
(2010) 08 AHC CK 0161
In the Allahabad High Court

Raghavendra Atrey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0161

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Devendra Kumar Arora, J.—Heard Sri Raj Singh, Learned Counsel for the petitioner and the learned Standing Counsel for the respondents.

2. By means of present writ petition, the petitioner is seeking a writ of certiorari for quashing the impugned order dated 28.12.2007 passed by the respondent No. 3, (Annexure-5 to the writ petition), by which the representation of the petitioner with respect to grant of gratuity in pursuance of Government Order dated 19.04.2006 has been rejected.

3. The submission of Learned Counsel for the petitioner is that petitioner was appointed as Assistant Clerk on 13.07.1965 at Shree Akroor Inter College, Hathras an aided college under the provisions of U.P. Intermediate Education Act, 1921. The petitioner attained the age of superannuation on completion of 60 years on 31.05.2005. After superannuation of the petitioner, the papers of the petitioner with respect to sanction of retiral benefits were processed and the same was granted to the petitioner by means of order dated 14.09.2005. The State Government vide Government Order dated 19.04.2006 took a policy decision to provide gratuity to the employees of the Institutions governed by the U.P. Secondary Education Act on attaining the age of superannuation at 60 years.

4. The arguments of Learned Counsel for the petitioner is that since the petitioner has attained the age of superannuation at 60 years, therefore, he is also entitled for the benefit of government order dated 19.04.2006. In support of

his submission, Learned Counsel for the petitioner relied upon an interim order dated 11.08.2006 passed in Writ Petition No. 924 (S/S) of 2005 Ram Prasad Yadav v. State of U.P. and Ors. by which as an interim measure considering the request of the petitioner direction was issued to release the retiral dues in favour of the petitioner on the basis of the date of his retirement i.e. 07.02.2005 in the light of government order dated 19.04.2006.

5. Learned Counsel for the petitioner on being made query is unable to inform the present status of the said case.

6. Learned Standing Counsel while opposing the writ petition submitted that the petitioner has attained the age of superannuation on 31.05.2005 and at the time of petitioner's superannuation, the Government Order dated 19.04.2006 was not in existence. There is no stipulation in the said government order to the effect that the same will be made applicable to the persons retiring prior to the commencement of the Government Order dated 19.04.2006. Therefore, the petitioner is not entitled to get the benefit of the Government Order dated 19.04.2006 and he has already been paid his all retiral benefits vide order dated 14.09.2005.

7. I have considered the rival submissions of Learned Counsel for the parties.

8. It is admitted position that the petitioner has attained the age of superannuation on 31.05.2005 and the Government Order in question was not in existence. The policy decision of the State Government came into force much after the superannuation of the petitioner. The perusal of Government Order dated 19.04.2006 reveals that the benefit of the same is to be made available from the date of its issuance. I find force in the arguments of learned Standing Counsel that petitioner is not entitled for the benefit of Government Order dated 19.04.2006.

9. The Hon'ble Supreme Court in the matter of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, while reiterating its earlier decision pleased to observe that a statutory rule or government order is prospective in nature unless it is expressly or by necessary implementation made to have retrospective effect. The relevant para-13 of the same reads as under:

13. In Y.V. Rangaiah v. J. Sreenivasa Rao similar question arose relating to recruitment by promotion. The question was whether promotion should be made in accordance with the Rules, in force on the date the vacancies occurred or in accordance with the amended Rules. The Court observed as under: (SCC p 289, para 9)

The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by Counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and, therefore, there was no question of challenging the new rules. But the

question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

The same view was taken in *P. Ganeshwar Rao v. State of Andhra Pradesh*. Similar view was taken in *A.A. Calton v. Director of Education*. It is a well accepted principle of construction that a statutory rule or government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and government orders and any amendment of the rules or the government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended Rules or the amended government orders, issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections.

10. So far as interim order dated 11.08.2006 passed in Writ Petition No. 924 (S/S) of 2005 is concerned, firstly, the same appears to have been passed ex-parte and secondly, in the said writ petition the petitioner was agitating the issue of his date of superannuation on attaining the age of 62 years and his retirement was made subject to decision of another Writ Petition No. 54417 of 2004 and in this back ground it was prayed that the petitioner was entitled for the benefit of Government Order dated 19.04.2006 as his date of retirement will fall after the date of commencement of the Government Order whereas in the present case the pleadings have already been exchanged and the reasons have also been discussed in the counter affidavit. The petitioner attained the age of superannuation much before the issuance of the Government Order dated 19.04.2006. Therefore, I am of the considered view that benefit of the said interim order can not be given to the petitioner while finally adjudicating the issues.

11. In view of the aforesaid facts and circumstances, the petitioner is not entitled for the benefit of the Government Order dated 19.04.2006. Thus, the claim of the petitioner is misconceived.

12. Hence, the writ petition is dismissed. No order as to costs.