
(2007) 05 AHC CK 0146
In the Allahabad High Court

Ram Singh

APPELLANT

Vs

State of U.P., U.P. Jal Nigam and The Executive Engineer,
Construction Division, U.P. Jal Nigam

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 6 AWC 6355 : (2007) 3 UPLBEC 108

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Judgement

D.P. Singh, J.—Heard learned Counsel for the parties.

2. Pleadings are complete and the counsel for the parties agree that the petition may be disposed of under the Rules of the Court.

3. The dispute in this bunch of petitions is with respect to the age of retirement of the employees of U.P. Jal Nigam. Before the Court deals with the different set of petitioners, it would be appropriate to examine the back-ground which has led to the filing of these petitions.

4. The State Legislature enacted U.P. Water Supply and Sewerage Act, 1975 (hereinafter referred to as the Act) and the State Government was empowered to issue notifications to constitute a Corporation u/s 3 known as U.P. Jal Nigam (hereinafter referred to as Nigam). In pursuance thereof it issued a notification establishing the Nigam w.e.f., 18th June, 1975. By virtue of Section 31 of the Act, all properties, assets etc. which vested before the appointed date in the Local Self Engineering Department of the State, stood vested in the Nigam. u/s 37 of the Act, all the employees of the Local Self Government Engineering Department from the appointed date became the employees of the Nigam with same tenure, enumeration and other terms and conditions of service including the benefit of pension, gratuity etc., till the terms and conditions of service were altered by the Nigam.

5. The Nigam directly recruited other employees and framed certain Service Rules, but wherever the Service Rules were silent, rules applying to government employees were to be followed. The Rules framed by the Nigam were silent on the age of superannuation.

6. The age of superannuation of government employees was 58 years vide Rule 56(a) of the Financial Handbook (Vol. II to IV). The State Government vide its Notification dated 31st October, 1975 provided that in accordance With Section 37 of the Act the service conditions of the employees of the Nigam would continue to remain the same and in pursuance thereof the Nigam took a decision on 4th April, 1977 that the service conditions would remain the same and the various provisions applicable to the government servants would apply to the employees of the Nigam till it is altered by the Nigam. In pursuance of the power enjoined in Section 92(c), the U.P. Jal Nigam Engineers (Public Health Branch) Service Regulations, 1978 and other allied Regulations, were framed.

7. The State Government through its Notification dated 28th November, 2001 increased the age of superannuation of government servants from 58 years to 60 years and subsequently, vide U.P. Fundamental (Amendment) Rules 2002 which were notified on 2nd January, 2002 w.e.f. 28th November, 2001, the age of superannuation of government servants was enhanced from 58 years to 60 years. On a query raised by the Nigam whether the employees of the Nigam are also entitled to the enhancement of the age of superannuation, the Government opined that it is applicable only to government servants. In pursuance thereof, the Nigam vide its resolution dated 11th July, 2002 resolved that the age of superannuation of the employees of the Nigam would remain 58 years.

8. Several employees through various writ petitions approached this Court, and in the leading case of Harvindra Kumar v. Chief Engineer, Karmik and Ors. Writ Petition No. 8448 of 2002 the employees claimed that they were entitled to continue till the age of 60 years as the conditions of service of employees of the Nigam had not been altered and thus, they would be entitled to the benefit of the amendment in the Fundamental Rules. A Division Bench vide its order dated 20.3.2002 rejected the contention. The issue was carried to the Apex Court, which held, in its judgment reported in JT 2005 (10) 32, that unless Regulation 31 is amended by altering the service conditions of the employees they too would superannuate at the age of 60 years.

9. The first set of the petitioners are those who did not challenge their retirement at the age of 58 years but have approached this Court after their retirement claiming the benefit of the judgment of the Apex Court in Harvindra Kumar's case (supra). Another set are those employees who have challenged their retirement notice while they were still in service and some of them have obtained stay orders.

10. It is urged on behalf of first set of employees that they are entitled to the benefit of the decision of the Apex Court. They have relied upon a Division Bench

decision of this Court dated 7.2.2006 rendered in a bunch of petition in the leading case of Braham Prakash v. State of U.P. and Ors. Civil Misc. Writ Petition No. 7520 of 2006 and other identical judgments. The Division Bench in Braham Prakash case (supra), held that even though the employees who had not challenged their retirement notice but filed their petitions after the judgment in Harvindra Kumar's case (supra) they are also entitled to its benefit. However, learned Counsel for the respondent has placed reliance upon a judgment of the Apex Court rendered in the case of Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr. Appeal (civil) 4790 of 2006 decided on 10.11.2006.

11. The Apex Court in the aforesaid case of Jaswant Singh (supra) was also confronted with the issue as to whether those employees who did not challenge their retirement within time are entitled to the benefit of Harvindra Kumar's decision? The Court approved the verdict in Harvindra Kumar's case but posed the following question:

But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this Court in the case of Harvindra Kumar (supra). Whether they are entitled to the same relief or not?

