

(2011) 09 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15660 of 2009

M. Krishna Murthy

APPELLANT

Vs

Jawaharlal Nehru Technological University, Hyderabad

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309, 32
Jawaharlal Nehru Technological University Act, 1972 — Section 10, 11, 23, 24(1), 24(5)

Citation : (2011) 09 AP CK 0054

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : A. Nagendra Rao, for the Appellant; K. Rathangapani Reddy, SC. for JNTU, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao

1. This writ petition has been instituted seeking a writ of mandamus to call for the records relating to the amendment of Rule 25 of the Statute XIV of the first Statutes of the Jawaharlal Nehru Technological University and consequently, to set aside the order dated 09-02-1999 issued by the respondent University. The petitioner also sought for consequential relief for extending the benefit of the Judgment dated 13-10-2008 rendered in W.P. No. 1378 of 2007. He also sought for setting aside the proceedings dated 06-06-2009 issued by the respondent University in respect of the petitioner, duly treating the age of superannuation of the petitioner as 60 years in terms of Andhra Pradesh Revised Pension Rules, 1980.

2. The relevant facts are; the petitioner was initially recruited to the service of the first respondent University as a Technical Assistant Grade-II on 09-12-1994. He was promoted as a Technical Assistant Grade-I on 30-11-2000. His services as Technical Assistant Grade-I have been regularized. On 06-06-2009 it was

notified that the petitioner would be retiring from service on the afternoon of 30-06-2009 on attaining the age of superannuation of 58 years. Accordingly, the writ petitioner has been retired and relieved from the service of the respondent University on the afternoon of 30-06-2009. Subsequently, he instituted this writ petition seeking the reliefs noticed supra.

3. It was urged that pursuant to the State Legislature enacting J.N.T.U. Act (Act No. 16 of 1972), the respondent University came to be constituted with effect from 02-10-1972. Prior thereto, the employees working under the Technical Education Department and also in various Government Engineering Colleges were all treated as Government Servants and their conditions of service were regulated by Rules framed in terms of the Proviso to Article 309 of our Constitution. Upon constitution of the respondent University, the services of various Government employees stood transferred to the service of the respondent University. Statute 25 prescribed the age of superannuation of the employees covered by those set of rules as 60 years but not 58 years. However, without any regard to the obligation to preserve and protect the conditions of service of the Government employees, who stood transferred to the J.N.T.U., upon its formation, the Statutes are sought to be amended reducing the age of superannuation of the employees, who are in non-teaching cadre to be 58 years instead of 60 years. Consequently, the employees, who have completed 58 years of age as on 23-09-1998 and continuing as such after 23-09-1998 are all sought to be retired duly treating the service rendered by them after attaining the age of 58 years, as just service. In those set of circumstances, some of the employees approached this Court by instituting W.P. No. 8480 of 2003, which was allowed on 09-07-2003 directing the respondents to determine the pension of those writ petitioners in accordance with the A.P. Revised Pension Rules, 1980 duly reckoning the age of superannuation as 60 years. The respondent University challenged the correctness of the said order by instituting W.A. No. 2115 of 2003. The said writ appeal was dismissed on 15-03-2004. On the precious plea that Revised Pension Rules are applicable to the case of the writ petitioner, his age of superannuation was sought to be determined at the age of 58 years instead of treating it as 60 years.

4. In these set of circumstances, the question that arises for consideration in this writ petition is whether the age of superannuation of the writ petitioner is to be treated as 60 years or as contended by the respondent University, it should be 58 only.

5. The State Legislature with a view to provide for the establishment and incorporation of a technological university in the State of Andhra Pradesh enacted the Jawaharlal Nehru Technological University Act, 1972, Act number 16 of 1972 (henceforth referred to as J.N.T.U. Act). This act was brought into force on 02.10.1972. In terms of Section 3 thereof, a teaching University called Jawaharlal Nehru Technological University came to be established. Section 10 of the Act constituted various authorities of the University, while Section 11 dealt

