

(1993) 07 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 2997 of 1989

Prabha S. Kumar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-07-1993

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 4(1)
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 17

Citation : (1994) 1 BomCR 145 : (1993) 95 BOMLR 898 : (1993) MhLj 1612

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : P.V. Sathe, for the Appellant; S.B. Sukhatankar, for the Respondent

Judgement

A.P. Shah, J.—This writ petition under Article 226 of the Constitution raises an important question as regards the age of retirement of teachers transferred from senior college to junior college due to introduction of 10 + 2 + 3 system of education.

2. The essential facts which may be mentioned briefly for the purpose of this writ petition are as follows : The petitioner was appointed as a full-time tutor in English in Ramnarayan Ruia College (Ruia College for short) with effect from 7th November, 1963. The petitioner was confirmed in the said post on 27th November, 1965. Ruia College is run by an institution known as Shikshan Prasarak Mandali, Pune and the same is affiliated to the University of Bombay. The service conditions of the teachers teaching in Colleges and University are governed by the provisions of the Bombay University Act, 1974 and the Rules and Statutes made thereunder. As per the Statute laying down the conditions of service, their age of retirement is 60 years. From the academic year 1976-77, the State of Maharashtra introduced junior college pattern of education commonly known as 10 + 2 + 3 system. For the purpose of giving effect to the 10 + 2 + 3 system, the State of Maharashtra published executive orders in the

form of a Resolution No. HSC/1076/419 dated the 11th June, 1976. The said Resolution provided that any lecturers or tutors who became surplus in the senior college owing to the introduction of the 10 + 2 + 3 system should be transferred to the junior college. On 1st October, 1976, the petitioner was transferred as a tutor in English to the junior wing of Ruia College as she was found to be surplus in the senior college. The junior college is also run by the same institution, namely, Shikshan Prasarak Mandali, Pune. The petitioner's grade in the junior college remained the same as the grade of tutor/teacher in English in the senior college. Since the petitioner's service conditions are protected by the above-mentioned Resolution dated 11th June, 1976, the petitioners continued to receive the same salary as that of tutor in the senior college.

3. In the year 1977, the State of Maharashtra passed the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, (hereinafter called "the said Act"). The said Act was brought into force on 15th July, 1981, which is the appointed date as defined by the said Act. The junior colleges were brought within the purview of the Act by virtue of the definition of "school" in Clause 24 of section 2. In exercise of the powers conferred by sub-sections (1) and (2) of section 16 of the said Act, the Government of Maharashtra enacted the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, (hereinafter referred to as "the said Rules"). Under Rule 17 of the said Rules under the head "Superannuation and Re-employment", the age of retirement of a teacher is fixed as 58 years. It appears that the petitioner was told by the Management that she would be retiring from service in October, 1989 on attaining the age of 58 years. The petitioner then wrote a letter dated 7th July, 1989 to the Principal of the College saying that she is liable to be retired only at the age of 60 years, as the original conditions of service were protected. The Principal of the College, by his reply dated 9th October, 1989, informed the petitioner that the Deputy Director, vide his letter dated 28th September, 1989, had already decided that the petitioner would be retiring on attaining the age of 58 years and as such, the request of the petitioner could not be accepted. The petitioner thereafter filed the present petition, firstly, for declaration that his age of retirement is 60 years and, secondly, for an injunction restraining the respondents from retiring the petitioner before she attains the age of 60 years.

4. Shri Sathe, learned Counsel for the petitioner, submits that the service conditions of the petitioner including the age of retirement is expressly protected by the Government Resolution dated 11th June, 1976 and also by the provisions of section 4 of the said Act and, therefore, the decision to retire the petitioner at the age of 58 years is patently illegal. Shri Sathe, relying upon Clause 2 of the Government Resolution, submits that status quo ante has been maintained in respect of the teaching staff with regard to the terms and conditions of the service in force regarding superannuation, retirement etc. and the same cannot be changed to the prejudice of the petitioner. As regards Rule 17 of the said Rules, Shri Sathe submits that the proviso to sub-section (1) of section 4 makes it very clear that the age of retirement of the petitioner and the post-retirement

benefits and other benefits cannot be varied to the disadvantage of the petitioner by the said Rules. Shri Sukhathankar, representing the State of Maharashtra, countered the submissions of Shri Sathe by contending that the petitioner is liable to be retired at the age of 58 years, having regard to the express and unequivocal language of Rule 17 of the said Rules, which provides that a teacher shall retire from service on the date on which he attains the age of 58 years and under no circumstances he shall be granted an extension in service beyond that age.

