

(1997) 07 AHC CK 0090

In the Allahabad High Court

Case No : C.M.W.P. No. 18028 of 1997, Connected with C.M.W.P. No. 23134 of 1997

Hari Om Gupta

APPELLANT

Vs

District Inspector of Schools, Moradabad and others

RESPONDENT

Date of Decision : 14-07-1997

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 2

Citation : (1998) 1 AWC 570

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : P.C. Misra, for the Appellant; S.C. and Anil Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—As common questions of law and facts are involved in these writ petitions, they are being disposed of together.

2. The core question is whether the petitioner shall retire at the age of 58 years or 60 years.

3. The facts in brief are that the petitioner was appointed as lecturer in Biology on 5th July. 1964 in Maharaj Agrasen Inter College, Moradabad (hereinafter referred to as the "institution"). His date of birth is 31st July. 1939. On 30.6.1990 Sri B. P. S. Agarwal, the Principal of the institution retired from service. The petitioner was appointed as officiating Principal being the seniormost lecturer in the institution. The U. P. Secondary Education Service Commission (hereinafter referred to as the ("Commission")) advertised the post of Principal treating the vacancy as substantive vacancy. The petitioner applied for appointment and was selected by the Commission. On 29.8.1996, an appointment letter was issued by the Manager of the institution appointing him as Principal in pursuance of the directions of the Commission.

4. The controversy arose regarding the date of retirement of the petitioner on the ground that the petitioner had submitted option on 22.12.1982 to retire at the age of 58 years. According to the petitioner, he had submitted option on 26th July, 1983 and according to respondent No. 8, the petitioner submitted his option on 22.12.1982. The District Inspector of Schools countersigned the option form on 20.3.1986.

5. It appears that a report was called by the Director of Education regarding the option exercised by the petitioner. The District Inspector of Schools submitted a report on 4th March. 1997 to the Director of Education that the petitioner had not submitted the option form by the last date of submission of option form, i.e., 31st December, 1982. The option form of the petitioner is ineffective. Against this recommendation, one Har Swarup Sharma alleging himself to be member Parent Teacher Association and President of U. P. Madhyamik Shiksha Sangh, filed writ petition. The writ petition was dismissed on the ground that the petitioner had no locus standi to file the writ petition. It was further observed that if the option has been rejected by the District Inspector of Schools, the teacher is entitled to continue till he attains the age of 60 years.

6. Ashok Kumar Gupta, respondent No. 8, made a representation to District Inspector of Schools stating that the petitioner had submitted the representation on 22.12.1982. It was countersigned by the District Inspector of Schools in token of acceptance of the option form on 20th March. 1986. The acceptance of said option was received by the petitioner in his own handwriting on 4.1.1991.

7. After the said representation was submitted by respondent No. 8, the petitioner was given notice by the District Inspector of Schools. On 1.5.1997 after affording opportunity to the parties concerned, the District Inspector of Schools decided the representation recording the finding that the petitioner had submitted option form on 22.12.1982. It was accepted by the then District Inspector of Schools by countersigning it. The petitioner was communicated the decision of the District Inspector of Schools and the petitioner countersigned the option form on 4.1.1991 in token of the fact that he had received the Intimation regarding acceptance of his option.

8. The petitioner challenged this order by filing Writ Petition No. 18028 of 1997. In the writ petition, this Court did not grant any interim stay order. The petitioner thereafter made a representation to the Director of Education and an interim order was passed by the Assistant Director of Education on 5.6.1997 staying the effect of the order dated 1.5.1997 but later on this order has been revoked by the Additional Director of Education on 5th July. 1997. The petitioner has filed Writ Petition No. 23134 of 1997 against this order.

9. Sri Ashok Khare, learned counsel for the petitioner submitted that the petitioner had exercised the option to retire at the age of 58 years in the year. 1983 when he was only a lecturer in the institution but when he has been selected as Principal by the Commission and a fresh letter of appointment was

issued after selection, the said option cannot be taken into consideration for determining the age of retirement of the petitioner. The petitioner relies upon the Government Order dated 29th August, 1981. Annexure 4 to the writ petition. Paragraph 4 of this order provides that the person who has been appointed after the date of notification, can exercise his option within two years of his confirmation and if no option is exercised, those rules will not be applicable.

10. The Government Order, referred to above, is to be considered in the context of the provisions of U. P. Intermediate Education Act, 1921 and the U. P. Secondary Education Service Commission Act, 1982 and the Rules framed thereunder. Section 2 (k) of U. P. Secondary Education Service Commission and Selection Boards Act. 1982 (U. P. Act No. 5 of 1982), defines teacher which means a person employed for imparting instructions in an institution and includes the Principal or a Head Master. The teacher who is appointed in L. T. grade may be appointed as lecturer either by promotion or by direct recruitment. Similarly, a lecturer may be appointed as Principal either on ad hoc basis or by recruitment through selection as provided under the said Act. He continues to remain as a teacher as defined u/s 2 (k) of 1982 Act in all the stages. A teacher has to give his option only once in his career.

