

(1987) 08 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13560 of 1987 and CMW No"s. 10070, 10994, 11068, 14365 and 15111 of 1987

Ram Lai Prasad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-1987

Acts Referred:

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 29
Uttar Pradesh Basic Education Act, 1972 — Section 13, 19
Uttar Pradesh Intermediate Education (Amendment) Act, 1958 — Section 16A, 16B, 16C, 16D, 16E
Uttar Pradesh Intermediate Education Act, 1921 — Section 15, 16G, 16G(1), 3, 9(1)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 21

Citation : (1987) 08 AHC CK 0012

Hon'ble Judges : S.D. Agarwala, J;A.N. Varma, J

Bench : Division Bench

Advocate : Ram Niwas Singh and Vinod Kumar Chandel, for the Appellant; S.C. and Aditya Narain, for the Respondent

Judgement

S.D. Agarwala, J.—These petitions and other group of similar petitions relate to retirement of the Principal, Head Master, teachers and other employees of the Intermediate Colleges as well as the Basic Schools.

2. Under the existing provisions of law, the above mentioned employees, both in the Colleges governed by the U.P. Intermediate Education Act, 1921 as well as those governed by the U.P. Basic Education Act, 1972 were to retire on 30th June 1987. These petitions have been filed claiming that they should not be retired on 30th June, 1987, but should continue to remain in service, either till 30th April, 1988, or 30th June, 1988.

3. In order to examine the exact position of law in regard to those serving in the Intermediate Colleges as well as in the Basic Schools, it is necessary to refer certain provisions of law which are relevant in this connection.

High School and Intermediate Colleges

The Principal, Head Master, teacher and other employees of the Intermediate Colleges are governed by the provisions of the U.P. Intermediate Education Act 1921 (hereinafter referred to as the 1921 Act). 1921 Act provides for the constitution of a Board of High School and Intermediate Education. In Section 3, the constitution of the Board has been laid down. Section 15 empowers the Board to make Regulations for the purpose of carrying into effect the provisions of the Act. Section 16G provides for the conditions of service of Heads of institutions, teachers and other employees. Sub-section (1) of Section 16G specifically provides that every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by Regulations and any agreement between the management and such employee in so far as it is inconsistent with the provisions of this Act or with the Regulations shall be void.

4. In pursuance of Section 16G, Regulations were framed by the Board. Regulations of Chapter III deal with conditions of service. Regulation 21 lays down the age of superannuation. Regulation 21 is quoted below:

* * *

5. In the above Regulation, it was specifically provided that if the age of superannuation fell during an academic session then every person employed in a recognised institution shall continue to serve the institution till the end of the session.

6. Every person employed in a recognised institution was, therefore, governed by the Regulation. The dispute, which has given rise to all these petitions is the letter of the Director of Education dated 24th December 1986, in which it was stated that the new academic session would commence from 1st May, 1987. The letter of the Director of Education is quoted below:

* * *

7. Because of the letter of the Director of Education, quoted above, a confusion has arisen whether the teachers, who had retired after 1st July, 1986, would continue up to 30th June, 1987, or their services would come to an end on 30th April, 1987, when the earlier session was to end. The State Government, consequently, issued a telex to clarify this position on 27th April, 1987. The telex issued by the Government is quoted below:

To

Shri Har Prasad Pandey Additional Director Education (MA) Uttar Pradesh
Allahabad

From

Shri Govind Ballabh Pant Joint Secretary to Government of Uttar Pradesh

----- No. 2158/15.08.1987 Lucknow: Dated: 27th April, 1987 -----
----- It has
come to the notice of the Government that some Teachers of recognised aided
Higher Secondary Schools are being asked to retire on the 30th April 1987 in
place of 30th June 1987(.) In this regard it may be made clear to the
Management of such institutions that retirement date of teachers and principals
will continue to remain 30th June till such time as the Government does not
notify otherwise.