5. It is not disputed before me that till the introduction of 10 + 2 + 3 system of education, the petitioner was governed by the Rules and the Statutes made by the University. It is also not disputed that under the relevant Statutes of the University, the age of retirement of a teacher is 60 years. The petitioner, being found surplus, was transferred to the junior college in accordance with the instructions contained in the Government Resolution dated 11th June, 1976. The material portion of para 2 of the said Government Resolution reads as follows :

"Pending completion of the work mentioned above, and without prejudice to any contract and the terms and conditions of service in force regarding superannuation, retirement etc. and further without prejudice to the disciplinary action taken in accordance with the provisions of the Statutes made by the University concerned, it is hereby directed that the following ad interim arrangements shall be made:

(i) Status quo ante shall be maintained in respect of the teaching staff who are in continuous service and who were appointed in colleges on or before 7th February, 1975 in clear vacancies, and they should be continued to be paid their salary and allowances in their respective scales and at rates as hithertofore."

Thus, status quo ante was to be maintained as regards the service conditions of those teachers who were appointed in college in clear vacancies on or before 7th February, 1975 and who were found surplus and were required to be transferred to the junior college. Their transfer to junior college was without prejudice to their existing service conditions including the age of superannuation/retirement. There is no dispute that till the commencement of the said Act on 15th July, 1981, the petitioner continued to be governed by the Rules and Statutes made by the University. The question is whether the terms and conditions of service were varied to the disadvantage of the teachers in the junior college by reason of the commencement of the said Act and the Rules framed thereunder. In my opinion, the provisions of section 4 of the said Act makes it abundantly clear that the service conditions regarding the leave of absence, age of retirement and post-retirement benefits and other monetary benefits of teachers transferred to the junior college were fully protected.

Sub-section (1) of section 4 of the said Act reads as follows :---

"Subject to the provisions of this section, the State Government may make rules providing for the minimum qualifications for recruitment (including its

procedure), duties, pay, allowances, post-retirement and other benefits, and other conditions of service of employees of private schools and for reservation of adequate number of posts for members of the backward classes :

Provided that, neither the pay nor the rights in respect of leave of absence, age of retirement and post-retirement benefits and other monetary benefits of an employee in the employment of an existing private school on the appointed date shall be varied to the disadvantage of such employee by any such rules."

The proviso to sub-section (1) specifically says that the service conditions including the conditions regarding the age of retirement in an existing private school on the appointed date shall not be varied to the disadvantage of an employee by the Rules framed under sub-section (1) of section 4. The petitioner is clearly an employee in an existing private school as defined by the said Act as on the appointed date i.e. 15th July, 1981. Consequently, the petitioner's age of retirement continues to be 60 years and the provisions of Rule 17 of the Rules made under the said Act fixing the age of retirement of teachers in junior college at 58 years does not apply to the petitioner. The proviso to section 4(1) of the said Act protects service conditions of the teaching staff in a junior college transferred from senior college to junior college upon the introduction of 10 + 2 + 3 system. The respondents have no right to vary the service condition relating to the age of retirement to the disadvantage of the petitioner. The decision of the Deputy Director to retire the petitioner prematurely is thus clearly illegal and, therefore, liable to be quashed and set aside.

6. It may be mentioned that the petitioner's services were continued under the interim orders passed by this Court at the time of admission. The petitioner has already attained the age of superannuation on 31st October, 1991. In view of this, it is not necessary to grant prayer as prayed for in prayer Clause (b). Rule is made absolute in terms of prayer Clause (a). In the circumstances of the case, there will be no order as to costs.