

(1992) 04 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16248 of 1991

N. Ramachandra Reddy

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 16-04-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 2 ALT 746

Hon'ble Judges : S.C. Pratap, C.J.; Subhashan Reddy, J

Bench : Division Bench

Advocate : A.K. Jaiswal, for the Appellant; The Govt. Pleader on behalf of Respondent Nos. 1 and 2 and S.R. Ashok, on behalf of the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner seeks continuance in service upto 60 years in view of number of decisions of this court declaring that G.O.Ms. No. 144 dt.12-2-1981 and G.O.Ms. No. 472 dt.19-5-82 do not apply to Lecturers of private colleges. Counsel for the petitioner made specific reference to three writ petitions. W.P. No. 608/80 filed by two Lecturers of the same college was disposed of along with a batch of writ petitions by Division Bench of this court by Judgment dt.25-8-90 on the assumption that they were Lecturers in Colleges which are affiliated to Andhra University, or Sri Venkateswara University or Osmania University. On the basis of the above Bench decision, S. Parvatha Rao, in W.P. No. 4855/87 on 27-12-1991 and M.N. Rao, J. in W.P. No. 412/90 on 10-10-1990 have also allowed writ petitions filed by Lecturers of Junior Colleges.

2. Third respondent has filed a counter-affidavit stating that the third respondent-Junior College was affiliated only to the Board of Intermediate Education and not to any one of the Universities in the State. He also submits that the age of retirement for employees of institutions affiliated to the Board of Intermediate Education has always been 55 or 58 years and never 60 years. According to this

submission, the Judgment of the Division Bench in W.P. No. 608/80 was rendered without reference to the above fact and requires reconsideration.

3. On examination of the Judgment of Division Bench, it appears to me that it proceeded on the assumption that two lecturers of the third respondent college were also Lecturers in colleges affiliated to the Andhra University of Sri Venkateshwara University or Osmania University. It is obvious that the above decision of the Division Bench in respect of W.P. No. 608/80 may require reconsideration.

4. I am of the opinion that it is better that the matter is placed before the Division Bench for admission. Counsel for the petitioner submits that his services sought to be discontinued and it is necessary that he shall obtain orders immediately. Registrar (Judicial) shall place the matter before the Hon''ble the Chief Justice forthwith and obtain orders to have the matter heard and disposed of by Division Bench at the earliest.

This writ petition coming on for hearing on this the 16th day of April, 1992 pursuant to the order of this court dt.30th March 1992, and upon perusing the order of this court dt.30-3-92 and upon hearing the arguments of the learned Counsel on both sides, the court delivered the following:

1. Principal relief claimed in this Article 226 petition is that the petitioner is entitled to continue in service till the attainment of 60 years and not 58 years as claimed by the third respondent.

2. In October, 1969, the petitioner was appointed in the Ramakrishna Junior College, Allur, District Nellore as a Junior Lecturer in Mathematics. He was promoted as Principal of the said College with effect from 1st November, 1976. This college is not affiliated to any of the three Universities, namely, Andhra University, Sri Venkateswara University or Osmania University. It is affiliated to the Board of Intermediate Education vide G.O.Ms. No. 97 Education, dated 6th February, 1980. Originally, the age of superannuation in the case of teaching staff and Principals in Junior Colleges affiliated to the Board of Intermediate Education was 58 years. By Government Order dated 11th November, 1983 it was reduced to 55 years. But, subsequently, by virtue of the minutes dated 6th November 1985 of the Board of Intermediate Education it was increased to 58 years. At no stage or time was the age of superannuation 60 years. Even today, nothing has been shown to us nor our attention invited to any rule or regulation under which the age of superannuation of the petitioner working in the Junior College affiliated to the Board of Intermediate Education can be said or held to be 60 years. The relief claimed by the petitioner that he was entitled to continue in service till he attained the age of 60 years is, in the circumstances, ex facie untenable and deserves to be rejected.

3. Our attention is, however, invited to two judgments of this court in support of the contention that the age of superannuation of the principal and teaching staff of the 3rd respondent-Junior Colleges affiliated to the Board of Intermediate

Education has been 60 years. The first Judgment is in W.P. No. 608/80 filed by two Lecturers in the third respondent-college for direction to release teaching grant from out of the grant-in-aid till they attained the age of 60 years. This petition was disposed of along with a batch of cases dealing with the age of superannuation of lecturers in private colleges affiliated to either Andhra, Sri Venkateswara or Osmania University. The petitioners in the aforesaid W.P. No. 608/80 were not lecturers in any of the colleges affiliated to any of these Universities. The said writ petition was, however, heard along with a batch of petitions under a misconception that the said writ petition was also concerned (what was not true) with lecturers in a college affiliated to one or the other of the aforesaid three Universities. Consequently, relief similar to the one granted to the petitioners in the entire batch of writ petitions also came to be granted to the petitioners in the W.P. No. 608/80. Decision in this latter writ petition was thus under an erroneous assumption and total misconception and cannot prevent, debar or estop the respondents herein from contending that the true age of superannuation for Principals and staff members of the third respondent-college is 58 years. As already indicated, even as of now no rule, regulation or provision is shown to us in support of the contention that the age of superannuation is 60 years. We see no justification to compel the respondents to continue the petitioner till his attainment of 60 years. Correct facts and true position having been brought to the notice of this court and the same being undisputed, it must follow that the petitioner cannot be permitted to take advantage of the Judgment in W.P. No. 608/80 which as seen was based on erroneous assumption and misconception that the third respondent-junior college was affiliated to one or the other of the aforesaid three Universities and not to the Board of Intermediate Education as is in fact the correct position.

4. Coming to the second Judgment, namely, one dated 27th December, 1991 in W.P. No. 4855/87, it does not independently decide the question. It is based solely and wholly upon the first Judgment supra. It does not, therefore, advance the case of the petitioner any further. Indeed, even in the present petition, the petitioner almost got away with the relief of superannuation on attainment of 60 years when at the admission stage itself and without notice to the third respondent-college, an order accordingly was passed based on the decision in the aforesaid matters. On coming to know thereof, the third respondent-college moved this court and at its instance the said order was set aside and the writ petition was placed before the court for decision on merits. When the petition came up before Sivaraman Nair, J., the same by a brief order dated 30th March, 1992 was referred to a Division Bench with an observation that it was obvious that the above decision in W.P. No. 608/80 may require reconsideration because the same proceeded on the assumption that the two lecturers of the third respondent-college were also lecturers in a college affiliated to one or the other Universities aforesaid. That is how this petition comes up before us.

5. In the counter, reference is made in paragraph 9 thereof to the petitioner's conduct which is highly unbecoming of a principal of an educational institution.

Be that as it may, we do not desire to pursue this particular aspect in the present proceedings as it is not relevant to the main question of the correct age of superannuation.

6. In the result, we hold and reiterate that the age of superannuation of Principals and staff members of Junior Colleges affiliated to the Board of Intermediate Education is 58 years only. We further hold that the Division Bench ruling in W.P. No. 617/80 (and the batch along therewith) decided on 25th August, 1990 has no application to the question of the age of superannuation of Principals and teaching staff of Junior Colleges affiliated to the Board of Intermediate Education.

7. In the result, this petition fails and the same is dismissed. In the circumstances, there will be no order as to costs.