(2011) 07 AHC CK 0070

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37749 of 2005

Om Prakash Dwivedi APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Financial Hand Book Rules — Rule 197(A)
Uttar Pradesh Judicial Officers Rules, 1992 — Rule 4
Uttar Pradesh Presiding Officers of Labour Courts and Industrial Tribunals Rule, 1996 — Rule 6, 6(1)

Citation : (2011) 7 ADJ 813

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By the Court - We have heard Shri A.N. Tripathi, Sr. Advocate assisted by Shri S.S. Sachan for the Petitioner. Shri Amit Sthalekar appears for the Registrar General, High Court. Learned Standing Counsel appears for the State Respondents.

2. The Petitioner retired on attaining the age of sixty years on 30.4.2001 as Special Secretary and Additional Legal Remembrancer of State of U.P., posted at Allahabad High Court. Prior to his retirement he was selected and appointed by Office Memorandum dated 29th March, 2001, as Presiding Officer, Labour Court, Allahabad for a period of 3 years or until he attains the age of 65 years, whichever is earlier. The Office Memorandum required the Petitioner alongwith other Presiding Officers of the Industrial Tribunal and Labour Court to join within a fortnight.

3. The Petitioner handed over the charge of his office on retirement in the afternoon of 30.4.2001 and in pursuance to his fresh appointment vide memorandum dated 29th March, 2001 he assumed charge as Presiding Officer,

Labour Court, in the afternoon on 1.5.2001.

4. By this writ petition the Petitioner has prayed for directions to pay him arrears of salary from 1.5.2001 to 1.5.2004, alongwith interest at 9% per annum and to refix his pension after adding an increment of Rs. 450/- per month in his basic salary for which he became entitled on 1.5.2001. Shri A.N. Tripathi submits that w.e.f. 1.1.1986 the Petitioner was given the pay scale of Rs. 5100-6300/-. On 1.1.1996 he was given pay scale of Rs. 16,400-450-20,000/-. His pay was fixed on 1.7.1996 in the pay scale of Rs. 16750-400-19150-450-20500/- and was given selection scale on 29.3.2001 in the pay scale of Rs. 18750-400-19150-450-22,850/ -. He submits that the Petitioner was entitled to an increment of Rs. 450/-, on completion of service for 12 full months on 30.4.2001.

5. The Petitioner made representation for giving him increase of Rs. 450/- per month to which he claimed to have become entitled on completing service on 12 full months on 30.4.2001 and consequential increase in dearness allowance to the tune of Rs. 300/- per month. The Petitioner also claimed entitlement to conveyance allowance, which was increased from Rs. 750/- per month to Rs. 800/- per month for having joined as Presiding Officer, Labour Court, while serving as Special Secretary and Additional Legal Remembrancer on 1.4.2001, which was not given to him for a period of 3 years causing loss of Rs. 28,750/-. The Petitioner has calculated the entire monetary loss at Rs. 66,550/- including the increment, conveyance allowance, special compensatory allowance, and library allowance.

6. Shri Amit Sthalekar, Learned Counsel appearing for the Registrar General, High Court submits that the Petitioner was posted as Special Secretary and Addl. L.R. (Legal Cell), High Court, Allahabad from October, 1999 to 30.4.2001. The date of birth of the Petitioner is 1.5.1941 and as such he retired on 30.4.2001 on attaining the age of superannuation i.e. 60 years. The Petitioner handed over the charge on its retirement on 30.4.2001. After his retirement he was appointed as Presiding Officer, Labour Court on 1.5.2001, in pursuance to the Government Order dated 29.3.2001. Rule 4 of the U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992 regulates retirement of the Judicial Officers and provided as follows:

4. Retirement: A judicial officer shall retire from service on superannuation in the afternoon of the last day of the month in which he attains the age of 60 years.

