(2007) 04 AHC CK 0078

In the Allahabad High Court

Keshav Prasad Gupta APPELLANT

Vs

U.P. Project Corporation Ltd. (Earlier U.P. Nalkoop Nigam Ltd.) and State of U.P. RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2007) 5 ADJ 446 : (2007) 4 AWC 3535 : (2007) 4 AWC 3525 : (2007) 113 FLR 1068

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard counsel for the petitioner.

2. By this writ petition, the petitioner has prayed for quashing the order dated 28 th November, 2006 in so far as petitioner is concerned. A writ for striking down Regulation 26 of the U.P. Project Corporation Service Regulations dated 27th October, 1986 has also been sought for. Further a mandamus has been sought commanding the respondent-Corporation to suitably amend Regulation 26 of the U.P. Project Corporation Ltd. Services Regulations fixing the age of retirement as 60 years brining it in conformity with the Fundamental Rule 56.

3. The impugned order is an office order providing that employees mentioned in the order after attaining the age of 58 years shall attain the age of superannuation on different dates as mentioned in the order.

4. Learned Counsel for the petitioner challenging the order, contended that the age of retirement of the employees of the Project Corporation shall also be treated as 60 years in view of the amendment made by Uttar Pradesh Fundamental (Amendment) Rules, 2002 amending Rule 56 of the Financial Hand Book Vol. 2 Part II to IV. Learned Counsel for the petitioner submits that Regulation 26 of the Project Corporation Services Regulations contemplates

extension of age of retirement with the approval of the State Government. Reliance has been placed on Regulation 68 to the effect that if any disability arises in giving effect to the provisions of these rules, the Board may by a general or special order, do anything not inconsistent with the provisions of Financial Hand Book Vo.2 Part II to IV, The submission is that Regulation 68 envisages that action of the Corporation has to be in accord with the provisions of Financial Hand Book Vol.2 Part II to IV and the age of retirement of Government servant being extended to 60 years, the same benefit be also given to the petitioner. Learned Counsel for the petitioner further submits that since neither any steps have been taken nor any order under Regulation 68 has been passed by the respondents, the action is the respondents to arbitrary and discriminatory violating Article 14 of the Constitution of India. Learned Counsel for the petitioner has placed reliance on an interim order dated 29 th September, 2005 passed in Writ Petition No. 63908 of 2005 by which a learned Single Judge has stayed the superannuation till 60 years.

5. I have considered the submissions and perused the record.

6. Service Regulations have been framed with regard to Corporation of which Regulations 26 and 68(1) have been relied by counsel for the petitioner. Regulations 26 and 68 of the Regulations are extracted below:

26. an employee shall ordinarily retire at the age of 58 years unless the Board, with the prior approval of the State Government, extends, the period of employment which in no case shall be beyond the age of 60 years.

68(1). If any disability arises in giving effect to the provisions of these rules, the Board may by a general or special order, do anything not inconsistent with the provisions of Financial Hand Book Volume 2 Part II to IV of the Government of Uttar Pradesh, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

7. From perusal of Regulation 26, it is clear that the age of retirement of an employee of Corporation is 58 years. The second part of the said regulation is an enabling provision enabling Board to extend the period of employment with the prior approval of the State Government, which shall not be beyond 60 years. Regulation 26 reading literally clearly mean that the age of retirement is fixed as 58 years with right to the Corporation to extend the said age with the approval of the State Government. The submission of the counsel for the petitioner on the basis of Fundamental Rule 56(a) also needs consideration. Fundamental Rule 56 as amended in 2002 is as follows:

56(a). Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

8. The Fundamental Rule applies to every Government servant. The said Fundamental Rules are not applicable to the employees of the Corporation for

which separate rules have been framed providing age of retirement. By amendment in Fundamental Rules, the service rules of the Corporation cannot be automatically amended or effected and the age of retirement in the service rules of the Corporation shall remain 58 years till the said rule is amended. Thus the fact that State Government having extended the age of superannuation shall not ipso facto has any effect on rules of Corporation. Much emphasis has been laid by counsel for the petitioner on Regulation 68 which provides that in case any disability arises in giving effect to the provisions of these rules, the Board may by a general or special order do anything not inconsistent with the provisions of Financial Hand Book Volume 2 Part II to IV. The said power is a power to remove a difficulty. The said power can only be exercised when there is any difficulty in giving effect to the provisions of the rules. The said provision can be invoked when there is difficulty. The said regulation further provides that the Board may by a general or special order do anything not inconsistent with the provisions of Financial Hand Book Volume 2 Part II to IV. On the strength of Regulation 68 it cannot be said that there is difficulty in giving effect to the rules of Corporation for which any order was required by the Corporation. Thus the argument of the petitioner on the basis of Rule 68 has no substance.

