
(2012) 04 AHC CK 0152
In the Allahabad High Court
Case No : Writ Petition No. 1634 (S/S) of 2012

Ram Bahadur Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

General Service Regulations, 1984 — Regulation 26

Citation : (2012) 5 AWC 4665

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Ritu Raj Awasthi, J.—Notice on behalf of the opposite party no. 1 has been accepted by the learned Chief Standing Counsel whereas notice on behalf of the opposite party nos. 2 to 5 has been accepted by Mr. Manoj Singh, Advocate. Since common question of law and facts are involved in both the writ petitions, therefore, they have heard together and are being decided by a common order.

2. Heard Learned Counsel for the parties and perused the record.

3. The short question involved in the writ petitions is as to whether the decision to enhance the age of retirement of the employees of U.P. State Agro Industrial Corporation Limited, Lucknow (hereinafter referred to as the "Corporation") can be given effect to from the back date when the Board had approved the resolution to enhance the age of retirement of its employees and sent its proposal to the Administrative Department for further approval of the State Government or it is to be made effective from 27th March, 2012 when the final decision in this regard was taken by the State Government.

4. Mr. O.P. Srivastava, Learned Counsel for petitioners submitted that vide Government Order dated 20.12.2011, the State Government had taken a decision to enhance the age of retirement of the employees of State Corporation/ Undertakings to 60 years and had directed the concerning corporation/

undertakings to examine the said matter at their own level and in case they are able to bear the financial burden they may pass resolution and sent the proposal to the State Government for approval. It was in pursuance of the said government order that the Managing Director of the U.P. State Agro Industrial Corporation had sent the proposal of the Board of Directors of the Corporation for enhancement of the age of its employees to 60 years. Due to state assembly elections, the decision could not be taken by the State Government and in this regard the State Government by letter dated 10th January, 2012 had sought clarification from the Election Commission as to whether there is any objection in granting the benefit of enhancement of age of superannuation to the employees of the Corporation. The Election Commission vide letter dated 19.1.2012 had granted no objection and approved the proposal of enhancement of age of superannuation. It was thereafter that vide Government Order dated 27.3.2012, the opposite party no. 1 has informed the opposite party no. 2 that the approval has been granted to enhance the age of superannuation of the employees of U.P. State Agro Industrial Corporation, Lucknow from 58 years to 60 years, however, the said approval has been granted with immediate effect.

5. The contention of Learned Counsel for petitioners is that the decision to enhance the age of retirement of the employees was, in fact, taken by the Board of Directors of the Corporation in its meeting dated 23rd December, 2011 and as such the benefit of enhancement of age of retirement shall be given effect to from 23rd December, 2011 and it cannot be treated to be w.e.f. 27th March, 2012. In fact, all the formalities in this regard were completed much before 27th March, 2012 i.e. prior to retirement of the petitioners and even the approval of the Departmental Minister i.e. Agriculture Minister was obtained and as such it cannot be said that final decision has been taken on 27.3.2012.

6. Learned State counsel on the other hand submitted that the language of the Government Order dated 20.12.2011 makes it very much clear that the decision to enhance the age of employees of the Corporation/Undertakings was not to be made effective w.e.f. 20.12.2011 itself and the question of enhancement of age of the retirement of the employees of the Corporation/Undertakings was to be examined by each and individual Corporation/Undertaking at its own level and in case they were able to bear the financial burden, the Board of Directors were required to pass resolution and send the proposal to the State Government.

7. The question of enhancement of age of retirement was thereafter to be considered by the State Government and it was only after grant of approval by the State Government that the age of retirement of the employees would be enhanced.

8. In the present case, the State Government has given final approval vide Government Order dated 27th March, 2012 and as such it cannot be said that the age of retirement of the employees of Corporation was to be automatically enhanced from 20.12.2011 or w.e.f. 23.12.2011 when resolution was passed by the Board of Directors of the Corporation.

9. It is further submitted by the learned Standing Counsel that the Government Order dated 27.3.2012 clearly provides that the proposal to enhance the age of retirement from 58 years to 60 years of the employees of the Corporation has been approved with immediate effect, meaning thereby that the Government Order dated 27.3.2012 has been made effect prospectively and the benefit of enhancement of age of retirement cannot be given retrospectively to the employees who have retired prior to 27.3.2012.