----- Not to be telexed. (Govind Ballabh Pant) Dated: 27.04.87. Joint
Secretary. -----

8. After the above mentioned telex, Regulation 21 was substituted by a fresh
Regulation 21 by the order of the Government dated 5th June, 1987. The
amended Regulation 21 is as under:

* * *

Basic Schools

The basic schools are governed by the Uttar Pradesh Basic Education Act, 19/2
(U.P. Act No. 34 of 1972) (hereinafter referred to as the 1972 Act). Under this
Act, U.P. Board of Basic Education has been constituted. Section 13 of the 1972
Act empowers the State Government to control the Board and issue directions
from time to time. Section 19 empowers the State Government to make Rules
for carrying on the purposes of the Act which includes the power to make Rules
in regard to the recruitment and the conditions of service of the persons
appointed to the post of officers, teachers and other employees of the schools.

9. In pursuance of the powers given u/s 19 of the 1972 Act, U.P. Basic Education
(Teachers) Service Rules, 1981 have been framed. Rule 29 of these Rules provide
for the age of Superannuation of teachers. Rule 29 is quoted below:

29. Every teacher shall retire from service in the afternoon of the last day of the
month in which he attains the age of 60 years ; Provided that a teacher who
retires during an academic session (July 1 to June 30) shall continue to work till
the end of the academic session, that is, June 30 and such period of service will
be deemed as extended period of employment.

10. The teachers of the basic schools were, consequently, governed by Rule 29,
quoted above, in regard to the age of superannuation. In view of the fact that
the Director of Education by letter dated 24th December, 1986, which has
already been quoted above, fresh academic session was to commence from 1st
May, 1987. Difficulties also arose in regard to computation of the age of
superannuation so far as the teachers of the basic schools were concerned. The
State Government, consequently, by notification dated 12th June, 1987, amended
the U.P. Basic Education (Teachers) Service Rules, 1981. Two important

amendments were brought about ; one was the addition of Rule 2 (aa), which read as under:

2 (aa). "Academic" session " means the year commencing on May 1, and ending on April 30 in the next following calendar year.

Rule 29 was also substituted by this very notification and it now reads as under:

29. Every teacher shall retire in the after-noon of the last day of the month in which he attains the age of sixty years provided that a teacher who retires during an academic session not being a teacher retiring on June 30, following next after the date of retirement and such period of service shall be deemed as extended period of employment.

11. The age of superannuation of the teachers in the above mentioned High School and Intermediate Colleges as well as the Basic Schools is 60 years in accordance with the above mentioned Rules. The teachers in the above mentioned High School and Intermediate Colleges as well as the Basic Schools have to be divided into three categories for the purposes of the present petitions. The three categories are:

1. The teachers whose date of superannuation falls between 1st July 1986, and 30th April, 1987, both dates inclusive.

2. The teachers whose date of superannuation falls between 1st May, 1987, and 30th June, 1987, both dates inclusive, and

3. The teachers whose date of superannuation falls between 1st July 1987, and 30th June, 1988 both dates inclusive.

12. The word " teachers ", mentioned by us in the categorise, includes Principals, Head Masters and other employees of the institution governed by the impugned Regulations and the Rules.

13. In Writ No. 13560 of 1987, Ram Lai Prasad v. State of U.P. and Ors., the Petitioner was working as principal in the National Intermediate College, Patti Narendrapur, district Jaunpur. His date of birth is 31st July, 1926. Consequently, his date of superannuation is 30th July, 1986. He comes in the first category.

14. In Writ No. 14365 of 1987, Basu Eeo Singh v. State of U.P. and Ors., the Petitioner is working as Head Master in the Junior High School, Pariyan, Pargana Haveli district Jaunpur. This is a Basic School. The date of birth of the Petitioner is 14th July 1926, and, as such, the date of superannuation is 13th July 1986, and, consequently, he belongs to the first category.

15. In Writ No. 11068 of 1987, S-ita Ram Singh v. Director of Education and others, the Petitioner is working as Principal in the Jai Hind Inter College, Teji Bazar, Jaunpur. His date of birth is 24th October, 1926, and hence his date of superannuation is 23rd October, 1986. This also is a case under the first category.

16. In Writ No. 15111 of 1987, Ganesh Prasad Singh v. State of U.P. and Ors.,

the .Petitioner is a lecturer in commerce in Hindu Inter College, Jamania, district Ghazipur. His date of birth is 3rd May, 1927, and hence his date of superannuation is 2nd May, 1987. He belongs to the second category.

