

(2008) 08 UK CK 0025
In the Uttarakhand High Court
Case No : Writ Petition No. 91 of 2008 (S/B)

Man Bahadur

APPELLANT

Vs

Uttarakhand Jal Sansthan and Others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Uttar Pradesh Palika (Centralised) Service Rules, 1966 — Rule 38
Uttar Pradesh Palika and Jal Sansthans Water Works Engineering (Centralised)
Services Rules, 1966 — Rule 7

Citation : (2009) 1 UC 203

Hon'ble Judges : Vinod Kumar Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Prabha Noliyai, for the Appellant; Rakesh Thapaliyal, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—By means of this petition, the Petitioner has sought the relief that a mandamus be issued to the Respondents to permit the Petitioner to continue his service till he attains the age of 60 years as per the service record.

2. It is admitted case of the parties that the Petitioner was appointed as a Junior Engineer on regular basis on 04-11-1978 in the office of Executive Engineer, Kumaon Jal Sansthan, Nainital. As per the service records of the Petitioner, his date of birth is 01-09-1950 and is completing 58 & 60 years on 31-08-2008 and 31-08-2010 respectively. The Petitioner received an order dated 17-03-2008 issued by the Executive Engineer stating therein that he would be superannuated on 31-08-2008 because he has opted for the superannuation at the age of 58 years. After receiving the said order, the Petitioner submitted his representation on 18-03-2008 with the prayer that he may be permitted to continue his service till he attains the age of 60 years. The Petitioner belonged to the Centralized Cadres pursuant to the UP. Palikas and Jal Sansthans Water Works Engineering (Centralised) Services Rules, 1986 (hereinafter referred as "Rule 1986") wherein

there is no provision for providing the superannuation of age. Rule 7 of Rule 1986 provides that the matter not covered by these Rules or by special orders, the provisions of the U.P. Palika (Centralised) Service Rules, 1966 (hereinafter referred as "Rule 1966") and the U.P. Palika (Centralised Service Retirement Benefit Rules, 1981 (hereinafter referred as Rule 1981") shall, mutatis mutandis, apply until such time appropriate rules in this behalf are made for these services. Rule 38 of the Rule 1966 provides that the age of superannuation from service shall be 60 years. According to the Petitioner, Rule 38 is applicable in this case. Pursuant to the pay revision of the Central Government employees by the Pay Commission, the State Government constituted the Samata Committee of the Pay Commission in the year 1989 for removing anomalies between the pay-scales of State Government employees and the employees of local bodies/authorities. While removing such anomalies in the pay scale the Samata Committee had taken into consideration that the age of retirement in the State Services was 58 years and in the local bodies it was 60 years and in order to bring the pay-scale of the employees of the local bodies at par with the employees of the State Government, a recommendation was made by the Samata Committee to give pay parity benefits and other benefits equal to other government employees and the employees of the local bodies, who have opted for superannuation at the age of 58 years. Pursuant to the recommendation of the Samata Committee constituted for removing anomalies between the pay scales of the employees of local bodies and Government employees, the Government Order No. V.A.2-3-315/Das-Estha. Ni.3-89 dated 13-02-1990 was issued to all the General Managers of the Jal Sansthan in which the options of the employees with regard to the age of superannuation were obtained. Pursuant to aforesaid G.O. dated 13-02-1990 the Petitioner has opted the age of retirement as 58 years and thereafter as per the condition as provided in the 1990 G.O. he was given selection grade w.e.f. 01-01-1986 and then his pay was fixed in the scale of Rs. 1400-2400 which is the revised pay scale of Junior Engineer Grade-I. However, these benefits were only admissible to the employees who have completed 14 years of service. Since the Petitioner has opted for the superannuation at the age of 58 years, as such, he was given said benefits immediately after issuance of the 1990 G.O. A further benefit of higher pay scale was also given to the Petitioner pursuant to the aforesaid G.O. dated 13-02-1990 and his pay scale was fixed at Rs. 2200-4000/- w.e.f. 12-11 -1991 i.e. after 8 years from the grant of the benefit of the selection grade. This scale was admissible for the post of Assistant Engineer. Generally, the benefit of higher scale to other employees are admissible after 4 years from the grant of the benefit of selection grade.