with the composition of the Executive Council of the University. Section 23 of the J.N.T.U. Act provided for the matters concerning which statutes can be made, in detail and most importantly, in Clause (i), it is provided that the classification, the method of appointment and determination of the terms and conditions of service of teachers and other staff of the University has been provided there. Section 24(1) empowered the Government to make and notify the first statutes of the University. Sub-Section 2 empowered the Executive Council to not only make statutes in addition to the first statutes, but was also conferred with the power to amend or repeal any statute in the manner provided in the said section. The proviso to Sub-Section 2 of Section 24 makes it clear that nothing in the First Statutes or any Statute made by the Executive Council subsequently shall adversely affect the conditions of service of teachers or other employees transferred to the control of the Technological University on 02.10.1972 along with transfer of the control and management of the constituent colleges. Sub-Section 5 of Section 24 requires that every statute passed by the Executive Council shall be submitted to the Chancellor of the University who may either give or withhold his assent or remit it to the Executive Council for reconsideration. It was further set out therein that no statute passed by the Executive Council shall have validity unless it is assented to by the Chancellor. The first statutes have been made by the Governor and published in the Andhra Pradesh Gazette on 17.01.1975. Statute XIV dealt with various aspects relating to the services of the employees of the University. Rule 1 of Statute XIV dealt with the classification of the members of the staff of the University. Various categories such as "academic service", "administrative service", "ministerial service" have been dealt with in Sub Rules a, b and c of Rule 1. Various categories of "Subordinate Service (Technical)" have been listed out in Rule 1d of the said Statute. The posts of Technical Assistants have been included at Serial No. 7 thereof. Rule 25 dealt with the aspects relating to pension and gratuity. It is stated therein that an employee of the University excepting: the administrative and ministerial employees shall be retired on superannuation when he attains the age of 60 years. Whereas, any administrative and ministerial employee of the University shall be retired on superannuation when he attains the age of 55 years. It was further made clear that all employees of the University shall be governed by the rules applicable to the employees of the Government of Andhra Pradesh in respect of all types of pension, family pension, death-cum-retirement gratuity and general provident fund. Thus, Rule 25 of Statute XIV is of considerable significance for our inquiry.

6. An amendment has been carried out to this Rule 25 of Statute XIV of the first statutes. The assent granted to the said amendment by the Chancellor of the University has been communicated by the State Government in Education Department to the respondent University through their letter No. 471/EC. 1/96-11 dated 23.09.1998. Along with the administrative service and ministerial service employees, subordinate service (technical employees) as well as subordinate service (non-technical employees) are now required to be retired on

superannuation basis when they attain the age of 58 years. It is contended that no such amendment has been made at all to the Statute XIV incorporating that the subordinate service (Technical Personnel) in the same group as that of ministerial service and administrative service employees and even if such an amendment is made the same is bad, as the procedure prescribed has not been followed.

7. It is further contended that the Andhra Pradesh Revised Pension Rules, 1980, are applicable to all the employees of the J.N.T.U. irrespective as to whether they retire at the age of 60 or 58 years, as the case may be, in view of the provision contained in Rule 25 (iii) of Statute XIV and hence for the sake of extending the benefit of Andhra Pradesh Revised Pension Rules, 1980, the petitioner herein need not be retired at the age of 58 years, which is incidentally the age of superannuation for the servants of Government of Andhra Pradesh. It is also contended that prescribing different ages of superannuation for different categories of employees forming part of a common service amounts to arbitrary discrimination violative of Article 14. It is also further urged that several writ petitions have been allowed by this Court directing the respondent University to continue in service, the employees till they attain the age of 60 years and on that basis, compute their retrial benefits in accordance with the Andhra Pradesh Revised Pension Rules, 1980 and hence any action in seeking to retire the petitioner herein at the age of 58 runs contra to the various judgments rendered by this Court.

8. From the pleadings as were set up by the petitioner, in paragraph 4 of the affidavit filed in support of this writ petition, it is clear that he was directly recruited to the service of the first respondent-University as a Technical Assistant Grade-II on 09.12.1994. Therefore, it can be safely ruled out that he is not one of the employees belonging to the Government service, serving either in the Technical Education Department or in any of the Government Engineering Colleges and whose management and control has been transferred under Sub-Section 2 of Section 28 of the J.N.T.U. Act to the first respondent-University and to whom the benefit of absorption (in terms of Section 44 of the J.N.T.U. Act) in the first respondent-University has been extended. Therefore, the first question that has got to be answered is whether the employer has got a right to justifiably modify the age of superannuation. In *K. Nagaraj v. Government of Andhra Pradesh* AIR 1985 551 the issue was answered in the following words.