17. In Writ No. 10994 of 1987, Ram Chandra Tewari v. The Director of Education and others, the Petitioner is working as a teacher in Banshi Bazar, Ballia. His date of birth is 1st July 1927 and, consequently, his date of superannuation is 30th June 1987. He also belongs to the second category.

18. In Writ No. 10070 of 1987, Ram Lai Prasad v. The State of U.P. and Ors., the Petitioner is a teacher in Nehru Intermediate College, Ratanpura, district Ballia. His date of birth is 1st July 192 and, as such, his date of superannuation is 30th June, 1987. This petition also relates to the second category.

19. It may be stated here that though the dates of superannuation of the Petitioners in accordance with the Rules were to be extended till the end of the session, namely, till 30th June, 1987, when they would have retired, but they are continuing to work in the institutions in pursuance of the interim orders passed by this Hon'ble Court.

20. We have heard the learned Counsel for the Petitioners in the above mentioned petitions as well as those learned Counsel who wanted to argue for the Petitioners in the group of petitions listed before us. We have also heard Sri K.S. Shukla, learned standing counsel, as well as the learned Counsel for the Respondents who have opposed these and the other connected petitions.

21. In regard to the employees falling in category 1, the argument is that in accordance with the Rules applicable and in view of the fact that the old session was to end on 30th April, 1987, the teachers having been permitted to continue upto 30th June, 1987, this being now mid of the session are entitled to continue to work till 30th April, 1988. In fact, they claim double benefit of extension.

22. In regard to the employees of category 2, the argument is that since the fresh session begins from 1st May, 1987, therefore, they are entitled to continue till 30th April, 1988, and their services are not liable to be terminated on 30th June, 1987.

23. In regard to the employees of the third category, the question is whether they will retire on 30th April, 1988, or will continue upto 30th June, 1988.

24. In regard to the persons employed in an institution governed by the 1921 Act, working in the High School and Intermediate Colleges, their date of superannuation is governed by Regulation 21 of Chapter III of the Regulations framed under the Act. On a reading of Regulation 21, quoted above, it is clear that the date of superannuation of the Principal, Head Master, teacher, matron, clerk, librarian and other inferior servants of the colleges is 60 years. It is further provided that if the date of superannuation falls within an academic session then the service shall be extended till the end of the session. The "academic session" has not been defined, either under the Act or by the Regulations, but it was

understood to be 1st July to 30th June of the succeeding years. In the circumstances, so far as the services of the employees of the institution whose date of superannuation was after 1st July, 1986, they were to retire on 30th June, 1987.

25. The problem, however, arose because of the letter issued by the Director of Education on 24th December, 1986, wherein it was categorically stated that the new session will commence on 1st May, 1987. Since the new session was to commence on 1st May, 1987, many of the institutions informed the employees of their institutions that they would retire on 30th April, 1987, as that was the date when the session ended. The effect of this was that there was likelihood of the curtailment of the period of service of the employees. In the circumstances, the State Government issued a telex on 27th April, 1987. By this telex, it was made clear and the managements of the institutions were informed that the retirement date of teachers and principals will continue till 30th June, 1987, or till such time the Government does not notify otherwise. The effect of this telex was that the teachers and Principals, who were sought to be retired on 30th April, 1987, were made to continue to work in the institutions. This telex, in our opinion, is clearly referable to the power given by the State Government to issue orders or to take such other action consistent with the provisions of the Act, which was necessary or expedient in the opinion of the State Government u/s 9(4) of the 1921 Act. Sub-section (4) of Section 9 of 1921 Act confers very wide powers on the State Government. It provides that whenever, in the opinion of the State Government, it is found necessary or expedient to take immediate action, without making any reference to the Board, the State Government is empowered to issue any order and also, in particular, to modify or rescind or make any Regulation in respect of any matter. Since under the then existing Regulations, the teachers were to retire on 30th June, 1987, uncertainty was prevailing among the teachers and, consequently, on the face of it, it was a matter which required immediate attention of the State Government and, as such, a telex was issued on 27th April, 1987. In our opinion, the Government had the power to issue the telex under the powers conferred on it u/s 9(4) of the 1921 Act.

