

(2012) 01 MP CK 0039
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 596 of 2011

Madhav Institute of Technology and Science Gwalior and
another

APPELLANT

Vs

Prof. Y.P. Singh and others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 23
Madhya Pradesh Ashaskiya Shikshan Sanstha Anudan Niyam, 2008 — Rule 11, 3, 4, 4(8), 9
Madhya Pradesh Ashaskiya Shikshan Sansthan (Anudan Ka Praday) Adhinyam, 1978 — Section 10
Rajiv Gandhi Proudhyogiki Vishwavidyalaya Adhinyam, 1998 — Section 37, 38(1)

Citation : (2012) 2 MPHT 149 : (2012) 2 MPLJ 538

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : K.N. Gupta and Mr. Ankur Mody, for the Appellant; D.K. Katare, Advocate for the Respondent No. 1 and Mr. Raghvendra Dixit, Govt. Advocate for the Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J.—Appellants have filed this appeal against order dated 21-10-2011, Annexure P-1, passed by learned Single Judge of this Court in Writ Petition No. 6621/2010 (S). The main question for consideration in this appeal is that whether order dated 14/15th September, 2010 (Annexure P-2), passed by the Technical Education and Training Department, Bhopal fixing age of superannuation as 65 years to the teachers working in Autonomous and Aided Engineering Colleges is binding on these institutions ?

2. Respondent No. 1 was employed as Professor in Architect in the year 1987. The institution-appellant decided to retire respondent No. 1 at the age of 62 years vide order 5-1-2010 (Annexure P-1). As per appellants, respondent No. 1 is eligible to continue in service till attaining the age of 62 years.

3. The aforesaid order was challenged by respondent No. 1 before the Writ Court on the ground that the State Government vide order dated 14/15th September, 2010 fixed the age of 65 years for retirement of teaching staff working in autonomous and aided institutions. The appellants resisted the claim of respondent No. 1 before the learned Single Judge and pleaded that the appellant is an autonomous college and it has a right to fix service conditions of its employees under Statute No. 37, framed by the State Government in exercise of powers by sub-section (1) of Section 38, read with Section 37 of the Rajiv Gandhi Proudhyogiki Vishwavidyalaya Adhiniyam, 1998 (No. 13 of 1998). The learned Single Judge has negatived the contention of the appellants and held that respondent No. 1 is entitled to continue in service up to attaining the age of 65 years.

4. Learned Senior Counsel, appearing on behalf of appellants, has contended that the State and AICTE has no power and authority to fix the age of retirement of teachers working in the appellant-institution. Learned Senior Counsel further submitted that in accordance with Statute No. 37 the appellant-institution has power to fix the age of retirement of teachers in the institution. Consequently, the appellant has fixed the age of retirement at 62 years. The order passed by the learned Single Judge is contrary to law. In support of his contentions learned Senior Counsel relied on the following judgments :-

- (1) K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another,
- (2) Mani Subrat Jain and Others Vs. State of Haryana and Others, and
- (3) T.P. George and Others Vs. State of Kerala and Others,

5. Contrary to this, learned Counsel for respondent No. 1 has submitted that, the Regulations framed by AICTE has statutory force of law and they are binding on appellants. Apart from this, the State Government has also fixed the age of retirement of teachers of autonomous and aided technical institutions at 65 years. Hence, the learned Single Judge has rightly allowed the petition filed by respondent No. 1.

6. The State Government framed Statute, named as "Statute-37" in exercise of powers conferred by sub-section (1) of Section 38 read with Section 37 of the Rajiv Gandhi Proudhyogiki Vishwavidyalaya Adhiniyam, 1998 (No. 13 of 1998). Clause 12 of the Statute 37 prescribes "Functions of the Governing Body" and in accordance with Clause 12 (a) the governing body has to lay down service conditions. The relevant clause is as under :-

12. Function of the Governing Body.-

The following shall be function of the Governing Body :-

- (a) to lay down service conditions, emoluments, travelling allowances for the teaching and non-teaching staff in the college;

7. The Union of India has enacted an Act, named as "The All India Council for Technical Education Act, 1987 (52 of 1987), hereinafter referred to as "Act of 1987" with a view to the proper planning and co-ordinated development of the technical education system throughout the country, and proper maintenance of norms and standards in the technical education system. Section 10 of the aforesaid Act prescribes "Functions of the Council" and Section 23 gives power to the Council to make Regulations. The relevant provision is as under :-

23. Power to make regulations.- (1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, and the Rules generally to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :-

(a) regulating the meetings of the Council and the procedure for conducting business thereat;

(b) the terms and conditions of service of the officers and employees of the Council;

(c) regulating the meetings of the Executive Committee and the procedure for conducting business thereat;

(d) the area of concern, the constitution, and powers and functions of the Board of Studies;

(e) the region for which the Regional Committee be established and the constitution and functions of such Committee.

8. In exercise of powers conferred under sub-section (1) of Section 23 read with Section 10 (i) and (v) of the AM India Council for Teacher Education Act, 1987 (52 of 1987) framed the regulations, named as "All India Council for Technical Education (Pay Scales, Service Conditions and Qualifications) for the Teachers and other Academic Staff in Technical Institutions (Degree) Regulations, 2010", hereinafter referred to as the "Regulations, 2010". Sub-clause (i) under heading "Age of Superannuation" thereof prescribes the age for superannuation of teaching staff is as under;-

Age of Superannuation :

(i) In order to meet the situation arising out of shortage of teachers in Technical Institutions and the consequent vacant positions therein, the age of superannuation for teachers in Technical Institutions has been enhanced to sixty five years, vide the Department of Higher Education letter No. F No. 1-19/2006/2006-U.II, dated 23-3-2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period.