28. On the basis of this data, it is difficult to hold that in reducing the age of retirement from 58 to 55, the State Government or the Legislature acted arbitrarily or irrationally. There are precedents within our country itself for fixing the retirements age at 55 or for reducing it from 58 to 55. Either the one or the other of these two stages is regarded generally as acceptable, depending upon the employment policy of the Government of the day. It is not possible to lay down an inflexible rule that 58 years is a reasonable age for retirement and 55 is not. If the policy adopted for the time being by the Government or the

Legislature is shown to violate recognised norms of employment planning, it would be possible to say that the policy is irrational since, in that event, it would not bear reasonable nexus with the object which it seeks to achieve....

35... It was also urged by counsel that by reducing the age of retirement to 55 years, the Government employees were deprived of their right to livelihood. There is no substance in this latter argument because, if a rule of retirement can be deemed to deprive a person of his right to livelihood, it will be impermissible to provide for an age of retirement at all. That will be contrary to public interest because the State cannot afford the luxury of allowing its employees to continue in service after they have passed the point of peak performance. Rules of retirement do not take away the right of a person to his livelihood: they limit his right to hold office to a stated number of years.

9. Therefore, the right of every employer to appropriately fix the age of superannuation for its employees or even to modify the same has got to be understood as power available to such an employer without in any manner attacking the rationale behind the policy, it is not enough for one to lay a claim that the decision per se is arbitrary.

10. However, the contention canvassed that there is no amendment carried out to Rule 25 of Statute of XIV of the first Statutes, reducing the age of superannuation, to my mind is a far-fetched contention. After the State Government introduced the Andhra Pradesh Revised Pension Rules, 1980 through their G.O. (P) 88 Finance & Planning (FW PSC IV) Department, dated 26.03.1980, the first respondent-University has taken up the matter with the Government for extending the benefit of the Revised Pension Rules to the employees of the University also. The Government appeared to have replied to the respondent-University on 16.10.1987 that if the University also fixes the age of superannuation of its employees as 58 instead of 60, the same age as was fixed by the State Government for its employees, the issue of extension of the benefit of Andhra Pradesh Revised Pension Rules, 1980, to the University employees would be favourably considered. At that stage, the Chairman of the Joint Action Committee of the non-teaching staff employees association of the respondent-University has conveyed to the respondent-University that all the non-teaching staff are willing to retire at the age of 58 years, for securing the extension of the benefit of Andhra Pradesh Revised Pension Rules, 1980. The matter was accordingly placed before the Board of Management at their meeting held on 27.08.1992 and it was resolved there to extend the benefit of the Andhra Pradesh Revised Pension Rules, 1980, to both Technical Subordinate Service Employees as well as Non Technical Subordinate Service Employees who opt to retire on attaining the age of 58 years. However, the University realized that this decision of the Board of Management cannot be given effect to unless Rule 25 of Statute XIV of the first Statutes of the University have been appropriately amended. Therefore, the matter was placed before the 17th meeting of the Board of Management for its consideration and by resolution No. 2.05