26. After the telex was issued, Rule 21 of Chapter III itself was substituted by a Government Order dated 5th June, 1987. In this substituted Regulation 21, which has also been quoted above, it is apparent that now the word " session " has been deleted from Regulation 21 and it has been made clear that those teachers whose date of superannuation falls between 2nd July and 30th June, they will retire on 30th June. By issuance of the new regulation 21, it is now abundantly clear that all those teachers or principals whose date of superannuation falls between 2nd July 1986 and 30th June 1987, will retire on 30th June, 1987.

27. In so far as the teachers of the Basic Schools are concerned, Rule 29 clearly provides that every teacher shall retire from service when he attains the age of 60 years, but if a teacher retires during an academic session, namely, between

July 1 and 30th June, he shall continue to work till the end of the academic session, that is, 30th June and that such period of service will be deemed as the extended period of employment.

28. In the case of teachers in Basic Schools, the academic session was specifically stated to be from 1st July to 30th June in the Rule itself. In view of the letter of the Director of Education dated 24th December 1986, the session has changed. The State Government has, consequently, by a notification dated 12th June, 1987, substituted Rule 29 and also defined the expression "academic session". Now the "academic session" commences from 1st May and ends on 30th April in the next following calendar year. In this amended Rule 29, it has further been specifically provided that in case a teacher retires during an academic session, namely, between 1st May and 30th June, in the next calendar year, the teacher shall continue to work till 30th June, and the period of service of such teachers shall be treated as extended till that date. The effect of this Rule is that even though the academic session has changed, the teacher will retire on 30th June in any case. The State Government amended this Rule 29 by virtue of the powers conferred upon it u/s 19 of the 1972 Act.

29. As already pointed out, u/s 19 of the 1972 Act, the State Government has been empowered to make rules in regard to the recruitment and the conditions of service of persons appointed to the post of officeis, teachers and other employees. In the circumstances, the notification issued on 12th June, 1987, is a valid notification and is clearly referable to the powers conferred on the State Government under the provisions of Section 19 of the 1972 Act.

30. In view of the above, it is clear, therefore, that so far as the teachers of the Basic Schools are concerned, the changing of the session by the letter of the Director of Education did not affect their date of retirement and they would retire on 30th June, 1987

31. Since Regulation 21 made under the 1921 Act and Rule 29 made under the 1972 Act are valid, no question of double benefit arises nor the teachers are entitled to continue till 30th June, 1988. Both the teachers of categories first and second will, consequently, retire on 30th June, 1987.

32. So far as the teachers in the High School and Intermediate Colleges are concerned, Shri K.S. Shukla has conceded that they will retire on 30th June, 1988. The teachers working in the Basic Schools in accordance with the amended Rule 29 of the U.P. Basic Education (Teachers) Service Rules 1981 shall also retire on 30th June, 1988.

33. Now we will consider the various contentions raised by learned Counsel for the Petitioners in support of their petitions.

34. The first contention raised is that Section 9 Sub-section (4) of the 1921 Act is ultravires. The contention is that this Sub-section suffers from the vice of excessive delegation of legislative power by the Legislature. In support of this

submission learned Counsel has cited the decision of the Hon'ble Supreme Court in *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, . On the basis of this authority, it has been urged by learned Counsel that the power given to the State Government to pass orders as well as to make regulations amounts to delegating to the State Government legislative powers. The proposition is now well settled that if it appears from the relevant provisions of the impugned statutes that powers which have been delegated include powers which can legitimately be regarded as essentially legislative powers then the legislation is bad and it introduces a serious infirmity in the act itself. On the other hand if the legislature lays down its legislative policy in clear and unambiguous terms and leaves it to the delegate to execute that policy by means of making appropriate rules, then that delegation is not impermissible. Reference in this connection may be made to the decision in *Makhan Singh Vs. State of Punjab (and connected appeals)*, and *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, . The same principle has been laid down in the case of *Hamdard Dawakhana (supra)* cited by learned Counsel.