9. By the aforesaid regulation the age of retirement of teachers has been

enhanced to 65 years. These regulations have been published in the Extra Ordinary Gazette of Union of India, dated 5th March, 2010.

10. The Ministry of Human Resources Department, Government of India, Department of Higher Education also wrote a letter on 23rd March, 2007, Annexure P-5, filed in Writ Appeal No. 609/2011, to the Secretary, University Grants Commission and various other departments and Technical Institutions in regard to enhancement of age of teaching staff, who are engaged in teaching activities up to 65 years vide letter dated 23rd March, 2007. Consequently, the Technical Education and Training Department, Madhya Pradesh vide letter dated 14th September, 2010 sanctioned pay scales of the teaching staff and also held that the teaching staff would be eligible to continue in service upto the age of 65 years including the teaching staff working in Autonomous and Aided Technical Engineering Colleges.

11. From the aforesaid statutory provisions, it is clear that in accordance with the Regulations of 2010 framed by the AICTE, respondent No. 1, the teachers performing teaching job in technical institutions are eligible to continue in service up to the age of 65 years. The arguments advanced by the learned Senior Counsel for appellants that these regulations are not applicable to appellant-institution in view of the provisions of the Statute No. 37 could not be accepted because the Union of India has framed Regulations in exercise of powers conferred sub-section (1) of Section 23 read with Section 10 (1) and (v) of the All India Council for Teacher Education Act, 1987 (52 of 1987) and if the Regulations are not applicable to the appellant-institution then the appellant can very well challenge the validity of the Regulations because it has clearly been held in Regulation 1.2 that they shall apply to technical institutions and Universities including deemed Universities imparting technical education and such other courses/Programmes and areas as notified by the Council from time to time. Apart from this, the State Government has fixed the age of superannuation of teaching staff at 65 years. In accordance with the provisions of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ke Vetano Ka Sandaya) Adhiniyam, 1978, the State Government has power to fix service conditions of the employees of aided institutions who are receiving 100 per cent grant-in-aid from the State Government.

12. It is an admitted fact that the appellant-institution has been receiving 100 per cent grant-in-aid from the State Government. The State Government has framed Rules in exercise of the powers conferred by Section 10 of the Madhya Pradesh Ashaskiya Shikshan Sansthan (Anudan Ka Praday) Adhiniyam, 1978, named as the Madhya Pradesh Ashaskiya Shikshan Sanstha Anudan Niyam, 2008. hereinafter referred to as the "Rules of 2008". The aforesaid Rules of 2008 prescribes the provisions in regard to payment of Grant-in-aid. Rule 4 thereof prescribes that grant shall be made subject to following conditions, of which Rule 4 (8), (9) and (11) are important :-

4. Mode of Grant.- (1) Grant shall be made subject to the following conditions :-

(i) Keeping view the financial fund available with the State Government for this purpose;

(ii) Grant will be made to those non-Governmental institution whiel imparts secular education.

(2) No institution shall be entitled to claim any grant as a right, but only such institutions shall be provided with the grant which :-

(a) have been in existence for last five years, and

(b) are either affiliated or recognised by the School Education Department Board of Secondary Education Madhya Pradesh or any University situated in Madhya Pradesh.

(3) Grant shall be sanctioned every year and for such maximum terms as may be determined by the State Government in accordance with the norms specified in Rule 3.

(4) Educational Institutions shall have to provide their accounts to be audited by any agency duly authorised by the State Government for this purpose.

(5) No Educational Institution shall be sanctioned any grant where the Education is being imparted on the basis of caste or community.

(6) No such school or Educational Institution or any part thereof, shall be sanctioned grant which, in the opinion of the Government is not entitled to receive the grant.

(7) No such School or Educational Institution shall be sanctioned any grant which in the opinion of the Government is itself earning from all its sources, if such income as is sufficient to perform its efficient functioning.

(8) In case of new institutions, grant shall be sanctioned under such terms and conditions as may be prescribed by the State Government.

(9) Grant shall be sanctioned only for those institutions where the rules for reservation as may be made by the State Government, are strictly complied with in the appointment and promotion for the teachers and employees.

(10) School Committee should have been registered under the Madhya Pradesh Society Registrickaran Adhiniyam, 1973 (No. 44 of 1973).

(11) Educational qualification for the working staff and teachers in the school, should be in accordance with the minimum educational qualification prescribed for recruitment rules made for appointment for them.

13. From the aforesaid provisions of the Rules, it is clear that the State Government has power to fix the age of retirement of the employees working in the aided institutions. Apart from this, a decision has been taken to give an uniformity to the teachers, who are working in technical institutions. The Higher

Education Department, Ministry of Human Resources Department, Government of India, has also recommended to fix the age of retirement of teachers who are imparting education in technical institutions at 65 years. Hence, the action cannot be said to be illegal or arbitrary. Consequently, we do not find any merit in this appeal. It is hereby dismissed. No order as to costs.