
(1998) 07 MP CK 0050

In the Madhya Pradesh High Court

Case No : Writ Petition No. 304 of 1996

Har Govind Naik

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 20-07-1998

Acts Referred:

Madhya Pradesh Ashashkiya Shikashan Sanstha (Adhyapakon Tatha Anya
Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 — Section 3

Citation : (1999) 1 MPLJ 211

Hon'ble Judges : S.P. Shrivastava, J

Bench : Single Bench

**Advocate : Arun Mishra, for the Appellant; J.D. Suryavanshi, Government
Advocate, for the Respondent**

Judgement

S.P. Srivastava, J.

Feeling aggrieved by the decision of the respondent-authority holding that the petitioner was not entitled to any post-retiral pensionary benefits, he has now approached this Court seeking redress praying for a direction to the respondents to release the aforesaid benefits treating him to be in service on 1-4-1987, extending to him the benefits available under the M.P. Civil Services (Pension) Rules 1976 as amended from time to time bringing within its purview the Full-time employees, officers and teachers of the University w.e.f. 1-4-1987.

I have heard the learned counsel for the petitioner as well as the learned Government Advocate, representing the respondents, and have carefully perused the record.

The facts in brief, shorn of details and necessary for disposal of this petition lie in a narrow compass. The petitioner was duly appointed as an Assistant Professor in Madhav Mahavidyalaya, Gwalior, on 9-11-1970. Taking in account his date of birth, he was to attain the age of superannuation on 31-3-1987. However, exercising the jurisdiction vested in it vide Para 26 of the Education Code, which

has statutory force, the Governing Body of the College extended the service period of the petitioner till 30th June, 1987 till the end of the academic year.

The Madhya Pradesh Uchcha Shiksha Anudan Ayog, however, approved the extension of the period of service of the petitioner till 30th of April 1987 i.e. the end of academic-session. In view of the decision of the Ayog to treat the extension of the service period of the petitioner only till the end of the academic sessions i.e. 30-4-1987, the payment of salary for the months of May and June 1987 was withheld by the respondents.

The petitioner challenged the aforesaid action of the respondents by means of a Writ Petition No. 419 of 1990, decided on 21-4-1995, whereunder the respondents were directed to pay him the salary for the aforesaid months noticing that the petitioner had actually worked and as a matter of fact his case was duly recommended, and the petitioner was relieved from the charge of his post on 1-7-1987.

The petitioner had applied for the release of the post-retiral pensionary benefits to him, but that was declined on the ground that the extension of service period till the end of the academic session had to be taken, as directed by the State Government to be a reappointment only, which was not liable to be taken into account as qualifying service for the purpose of pensionary benefits. The petitioner submitted various representations to the respondent-authority seeking release of the post-retiral pensionary benefits treating him to be in service on the relevant date. But, the respondents negatived his claim reiterating their stand that the petitioner had to be treated as having retired from service on 31-3-1987 i.e. before the relevant date and was not entitled to any post-retiral benefits as claimed.

In the present case, respondent No. 2 has filed a separate counter-affidavit. The respondent No. 2 has supported the case of the petitioner asserting that the petitioner has been allowed to continue till the end of the academic year 1987 by the Governing Body exercising the jurisdiction vested in it as contemplated under Paragraph 26 of the Education Code and the petitioner in fact continued to be in service till 30th June 1987. He was, therefore, entitled to the post-retiral benefits made available under the Self-Finance Pension Scheme, 1992, as claimed.

The respondent No. 1 has filed a separate counter-affidavit in opposition to the Writ Petition. In this counter-affidavit the contesting respondent has reiterated that the date of superannuation of the petitioner had to be taken as 31-3-1987 and could not be deemed to have been altered in view of his continuance in service thereafter on the strength of the order passed by the Governing Body, as claimed. It has further been asserted that the period of service of the petitioner subsequent to 31-3-1987 was liable to be treated as on reappointment which had to be excluded for the purposes of pensionary benefits. It has been claimed that the service conditions of the petitioner stood governed by the provisions contained in M.P. Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya

Karmachariyon Ke Vetno Ka Sandaya) Adhiniyam 1978 and Madhya Pradesh Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ki Bharti) Niyam, 1979 wherein the maximum age for service which stood provided was only upto 60 years and, therefore, the period beyond his attaining the age of 60 years had to be taken as period of service on reappointment.

The question which, therefore, arises for consideration is as to whether the petitioner's service period which would have been terminated on 31st March 1987 could be deemed to be continuing subsequent to that date till the end of the academic year or there was a break in service of the aforesaid period subsequent to 31-3-1987, and the period during which the petitioner worked, thereafter could be treated to be a period of service on reappointment liable to be ignored for the purposes of the pensionary benefits secured under the rules governing release of pension.

In the aforesaid connection it would be relevant to refer to the provisions contained in paragraph 26 of the Education Code, framed in exercise of the jurisdiction envisaged under Statute 26 of the Statute framed under the University Act:-

"26. A permanent teacher shall be entitled to be in the service of the college until completes the age of sixty.

No extension after the age of sixty shall be granted.

Provided that where the date of retirement of a teacher falls due during the course of the academic session the Governing Body shall allow the teacher to continue till the end of the academic year."

