

(1997) 07 AHC CK 0211
In the Allahabad High Court
Case No : C.M.W.P. No. 18744 of 1994

Raghu Bir Singh Pawar

APPELLANT

Vs

Committee of Management, Sanatan Dharm Intermediate
College and Others

RESPONDENT

Date of Decision : 15-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 07 AHC CK 0211

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Ashok Bhushan, for the Appellant;

Final Decision : Allowed

Judgement

D.K. Seth, J.—Pursuant to the order dated 22.6.1994, steps were taken for affecting service on the Respondent No. 1 which was duly sent on 28.6.1994. No return has come back. Since return has not come back and the notice appears to have been issued at the correct address with sufficient postage, the service on the Respondent No. 1 is accepted under Chapter 8, Rule 12, Explanation 2 and the matter is treated as ready as regards service.

2. The Petitioner had exercised option to retire at the age of 58 years pursuant to the Government Order dated 10.8.1978 sometimes in March, 1982. Subsequently, pursuant to the order dated 4.11.1991, the Petitioner exercised his option to retire at the age of 60 years. The said option was ultimately accepted by the District Inspector of Schools which is apparent from the Service Book of the Petitioner, which is Annexure 7 to the writ petition. It appears from the said Service Book that pursuant to the order dated 4.11.1991, the Petitioner's option to retire at the age of 60 years was accepted by the District Inspector of Schools under his seal and signature. On the other hand, the school authority by a letter dated 11.5.1994 sought to retire the Petitioner on superannuation at the age of 58 years w.e.f. 30th June, 1994, which is Annexure

9 to the writ petition.

3. Sri Ashok Bhushan, learned Counsel for the Petitioner contends that since his earlier option was never accepted inasmuch as no communication was given to the Petitioner accepting the said option neither anything was endorsed in the Service Book of the Petitioner as is apparent from the Service Book, therefore, it was open to the Petitioner to withdraw the same before it is accepted and that the District Inspector of Schools is empowered to permit withdrawal of such option and accept fresh option. Since fresh option has been accepted as aforesaid, by implication the earlier option is permitted to be withdrawn. According to him, therefore, the Petitioner is entitled to the salary for the period after 30.6.1994 till 30.6.1996, namely on attainment of the age of 60 years and that the Petitioner had worked during this period and he is also entitled to all the service benefits on the basis of such retirement. The Petitioner had worked till 60 years of age by virtue of interim order granted in this writ petition on 22.6.1994.

4. Sri R. C. Yadav, learned standing counsel on the other hand, contends that since the Petitioner had exercised option once earlier he is precluded from exercising the second option. He relies in the decision in the case of Chandra Kishore Dube v. Deputy Director of Education. Jhansi and Ors. 1994 (1) UPLBEC 550, in support of his contention.

5. I have heard Sri Ashok Bhushan, learned Counsel for the Petitioner and Sri. R. C. Yadav, learned standing counsel.

6. The decision in the case of Chandra Kishore Dube (supra), is distinguishable on the facts and the circumstances of the present case. Inasmuch as in the said case, the first option was exercised pursuant to the Government Order dated 6.10.1990 and the second option was sought to be exercised pursuant to the order dated 4.11.1991. It was held in the said case that the genuineness of the second option appears to be dubious. The Court did not come to any finding that the second option was really exercised. Then again, it was held that by the second order dated 4.11.1991, it was pointed out that those who could not give option earlier under the Government Order dated 6.10.1990 were permitted to exercise option under Government Order dated 4.11.1991. In the present case, admittedly the Petitioner did not exercise option under order dated 6.10.1990. Therefore, he cannot be said to be precluded by reasons of the conditions contained in Government Order dated 4.11.1991. Inasmuch as the said eligibility clause is not attracted in the case of the Petitioner. Sri. R. C. Yadav has not been able to point out from the order dated 4.11.1991 that even those who have exercised option under the Government Order dated 10.8.1978 are also precluded. In the absence of any specific provisions in the order dated 4.11.1991, it is not possible to exclude those persons who have exercised option under order dated 10.8.1978. Therefore, it is not possible to preclude the Petitioner from exercising his option as aforesaid. Therefore, the ratio decided in the case of Chandra Kishore Dube (supra), cannot be attracted in the facts and the circumstances of the present case.

