
(2005) 02 AHC CK 0052

In the Allahabad High Court

Case No : C.M.W.P. No's. 16424, 17242, 29441, 31300, 38589, 41031, 47056
and 51736 of 2004 and 2992, 6155 and 8044 of 2005

Ram Mohan Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Osmania University Act, 1959 — Section 38(1)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 21

Citation : (2005) 2 ESC 1436

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : D.K. Misra, Harish Kumar, S.K. Shukla and Sudhakar Pandey, for the Appellant; C.B. Yadav, C.S.C., for the Respondent

Judgement

V.K. Shukla, J.—In these bunch of writ petitions, claim of Class III employees and claim of Class IV employees of recognised institution of Madhyamik Shiksha Parishad, U.P. at Allahabad is for issuing writ in the nature of mandamus directing the respondents to enhance the age of superannuation of the petitioners from 60 to 62 years in same way and manner as it has been extended qua the teaching staff of the institution in terms of Government Order dated 4.2.2004.

2. Brief facts of the case as has been disclosed by the petitioners in the aforementioned writ petitions is that they have been appointed as Class III employee and Class IV employees at duly recognised institutions of Madhyamik Shiksha Parishad, U.P. at Allahabad. Contention of the petitioners is that in terms of Regulation 21 of Chapter III of U.P. Intermediate Education Act, 1921 age of superannuation of teachers and employees has been provided to be 60 years and once decision has been taken to enhance the age of superannuation of teachers from 60 to 62 years then for the purposes of superannuation teachers and other

employees has to be treated as one class and no different treatment could be accorded to the petitioners as such petitioners have been discriminated, and writ of mandamus be issued extending the same benefit as has been extended to teachers in terms of Government Order dated 4.2.2004.

3. From the side of respondents counter-affidavit has been filed and therein it has been asserted that as far as non-teaching staff is concerned no decision whatsoever has been taken by the State Government in respect of enhancement of the age of superannuation of the non-teaching staff. The teaching staff cannot be placed at par with the non-teaching staff and three reasons has been indicated for extending age of superannuation of teaching staff namely :

(i) There are different working between teaching and non-teaching staff of the institution.

(ii) Process of selection of both set of persons are different. Class III and Class IV regulated under the provisions of U.P. Group "D" Services Rules 1985 as well as under the provisions of recruitment of class III employee Service Rules 1998.

(iii) Educational qualification, eligibility and experience of work of teaching and non-teaching staff are different and therefore, they cannot be placed at par with each other.

4. It has further been asserted that amendment in Chapter III of Regulation 21 of U.P. Intermediate Education Act, 1921 has been proposed by the Government in respect of teachers and there is no proposal qua the petitioners, as such, no benefits or advantage can be given to the petitioners.

5. Rejoinder affidavit has been filed and therein it has been contended that service condition of teaching and non-teaching staff is governed by regulations framed under U.P. Intermediate Education Act, 1921 and both are two wheels of one vehicle and action complained is clearly violative of Articles 14 and 16 of the Constitution of India. Much stress has been laid on the fact that age of superannuation of teaching and non-teaching staff both has been 60 years, than leaving one group and changing age of superannuation of one group is clearly arbitrary and partly is liable to be extended, qua the age of superannuation.

6. After pleadings inter se parties mentioned above have been exchanged, present writ petitions have been taken up with the consent of the parties, as common question of law and fact is involved.

7. Sri D.K. Misra, Advocate, Sri Harish Kumar, Advocate, Sri S.K. Shukla, Advocate, Sri Sudhakar Pandey, Advocate have appeared on behalf of the petitioner. Sri C.B. Yadav, learned Chief Standing Counsel has appeared on behalf of State respondents. Sri D.K. Dwivedi, Advocate, has appeared on behalf of one of the Committee of Management of the institution opposing the extension of age of superannuation.

8. From the side of the petitioners much stress has been laid on the fact that as

far as age of superannuation of teaching and non-teaching staff is concerned in terms of Regulation 21 of Chapter III of U.P. Intermediate Education Act, 1921 same is sixty years and, as such, they form one class, as such discrimination which has been practiced in the present case is clearly violative of Articles 14 and 16 of Constitution of India, as such same benefits which has been extended to teachers in respect of extension of age of superannuation is liable to be extended to petitioners also and discrimination practiced is liable to be struck down and remedied.

9. From the side of the respondents it has been asserted that it is policy decision and this Court has got no authority or jurisdiction to extend age of superannuation and petitioners and teachers form separate class, as such, by no stretch of imagination any relief can be granted to the petitioners for extending age of superannuation, as such writ petition as it has been drawn and framed is liable to be dismissed.

10. In order to appreciate respective arguments as to whether teachers and Class III employee form same class or not as per provisions contained under Regulation 21 of Chapter III of U.P. Intermediate Education Act, 1921 is to be seen :

Regulation 21 of Chapter III of U.P. Intermediate Education Act 1921.--

Superannuation age of Principal, Headmaster, Teacher and other employees would be 60 years. -- If above said superannuation age of any Principal, Headmaster and Teacher falls on any date in between 2nd July and 30th June, except in the condition when he himself, before two months of the date of superannuation, furnishes in writing the information for not seeking extension of service, extension of service up to 30th June shall be deemed to be conferred on him so that after summer vacation, substitute can be arranged in the month of July. In addition to this, extension of service could be granted only in such special cases which may be decided by the State Government.