11. The Government Orders/Rules do not contemplate the option to be exercised at different stages by a teacher, i.e., when he is appointed/promoted as lecturer from the post of Assistant Teacher in L. T. grade or he is appointed as officiating or permanent Principal. If the contention of the petitioner is accepted. It will also lead to anomalous result. A lecturer who is appointed as officiating Principal on a substantive vacancy on retirement of the Principal of an institution, if he has exercised the option as a lecturer, he will retire at the age of 58 years on the basis of option given by him but when he is selected by the Commission to function on permanent basis, the said option becomes redundant.

12. Learned counsel for the petitioner has placed reliance upon the decision. *Ramji Tiwari and Others Vs. District Inspector of Schools and Others*, wherein the contention of the appellant therein that after completing his term as Director of All India Institute of Medical Sciences (in short A.U.M.S.), he was entitled to function as a Professor and Head of E.N.T. Department in A.I.I.M.S., was rejected. It was held that the post of Director of A.I.I.M.S. was made on the basis of the selection and it was a tenure post. The appellant having been appointed after selection on the said post was not entitled to have lien on the post of Professor in E.N.T. Department. This case has no application to the facts of the present case. A person who is appointed as Principal is treated as teacher u/s 2 (k) of U. P. Act No. 5 of 1982. The option is exercised to retire at the age of 58 years as a teacher and is not confined to a post. A teacher may function on different posts, e.g., Assistant Teacher, Lecturer or Principal but in all the capacities, he remains as a teacher. The option once exercised by a teacher continues during the period he functions as a teacher.

13. Learned counsel for the petitioner has further placed reliance upon the

decision P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, , wherein it was held that no person can be reverted by way of punishment to a post lower than that to which he was initially appointed. The petitioner is not being reverted but he is sought to be retired on attaining the age opted by him. Another decision relied upon is State of U.P. and others Vs. Smt. Jaya Quddusi, , wherein it was held that if the leave of an Incumbent was sanctioned, it would be presumed that he continued in service from the date of initial appointment. This case has no application to the facts of the present case.

14. The next submission of learned counsel for the petitioner is that the option form was submitted by the petitioner on 26.7.1983. after the date fixed for exercising the option and, therefore, it was Ineffective. The District Inspector of Schools has recorded a finding that the petitioner had submitted the option form on 22.12.1982. It relates to the question of fact and there is no reason to interfere with this finding of fact.

15. The third submission of learned counsel for the petitioner is that there is no evidence that the option submitted by the petitioner was accepted by the District Inspector of Schools and it was communicated to the petitioner. The District Inspector of Schools vide order dated 1.5.1997 has recorded a finding that the option form was countersigned by the then District Inspector of Schools and the petitioner had also signed the said option form thereafter on 4th January. 1991. In Special Appeal No. 289 of 1995, Prakash Chandra Sharma (since deceased) v. Deputy Director of Education, Bareilly Region, Bareilly and others, a Division Bench of this Court has held that if the option form submitted by a teacher is countersigned by the District Inspector of Schools, that amounts to acceptance of the option given by the petitioner. This finding has been attached by learned counsel for the petitioner that the purported counter-signatures were forged. It involves a question of fact and there is no material to come to the conclusion that the signatures were forged.

16. The last submission of learned counsel for the petitioner is that the District Inspector of Schools passed an order on 4th March, 1987 rejecting the option of the petitioner and against that order one Har Swamp Sharma filed Writ Petition No. 11212 of 1997. The writ petition was dismissed. The order passed on 4th March, 1987 indicates that it was a letter written to the Director of Education in pursuance of certain queries made by him in respect of the option exercised by the petitioner. Respondent No. 5 submitted a report stating that the teachers of the institution had submitted the option form after prescribed date, i.e., 31st December, 1982 and, therefore, they are ineffective. It was only a report submitted by respondent No. 5 to the Director of Education. One Har Swarup Sharma filed writ petition claiming himself as Member, Parent Teacher Association, Maharaj Agrasen Inter College. The court dismissed the writ petition holding that he had no locus standi and further if the option was exercised after the due date, it shall be ineffective. Respondent No. 8 was not a party in this petition. He submitted representation to respondent No. 5 and on perusal of

records, the respondent No. 5 found that the petitioner had submitted the option form on 22.12.1982. It was countersigned by the then District Inspector of Schools and the acceptance was communicated to the petitioner. The report of respondent No. 5 dated 4.3.1997 was ex parte. In these circumstances, the ex parte report dated 4th March, 1997 and the order passed by this Court on 1st April, 1997 are not binding on respondent No. 8 which vitally affects his rights.

17. There is no merit in this writ petition. It is accordingly dismissed.