
(1999) 03 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Writ Petition No. 349 of 1996

Pyare Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Contract Act, 1872 — Section 23

Citation : (1999) 2 RLW 1332 : (1999) 3 WLC 148 : (1999) 1 WLN 400

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Yadav, J.—By filing the present writ petition, the petitioner questions the legality and validity of the order dated 25.1.1996 Annx.3 passed by respondent No. 4 - Rajasthan Non-government Educational Institution Tribunal, Jaipur and notice dated 14.12.1995 Annx.2 issued by respondent No. 2 - Seth G.L. Bihani Sanatan Dharam Shikshan Sansthan Management Committee, Sri Ganganagar through its Secretary proposing his retirement after attaining the age of 58 years. In alternative, it is prayed that for any reason by the time the present writ petition is decided if the petitioner attains the age of 60 years then the respondents may be directed to give all consequential benefits such as emoluments etc.

2. Brief facts leading upto the filing of the present writ petition are that the petitioner entered in the services of respondent-Seth G.L. Bihani Education Trust on being appointed as Lecturer in Commerce (EAFM) in Seth G.L. Bihani Sanatan Dharm Post Graduate College, Sri Ganganagar run by respondent No. 2 - Seth G.L. Bihani Sanatan Dharam Shikshan Sansthan Management Committee, Sri Ganganagar. Since the College, at the relevant time, was affiliated to the University of Rajasthan, hence, his services are governed by Ordinances 67, 67-A and 68 of the Ordinance of University of Rajasthan. In pursuant to Ordinance 68 of the Ordinance of University of Rajasthan, the petitioner entered into an

agreement dated 8.2.1973, a copy whereof is filed and marked as Annx. 1 to the writ petition. It is averred that on being promoted as Vice Principal, the petitioner was made to execute another agreement in the Proforma provided by Appendix-III of the Rules for payment of Grant-in-Aid to Non-Government Educational and Cultural Institutions Rules, 1963 (hereinafter referred to as "the Rules of 1963"). The subsequent agreement dated 13.8.1984 is also placed on record and marked as Annx. 4. According to former agreement dated 8.2.1973 Annx. 1, the petitioner was to retire after attaining the age of 60 years whereas according to the later agreement dated 13.8.1984 Annx.4, he was to retire after attaining the age of 58 years.

3. The petitioner was informed by notice of respondent No. 2 dated 14.12.1995 (Annx.2) that he will be relieved from service on attaining the age of superannuation i.e. 58 years on 31.1.1996.

4. Aggrieved against the aforesaid notice dated 14.12.1995 (Annx.2), the petitioner approached the Rajasthan Non-government Educational Institutions Tribunal, Jaipur by an appeal which was dismissed vide order dated 25.1.1996, a certified copy whereof is placed on record as Annx.3 to the writ petition. It is also averred in the writ petition that till the establishment of Ajmer University, the College run by respondents No. 2 and 3, in which, the petitioner was appointed as a whole time teacher, was affiliated to the University of Rajasthan but thereafter the affiliation was transferred to Maharshi Dayanand Saraswati (M.D.S.) University, Ajmer without any change in his service conditions.

5. After service of notice, respondent No. 1 filed a return denying the averments made in the writ petition. Respondents No. 2 and 3 also, after service of notice, have filed a joint reply denying the averments made in the writ petition. It is, inter alia, averred by respondents No. 1, 2 and 3 in their separate replies that Ordinances 67, 67A and 68 framed by the University of Rajasthan under the University of Rajasthan Act, 1946 are not attracted in the present case but according to them, the age of superannuation of the petitioner is to be determined by the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter referred to as "Act No. 19 of 1992") as it was enforced w.e.f. 4.6.1992 and the Rules framed thereunder. According to the averments made in the two separate replies of the respondents No. 1, 2 and 3 under the aforesaid Act and Rules, the age of superannuation of the petitioner is 58 years and not 60 years as averred in the present writ petition.

6. From the averments made in the writ petition and two sets of separate replies filed by the contesting respondents No. 1, 2 and 3, the only question involved in the present writ petition, which deserves to be decided would be whether the age of superannuation of the petitioner in the present case is 58 years or 60 years.

7. I have heard learned Counsel for the parties and perused the materials available on record.

8. It is strenuously urged by the learned Counsel "for the petitioner that the

Managements of affiliated Colleges, by taking aid of Sub-rule (16) of Rule 3 of the Rules of 1963, which are merely executive instructions having no force of law, had victimised in the past number of whole time teachers from time to time by retiring them on attaining the age of 58 years but such victimisation had been always rectified by the High Court in writ petitions. In support of his argument, learned Counsel for the petitioner invited my attention towards the Statutory Ordinance 67, 67-A and 68 of the Ordinance of the University of Rajasthan. It is submitted by the learned Counsel for the petitioner that the controversy involved in the present writ petition is squarely covered by a decision rendered by the learned Judges constituting Division Bench in case of G.N. Tandon v. State of Rajasthan and Ors. reported in 1997 WLR 93 wherein previous decisions of this Court on this point are relied upon in holding the age of superannuation in such cases to be 60 years and not 58 years as claimed by the contesting respondents after interpreting the relevant provisions of Act No. 19 of 1992 and Rules of 1993 framed thereunder.