amendment to Rule 25 was proposed reducing the age of superannuation. Unless the amendment proposed has been assented to by the Chancellor of the University, the amended Statutes cannot be given effect to. Hence, the matter was taken up for securing the assent to the Chancellor which was what has been communicated by the State Government through their letter dated 23.09.1998. Thus, Rule 25 of Statute XIV of the first Statutes has been appropriately amended. Learned Standing Counsel has produced the record, disclosing as to how the Members of the Board of Management met at 11.00 A.M. on 06.09.1994 in the chambers of the Vice-Chancellor of the University-Dr. I. Gopal Reddy. The following nine other members, along with Dr. I. Gopal Reddy, have affixed their signatures in token of their attendance at the meeting. They are: Dr. C.S. Rangachari, Principal Secretary to Government, Education Department; Sri M. Sahoo, Additional Secretary to Government of Andhra Pradesh, Finance Department; Sri Priyadarsi Dash, Director of Technical Education, SBRKR Govt. Office Complex; Dr. D. Ramadurgaiah, Director, S.E.W.A.R, J.N.T.U, Hyderabad; Prof. G. Shankara Rao, Principal, J.N.T.U. College of Engineering, Hyderabad; Dr. S.S.R.L. Swamy, Technical Director, Instrument Techniques Pvt. Ltd. Balanagar, Hyderabad; Sri K. Rami Reddy of Tirupathi; Prof. K. Seetharamulu, Professor of Civil Engineering, Indian Institute of Technology, New Delhi; Dr. M. Anandakrishnan, Vice-Chancellor, Anna University, Madras. It is contended that the Executive Council (which was rechristened later on as Board of Management) cannot consider or propose any amendment to any Statute without receiving a proposal in that regard from the Academic Senate and at the relevant point of time, the Academic Senate was not constituted at all. It is one thing to say that the Executive Council or Board of Management does not have the power at all to propose any amendment to the Statutes and it is altogether a different thing that it did not have the benefit of wise counsel of the Academic Senate. When the later body was not in existence, the power of the Executive Council or Body of Management does not get circumscribed to independently consider or propose an amendment to a Statute. I, therefore have no hesitation to reject the contention that there is no amendment validly carried out to Rule 25 of Statute XIV of the first Statutes of the respondent-University. Further, the Government of Andhra Pradesh in its Education Department, through its letter dated 23.09.1998 conveyed the assent granted by the Chancellor of the University in terms of Sub-Section 5 of Section 24 of the J.N.T.U. Act. I am not able to subscribe to the view that it is not for the State Government to communicate the assent of the Chancellor at all and that such an assent shall be communicated by the Secretary to the Governor, what is important is the assent granted by the Chancellor but nothing turns on who communicates such an assent.

11. As per the amendment, all Subordinate Service (Technical) and Subordinate Service(Non-Technical) employees, have to retire on attaining the superannuation of 58 years. Therefore, in terms of the amendment, the petitioner has been rightly notified that he has to retire on 30.06.2009 on attaining the age of superannuation of 58 years.

12. The next contention that there cannot be different ages fixed for different categories of employees working under the same employer is concerned and that any such prescription amounts to discrimination, all I need to point out is that the Supreme Court has silenced a similar contention canvassed before it in Life Insurance Corporation of India and Others Vs. S.S. Srivastava and Others, as under.

23..... In the case of those 16 people the Corporation passed a separate order fixing their age of retirement as 60 years having regard to the negotiations which had taken place between the Corporation and the Government before the taking over of their services by the Corporation. They again belong to a different category altogether and 212 the fixation of the age of retirement in their case at 60 years cannot be challenged by those who were directly recruited by the Corporation after September 1, 1956 as there is no similarity between them and the said 16 officers.

24. The next question for consideration is whether the fixation of 58 years as the age of superannuation in the case of the employees who entered the service after 1st September, 1956 is unreasonable. While dealing with this question, the Court can take judicial notice of the different ages of retirement prevailing in the several services in India. In almost all the public sector corporations, Central services and State services 58 years age is considered to be a reasonable age at which officers can be directed to retire from their service. So, the determination of 58 years as the age of superannuation by itself cannot be considered to be arbitrary.

25. Having regard to the lower emoluments and other benefits which the employees belonging to Class III and Class IV are entitled to get from the Corporation and the higher emoluments and other benefits to which officers belonging to Class I and Class II are entitled and also the nature of their work and the powers enjoyed by them we are of the view that fixation of different ages of retirement to the different classes of employees would not by itself be violative of Articles 14 and 16 of the Constitution....

13. Further, once again the Supreme Court rejected such a contention brought before it in Tejinder Singh v. Bharat Petroleum Corporation Limited AIR 1987 51 as under:

1. All these applications under Article 32 of the Constitution are by officers called the Management Staff employed under the Respondent No. 1 and challenge in all the Writ Petitions is to the age of superannuation at 58 years. The principal ground of attack is discrimination between the clerical staff for whom the age of retirement is 60 years and the management staff in whose case such terminal point is 58 years. It is also the claim of the petitioners that in keeping with the current trend in the commercial field such age should be fixed at 60.