35. The question, however, which has to be determined is whether by enacting Section 9 Sub-section (4) of the 1921 Act essential legislative powers have been delegated to the State Government. In this connection the relevant section of the Act have to be examined to see as to whether the legislative policy has been formulated by the Legislature and as to what nature of powers have been delegated to the State Government. Initially when the 1921 Act was enacted, there was no control of the Government in so far as the teachers of the colleges were concerned. By the Intermediate Education (Amendment) Act, 1958 (U.P. Act No. XXXV of 1958) Section 16A to Section 16G were inserted. Section 16G related to the conditions of service of teachers. Sub-section (1) of Section 16G provides that every person employed in a recognised institution would be governed by such conditions of service as may be prescribed by regulations and any agreement between the management and such employees in so far as it is inconsistent with the provisions of this Act or with the regulations shall be void. In our opinion, the Legislature had clearly laid down its policy that after insertion of Section 16G of the Act, the conditions of service of persons employed in the recognised institution had to be governed by regulations and if any agreement was inconsistent with the Act or the regulations, it shall be declared as void in law. Prior to insertion of Section 16G, different managements entered into different agreements with teachers. The result was that teachers used to suffer. In order to avoid this malady, Section 16G was inserted to make the conditions of service of all the teachers uniform. This, in fact, was the legislative policy behind the enactment of Section 16G. Legislature further conferred power to lay down conditions of service of teachers by means of regulations. These regulations were to be made by the Board u/s 16 of the Act with the previous sanction of the State Government.

36. By the enactment of Section 9(4) the Legislature has only given power to the State Government if it is necessary or expedient to take necessary action to pass orders or to modify or rescind or make any regulation in respect of any matter. It has also been provided in this Sub-section (4) specifically that the order or regulation if any made by the State Government has to be consistent with the provisions of the Act.

37. It is, therefore, clear that the Legislature clearly declared its policy in Section 16G of the Act in regard to the conditions of service of teachers and it was in pursuance of this policy that power was granted to the State Government u/s 9 Sub-section (4) of the Act to pass orders or make regulations if so required. The Legislature has further laid down guidelines in Section 16G Sub-clause (2) as to the matters in respect of which regulations can be made by the Board. In view of the above, it cannot be said that the State Government has delegated its essential legislative function to the State. On the other hand, it is clear that the legislative policy has been clearly enacted in Section 16G of the Act and specific guidelines have been given to the regulating authority to frame regulations which are consistent with the provisions of the Act.

38. In the case of Hamdard Dawakhana (supra) relied upon by learned Counsel for the Petitioners, the validity of Section 3 Sub-clause (d) of Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 was under consideration before the Hon'ble Supreme Court, which is in the following terms:

(d) the diagnosis, cure mitigation treatment or prevention of any venereal disease or any other disease or condition which may be specified in rules made under this Act.

39. Hon'ble Supreme Court declared only the following portion of the above clause namely or any other disease or condition which may be specified in the rules made under this Act as ultra vires on the ground that it conferred uncanalised and uncontrolled power to the executive. Here the Parliament prescribed venereal disease as one of the diseases and left other diseases to be mentioned in the schedule to be made by the executive. This case is clearly distinguishable from the instant case. In the case before us legislative policy has been clearly laid down, namely, that all teachers must have same condition of service, the details of which are to be laid down in regulations framed under the Act. In the circumstances, in our opinion, the Petitioners are not liable to get the benefit of the decision mentioned above.

40. In the circumstances, we do not find that Section 9(4) suffers from the vice of excessive delegation of legislative powers. This contention raised by learned Counsel for the Petitioners, in our opinion, is without substance.

41. The second contention of learned Counsel is that the notification dated 5th June, 1987 by which Regulation 21 has been substituted is invalid as the State Government did not make a reference to the Board before issuing Notification.

42. In this connection, it is necessary to quote Section 9(4) itself which is as follows:

(4) Whenever, in the opinion of the State Government it is necessary or expedient to take immediate action, it may, without making any reference to the Board under the foregoing provisions, pass such order or to take such other action consistent with the provisions of this Act as it deems necessary, and in particular, may be such order modify or rescind or make any regulation in respect of any matter and shall forthwith inform the Board accordingly.