3. Learned Counsel for the Petitioner contended that Rule 38 of the Rule 1966 provides that the age of retirement of the employees would be 60 years which is applicable in the case of the Petitioner. The Petitioner is willing to return the benefits granted under the G.O. and he is entitled to continue in service till he attains the age of 60 years. Learned Counsel for the Respondents refuted the

contention. Learned Counsel for the Respondents contended that Rule 7 of 1986 provides that the matter not covered by these Rules or by special orders, the provisions of Rule 1966 and Rule 1981 shall, mutatis mutandis, apply until such time appropriate rules in this behalf are made for these services; the aforesaid Rule provide that the Government has the power to issue special orders with regard to the conditions of service; and the Government has issued the special order i.e. 1990 G.O. It is pertinent to mention here that the State of U.P. constituted the Samata Committee of the Pay Commission in the year 1989 for removing anomalies between the pay-scales of the State Government employees and the employees of local bodies/authorities. It is also revealed from the annexures filed by the Respondents that the employees of the local bodies were not getting salary at par with their counterparts in the State Government. The Samata Committee of the Pay Commission made certain recommendations which were accepted by the Government. The G.O. No. V. Aa.-2-2983/Das. Estha. Ni.-3-89 was issued on 18.10.1989 in which it was recommended as follows:

(2)

(3)

(4)

(5)

(6)

4. Perusal of the above G.O. reveals that for removing the anomalies in the pay scale, the Samata Committee has taken into consideration that the age of retirement in the State Services was 58 years and in the local bodies it was 60 years and to bring the pay-scale of the employees of the local bodies at par with the employees of the State Government, a recommendation was made by the Samata Committee to give benefits of pay parity with the Government employees, local bodies/authorities, who have opted for superannuation at the age of 58 years. Pursuant to the said G.O. dated 18-10-1989, the Government issued a Government Order dated 13-02-1990 provided the revised pay scale of Rs. 1400-2400 to the Junior Engineers, who had opted to retire at the age of 58 years. The relevant paras of the G.O. dated 13-02-1990 are extracted below:

(2)

(3) (1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

5. Thus, the G.O. dated 13-02-1990 was issued about 18 years ago; it has been followed by all the employees of the department; and they have been getting benefits arising out of the said G.O. Learned Counsel for the parties could not demonstrate us that the said G.O. was ever quashed by the court. The said G.O. was beneficial to all the employees and their pay scales had been upgraded equal to the State Government employees. The said benefits are being given to the employees by the Government for the last 18 years. Since the Petitioner in the year 1990 has opted for the superannuation at the age of 58 years, hence he has taken all benefits and promotions which were not admissible to him during his tenure if he would not have opted his retirement age as 18 years. It is admitted to the parties that the Petitioner has not withdrawn his option which he submitted pursuant to the G.O. dated 13-02-1990 and the option given by the Petitioner in the year 1990 is valid till date. The Petitioner had already taken the salary as well as the promotional benefits by opting the retirement age as 58 years pursuant to the said G.O. The Petitioner has availed all the facilities which were available to him under the aforesaid G.O. The employees who have not opted for the superannuation at the age of 58 years have been deprived of the said benefits and the promotions. Since the Petitioner has opted for the superannuation at the age of 58 years hence he was given selection grade w.e.f. 01-01-1986 and his pay was fixed at higher pay-scale. If the Petitioner would not have opted for the superannuation at the age of 58 years he was entitled to get the benefit of selection grade in the year 1992 and then the higher pay scale after 4 years from the date of selection grade i.e. in the year 1996, but he got higher grade in the year 1994. The relevant extracts of the service book of the Petitioner has been annexed with the counter affidavit. The Petitioner has taken all benefits pursuant to the aforesaid G.O. and now at the fag end he cannot claim to continue in service till he attains the age of 60 years.

6. In view of the above, the writ petition lacks merit and is hereby dismissed accordingly. No order as to costs.