After examining a number of decisions, it summarized the law in the following words:

In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time are while away and did not arise to the occasion in time for filing the writ petitions, men in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquisitions or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.

And it went on to hold:

Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others.

12. The issue with regard to these two sets of petitioners is thus squarely covered by the aforesaid decision of the Apex Court in the case of Jaswant Singh and another (supra). For the reasons given in Jaswant Singh's case, only those petitioners who have challenged their retirement while in service or have obtained interim orders would be entitled to the benefit of Harvindra Kumar's Case and would be paid their salary uptill the age of 60 years and other consequential benefits. Those petitioners who did not challenge their retirement while in service cannot be extended the benefit.

13. The second set of petitioners are those who were directly appointed after the creation of Jal Nigam and were not transferred from Local Self Government Engineering Department of the State Government.

14. The State Government in exercise of its powers u/s 97 of the Act has framed U.P. Jal Nigam Karamchan (Adhivarshata Par Sevanivnti) Vimyamavali 2005 (hereinafter referred to as "Regulation 2005"). Under Regulation 3, it is provided that all those employees who were earlier transferred from the Local Self Government Engineering Department and absorbed in the Nigam u/s 37 of the Act would superannuate at the age of 60 years, while Regulation 4 provides that all other employees of the Nigam would superannuate at the age of 58 years except those Group D employees who were appointed prior to 5th November, 1985 who would also retire at the age of 60 years.

15. It is urged on behalf of the second set of petitioners that the employees in the cadre of the Nigam whether they were appointed directly or by transfer from the State Government performed identical functions and formed one single integrated class and the different treatment meted out with regard to their superannuation would be arbitrary and hit by the principles of Article 14 and 16 of the Constitution.

16. The principle of Article 14 that equals cannot be treated differently, needs no reiteration as it has by now been well recognized. However, it does not debar a reasonable classification of employees but such classification has to be made with reference to some lawful object sought to be achieved.

17. The Constitution Bench in the case of D.S. Nakara and Others Vs. Union of India (UOI), was confronted with the question whether, (or the purpose of application of Liberalised Pension Rules, the Government could stipulate a date for dividing the employees in two classes, one who retired prior to the date and those who retired later. Considering the scope of Article 14, it observed:

The decision clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be found on an intelligible differential which distinguishes persons or things that are grouped together from those that are left out of the group and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question....

The other fact of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification.

Thereafter, it posed the following question:

As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved.?

Then it went on to answer it as follows:

The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved.

18. In *Union of India (UOI) and Another Vs. R.G. Kashikar and Another*, the Supreme Court was examining whether benefit of revision of pay scales could be denied to those employees for whom there was a proposal to handover their administrative control to the State Government. It upheld the Bombay High Court judgment and went on to hold in paragraph 8, that:

...Such classification or differentiation of the instructors under the Scheme as a class of Central Government employees for depriving them of the benefits in "matters relating to employment" which expression includes matters relating to salary, periodical increments, leave, gratuity, pension, age of superannuation etc., although they continued to remain Central Government employees till the date of absorption, was per se discriminatory and violative of Article 14 and 16 of the Constitution.

Applying the ratio in the present case, the court has to be satisfied whether the burden of justifying the different treatment is valid.

19. Arguments have been raised, on the basis of the retrospectivity in *Hanndar Kumar's* case with regard to retrospectivity of the Rules, 2005. This is no longer res integra, as the Apex Court in the case of *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, has upheld the power of the Government to alter the age of superannuation.

20. The Apex Court in *Harvindra Kumar's* case (supra) has held that the change in the rules would not be retrospective. What it meant was that benefit already derived under the existing rules would not be taken by retrospectively. Thus, the argument has no force.

21. Neither in the counter affidavit nor otherwise during arguments any justification, much less reasonable justification has been shown for creating a class within a class. Further, no effort has been made to disclose the object sought to be achieved by this classification. No doubt, those employees who were transferred from the Local Self Government Engineering Department came

with their terms of appointment intact but that was subject to any Regulation or Rules framed under Regulation 22. The fact that they came to the Nigam with their superannuation age as 58 years which was also of the employees recruited directly by the Nigam, is not denied. Once the transferees were absorbed and integrated with the employees of the Nigam and regulated by a common single permanent service rule, and belonging to a single cadre, differentiation merely on historical background without anything more, cannot be justified. It does not stand to reason that two Junior Engineers or Clerks drawing identical salaries performing the same nature of work should retire differently. As already noted hereinabove, no effort has been made to distinguish between employees of the same cadre. Therefore, there is no option left to the Court except to hold that Regulation 4 of the Regulation, 2005, to the extent it provides superannuation age of 58 years for the employees of the Nigam who were directly appointed, except Group-D employees, is arbitrary and thus is hereby quashed. They would also retire at the age of 60 years as is the case with the transferred employees.

For the reasons given herein above, these petitions are patly allowed in the terms indicated hereinabove. No order as to costs.