From a reading of Sub-section (4) quoted above, it is clear that Sub-section (4) empowers the State Government to pass orders or make regulations without making any reference to the Board. In view of this specific provision, it was not necessary to comply with the provisions of Section 9 Sub-sections (1) (2) and (3) and as such, no reference at all was required to be made to the Board before passing any order u/s 9(4) or making any regulation. This argument, in our opinion, is also without substance.

43. The third contention raised by learned Counsel is that the power u/s 9 Sub-section (4) of the Act can only be exercised when it is necessary or expedient to take immediate action and that since there is no material placed before the court that immediate action was required, the notification issued on 5th June, 1987 is wholly invalid. In our opinion, this contention is also without foundation. In our opinion, there is already sufficient material on record on the basis of which it can be easily concluded that immediate action was necessary. The relevant regulations and orders passed by the Government have already been quoted above. In view of the change of the academic session from 1st May, 1987 thousand of teachers of the various colleges in the State would have retired on 30th April, 1987 in view of the existing regulations. In order to enable them to continue till 30th June, 1987 telex order was issued on 27th April, 1987, and thereafter the notification amending the regulation 21 was passed on 5th June, 1987. On the face of it, this matter required immediate attention by the State Government otherwise there was likelihood of uncertainty prevailing in all the colleges of the State as to what would be the position of the teachers after 30th April, 1987. In the circumstances, in our view, it is clearly a case where it was necessary and expedient for the State Government to take immediate action to pass orders clarifying the position and also, if it is necessary to modify or substitute the regulation.

44. The next contention raised by learned Counsel is that those teachers who retired after 1st May, 1987 have got a vested right to continue in service till the end of next academic session, namely, till 30th April, 1988 and as such, they cannot be retired on the 30th June, 1987. The argument is that once a vested right has been conferred on a teacher, it cannot be taken away by either passing an order or making a regulation

45. Under regulation 21 existing prior to 5th June 1987 as well the substituted

Regulation 21 the right of the teacher is only to the extent that the age of superannuation is sixty years and that no teacher could be retired before completing sixty years of age. The continuance of service of teacher beyond the date of superannuation is only a benefit conferred on the teacher in the interest of the students so that the teacher continues to teach the student till the end of the academic session. On the basis of this extension or benefit, which has been conferred on the teacher, it cannot possibly be said that a vested right is created in favour of a teacher and that he has a right to continue till the end of the next academic session.

46. In *Ram Autar Pandey Vs. State of Uttar Pradesh and Another*, a Full Bench of this Court had an occasion to consider the question as to whether the Government employee can claim a vested right under any rule relating to the conditions of service and on that account, it is not permissible to the rule making authority to amend the rule in regard to retirement. In that decision, it was held as follows:

(51) The argument that a Government employee can claim a vested right under any rule relating to his conditions of service and that on that account it is not permissible for the rule making authority to amend the rule so as to affect that right does not appear to be acceptable at all. It may be pointed out in this connection that certain audit instructions have been issued regarding Rule 56 which are printed just below the rule in the Financial Handbook, Volume 11, Part 1. Instruction No. 1 B reads:

The purpose of Fundamental Rule 56 is not to confer upon Government servants any right to be retained in service up to a particular age, but to prescribe the age beyond which they may not be retained in service.

This shows the intention with which the rule was framed. What to say of a vested right not even a right was intended to be conferred by Rule 56. The Petitioner could not, therefore, say that because at one stage 58 was the age of superannuation according to the rule a right was conferred upon him under which he could insist that he should be retained in service till that age and that the rule making authority had lost its right to change the rule and to reduce the age of superannuation to a lower figure.

The decision of this Court has been followed in the case of *D.N. Dhar v. State of Jammu and Kashmir* AIR 1964 J.K. 92. The decision in this case is also of the Full Bench of the Jammu and Kashmir High Court. It was opined by the Full Bench as follows:

The Petitioners could not therefore say that a right was conferred upon them under which they could insist to hold the post till the expiry of the extended period of service. Once the right of permanent government servant to hold the post comes to an end on attaining the age of superannuation, no fresh right to hold the post is created in him merely because he is permitted to remain in service for a certain period.