9. In the writ petition, the petitioner has also prayed for striking down Regulation 26. Regulation 26 has been framed by the Corporation. It is well settled that every employer has jurisdiction and authority to lay down the service conditions, the age of retirement, giving pension to the employee etc. may be of the State Government or the Corporation according to need and requirement of service. There is nothing arbitrary in Regulation 26 by which age of retirement has been fixed as 58 years. Reliance of the learned Counsel for the petitioner on an interim order passed by this Court dated 29th September, 2005, as referred above, cannot help the petitioner in support of the submission which are being pressed in the writ petition. The said order was only an interim order which does not contain any ratio to be followed by this Court.

10. The learned Counsel for the petitioner has also referred to a Division Bench order of this Court reported in (2005)2 UPLBEC 2011; Chairman, Uttar Pradesh Jal Nigam, Lucknow and Anr. v. State of U.P. and Anr. (of which I was also a Member). By the said Division Bench judgment order granted by learned Single Judge in favour of an employee of U.P. Jal Nigam permitting him to continue till the age of 60 years was affirmed. The Division Bench considered the case of the said employee of Jal Nigam and referred to Regulation 31 framed under U.P. Water Supply and Sewerage Act, 1975,. Regulation 31 is extracted below:

31. Besides the provision made under these Regulations, the pay and allowances, pension, leave, imposition of penalty and other terms and conditions of service shall be governed by such rules, regulations and orders which are equally applicable to other serving government servants concerned functioning in the State.

11. The Division Bench relying on Regulation 31 was prima facie satisfied that in

view of Regulation 31 the service conditions for retirement as applicable to the State Government is incorporated by force of law in the service conditions of the employees of the Jal Nigam. Thus in that case the Division Bench was satisfied that a case was made out for grant of interim order extending the benefit of age of retirement till 60 years. Following was laid down in paragraph 17:

17. With the greatest of respect to all concerned, these clarificatory letters and circulars are on a plain far below where written legislation or law operates. If by the clear operation of Regulation 31 mentioned above, the State Government''s service conditions for retirement at the age of 60 years is incorporated by force of law in the service conditions of the employees of the Jal Nigam, then and in that event, the only way to remove that difficulty, if difficulty it is, is to bring out legislation at least equal force and clarify the matter or annul the benefit, which has already accrued to the employees of Jal Nigam. The State Government and the Nigam (which is an Article 12 authorities) are model litigants and ought to be credited with reasonably accurate knowledge of the laws and legal principles. It should be fairly easy for them to see that by reason of a Regulation, which had the prior approval of the State Government, all the Nigam''s employees must retire as on date at the age of 60 and not before. If the matter has to be changed, it has to be changed by the Nigam by way of framing of a new Regulation again with the prior approval of the State Government.

12. The matter of retirement of the employees of U.P. Jal Nigam was taken up to the Apex Court and the Apex Court vide its judgment reported in Harwindra Kumar Vs. Chief Engineer, Karmik and Others, Harwindra Kumar v. Chief Engineer, Karmik and Ors. laid down that by virtue of Section 37 of the U.P. Water Supply and Sewerage Act and Regulation 31 of the U.P. Jal Nigam Engineers (Public Health branch) Service Regulations, the service conditions of the employees shall be the same as of the State Government, hence the amendment in Fundamental Rule 56 of the State Government with effect from 20 th November, 2001 shall also be applicable to the employees of the U.P. Jal Nigam. On the said basis it was held that employees of Jal Nigam shall continue till the age of 60 years.

13. The present case is clearly distinguishable from the above case. In the present case the age of retirement has been specifically provided in Regulation 26. Thus the Corporation has framed its rule on the age of retirement. There is no such provision in the regulations of the Corporation, which provides that service conditions pertaining to age of superannuation applicable to the State Government shall apply to the employees of Corporation. The age of retirement being statutorily fixed by the Regulation 26, there is no infirmity in the notice issued by the Corporation asking the petitioner to retire after completion of 58 years of age.

14. Learned Counsel for the petitioner lastly contended that service condition of the employees of corporation including dearness allowance, transfer etc. are in conformity with the service conditions of the Government employees, hence

continuing the age of retirement as 58 years has no nexus with the other service conditions. It goes without saying that Corporation is fully empowered to amend its service rules if any discrepancy is found. However, no mandamus can be issued for amending any service rules to the Corporation. The fact that service condition and other things are in accord with the service conditions of the Government employee does not mean that all benefits should be given to the employees of the Corporation which are being given to the Government servant since the rules of Corporation do not so provide. On this ground no discrimination or arbitrariness can be found as pointed out by the counsel for the petitioner.

15. None of the submissions raised by the counsel for the petitioner has any substance. The writ petition is dismissed.