(emphasis supplied)

7. Shri Sthalekar submits that Rule 6 of the U.P. Presiding Officers of Labour Courts and Industrial Tribunals (Appointment and Conditions of Employment) Rule, 1996 provides that a person in service, on appointment to a post under these Rules (Rules of 1996), shall be entitled to receive the same pay and allowance as would have been admissible to him, had he continued in his parent department. Sub-rule (2) provides that person by appointment to a post under

these Rules after superannuation from Government Service shall be treated as reemployed under Article 520 of the Civil Service Regulations and will be entitled to receive the salary at the rate of last pay drawn, minus the total amount of pension. Since Shri Dwivedi, the Petitioner retired on 30.4.2001 on attaining the age of superannuation, and joined as Presiding Officer, Labour Court, Allahabad on the next day on 1.5.2001, after his retirement, his services were not in continuation to claim benefit of Rule 6 (1) of the Rules of 1996. Rule 6 of the U.P. Presiding Officers of Labour Courts and Industrial Tribunal (Appointment and Condition of Employment) Rules, 1996 is quoted as below:

6. Pay and allowance, etc.--(1) A person in service on appointment to a post under these rules shall be entitled to receive the same pay and allowances as would have been admissible to him, had he continued in his parent department.

(2) A person on appointment to a post under these rules after superannuation from Government service shall be treated as re-employed under Article 520 of the Civil Service Regulations and will be entitled to receive the salary at the rate of last pay drawn minus the total amount of pension.

(3) A person appointed to a post under these rules after retirement from a Government service on reaching the age of superannuation will be entitled to all kinds of leaves and leave encashment admissible to a temporary Government servant under the subsidiary Rule 197-A of the Financial Handbook, Vol. II, Parts II to IV.

(4) A person appointed to a post under these rules shall not be entitled to any temporary or ad hoc increase in pension.

(5) the period of service rendered by a person as Presiding Officer of the Labour Court or the Tribunal after his retirement from Government service on reaching the age of superannuation shall not be counted for pension purpose and no gravelling allowance will be payable to such person either for joining the duty at the place of his posting or for return journey to his place of residence on completion of his term of appointment.

8. Shri Sthalekar submits that on his retirement on 30.4.2001 the Petitioner''s eligibility for increment or other service benefits as serving Judicial Officer from the High Court came to an end. There was no question of recommending increment for his salary or other allowances as claimed by him. He was also not entitled, after he retired from judicial service to the conveyance allowance or other allowances attached to the office of the Judicial Officer.

9. Learned Standing Counsel appearing for the State Respondents supported the submissions of Shri Amit Sthalekar.

10. Shri A.N. Tripathi submits that the stand taken by the High Court and the State Government does not take into account Rule 4 of the U.P. Judicial Officer (Retirement on Superannuation) Rules, 1992, which clearly provides that a judicial officer shall retire from service on superannuation in the afternoon of the

last day of the month in which he attains the age of 60 years. The Petitioner was to continue in employment upto 12 0'' clock in the night of 30th May, 2001 (i.e. the last day of the month of May in which he attained the age of 60 years) and on his joining on 1st May, 2001, there was no break in service. According to Shri Tripathi Sub-rule (1) of Rule 6 of the Rules of 1996 will be applicable to the Petitioner''s case and that the Petitioner will be entitled to receive the same pay and allowance as would be admissible to him, had he continued in his parent department. A con-joint reading of Rule 4 of the U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992, and Rule 6 of the Presiding Officers of Labour Courts and Industrial Tribunals (Appointment and Conditions of Employment) Rules, 1996 would show that there was no break in service and thus the Petitioner was not only entitled to increment but also all allowances payable to judicial officers while serving as Presiding Officer, Labour Court for a period of 3 years upto the age of 65 years.

11. Shri A.N. Tripathi suits that under Fundamental Rule 56, which is a general rule applicable to all government servants, it is provided that every government servant shall retire from the serve on the afternoon of the last day of the month in" which he attains the age of 60 years. The proviso to Sub-rule (a) provides that government servant, whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 60 years. He drawn distinction between under the proviso to FR 56 and Rule 4 of the U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992, and submits that since the Petitioner''s date of birth is 1st May, 1941, he would have retired on 1.5.2001, and not on the previous day on 30.5.2001. The fiction created by Rule 4 of the U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992 will be applicable, dehorse the proviso to FR 56(a), which is quoted as below:

F.R. 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.

Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

12. In Achhaibar Maurya Vs. State of U.P. and Others, (followed in Eerati Laxman Vs. State of A.P., the Supreme Court held in paras 7 to 14 as follows:

7. The question in regard to the determination of age of superannuation of an employee is governed by the Rules. Indisputably, the terms and conditions of service of an Assistant Teacher are governed by the provisions of 1972 Act and the Rules framed under Sub-section (1) of Section 19 thereof. The Rules were amended on or about 12th June, 1989. In terms of Rule 29, a teacher is to retire on the date on which he had completed 60 years on the last day of month when the person is born.

8. As the Appellant was born on 1st July, 1943, he would retire on 30th June, 2003. the question as to whether he would obtain the benefit of extended period of service upto 30th June and the next year will depend upon the situation as to whether the teacher retires on or after 1st July or not.

9. in Khan Chandra Madhu (supra), the learned Judge proceeded on the basis that the academic session starts on 2nd July and ends on 30th June.

10. A benefit of getting an extended period of service must be conferred by a statute? The Legislature is entitled to fix a cut off date. A cut off date fixed by a statute may not be struck down unless it is held to be arbitrary. What would, therefore, be an employees last working date would depend on the wordings of the Rules. It may seem unfortunate as some people may miss the extended period of service by a day; but therefor a valid provision may not be held to be invalid on the touchstone of Articles 14 or 16 of the Constitution of India. A statute cannot be declared unconstitutional for conferring benefit to a Section of the people. We, therefore, do not agree with the view taken in Khan Chandra Madhu (supra).

11. In S. Banerjee Vs. Union of India (UOI) and Others, whereupon reliance has been placed, the fact situation obtaining was completely different. In that case, the Appellant filed an application for voluntary retirement Which was accepted from the forenoon of 1st January, 1986. In that view of the matter, he was found to be entitled to the benefit of paragraph 17.3 of the recommendations of the Pay Commission.

12. It was urged that the Appellant was entitled to a hearing as the matter relating to retirement from service depended upon the statutory provisions. A person; retires automatically on the day when he completes the age of superannuation. Principles of natural justice, therefore, cannot be said to have any application in a case of this nature. A person attains a specified age on the day next before the anniversary of his birthday or in other words on the day preceding that anniversary. [See Re: Shurey Savory v. Shurey, LR (1918) 1 Ch. 263 and Rex v. Scoffin, LR (1930) 1 KB 741].

13. This Court in Prabhu Dayal Sesma v. State of Rajasthan and Anr. AIR 1086 SC 1948 held:

9. In calculating a persons age, the day of his birth must be counted as a whole-day and he attains the specified age on the day preceding the anniversary of his birthday."

14. It is interesting to note, however, that the common law rule stated in Re Shurey Savory (supra) in respect of anniversaries has been abrogated by virtue of the family Law Reform Act, 1969. The effect of the change is that, in respect of anniversaries falling after 1 January, 1970, the time at which a person (attains a particular age expressed in years is the commencement of relevant anniversary of the date of his birth. [See Halsburys Laws, 4th Edition Reissue, Page 209]. We

do not have such statute. We have, therefore, to determine the cases on the touchstone of statute operating in the field and in absence thereof by common law principle.

13. A person attains the age calculated in years, when the clock strikes 12 on the day preceding the date of his birthday, and this legal position is clearly stated in the proviso to FR 56(a). Rule 4 of the U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992, has to be read in the context of Fundamental Rule 56(a), as it cannot be treated to have created fiction to extend the period of retirement beyond 60 years. The words in which he attains the age of 60 years on the settled legal principle of calculating the age of a person, has to be treated as the day preceding the birthday. Although Sub-rule (2) provides that the provision of these Rules shall have effect notwithstanding anything to the contrary contains in Rule 56 of the U.P., the Fundamental Rules contained in Financial Hand Book Vol. 2 (Part II to IV), or any other Rules made by the Governor under proviso to Article. 309 of the Constitution or orders for the time being enforced, the legal fiction under Rule 4 cannot be extended beyond the date of completion of 60 years, if such period expires prior to the beginning of the month.

14. The Petitioner completed the age of 60 years on the last date of the preceding month on attaining the age of 60 years i.e. on 30.4.2001. He was not in service on 1.5.2001, to avail the benefit of Rule 6 (1) of the Rules of 1996, applicable to the Presiding Officers of the Labour Court and Industrial Tribunals.

15. The writ petition is dismissed.