
(1991) 09 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16006 of 89

P. Visweswara Rao

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 16-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 ALT 252 : (1992) 1 APLJ 34

Hon'ble Judges : Sivaraman Nair, J;Eswara Prasad, J

Bench : Division Bench

Advocate : V. Jogayya Sarma, for the Appellant; The Govt. Pleader for the Respondent Nos. 1 to 3 and M.R.K. Chowdary for Andhra University for the Respondent No. 6, for the Respondent

Final Decision : Allowed

Judgement

Eswara Prasad, J.—The petitioner is a lecturer in Sree Konaseema Bhanoji Ramars College, Amalapuram, East Godavari District Respondents 4 and 5 are the Correspondent and the Principal of the said college. The petitioner seeks a writ of Mandamus declaring that the proceedings of respondents 4 and 5 dt.29-9-89 as illegal and for a further declaration that he is entitled to continue in service till he attains the age of 60 years together with pay and allowances and other benefits such as, leave, special leave etc., and also for a further declaration that the petitioner is entitled to pension gratuity and all other financial benefits.

2. The case of the petitioner is that he joined the College of the 4th respondent as Tutor on 22-8-68 and that he is presently working as a lecturer. His contention is that he is entitled to continue in service until he completes the age of sixty years. The date of birth of the plaintiff is 1-12-81 and he is entitled to be in service till 30-11-91 respondents 4 and 5 issued the proceedings dt.29-9-89 seeking to retire the petitioner from service on his attaining the age of 58 years by the afternoon of 30-11-89. The contention of the petitioner is that the age of

superannuation of teachers working in the affiliated colleges according to the Osmania University and other Universities Act is 60 years. The petitioner basis his claim on a series of decisions of this Court.

3. The second respondent Director of Higher Education filed a counter stating that there was an agreement between the management and the teachers working in un-aided colleges affiliated to the respective Universities with regard to the age of retirement; that as per the agreement the age of retirement of teaching staff was 60 years; and that the said term is purely contractual, entered into between the management and the teaching staff and the Government who is not a party to the contract is not bound by the agreement as there is no privity of contract between the Government and the teaching staff. It was admitted that the age of retirement as per the University Rules was 60 years and that the teachers were continued till they attained the age of 60 years. The Government issued G.O.Ms. No. 584 Education dt.25-5-70 reducing the age of retirement of teachers working in private aided colleges from 60 years to 55 years and it was clarified that no grant would be given to any post of teachers who continued beyond the age of 55 years. Later, the Universities Acts were amended and the Government was empowered to make rules relating to service conditions of the staff consequently the Government issued orders reducing the age of superannuation to 55 years in exercise of the powers conferred by the amendments. In fact, there is no rule or Government Order according to which the teaching staff in the affiliated colleges should continue till the age of 60 years. Subsequently by G.O.No. 36 dt.19-1-85 the Government determined the age of retirement as 58 years and the petitioner is bound to retire from service on his attaining the age of 58 years. Therefore the 2nd respondent contends that the impugned order is valid. Referring to the judgment of this Court in W.P. Nos.1890/76 dt.15-9-77 it is stated in the counter that an appeal is pending in the Supreme Court against the said judgment. It was further stated that the petitioner who exercised option in terms of G.O.Ms. No. 144 Education is being allowed pensionary benefits, as per the A.P. Liberalised Pension Rules.

4. The learned counsel for the petitioner Sri Jogayya Sarma contended that the petitioner having joined service on 22-8-68 is entitled to the benefit of the decision of this Court rendered in W.P. No. 1899/76 and batch dt.15-9-77, holding that G.O.Ms. No. 591 Education dt.28-5-77 is only prospective in its application and that only the teachers who joined service after the date of the aforesaid G.O. would be governed by the conditions regarding the age of superannuation. The learned Government Pleader appearing for respondents 1 to 3 did not seriously dispute the right of the petitioner to continue in service till he attains the age of 60 years, but contended that the Government is not bound to grant aid in respect of the posts beyond the age of retirement at 58 years. He contended that no direction can be issued against the Government compelling the Government to pay salary to the petitioner beyond the age of 58 years as payments are based on the Grant-in-aid Code which is not statutory and is unenforceable.

5. The contention of the learned Counsel for the petitioner with regard to the age of superannuation of the petitioner is squarely covered by the decision of this Court in W.P.No. 1899/76. The Division Bench of this Court held that G.O.Ms. No. 591, dt.28-5-77 reducing the age of superannuation of teaching staff in the private affiliated colleges to 55 years is only prospective and does not affect the teaching staff who joined service prior to 15-9-77. It is not denied that the petitioner was appointed as a Tutor on 22-8-68 in the College of the 4th respondent. On the date of appointment of the petitioner, the petitioner was entitled to continue in service till he attains the age of 60 years and he cannot be retired before his attaining that age.

6. The next contention of the learned Government Pleader that the petitioner is bound to retire on attaining the age of 58 years by virtue of G.O.Ms.No. 36.Education dt.19-1-85 is also without substance. The said G.O. was considered in W.P. No. 8705/90 and batch dt. 21-9-90. The learned Judge while dealing with the question whether the petitioner herein are entitled to payment of pension on par with other teachers working in Government institutions under the liberalised Pension Rules of 1961 or Pension Rules of 1985 held that the petitioners are entitled to continue till they attain the age of 60 years. We are in agreement with the view expressed by the learned Judge and hold that the age of superannuation of the petitioner is not affected by G.O.Ms. No. 86 Education. The said G.O. is prospective and cannot affect the age of superannuation of the petitioner who was appointed admittedly in the year 1968.

7. Dealing with the contention of the learned Government Pleader that the Grant-in-Aid Code is non-statutory and is not enforceable we have to observe that this is only a feeble attempt "made by the learned Government Pleader at this belated stage. No such plea was taken at the earliest opportunity when there was an attempt to lower the age of superannuation of the teaching staff beginning with G.O.Ms.No. 591 dt.28-5-77 which was held to be not prospective. In W.P. No. 1899/76 dt.15-9-77 referred to above. The subsequent attempts made by the Government by issuing G.O.Ms. No. 1072 dt.26-11-76 and G.O.Ms. No. 71 dated 16-2-83 proved futile and the age of superannuation of the staff appointed prior to 28-5-77 remained unaffected.

8. The learned Government Pleader relied on State of Assam and Another Vs. Ajit Kumar Sharma and Others, , The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others, and Rev. Pr. Joseph v. State,1958 Kerala 290 and contended that the Grant-in-Aid Code being only executive instructions is not enforceable. The respondents are relying partly on the Grant-in-Aid Code and are disowning their liability so far as payment of salaries to the teachers post limited to grant-in-aid beyond the age of 58 years. So far as the college of the 4th and 5th respondents in which the petitioner is working is concerned the post of the petitioner was sanctioned way back in the year 1968. It is not disputed that the post in which the petitioner is working the age of superannuation is 60 years as per the Universities Act as it extend at that time. It is not open to the

Government to turn round and say that they will not pay the salary of the petitioner beyond the age of 58 years. We are therefore of the view that the petitioner is entitled to continue in service till he attains the age of superannuation at 60 years and is also entitled to the payment of salary till the date of his retirement at 60 years. So far as the question of pensionary benefits are concerned we leave the matter open. The writ petition is accordingly allowed with costs and the respondents are directed to continue the petitioner in service till he attains the age of 60 years and to pay his salary with all attendant benefits Advocate's fee Rs. 350/-.