9. The aforesaid argument of the learned Counsel for the petitioner is refuted with equal vehemence by Mr. S.L. Jain learned Counsel appearing on behalf of respondents No. 2 and 3. It is urged by learned Counsel Mr. Jain that it is apparent from perusal of the decision rendered in case of G.N. Tandon (supra) that the mandatory provisions contemplated u/s 40 of Act No. 19 of 1992 escaped notice of the learned Judges constituting Division Bench, which clearly provides that provisions of this Act i.e. Act No. 19 of 1992 shall have effect notwithstanding any thing inconsistent contained in any instrument having effect by virtue of any law. Thus, according to Shri Jain, the decision rendered by the Division Bench of this Court in case of G.N. Tandon (supra) required reconsideration. It is submitted by Mr. S.L. Jain that it is apparent on the face of record from perusal of averments made in the writ petition that the earlier agreement dated 8.2.1973 Annx. 1 to the writ petition stipulating 60 years age of superannuation of the petitioner, was superseded by subsequent agreement dated 13.8.1984 Annx.4 to the writ petition, wherein the age of superannuation of the petitioner is stipulated to be 58 years, hence, the decision rendered by the Division Bench of this Court in case of G.V. Tandon (supra) is not applicable to the facts and circumstances of the present case.

10. The aforesaid arguments advanced by Mr. S.L. Jain is adopted by the learned Counsel appearing on behalf of respondent No. 1.

11. I have given my anxious thoughtful consideration to the rival contentions raised at the bar. I am of the view that the present case is squarely covered by the decision rendered by the learned Judges constituting Division Bench of this Court in case of G.N. Tandon (supra). In my humble opinion, the decision rendered by the Division Bench in case of G.N. Tandon (supra) neither requires reconsideration nor it can be argued that the facts and circumstances of the present case are not applicable to the facts and circumstances of the case decided by the Division Bench in the aforesaid case for the reasons given

hereinbelow.

12. It is to be noticed that the provisions of Sub-rule (16) of Rule 3 of the Rules of 1963 which provides tentative age of superannuation to be 58 years is not statutory Rules but these are simple executive instructions having no force of law whereas Ordinances 67, 67-A and 68 of the Ordinance of the University of Rajasthan are framed by the University in exercise of its statutory powers under the University of Rajasthan Act, 1946 providing the age of superannuation to be 60 years are statutory conditions of service of whole time teacher working in a college affiliated to the University other than those maintained by the Government. The provisions of Order 67, 67-A and 68 of the Ordinance of University of Rajasthan have been framed by the University of Rajasthan Act, 1946, which have got statutory force and it confers legal rights on the whole time teachers working in a College affiliated to the University of Rajasthan, later on to Maharshi Dayanand Saraswati (M.D.S.) University, Ajmer.

13. It is true that the Statutory Ordinance 68 provides that all teachers of affiliated College shall be appointed on written contract in proforma prescribed but that does not mean that such teachers have mere a contractual remedy against the respondents. On the other hand, I am of the opinion, that the mandatory statutory provisions envisaged under Ordinance 67A relating to security of tenure of whole time teachers fixing 60 years of age of superannuation are part and parcel of whole time teachers Service Conditions working in a college affiliated to the University, therefore, it is held that Ordinance 67A prescribing 60 years age of superannuation of whole time teachers working in a college affiliated to the University validly made by the University of Rajasthan in exercise of its statutory powers conferred under the Rajasthan University Act, 1946 have force of law and these provisions create legal rights in favour of teachers of affiliated colleges to continue in service upto their age of 60 years immediately before commencement of Act No. 19 of 1992 and an argument contrary to it is not acceptable.