We respectfully agree with the decision given in the case of D.N. Dhar (supra). The rrere fact that after the date of superannuation an extension has been granted under the regulations to the teachers in the interest of students, no vested right is cieated in the teachers to continue in service till a particular date. It is always open to the regulation making authority to change the date when the service would come to an end. By the notification dated 5th .une, 1987. the State Government substituted Regulation 21. This would also be applicable to teachers whose date of superannuation was 1st May, 1987 and onwards. They would also continue only till 30th June, 1987. It is only those teachers whose date of superannuation is 1st July, 1987, who would get the benefit to continue till 30th June, 1988. In the circumstances, we are unable to hold that the teachers who retired after 1st May, 1987, till 30th June, 1987, would continue till the next session, namely, till 30th April, 1988 or 30th June, 1988.

47. One more contention has been raised in regard to the High School and Intermediate teachers. It has been contended that those teachers whose date of superannuation is 30th June, 1987, should be permitted to work till 30th June, 1988, because in term of regulation 21 as amended, they would not gei any benefit of extension. The benefit to get extension as held above, is not a vested right. It is only a privilege granted in the interest of students. If a teacher retires on the 30th June, 1987, itself, he cannot possibly get an extension in terms of Regulation 21. There is no infringement of his right. In the circumstances, he cannot possibly continue till 30th June, 1988, as contended by learned Counsel.

48. It was next contended that since toe order made by the telex dated 27th April, 1987 and the notification issued on 5th June, 1987 had not been published in the gazette, they cannot be treated as valid. This contention also cannot be accepted. u/s 16 Sub-section (1) of the Act, regulations made u/s 15 have to be made with the previous sanction of the State Government and they have to be published in the gazette. It has not been provided that the orders and regulations made u/s 9 Sub-section (4) of the Act by the State Government need be published in the gazette. Only an information has to be sent to the Board by the State Government. In the circumstances by the mere fact of non publishing in the gazette of the telex order dated 27th April 1987 and the notification dated 5th June, 1987 does not make it invalid.

49. In Dr. Ramji D-vivedi v. State of. U.P., 1983 AWC 542=1983 Ed. Cases 114 the Hon''ble Supreme Court had an occasion to consider the validity of a radiogram issued by the State Government Under Sub-section (4) of the Act. The said radiogram was held to be valid and it was not held that such a radiogram need be published in the gazette before enforcement. This submission of the learned Counsel, in our opinion, is wholly without substance.

50. In regard to the petitions filed by the teachers working in the basic school, the arguments are practically similar. In regard to the basic schools, the only arguments which need to be considered is as to whether the notification dated 12th June, 1987 amending Rule 21 of the U.P. Basic Education (Teachers) Service

Rules, 1981 is valid or not.

51. Section 19 of the U.P. Basic Education Act, 1972 empowers the State Government to make rules for carrying out the purposes of the Act. Sub-section (2) of this Act provides the matters in respect of which rules can be framed by the State Government. Sub-section (2) clearly lays down that the State Government can make rules in regard to the recruitment and conditions of service of persons appointed to the posts of officers, teachers and other employees. In the circumstances, the notification dated 12th June, 1987 by which the rules have been amended, are clearly referable to Section 19 of the Act and as such, the State Government had the jurisdiction to amend the Rule 29.

52. In view of the above, it is clear that by the changing of the academic session from 1st May, 1987 to 30th April in the succeeding year, there was no change in the rule regarding the date of retirement of the teachers either serving in the High School or Intermediate Colleges or those serving in Basic Schools. Their right remains intact as before. For the purpose of retirement by the amendment of the Regulations and the Rules, the teachers whose date of retirement falls between 1st July and 30th June would retire on 30th June.

53. To elucidate, those whose date of superannuation falls between 1st July 1987, and 30th June 1988, would retire on 30th June 1988.

54. In view of the above, we do not find any legal infirmity in the State Government making the amendments in the Regulations and Rules which have been questioned before us and we also do not find any merit in any of the contentions raised by the learned Counsel for the Petitioners.

55. All these petitions (except those falling in the third category, enumerated above, in regard to which separate orders shall be passed) are, accordingly, dismissed. Interim orders passed therein are hereby vacated. In the circumstances of the case, we, however, direct the parties to bear their own costs of these petitions.