7. On the other hand, Sri Ashok Bhushan, learned Counsel for the Petitioner relied upon the decision in the case of *Km. Shakuntala Tandon v. State of U.P. and Ors.* 1994 (1) ESC 525 (All), wherein it was held that the District Inspector of Schools having the power to accept the option is also empowered to permit withdrawal of such option, if it is done within reasonable time, i.e., before the date of retirement. In the present case, admittedly, the option was exercised before the Petitioner had attained the age of 58 years which is an admitted position. Therefore, District Inspector of Schools was well within his power to permit withdrawal and accept new option. Even then in the present case, the first option exercised by the Petitioner does not appear to have been accepted and the option was sought to be withdrawn before it was accepted. Furthermore, in the present case, the second option appeared to be accepted as is reflected in the Service Book by the District Inspector of Schools long before the attainment of the 58 years of age by the Petitioner. This fact finds support from the list of teachers published by the District Inspector of Schools, who, in the whole of the districts, were due to retire in the year 1994. Inasmuch as the said list did not contain the name of the Petitioner. This shows that the Petitioner was allowed to continue till 60 years of age and he was not shown to be retiring on attainment of 58 years of age in 1994. The list is Annexure 8 to the writ petition, which admittedly does not include the name of the Petitioner. This position is not disputed by Sri Yadav, learned standing counsel.

8. Sri Ashok Bhushan, learned Counsel for the Petitioner also relied upon the decision in the case of *Devi Krishan Goyal v. District Inspector of Schools, Ghaziabad and Ors.* (13) 1990 ACC 155. In the said case, the Apex Court has held as follows:

The Appellant, an inter-college teacher whose normal age of superannuation would be 60 years gave his option to retire on attaining 58 years of age by communicating his option on February 13, 1982, in terms of the Government Notification, dated August 29, 1981. The Management forwarded the option of the Appellant to the District Inspector of Schools for acceptance, but there was no communication from Respondent No. 1 accepting or rejecting the option. On January 20, 1987, the Appellant withdrew his option. The Management forwarded the same recommending acceptance of the subsequent revocation to Respondent No. 1 by letter, dated May 8, 1987. Respondent No. 1 wrote to the Management Committee stating that it would not be possible to accept the proposal of the Management Committee as per the rules. The Appellants application under Article 226 of the Constitution has been rejected in limine by the High Court. The relevant rule reads thus:

These rules shall be applicable to the teachers of those State Government aided higher secondary schools which are working under any local body or any non-administrative management, within the ambit of Salary Disbursement Act, 1971 on June 30, 1978, or thereafter and who will give their option in favour of retirement at the age of 58 years within six months of the publication of these

rules. An option, once used will be deemed to be final. The date of retirement shall be the end of session.

We are of the view that the High Court should not have rejected the writ application. It has not been disputed anywhere that option stood withdrawn before it was accepted. The provision in the rule "an option once used will be deemed to be final" would not mean that when an offer is made it is not open to be withdrawn before it is accepted. Respondent No. 1 obviously acted under the wrong notion and the High Court did not appreciate this aspect. We would accordingly hold that the Appellant was entitled to withdraw the option.

We are told, and there is no rebuttal to the submission, that the Appellant would have in normal course superannuated on March 19, 1989, when he would be of the age of 60 years. Once we hold that the Appellant was entitled to withdraw the offer of option of retire at the age of 58 years, he would be entitled to the benefit of continuing in service till March 19, 1989. The appeal is allowed and Respondent No. 1 is directed to continue the service of the Appellant till March 19, 1989.

9. In view of the above proposition laid down by the Apex Court, it is open to the Petitioner to withdraw his option before it is accepted. In the present case, the additional support is derived by the Petitioner from the acceptance of the option by the District Inspector of Schools. It is the District Inspector of Schools, who is the authority to accept, refuse or permit withdrawal of the option. The school authority is not empowered to deal with such option except to forward such option or in case of withdrawal, to forward such withdrawal of option to the District Inspector of Schools. The power of the Committee of Management is confined to the extent indicated above and not beyond. It has no business to retire the Petitioner on attainment of 58 years of age unless the option is refused by the District Inspector of Schools requiring the Petitioner to retire at the age of 58 years or the Petitioner has opted for retirement at the age of 58 years, as the case may be, therefore, the letter dated 11.5.1994 issued by the School authority having no force is to be ignored and overlooked is void and non-est.

10. In view of the acceptance of the Petitioner's option and he having been allowed to continue till the age of 60 years, and in view of the interim order granted and the Petitioner having worked till 60 years of age, there is no escape on the part of the Respondents to pay him salary for the period after 58 years till 60 years, if not already paid to him together with all consequential benefits as admissible in the law. The Petitioner is also entitled to such retiral benefits on the basis of his retirement at the age of 60 years as is admissible under the law.

11. In that view of the matter, the writ petition is allowed. Accordingly, a writ of certiorari be issued quashing the impugned order dated 11.5.1994, Annexure 9 to the writ petition. Let a writ of mandamus be issued commanding the Respondents to pay the salary to the Petitioner for the period he has not been paid till retirement on attainment of the age of 60 years, and all retiral benefits

as are admissible in law to the Petitioner as early as possible preferably within a period of six months from the date a certified copy of this order is communicated to the Respondents.

12. With these observation, the writ petition is finally disposed of. There shall, however, be no order as to costs.