14. Indisputably, the Act of 1992 is beneficial piece of legislation providing for a better organisation and development of education in the Non-Government Educational Institutions in the State of Rajasthan providing security of tenure to whole time teachers working in the affiliated colleges of the university. The first proviso of Sub-section (1) of Section 16 of the Act No. 19 of 1992 clearly provides that rights and benefits accruing to an employee of an existing institution under the "grant-in-aid" Rules in force at the commencement of this Act shall not be varied to the dis-advantage of such employee. The second proviso of Sub-section (1) of Section 16 of Act No. 19 of 1992 postulates that every such employees shall be entitled to opt for such terms and conditions of service as were applicable to him immediately before the commencement of this Act. It is further to be noticed that in exercise of powers conferred by Section 43 of the Act of 1992, the State Government framed rules in 1993 regulating recognition to Grant-in-Aid and Service Conditions etc. to the Non-Government

Educational Institutions, which are known as Rajasthan Non-Government Educational Institution (Recognition, Grant-in-Aid and Service Conditions etc.) Rules, 1993 (hereinafter referred to as the Rules of 1993). In the aforesaid Rules, under Sub-rule (1) of Rule 45 of the Rules of 1993, it is provided that the age of superannuation of teachers and other employees except Class IV employees shall be the last date of the month in which they attain the age of 58 years. In special circumstances, the Government may waive this condition and allow extension in service for a period not exceeding five years for such college teachers, who are engaged in Post-graduate teaching of research work. Any other employee of the Institution may also be allowed extension in service upto the age of 60 years by the State Government. Since the rest of Rule 45 is not relevant for just decision of the present case, therefore, it is omitted.

15. I am of the view that the provisions relating to over-riding effect of Section 40 of Act No. 19 of 1992 read with Sub-rule (1) of Rule 45 of the Rules of 1993 are to be examined in the light of the Phraseology used under first Proviso and second Proviso of Sub-section (1) of Section 16 of Act No. 19 of 1992, which saved the rights and benefits accruing to an employee of an existing institution at the commencement of the said Act and employees of an affiliated college of the University of Rajasthan, now University of Ajmer, are made entitled under Second Proviso of Sub-section (1) of Section 16 of Act No. 19 of 1992 to opt for such terms and conditions of service as were applicable to them immediately before commencement of the said Act.

16. A conjoint reading of First Proviso and Second Proviso of Sub-section (1) of Section 16 of Act No. 19 of 1992 lead to an ambiguity which is to be resolved by this Court. It is true that in the First Proviso, the rights and benefits accruing to an employee of an existing institution has been made subject to "grant-in-aid rules" in force at the commencement of the Act which cannot be varied to the disadvantage of such employee whereas the expression "grant-in-aid rules" is not used in Second Proviso, which provides that every such employee shall be entitled to opt for such terms and conditions of service as were applicable to him immediately before the commencement of this Act.

17. In view of the aforesaid ambiguity, the intention of the State Legislature is to be ascertained to do full justice to the expression "grant-in-aid rules" used in first proviso and omitting to use the aforesaid expression in second proviso to Sub-section (1) of Section 16 of Act No. 19 of 1992, which is indisputably a beneficial piece of legislation, and if the result of the said expression is to do less than justice to the beneficiaries of the enactment, it would be legitimate pious duty of this Court to ignore the expression "grant-in-aid rules" used in first proviso which has the effect of reducing the existing lawful service benefits to the employees of a Non-Government Educational Institutions affiliated to the University as were applicable to them immediately before the commencement of Act No. 19 of 1992.

18. In my humble opinion, whenever and wherever a court is called upon to

remove an ambiguity in a legislative enactment in order to make it workable, it has to do full justice to each and every expression appearing in the legislative enactment but where owing to carelessness or unskillfulness of draftsman, some expression of such legislative enactment reduces the accrual of rights and benefits to its beneficiaries to a futility, it is permissible in such cases to reject the surplus expression provided rejection of such expression preserves the basic legislative intent. To my mind, the expression "grant-in-aid rules" makes the first proviso and second proviso of Sub-section (1) of Section 16 of the said Act unintelligible, therefore, there is no reason why this Court should not endeavour to spell out a correct interpretation provided in pith and substance the obvious intended meaning of aforesaid proviso first and proviso second of the said Sub-section (1) of the aforesaid Section is preserved in its intended form of Act No. 19 of 1992. Here in the present case, the State Legislature in the First Proviso saved the rights and benefits accruing to an employee of an existing institution under the "grant-in-aid rules" in force at the commencement of Act whereas in the Second Proviso the expression "grant-in-aid rules" is omitted and an employee is made entitled to opt for such terms and conditions of service as were applicable to him immediately before the commencement of this Act. As provisions of Sub-rule (16) of Rule 3 of the Grant-in-Aid Rules, 1963 are mere executive instructions having no force of law whereas Ordinance 67A of the University of Rajasthan are statutory provisions having force of law, therefore, if the expression "grant-in-aid rules" used under first proviso is rejected as surplus yet the intended legislative meaning of first proviso and second proviso of Sub-section (1) of Section 16 of Act No. 19 of 1992 can be preserved. I am of the view that by reading down the expression "grant-in-aid rules" in the first proviso of Sub-section (1) of Section 16 of the said Act the existing rights and benefits accruing to employees of affiliated Colleges under Ordinance 67A of the University Ordinance which was applicable to them immediately before the commencement of Act No. 19 of 1992, making them entitled to opt for such terms and conditions of service as were applicable to them immediately before the commencement of said Act can be safely saved without disturbing the legislative intent of first proviso and second proviso of Sub-section 1 of Section 16 of the said Act.