10-A. The provisions contained in the Education Code, referred to hereinabove, had statutory force. There can be no escape from this conclusion in view of the ratio of the decision of the Apex Court in the case of Prabhakar Ramkrishna God v. A. L. Pande 1965 1113 513. The provisions contained in paragraph 26 of the Education Code vest the Governing Body of the college with ample jurisdiction to continue the service of a teacher till the end of the academic year in case the date of his retirement falls due during the course of the academic session. The term "Retirement" signifies cessation of the service tenure of an employee. In the absence of any jurisdiction to prevent the cessation of the tenure of service which is automatic on the happening of the event that is the attaining of the age of superannuation, any order allowing an employee to continue in service subsequent to his attaining the age of superannuation falls within the ambit of the expression "reappointment", which necessarily implies that there has been a break in service on the happening of the event of attaining the age of superannuation. However, when the appointing authority is vested with the jurisdiction and exercising that statutory power it directs for the continuance of the service period of the concerned employees beyond his attaining the age of superannuation, then there is no automatic cessation of the service period which would have otherwise come to an end on the specified date on which the

employee is to attain the age of superannuation.

The contesting respondent has relied upon administrative directions of the State Government on the basis whereof the period of service subsequent to the attaining of the age of superannuation by the petitioner has to be treated as a period of service on reappointment. No such administrative or executive direction act or fiat could override destroy or annul the statutory provisions contained in the Education Code, which, as has already been indicated hereinabove, has statutory force.

In the aforesaid connection it should also not go unnoticed that in exercise of the jurisdiction vested in it the employee is entitled to cut short the tenure of service of the employee and similarly in exercise of the jurisdiction with which it is vested, it can also extend the service tenure in accordance with law, but such an action has to be taken before the expiry of the service tenure which automatically terminates coming to an end, on the happening of the event of attaining the age of superannuation.

The learned counsel for the contesting respondent has strenuously urged that taking into consideration the provisions of the Madhya Pradesh Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetno Ka Sandaya) Adhiniyam 1978 read with Madhya Pradesh Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ki Bharti) Niyam, 1979 the maximum service tenure of a teacher cannot go beyond his attaining the age of 60 years. The contention is that in view of the non-obstante clause contained in Section 3 of the Madhya Pradesh Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetno Ka Sandaya) Adhiniyam 1978, the age of superannuation of the petitioner could not be taken to have been altered so as to treat him to be continuing in service beyond his attaining the age of superannuation on 31-3-1987. In this connection suffice it to say that the provisions contained in Section 3 of the Madhya Pradesh Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetno Ka Sandaya) Adhiniyam 1978 only stipulate that as from the appointed date notwithstanding any contract to the contrary the salary of a teacher or other employee of an institution in respect of any month or part thereof subject to the proviso to sub-section (4) of Section 5 shall be paid to him before the expiry of 20th day or such earlier date next following month or part thereof as may be specified by the State Government by a general or special order providing, however, that nothing in the said section shall apply to a teacher or an employee specified in clause (c) of Section 6 till an order approving the appointment is passed therefore and further that the salary shall be paid without any deductions of any kind except those authorised by or any other law for the time being in force. The provisions contained in Section 3 of the Act, indicated hereinabove, saddles the State Government with the liability in regard to payment of salary etc. of a teacher or other employee of an institution as defined under the said Act notwithstanding any contract to the contrary. The liability cast on the State Government under

the aforesaid provision is for the payment of salary without deduction of any kind except those authorised by or under this Act or any other law for the time being in force.

It is, therefore, obvious that taking into consideration the implications arising under the orders providing for the continuance of the service of the petitioner beyond his attaining the age of superannuation he became entitled to the salary without any deduction of any kind till he remained in service on the strength of the order passed in exercise of the jurisdiction vested under paragraph 26 of the Education Code. In fact, the respondent has paid the salary of the petitioner to which he was found entitled to for the period subsequent to his attaining the age of 60 years ending with 30th June 1987.

It may further be noticed that the Ayog in the present case on the strength of the order passed by it approving the continuance of the petitioner for the period ending with 30th April 1987 had taken the date 30th April 1987 to be the date of petitioner's retirement as is apparent from its order dated 29-5-1992 releasing the payment of salary to the petitioner for the month of May and June 1987, a true copy of which has been filed as Annexure P-15 along with the rejoinder-affidavit filed by the petitioner.

Taking into consideration the facts and circumstances brought on record and my Conclusions indicated hereinabove this writ petition succeeds in part. The impugned decision of the respondent-authority holding the petitioner to be disentitled to get post-retiral benefits is quashed with a direction to the respondent No. 1 to consider afresh the claim of the petitioner in the light of the observations made hereinabove and pass appropriate orders determining the post-retiral benefits of the petitioner in accordance with law.

It is further directed that the amount which is found due to be paid to the petitioner shall carry an interest at the rate of 12% p.a. which shall be paid to the petitioner along with the arrears.

The respondent No. 1 shall ensure that final orders are passed within a period of one month from the date of production of a certified copy of this order before the said authority and the arrears paid to the petitioner within the next month.

There shall, however be no order as to costs.