If date of superannuation of any clerk or fourth class employee falls in the middle of any month, his extension of service would be deemed to be given up to the last date of that month. But if the date of appointment of any employee falls on the first date of any month, he shall be retired on the last date of the preceding month.

11. A bare perusal of Regulation 21 Chapter III of U.P. Intermediate Education Act, 1921 would go to show that said regulations have been framed, providing for conditions of service u/s 16-G of U.P. Intermediate Education Act, 1921. Regulation 21 of Chapter III provides superannuation age of Principal, Headmaster. Teacher and other employees to be 60 years. Thus, uniform age of superannuation has been provided for each and every employee starting from Principal up to Class IV employee. However, session benefit has been extended to teachers till 30th June in case age of superannuation falls within 2nd July and 30th June. As far as Class III and Class IV employees are concerned they are

entitled for extension of service up to the last date of that month. As far as nature of duties of teaching and non-teaching staff is concerned same itself makes them different class amongst themselves. Extension of session benefit also clearly establishes that they form separate class. This fact is admitted that Class III and Class IV employees form separate class but insistence is that for the purposes of age of superannuation, they form one class.

12. Much stress has been laid by the petitioner on the judgment of Hon''ble Apex Court in the case of *Osmania University v. V.S. Muthurangam and Ors.*, 1997 (4) SLR 597, wherein it has been mentioned that there has to be uniformity in the age of superannuation of teaching and non-teaching staff of the institution. In the said judgment Hon''ble Apex Court after careful consideration of the facts and circumstances of the case concluded that nature of the duties performed by the teaching staff and non-teaching staff are different nature of the service and it is inherently different. It has also been held that University has authority to easily raise the age of superannuation as far as the service conditions of salaried staff of the University is concerned. Hon''ble Apex Court in view of specific provision as contained u/s 38(1) of the *Osmania University Act, 1959* which provides that there should be uniform condition of service of teaching and non-teaching staff of the University if same was not otherwise impracticable, found that there was nothing on the record to indicate that it was impracticable. In this background permission to extend the age of superannuation was accorded qua non-teaching employees.

13. Now taking the case in hand, it is true that Regulation 21 of Chapter III of *U.P. Intermediate Education Act, 1921* provides age of superannuation ranging from Principal, teachers and other employees to be sixty years. There is no provision akin to Section 38(1) of *Osmania University Act, 1959* under *U.P. Intermediate Education Act, 1921*, providing for that there should be uniform service conditions of service for teaching and non-teaching staff of the institution. Merely because at one point of time age of superannuation has been similarly provided for the non-teaching staff cannot claim that qua teachers they form the same class. However at the point of time of extending the age of superannuation only claim of teachers have been considered and the claim of petitioners has not at all been considered and till date no exercise has been undertaken for amending conditions of service of Class III and Class IV employees. Full fledged procedure has been provided for as to how decision has to be taken for extending the age of superannuation by amending the Regulations. This exercise has to be undertaken by the State Government and this Court has no authority to extend the age of superannuation of Class III and Class IV employees. Division Bench of this Court in the case of *Dr. Raj Bahadur v. State of U.P.*, 2000 (2) ESC 1058, has held that this Court cannot given binding directive to State Government to extend the age of superannuation by amending the Rules. Court can only ask for consideration.

14. Right to frame condition of service has been upheld in the case of *Osmania*

University v. V.S. Muthurangam and Ors., 1997 (4) SLR 597. Till date no steps whatsoever has been undertaken for extending the age of superannuation of non-teaching staff from 60 to 62 years. Power of the Court to extend the age of superannuation has been made permissible only when there is statutory provision to this effect, as has been noticed in the case of Osmania University v. V.S. Muthurangam and Ors., 1997 (4) SLR 597 and as far U.P. Intermediate Education Act, 1921 is concerned there is no provision providing for that there would be uniform service condition of teaching and non-teaching staff of the institution. Service conditions are provided for in terms of provision as contained u/s 16G of U.P. Act II of 1921 and as teaching and non-teaching staff form separate class State Government has the right to fix different age superannuation qua teaching and non-teaching staff of the institution.

15. In these circumstances and in this background as till date State Government has not taken any steps for extending age of superannuation of non-teaching staff and employees as such no mandamus can be issued directing that non-teaching staff would attain the age of superannuation at 62 years. However Sri C.B. Yadav learned Chief Standing Counsel submitted that matter pertaining to petitioners would also be considered by State Government.

16. As till date no steps whatsoever has been undertaken. In these circumstances Director of Education (Secondary) is directed to take the matter in respect of petitioners also within one month and thereafter same be placed before Secretary, Secondary Education for considering the claim of petitioners within next three months and whatever decision is so taken same be communicated to petitioners.

17. Joint Secretary of the State Government by means of letter send in October 2004, filed as Annexure-4 in Civil Misc. Writ Petition No. 8044 of 2004, Ram Dularey v. State of U.P., has already asked for proposal from Director of Education (Secondary) within three days.

18. With the above direction present writ petition is disposed of.

Copy of this order be supplied to learned Standing Counsel for forwarding the same to Secretary, Secondary Education, U.P. at Lucknow and to Director of Education (Secondary) for ensuring compliance of the same.