19. It has already been discussed in the preceding paragraphs of this order that the Grant-in-Aid Rules, 1963 are merely executive instructions having no force of law prescribing tentative age of superannuation to be 58 years using expression "ordinarily" before attaining the age of 58 years whereas Ordinance 67-A of the Ordinance of the University of Rajasthan having statutory force of law being framed under the University of Rajasthan Act, 1946 in unequivocal terms prescribes 60 years age of superannuation of whole time teachers working in Non- Government Affiliated Colleges of the University. Thus it can safely be held that every employee of a Non-government Affiliated College is made entitled to opt for such terms and conditions of service as were applicable to him immediately before commencement of Act No. 19 of 1992 means the statutory

Ordinance 67-A framed by the University of Rajasthan in exercise of its powers under the University of Rajasthan Act, 1946 prescribing 60 years age of superannuation of whole time teachers of Non-Government Affiliated Colleges of the University and age of superannuation of 58 years prescribed under the Grant-in-Aid Rules, 1963 having no force of law, cannot be said to have been applicable to them immediately before the commencement of the said Act. I have no hesitation to hold that immediately before commencement of Act No. 19 of 1992, Ordinance 67A prescribing 60 years of age of superannuation of whole time teachers of an affiliated College was the terms and conditions of service of such teachers, therefore, at the commencement of the said Act, the terms and conditions of service relating to superannuation would be 60 years and not 58 years as stipulated in the Grant-in-Aid Rules, 1963 which has no statutory force.

20. Now I would like to discuss the next contention of Mr. S.L. Jain, learned Counsel for the respondents to the effect that the earlier agreement dated 8.2.1973 Annx. 1 to the writ petition wherein under the terms and conditions No. 10, the petitioner was to be superannuated after attaining the age of 60 years was superseded by subsequent agreement dated 13.8.1984 Annx.4 to the writ petition stipulating 58 years age for superannuation. The aforesaid argument of Mr. Jain is attractive but fallacious. In order to avoid repetition and maintain brevity, it would be sufficient to observe that on the date when the subsequent agreement dated 13.8.1984 Annx.4 to the writ petition was executed stipulating 58 years of age of superannuation of the petitioner. Ordinance 67A of the University of Rajasthan was in force prescribing 60 years age of superannuation hence the subsequent agreement Annx.4 stipulating 58 years age of his superannuation is to be ignored being void ab initio against the statutory Ordinance 67-A framed by the University of Rajasthan under the University of Rajasthan Act, 1946. Obviously, the subsequent agreement dated 13.8.1984 Annx.4 stipulating 58 years of age of superannuation of the petitioner was executed under the Grant-in-Aid Rules, 1963 which has no statutory force, in contravention of mandatory provisions of Ordinance 67A prescribing 60 years age of superannuation. It is to be noticed that the subsequent contract dated 13.8.1984 Annx.4 to the writ petition executed in contravention of statutory Ordinance 67A framed by the University of Rajasthan in exercise of its power under the University of Rajasthan Act, 1946 also attract the provisions of Section 23 of the Contract Act 1872. It is held that as subsequent contract dated 13.8.1984 Annx.4 involves contravention of the provisions of statutory Ordinance 67A, therefore, it is per se illegal and the said agreement between the parties stipulating 58 years age of superannuation of the petitioner is to be deemed to be forbidden by law within the meaning of Section 23 of the Contract Act.

21. Before parting with the discussion of the present case and holding age of superannuation of the petitioner to be 60 years, it is observed that I respectfully concur with ratio decidendi of the decision rendered by the Division Bench of this Court in case of G.N. Tandon (supra) and it does not require reconsideration merely for non-consideration of overriding effect of Section 40 of Act No. 19 of

1992. I am of the view that subsequent agreement dated 13.8.1984 Annx.4 is void ab initio being in contravention of statutory Ordinance 67A and it also attracts violation of mandatory provisions envisaged u/s 23 of the Contract Act, therefore, it cannot be allowed to supersede the earlier statutory agreement dated 8.2.1973 Annx. 1 prescribing 60 years age of superannuation of the petitioner under Ordinance 67-A.

22. As a result of the aforesaid discussion, the instant writ petition succeeds and it is hereby allowed. The order dated 25.1.1996 Annx.3 to the writ petition passed by respondent No. 4 and notice dated 14.12.1995 Annx.2 to the writ petition are hereby quashed. The petitioner is entitled for all consequential benefits. Looking to the peculiar facts and circumstances of the case, both the parties are directed to bear their own costs.