

(2011) 04 AHC CK 0351
In the Allahabad High Court
Case No : Writ Petition No. 1887 (SS) of 2011

Rama Shankar Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Family Law Reform Act, 1969 — Section 9
Majority Act, 1875 — Section 3
Uttar Pradesh Basic Education Act, 1972 — Section 19(2)
Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 14

Citation : (2011) 6 ADJ 610 : (2011) 2 UPLBEC 1492

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Devendra Kumar Arora, J.—By means of present writ petition, the Petitioner prays for a writ, order or direction in the nature of certiorari for quashing of the order of retirement dated 01.01.2011, issued by opposite party No. 3. Petitioner further prays for a writ in the nature of mandamus commanding the opposite parties to retire on 31.7.2011 and give extended period of employment till 30.6.2012 as envisaged under Rule 14 of the Service Rules.

2. Submission of learned Counsel for the Petitioner is that the Petitioner was appointed as Assistant Teacher in Shri Gومتेश्वर Madhyamik Vidyalaya, Hindaur, Sitapur (hereinafter referred to as "institution") vide appointment letter dated 25.6.1977 (Annexure No. 2). He joined his duties in the institution on 01.7.1977. The institution came under grant in aid w.e.f. 01.4.1980 and Petitioner's services were approved on 18.7.1980. Further submission of learned Counsel for the Petitioner is that the service and service conditions of the Petitioner are governed by U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of services of Teacher) Rules, 1978.(hereinafter referred to as "Service Rules") framed u/s 19(2)(c) of the U.P. Basic Education

Act. Rule 14 of the Service Rules provides that an Assistant Teacher will retire in the afternoon of the last day of the month in which he attains the age of 62 years. The Rule further provides that an Assistant Teacher who retires during an academic session, shall continue to work till June 30, following next after the date of his retirement and such period of service shall be deemed as extended period of employment. The Petitioner will attain the age of 62 years on 01.7.2011 as per his date of birth mentioned in High School Certificate and in Service Book. Thus, according to Rule 14, the Petitioner will retire in the afternoon of 31st July, 2011 and he will also be entitled to the extended period of employment till 30th June, 2012. The Manager of the institution gave a notice of retirement dated 01.01.2011 to the Petitioner indicating therein that since date of birth of the Petitioner is 01.7.1949, as such, he will retire on 30.6.2011. The Petitioner on receipt of notice dated 01.1.2011 made a representation/objection to the Manager of the institution on 20.1.2011 mentioning therein that he cannot be retired prior to the age of his superannuation as envisaged under Rule 14 of the Service Rules. The Petitioner demonstrated in his representation that he is being retired one day before the age of 62 years. The Petitioner also sought his extension of employment till 30th June, 2012. When the Petitioner did not receive any reply from the opposite parties of his representation dated 20.1.2011, he sent a reminder on 23.3.2011.

3. It is also submitted by learned Counsel for the Petitioner that since the opposite parties are intending to retire the Petitioner one day before the age of 62 years, therefore, he is compelled to approach this Court by means of the present writ petition.

4. Heard learned Counsel for parties and perused the record.

5. The main controversy involved in the present writ petition is "Whether the Petitioner will complete the age of 62 years on 30.6.2011 or on 1st July, 2011, keeping in view the fact that his date of birth is 01.7.1949".

6. The services of the Petitioner are governed by U. P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of services of Teacher) Rules, 1978.(hereinafter referred to as "Service Rules"). As per Rule 14 of the Service Rules an Asst. Teacher will retire on the last day of the month in which he attained the age of superannuation (62) years. It further provides that an Asst. Teacher who retires during the academic session, shall continue to work till 30th June following next after the date of his retirement and such period shall be deemed as extended period of employment.

7. The Hon''ble Supreme Court while analyzing the similar controversy in the case of Prabhu Dayal Sesma Vs. State of Rajasthan and another, was pleased to observe that while counting the age of a person, whole of the day should be reckoned and it starts from 12 O'clock in the mid-night and he attains the specified age on the preceding, the anniversary of his birth day. The observation of Hon''ble Supreme Court in paras- 9 to 14 read as under:

9. ... At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birthday. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time is years or months in the sense that a fraction of a day will be treated as a full, day. A legal day commences at 12 O'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does (sic not) attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.

10. In Halsbury's Laws of England, 3rd edn. Vol. 37, para 178 at p. 100, the law was stated thus:

In computing a period of time, at any rate when counted in years or months, no regard is, as a general rule, paid to fractions of a day, in the sense that the period is regarded as complete although it is short to the extent of a fraction of a day...

Similarly, in calculating a person's age the day of his birth counts as a whole day; and he attains a specified age on the day next before the anniversary of his birthday.

11. We have come across two English decisions on the point. In *Rex. v. Scoffin*, the question was whether the accused had or had not completed 21 years of age. Section 10(1) of the Criminal Justice Administration Act, 1914 provides that a person might be sent to Borstal if it appears to the court that he is not more than 21 years of age. The accused was born on February 17, 1909. Lord Hewart, C.J. Held that the accused completed 21 years of age on February 17, 1930 which was the Commission day of Manchester Assizes.

12. In *Re Shurey, Savory v. Shurey*, the question that arose for decision was this: Does a person attain a specified age in law on the anniversary of his or her birthday, or on the day preceding that anniversary? After reviewing the earlier decisions, Sargent, J. said that law does not take cognizance of part of a day and the consequence is that person attains the age of twenty-one years or of twenty-five years, or any specified age, on the day preceding the anniversary of his twenty-first or twenty-fifth birthday or other birthday, as the case may be.

13. From Halsbury's Laws of England, 4th Edn., vol. 45, para 1143 at p. 550 it appears that Section 9 of the Family Law Reforms Act, 1969 has abrogated the old common law rule stated in *Re Shurey Savory v. Shurey*.

14. It is in recognition of the difference between how a person's age is legally construed and how it is understood in common parlance. The legislature has

expressly provided in Section 4 of the Indian Majority Act, 1875 that how the age of majority is to be computed. It reads:

4. Age of majority how computed.- In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of Section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of Section 3, at the beginning of the eighteenth anniversary of that day.

The section embodies that in computing the age of any person, the day on which he was born is to be included as a whole day and he must be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.

8. On applying the principle laid down by Hon''ble Supreme Court on the facts and circumstances of the present case, the Petitioner whose date of birth is 01.07.1949 will complete the age of 62 years on 30.06.2011, a day preceding to the Petitioner's birth day anniversary i.e. 01.07.2011 and, as such, Petitioner has been rightly given notice of his superannuation on attaining the age of 62 years on 30.6.2011. Since 30.6.2011 is the last date of the month as well as end of the academic session, therefore, as per Rule 14 of the U. P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of services of Teacher) Rules, 1978 Petitioner will retire from service on 30.6.2011. There is no illegality in the impugned notice/order of retirement dated 01.1.2011.

9. In view of the aforesaid facts and reasons, the writ petition lacks merits and deserves to be dismissed.

10. Writ Petition is dismissed. No order as to costs.