
(2006) 01 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 78010 of 2005

Ram Sufal Saroj

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Intermediate Education Act, 1921 — Section 9(4)

Citation : (2006) 5 AWC 5234 : (2006) 2 UPLBEC 1470

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : D.K. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard learned Counsel for the petitioner and learned Standing Counsel for the Respondent Nos. 1 and 2.

2. The petitioner has already attained the age of superannuation and has retired from his services as a Class III employee in Vidyawati Darabari Balika Inter College, Allahabad, w.e.f. 31.12.2005, The present petition has been filed by him for a mandamus commanding the respondents to extend the benefits of gratuity and other consequential benefits which are available to the employees of the State Government.

3. Learned Counsel for the petitioner Sri D.K. Mishra contends that the petitioner has a legitimate expectation of receiving the aforesaid benefits in view of the position taken by the State Government in its order dated 29.8.2005, Annexure-3 to the writ petition. The said order was passed by the State Government rejecting the claim of the ministerial staff association of Intermediate Colleges governed by the provisions of the U.P. Intermediate Education Act whereby the claim of enhancement of the age of superannuation at par with the Teachers of such institution was found to be untenable and

accordingly, the State Government for the reasons recorded in the said order refused to extend the benefits of Class III employees from 60 to 62 years.

4. Learned Counsel for the petitioner contends that while recording reasons in the said order, the State Government has detailed the consequences that the State Government may have to face on account of such enhancement keeping in view the fact that such a demand would also be raised by the government employees of the same category. Sri Mishra contends that since the State Government was comparing the status of the petitioner and other such similarly situated employees with that of the State Government employees, therefore, while refusing to grant the claim of enhancement, the State Government ought to have considered the extension of such other benefits which were being already given to the government employees and teachers of secondary institutions. He has pointedly raised the issue of extending the benefit of payment of gratuity, which according to him, was being made available to the government employees and was also being made available to the Teachers of the institution on exercising their option to retire at the age of 58 years. He contends that upon the enhancement of the age of retirement of Teachers to 62 years, the provisions of gratuity stands automatically extended to them as well and they now have the option of retiring at the age of 60 years with gratuity. In this view of the matter, the petitioner contends that the benefits of gratuity should be extended on the same parity of reasoning to the petitioner and the similarly situated employees.

5. Sri Mishra has further invited the attention of the Court to similar benefits being extended to the class HI employees of Junior High Schools by the Government order dated 25.8.2005, copy whereof has been appended as Annexure-6 to the writ petition. He contends that if the class III employees of Junior High Schools are being given the benefit of gratuity together with the benefit of enhancement of retirement of age at 60 years, the petitioner who is also a class III employee should be extended the same benefit.

6. Learned Standing Counsel on behalf of the Respondents has urged that since the petitioner or such other employees do not form the same class, therefore, the petitioner cannot be extended the same benefit and the extension of benefit of gratuity is a matter of policy which cannot be thrust upon the State Government by way of judicial intervention.

7. Having heard the learned Counsel for the parties, in order to invoke the applicability of Article 14 what has to be established is that the petitioner belongs to the same class of employees, who have been extended the benefits which are being claimed by the petitioner. The Apex Court in the case of *Md. Usman and Others Vs. State of Andhra Pradesh and Others*, has held that doctrine of equality is attracted not only when equals are treated as unequals but also when unequals are treated as equals. It has further been held that a statutory provision or Act of an authority may offend Article 14 of the Constitution, both by finding differences where there are none and by making no difference where there is one.

8. The payment of gratuity is a matter of service condition to be laid down by the State Government or the employer concerned extending the benefits of such payment keeping in view the service conditions of an employee, who is governed by a particular set of statutory Rules. In the instant case, services of the petitioner are governed by a set of Statutory Rules framed under the U.P. Intermediate Education Act and, the Regulations framed thereunder. The said regulations have been framed under the exercise of powers conferred on State Government under the U.P. Intermediate Education Act. The legislature did not itself make any provision for payment of gratuity under the U.P. Intermediate Education Act to such employees. However, by issuing Government Orders u/s 9(4) of the U.P. Intermediate Education Act, 1921, directives were issued from time to time extending the service benefits to the employees of such privately aided institutions. The payment of gratuity and benefits thereof extended to Teachers only, was made available under the exercise of such powers. Teachers by themselves form a different class. The aforesaid issue need not detain this Court for deliberation any further. Dealing with similar contentions, this Court in the case of Ram Mohan (Annexure-2 to the writ petition) came to the conclusion that class III employees and Teachers do not form the same class and as such, it would not be possible to test the case on the touch stone of Article 14. The aforesaid judgment clearly finds support from the principle laid down by the Apex Court in the case of Md. Usman quoted herein above. Since the petitioner who is a Class III employee and does not belong to the same class of Teachers, therefore, the argument that since such benefits were extended to teachers should also be made available to the petitioner, does not hold water,

9. The next illustration cited by the petitioner was that of Class III employees of Junior High Schools and to which the attention of the Court was invited, wherein it is stated that the benefit of extension of services to the age of 60 years will also include the benefit of payment of gratuity to the class III employees of Junior High Schools. Again at this juncture, it would be useful to reiterate that class III employees of Junior High Schools are governed by a different set of Rules. Their employment and terms and conditions of service are not similar to that of the petitioner whose services are governed under the provisions of U.P. Intermediate Education Act and Regulations framed therein. It is something different that both the petitioner and the employees of Junior High School are performing the job of a clerk, but by mere performance of duties which the petitioner claims to be of a similar nature, would not by itself be the basis of a legitimate expectation to claim similar benefits. Legitimate expectation is to be grounded on the basis of some existing rights or on the basis of some lawful legitimate undertaking given by the employer. In the instant case, the State Government has neither framed any Rules nor has it extended any such benefits or given an undertaking to the petitioner or such similarly situated employees on the basis whereof the petitioner can claim any legitimate expectation. The contention on behalf of the petitioner that legitimate expectation arises out of the benefits being given to employees of Junior High School cannot be accepted,

As already noticed herein above, they are employees governed by a different set of Rules. The Rules by which the employees of a Junior High School are governed cannot be deployed for any support in order to extend the benefit of gratuity to the petitioner.

10. The matter of payment of gratuity involves a policy decision to be taken by the State Government which entails fiscal burden, such matters should not be ordinarily tinkered with by the Courts inasmuch as the question of payment to be made out of State funds and exchequer have to be determined on the basis of deliberations to be made by the State Government in order to ensure any such benefit as claimed by the petitioner. In the instant case, there is nothing on record to indicate that the petitioner or such similarly situated employees had raised any such claim of extension of benefit of gratuity on the basis of the logic which the petitioner contends is applicable in the present case and contained in the decision dated 25.8.2005. It appears that the petitioner and such other employees, who failed to get their requests accepted by the State Government With regard to enhancement in the age of superannuation have come up before this Court, straightway for a mandamus calling upon the State Government to extend the benefit of gratuity. As already noticed herein above, the petitioner has failed to make out any case of discrimination or arbitrariness so as to attract the applicability of Article 14 of the Constitution of India. In view of the observations made herein above, this Court does not find any cause for any interference, much less for grant of any relief as claimed by the petitioner.

11. The writ petition, accordingly, lacks merit and is hereby dismissed.