superannuation from 58 years to 60 years with immediate effect, thus the enhancement of age of superannuation by the State Government would not be applicable to the employees of Uttaranchal Pey Jal Nigam before 29-07-2005.

5. We have heard learned Counsel for the parties and perused the entire evidence on record.

6. Learned Counsel for the Petitioners after relying on the judgment rendered by the Hon''ble Supreme Court in the case of Harwindra Kumar v. Chief Engineer Karmik and Ors. in Civil Appeal No. 7840 of 2002 decided on 21-11-2005, submitted that on the same set of facts since the Hon''ble Supreme Court has held the enhanced age of superannuation of the employees of the Corporation/Nigam from 58 to 60 years, hence this direction is also applicable in the present case and denial of benefit of enhanced age of superannuation to employees of Nigam is illegal and arbitrary and cannot be upheld. We find force in the contention of learned Counsel for the Petitioners. The directions issued by the Hon''ble Apex Court in the Harwindra Kumar''s case (Supra), are as follows:

For the foregoing reasons, the appeals as well as the writ petitions are allowed, orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the Appellants of the Civil Appeals and Petitioners of the Writ Petitions would superannuate upon completion of the age of 58 years are set aside and it is directed that in case the employees have been allowed to continue

up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary for the remaining period up to the age of 60 years which must be paid to them within a period of three months from the date of receipt of copy of this order by the Nigam. There shall be no order as to costs.

7. The Appellants as well as Petitioners in the Special Appeal were employed in the Local Self Government Engineering Department of the Government of Uttar Pradesh. In that case also, the letter dated 22-01-2002 issued by Special Secretary to Govt. in the Deptt. of Local Self Govt. communicated that the employees of Nigam shall not be entitled to enhancement of superannuation of age from 58 years to 60 years as the same would be applicable only to the government servants. In the Special Appeal before the Hon''ble Supreme Court, some writ Petitioners instead of moving the High Court directly filed writ petitions before Hon''ble Supreme Court challenging the orders issued by the Nigam against them to the effect that they would superannuate upon completion of age of 58 years. Thereupon, the orders were issued to the Appellants in the appeals as well as Petitioners in the Writ Petitions to the effect that they would retire upon completing the age of 58 years.

8. Since the Petitioners in all these writ petitions are the similarly situated candidates as the candidates who were in the Special Appeal before the Hon''ble Supreme Court and in the same set of facts and circumstances of the case, the Hon''ble Apex Court in exercise of its powers under Article 142 of Constitution of India in the case of Harwindra Kumar (Supra) has directed to treat the Appellants as well as the Petitioners in the Special Appeal to be superannuated on the age of 60 years instead of 58 years, therefore, this Court following the aforesaid judgment of Hon''ble Supreme Court also directs the Respondents to treat the Petitioners to be superannuated after attaining the age of 60 years instead of 58 years.

9. Accordingly, the writ petitions are allowed. The Petitioners in all these writ petitions shall be entitled for payment of salary for the remaining period upto the age of 60 years which shall be paid to them within a period of three months from the date of production of certified copy of this order. No order as to costs.