
(1993) 12 AHC CK 0037
In the Allahabad High Court
Case No : Special Appeal No. 482 of 1993

Kamla Sharma (Smt.)

APPELLANT

Vs

Deputy Director Education and Others

RESPONDENT

Date of Decision : 20-12-1993

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 21

Citation : (2001) 1 UPLBEC 171 : (2000) 2 UPLBEC 1375

Hon'ble Judges : V.K. Khanna, Acting C.J.; G.P. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This Special Appeal has been filed against the judgment and order dated 19-5-1993 by a learned Single Judge in a writ petition filed by Smt. Kushal Varshney. The appellant Smt. Kamla Sharma was not a party to the writ petition, but she has filed the appeal with the leave of the Court which was granted on 21-7-1993.

2. The writ Petitioner Smt. Kushal Varshney was appointed as Assistant Teacher in Chiranji Lal Girls Inter College, Aligarh (hereinafter referred to as the College) in 1961 and was promoted as Principal in July, 1972. Under Regulation 21 to Chapter III of Regulations framed under U.P. Intermediate Education Act (hereinafter referred to as the Act) the age of retirement of a Principal is 60 years. According to the case of the writ petitioner, a Government Order was issued in 1978 giving option to the teachers to take retirement at the age of 58 years. Thereafter, another Government Order was issued on 6-10-1990 by which teachers were given right to exercise their option within 90 days. The writ petitioner, accordingly, filled in the prescribed form for exercising option on 24-10-1990 and forwarded the same to the office of the District Inspector of Schools. However no orders on the said option were passed and the State Government issued another G.O. on 4-11-1991 giving right to the teachers to exercise their option. According to the Petitioner, she exercised her right again on

4-1-1992 modifying the earlier option dated 24-10-1990 and expressed her desire to continue upto the age of 60 years. The Deputy Director Education, however, vide his order dated 15-9-1992 accepted the first option exercised by her by which she could continue upto 58 years. According to the petitioner, as she had exercised second option on 4-1-1992, it was not open to the Deputy Director Education to have accepted her first option on 15-9-1992. The Petitioner accordingly filed the writ petition praying for following reliefs :

"(i) to issue a writ order or direction in the nature of mandamus directing the respondents to accept the option submitted by petitioner on 4th of January, 1992 (Annexure-6 to the writ petition).

(ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to treat the petitioner in service till she attains the age of 60 years, in accordance with Regulations framed under the U.P. Intermediate Education Act, 1921."

The writ petition was allowed by a learned Single Judge on 19-5-1993 and the operative part of the order is reproduced below :

"The representation of the petitioner dated 6th January, 1992 Annexure-4 to the writ petition, will be acted upon and appropriate orders passed on it by the District Inspector of Schools, Aligarh within two weeks of a certified copy of this order being placed before him to ensure continuity of the petitioner's services upto the age of 60 years, which services will not be dispensed with except in accordance with law. Any further approval which the District Inspector of Schools, Aligarh may have to seek from elsewhere, he will ensure that it is done within the same period.

The Petition, thus, succeeds but there will be no orders on costs."

The appellant Smt. Kamla Sharma has filed the present special appeal challenging the aforesaid judgment and order passed in the writ petition of Smt. Kushal Varshney. The appellant claims that she is senior-most lecturer in the College and had Smt. Kushal Varshney retired at the age of 58 years, she would have got a chance to become Principal of the Institution as the said post would have fallen vacant.

3. The first contention of Sri R.N. Singh learned Counsel for the appellant is that in-fact Smt. Kushal Varshney did not exercise any option on 4-1-1992 and on 15-9-1992 when the Deputy Director Education had accepted her first option dated 24-10-1990, there was no other option on her behalf and as such no illegality had been committed by the Deputy Director Education while accepting the first option of the petitioner. The learned Counsel has submitted that there is forgery in the option form alleged to have been filled in by the writ petitioner and the figure "92" has been interpolated subsequently by changing the figure "0" to "2" meaning thereby that the date was in-fact "4-1-90" but had been changed subsequently to "4-1-92". We have carefully examined the aforesaid option form

filled in by the writ petitioner and we are unable to find that any interpolation in the date has been done subsequently. That apart, the option form also bears the signature and seal of D.I.O.S. and below it the date 20-7-1992 has been written. It, therefore, shows that the second option exercised by the writ petitioner was countersigned by the D.I.O.S. on 20-7-1992 and its existence on record cannot be doubted. The D.I.O.S. had also written a letter to Deputy Director Education on 29-6-1993 (Annexure CA 7 to the counter-affidavit) wherein he has mentioned that the writ petitioner had sent here second option dated 4-1-1992 to his office which had been countersigned by the D.I.O.S. on 20-7-1992. The second aspect of the case is that even the first G.O. had been issued by the State Government on 24-10-1990 and as such there was no occasion for the writ petitioner to have exercised any option on 4-1-1990. Therefore, the contention of the learned Counsel that the figure "90" had been subsequently changed to "92" cannot be accepted.

4. Learned Counsel for the appellant has next submitted that the G.O. dated 4.1-1991 permitted only those teachers to exercise their option who had not exercised any option in pursuance of the earlier G.O. dated 6-10-1990. According to the learned Counsel as the writ petitioner had exercised an option on 24-10-1990, she was not entitled to give a second option on 4-1-1992 and the only course open to the authority was to accept her first option. We are unable to accept the submission of the learned Counsel that the second G.O. dated 4-1-1991 did not permit the petitioner to exercise a second option. The G.O. says that there was some anomaly in the language used in the various Government Orders issued in the year 1978 and on 6-10-1990 and therefore, most of the teachers in the State could not exercise their option due to confusion and therefore, a fresh opportunity was being given to them to exercise option within 90 days. This could never be the intention of the G.O. that, though there was ambiguity, those teachers who had exercised option in pursuance of the G.O. dated 6-10-1990 could not exercise their option again while those who had not at all exercised their option due to ambiguity could exercise their option. Such an interpretation would render the G.O. dated 4-1-1991 wholly arbitrary. In our opinion, the G.O. gave a right to all the teachers to exercise their option again as the Government itself was of the view that the earlier G.O. in this regard were not clear and there was ambiguity in their language. We are further of the opinion that the G.O. should not be interpreted in a very technical manner. In *Devi Krishan Goyal v. D.I.O.S., Ghaziabad*. (1990) 13 ATC 155, the Supreme Court ruled that notwithstanding a condition in the G.O. to the effect--option once used will be deemed to be final--the option could be withdrawn prior to its acceptance. We are, therefore, clearly of the opinion that as the writ petitioner had exercised a second option on 4-1-1992 withdrawing here earlier option dated 24-10-1990, it was not open to the Deputy Director Education to have accepted her first option by passing an order to that effect on 15-9-1992. Therefore, the writ petition of Smt. Kushal Varshney was rightly allowed by this Court.

5. In the end, we may also observe that the matter as to whether in terms of the

option exercised by the writ petitioner and the service rules governing her condition of service, she should be allowed to continue upto the age of 60 years or should be made to retire at the age of 58 years is entirely between the writ petitioner and the Education Authorities of State. The appellant Smt. Kamla Sharma cannot be allowed to become party to this dispute and cannot be allowed to contend that the writ petitioner should be made to retire at the age of 58 years.

6. For the reasons given above, the special appeal lacks merit and is dismissed.