

(2015) 01 AHC CK 0087
In the Allahabad High Court
Case No : Service Single No. 1861 of 2014

Karuna Kant Awasthi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 ADJ 629 : (2015) 2 ESC 923 : (2015) 3 SCT 150

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Anurag Srivastava and Ramesh Pandey, for the Appellant; Manish Mani Sharma, Advocates for the Respondent

Judgement

Pankaj Mithal, J.—Heard Sri Ramesh Pandey learned counsel for the petitioner. Learned Standing counsel appears for respondent Nos. 1, 2 and 3. He submits that respondent Nos. 1, 2 and 3 are the only formal parties. The main contest in the petition is between the petitioner and respondent No. 4 only.

Sri Manish Mani Sharma, learned counsel appearing for respondent No. 4 contends that the petitioner is in a private service of respondent No. 4 and therefore the writ petition is not maintainable. The above objection was taken by him even at the time when the petition was entertained but the Court has overruled the same and has proceeded on merits of the petition and had invited a counter-affidavit.

No doubt respondent No. 4 is a recognized private unaided institution but is a body that is discharging functions of a public nature.

In Ramesh Ahluwalia Vs. State of Punjab and Others, , the Apex Court was seized of a similar controversy in relation to a public school affiliated to Central Board Secondary Education. The Court therein held that even a purely private body where the State has no control over its internal affairs, would be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of

India provided the said private body is performing public functions which are expected to be performed by the State authorities. It was further observed therein that imparting of education to children by an unaided private educational institution is a public function.

2. Imparting of education supplements is one of the chief functions of a welfare State. Thus, a private institution in imparting education the State function and as such any institution engaged in such activity performs public functions and is therefore amenable to the writ jurisdiction.

3. On merits, the controversy involved in this writ petition is very short i.e. as to the age of retirement of a principal/teacher of a recognized unaided private institution.

4. The institution Ram Janki Vidhya Mandir Inter College, Gola Gorakhnath, Kheri which was previously Junior High School is now a recognized intermediate college but is not on the grant in aid list of the State of U.P.

5. The petitioner was appointed on 17.7.1978 as the principal of the above institution. His date of birth is 22.12.1953. He has been retired on 30.6.2014 after the end of the then running academic session on his attaining the age of superannuation of 60 years.

6. The only argument advanced on behalf of the petitioner is that the age of superannuation of a principal/teacher of intermediate college is 62 years and therefore his retirement is illegal.

7. In the counter-affidavit, the respondent No. 4 has taken a stand that the Committee of Management vide letter dated 29.4.2014 addressed to the petitioner had required him to give his option for retirement at the age of 62 years but as the petitioner failed to submit his option in this regard, he was retired at the end of the academic session in which he completed the age of 60 years.

8. There is no dispute that the institution in question is a recognized institution under the U.P. Intermediate Education Act, 1921 but is a private institution receiving no grant. The payment of salary to its teachers and staff is made by the Committee of Management out of its own funds.

9. The services of teachers of unaided institutions is covered by the G.O., as circulated by the Chief Secretary, U.P. vide letter dated 10.8.2001 titling .

10. A bare reading of the aforesaid Niyamawali reveals that the teachers of such institutions have been described as part time and that their qualifications are the same as provided under Chapter 2 of the Regulations of the Act but the conditions of service have not been provided therein. The service conditions especially relating to the age of retirement has been provided by the Government Order dated 27th February 2004 issued in continuation of letter of the Chief Secretary, U.P., dated 10.8.2011 containing the. It provides that the

age of superannuation of the teachers of the private unaided recognized institutions shall be 62 years in place of 60 years.

11. Apart from the above Government Orders or the Sewa Niyamawali as circulated, there are no statutes which specifically governs the conditions of service of teacher of recognized private institutions which are being run from their own funds. Nonetheless, the institution is a recognized institution under the Act and principally the qualifications and conditions of service of the principal/teachers of such an institution would be at par with those of recognized intermediate colleges receiving grant in aid.

12. There is hardly any difference between a recognized institution receiving grant in aid and that not receiving any aid from the State. Since the teaching pattern and qualification of the teachers in both categories of institutions are same merely for the reason that salary of teachers in one class of institution is being paid from State funds and in another from private source, no distinction in the age of retirement of the teachers can logically be made.

13. Regulation 21 of Chapter III of the Regulations framed under the Act provides the age of 62 years as the age of superannuation for the principal/teachers of a recognized intermediate college and that if his date of superannuation falls between 2nd July to 30th June, he would retire on 30th June. The retirement of the principal/teacher of an institution on 30th June is to facilitate him to complete the academic session so that the studies/education of the students is not disturbed in the mid session. In view of the aforesaid facts and circumstances, as there is no contrary provisions or statute laying down any condition of retiring a principal/teacher of a private institution at the age of 60 years or for requiring option from him to retire at such an age whereas the age of retirement of teachers of recognized institutions receiving grant in aid is 62 years, the action of respondent No. 4 in retiring the petitioner w.e.f. 30.6.2014 on his attaining the age of 60 years is patently illegal and erroneous in law. The petitioner is entitle to remain in service till he attains the age of 62 years and completes the academic session thereafter.

Accordingly, a writ of mandamus is issued commanding respondent No. 4 to permit the petitioner to continue functioning as principal/teacher of the above institution till he attains the age of superannuation of 62 years and completes the then academic session, if otherwise, there is no other cause of disturbance in his service and to pay him all salary and other emoluments in continuity to the post he holds.

The writ petition is allowed with no orders as to costs.