4.... Petitioners have contended that the disparity in the age of retirement between two groups of employees gives rise to discriminatory treatment This

stand is not tenable for more than one reason. Clerical staff and officers of the management staff belong to separate classifications and no argument is necessary in support of it....

14. Therefore, this contention canvassed on behalf of the petitioner also does not hold merit.

15. The further contention of the petitioner is inspired by the Judgment rendered by this Court in W.P. No. 1378 of 2007 on 13.10.2008. Before a learned Single Judge of this Court, it has been stated by both sides that the issue raised in the said W.P. No. 1378 of 2007 is covered by the Judgment rendered earlier in W.P. No. 8480 of 1993 dated 09.07.2003. Accordingly, the learned Judge allowed the W.P. No. 1378 of 2007 directing the respondents to determine the pension of the petitioners in accordance with the Andhra Pradesh Revised Pension Rules, 1980, treating the age of superannuation as 60 years. W.P. No. 8480 of 1993 was instituted by one Sri Muthu Krishnudu, who has joined initially the service of the Government of Andhra Pradesh in its Technical Education Department on 23.01.1950 and his services were transferred to the respondent-University when it was constituted on 02.10.1972. He retired from the services of the respondent-University on 30.06.1983 on attaining the age of 60 years. When the pension of the said Sri Muthu Krishnudu was required to be fixed, his pension has been fixed reckoning his service only till his attaining the age of 58 years which is the normal age of retirement for Government Servants of Andhra Pradesh and the balance two years of service was omitted from consideration. Then the question that arose for consideration in W.P. No. 8480 of 1993 was whether while fixing the pension of the said employee in terms of the Andhra Pradesh Revised Pension Rules, 1980, can the service rendered by an employee beyond 58 years be ignored?. Such a contention was rightly repelled in W.P. No. 8480 of 1993. When appealed against by the University, that view was confirmed by a Division Bench by its Judgment rendered on 15.03.2004 and accordingly Writ Appeal No. 2115 of 2003 preferred by the University was dismissed by the Division Bench.

16. I am at a loss to understand as to how the ratio laid down by this Court in Muthu Krishnudu's case, W.P. No. 8480 of 1993 or the Judgment rendered in W.P. No. 1378 of 2007 will have any applicability to the case of the present writ petitioner. As was already notice supra, prior to the amendment of Rule 25 of Statute XIV of the first Statutes, the age of superannuation for certain classes of employees of the University was fixed at 60 years. In accordance with that rule, if a University employee has retired from service on attaining the age of 60 years, merely because his retrial benefits have to be worked out in terms of the Andhra Pradesh Revised Pension Rules, 1980, the service rendered by such an employee beyond 58 years and up to 60 years cannot be ignored at all. The terminal benefits, such as pension and gratuity, it is well settled in law that, have to be worked out on the basis of the last wages drawn or last average pay drawn as the case may be. Wages drawn two years prior to the actual date of retirement cannot be taken into reckoning for the purposes of fixation of retrial

benefits. Therefore, Muthu Krishnudu's case is completely distinguishable from the case of the petitioner. Even now, the academic staff of the University retire at the age of 60 years. While granting them retrial benefits in accordance with the Andhra Pradesh Revised Pension Rules, 1980, the service rendered by them beyond the age of 58 and up to 60 years cannot be ignored at all. However, when it comes to the case of the petitioner herein, after the amendment is carried out to Rule 25 of Statues of Statute XIV of the first Statutes, the age of superannuation was fixed as 58 years. It is a pure coincidence that the age of superannuation of the Government employees is also 58. Therefore, without in any manner getting linked to the conditions of service of the Government employees, if the respondent-University in exercise of power available to it, also fixed the age of superannuation of subordinate employees both technical and non-technical as 58 years, the petitioner cannot make any grievance out of it, without demonstrating the irrationality behind such a decision.

17. I do not find any merit in this writ petition and accordingly it is dismissed. No costs.