10. Mr. Manoj Singh, Learned Counsel appearing for the Corporation has adopted the submissions made by the State Counsel.

11. I have considered the submissions made by the parties' counsel.

12. So far as the contention of Learned Counsel for petitioners that the age of retirement of the employees shall be treated to be effective from the date when the decision in this regard was taken by the Board of Directors of the Corporation and not from the date when final order has been issued by the State Government is concerned, the Board of Directors of the Corporation had not passed the resolution dated 23.12.2011 on their own and rather it was passed in pursuance of the Government Order dated 20.12.2011. The said resolution itself clearly provides that it has been passed in pursuance of Government Order dated 20.12.2011 and it is to be sent to the Administrative Department for further approval, as such the said decision cannot be treated to be final.

13. Moreover, as per requirement of the Government Order dated 20.12.2011, the proposal in this regard was to be sent to the State Government and final decision was to be taken by the State Government. In the present case, the final decision was taken by the State Government vide Government Order dated 27.3.2012.

14. this Court had the occasion to consider the enhancement of age of retirement of employees of Corporation/Undertakings on the basis of Government Order dated 20.12.2011 in the case of Mahesh Narayan Tiwari Vs. the State of U.P. & others (Writ Petition No. 1294 (S/S) of 2012), wherein vide judgment and order dated 15.3.2012, it was held as under:

The Government Order dated 20.12.2012 only provides that the public undertakings/corporations shall consider the matter with regard to enhancement of age of retirement of its employees at their own level and in case they are able to bear the financial burden, the recommendation shall be made in this regard by their Board of Directors after holding meeting. It clearly indicates that the age of retirement of the employees of public undertakings/corporations was not to be enhanced automatically with effect from 20.12.2011. The contention of Learned Counsel for petitioner in this regard is, as such, misconceived.

15. Further vide judgment and order dated 23.3.2012 in the case of Surendra Singh Vs. State of U.P. and others in Writ Petition No. 1434 (S/S) of 2012, the Court had observed that merely on the basis of proposal to enhance the age of

retirement of employees, the retirement cannot be treated to be extended to 60 years, unless and until the relevant rule in this regard is amended. The same view was taken by the Court while deciding the question of enhancement of the age of retirement of the employees of U.P. Industrial Development Corporation vide judgment and order dated 02.04.2012 passed in Writ Petition No. 1582 (S/S) of 2012 (Surendra Kumar Bhatia Vs. State of U.P. & Others).

16. It is to be noted that the Government Order dated 27.3.2012 clearly provides that the proposal to enhance the age of retirement of the employees of Corporation has been approved with immediate effect, meaning thereby that the age of retirement of the employees of Corporation is enhanced prospectively w.e.f. 27.3.2012.

17. I am of the considered opinion that the benefit of enhancement of age of retirement to the employees cannot be given retrospectively w.e.f. 23.12.2011, when the resolution was passed by the Board of Directors of the Corporation. The contention of Learned Counsel for petitioners in this regard as such has no force.

18. The contention of Learned Counsel for petitioners that the decision of the State Government dated 27.3.2012 shall be retroactive w.e.f. 23.12.2011, when the decision was taken by the Board of Directors also cannot be accepted in view of the fact that the decision of the Board of Directors was not independent but it was based on the Government Order dated 20.12.2011.

19. It is also to be noted that even if all the formalities were completed and necessary approvals were obtained from the opposite parties at different levels including at the level of Agriculture Minister that would not mean that the decision to enhance the age of retirement was final, unless and until the formal order in this regard was issued by the State Government.

20. Admittedly as per Regulation 26 of the General Service Rules, 1984, which govern the service conditions of the employees of Corporation, the age of retirement is 58 years. At the time of retirement of the petitioners on attaining the age of superannuation after completing the age of 58 years, the said regulation was not amended.

21. As such, for the facts and reasons given above, I am of the considered opinion that the petitioners have no right to continue in service till the age of 60 years. I do not find any illegality or infirmity in the impugned office order dated 31.12.2011.

22. The writ petitions being devoid of merit are liable to be dismissed. According, the writ petitions are dismissed.