(2015) 02 AHC CK 0077

In the Allahabad High Court

Case No : Writ Petition No. 99 of 2015

Rashid Ahmad Khan APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Citation : (2015) 110 ALR 117 : (2015) 4 AWC 3777 : (2015) 146 FLR 378

Hon'ble Judges : Rajes Kumar, J;Ashok Pal Singh, J

Bench : Division Bench

Advocate : Alok Kumar Mishra, for the Appellant; Nishant Shukla, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar and Ashok Pal Singh, JJ.

1. Heard learned Counsel for the parties and perused the record. The petitioner was the employee of Uttar Pradesh, New and Renewable Energy Development Agency (hereinafter referred to as "NEDA"), which is a society registered under the Societies Registration Act. However, it is being controlled and financed by the State Government and therefore, is instrumentality of the State Government. NEDA has its own Memorandum of Association and Rules. The Rules provided that the age of superannuation is 58 years. There is no dispute about it. The petitioner retired on 31.12.2013 after attaining the age of 58 years. He filed Writ Petition No. 69796 of 2013 before this Court seeking mandamus to the respondents to treat his age of superannuation as 60 years in place of 58 years. The said Writ Petition No. 69796 of 2013 has been dismissed on 18.12.2013 with the following observations:

"Heard Sri Ambrish Chatterjee, learned Counsel for the petitioner and Sri V.B. Mishra, learned Counsel appearing on behalf of the respondents.

The petitioner is the employee of Uttar Pradesh, New and Renewable Energy Development Agency, (hereinafter referred to as "NEDA"), which is a Society registered under the Societies Registration Act. However, it is being controlled and financed by the State Government and, therefore, is instrumentality of the State Government. NEDA has its own Memorandum of Association and Rules. The Rules provided that the age of superannuation is 58 years. There is no dispute about it.

Learned Counsel for the petitioner submitted that NEDA has also proposed the amendment in the Rules enhancing the age of superannuation to 60 years and the same has been referred to the State Government for the approval but the approval has not yet been granted. The petitioner is going to retire on 31.12.2013.

By the impugned letter dated 19.10.2013, the respondent No. 2, had issued Office Memorandum stating therein that as per the order dated 18.2.2008, the age of superannuation is 58 years, the petitioner would retire on 31.12.2013.

By means of the present writ petition, the petitioner is seeking a mandamus to the respondents to permit the petitioner to discharge his duties upto the age of 60 years.

We are afraid that no such mandamus can be issued. Unless the Rules provide the age of superannuation is 60 years, the petitioner cannot claim to continue beyond 58 years, upto the age of 60 years.

In view of the above, the writ petition is devoid of merit and is, accordingly, dismissed."

2. Thereafter, the petitioner filed a Review Application No. 107780 of 2014 on the ground that vide order dated 29th January, 2014, age of superannuation of the employees has been enhanced from 58 years to 60 years. The said Review Application 107780 of 2014 has been rejected vide order dated 11.7.2014 with the following observations:

"Heard learned Counsel for the applicant and learned Counsel for the respondent.

Learned Counsel for the applicant states that the approval for increasing the age of superannuation from 58 years to 60 years has been granted on 29.1.2014 which is annexure No. 1 to the review application. Therefore, the applicant is also entitled for the said benefit.

We do not find substance in the argument. The letter dated 29.1.2014 which provides that the age of superannuation of employees of Uttar Pradesh, New and Renewable Energy Development Agency has been increased from 58 years to 60 years. It is further provided that this order will be applicable with immediate effect.

We are of the view that said order cannot be read with retrospective effect but will apply prospectively. The applicant has already retired on 31.12.2013, therefore, he is not entitled for the benefit of order dated 29.1.2014. The review application has no substance and is accordingly stands rejected."

3. It appears that the petitioner filed a Special Leave to Appeal No. 15402 of 2014 before the Hon''ble Supreme Court which has been dismissed as withdrawn vide order dated 13.10.2014 with the following observations:

"Upon hearing the Counsel the Court made the following

Order

After arguing the matter at some length, learned Counsel for the petitioner seeks leave to withdraw this petition reserving liberty for the petitioner to approach the Government for appropriate redress.

The special leave petition is dismissed as withdrawn with the liberty prayed for. We express no opinion on the merits of any representation or prayer that the petitioner may make before the High Court for making increase in the age of superannuation applicable retrospectively."

4. The petitioner also moved an application before the State Government seeking the claim that his age of superannuation should be taken into consideration as 60 years and necessary benefits should accordingly be allowed to him. The said application has been rejected vide impugned order dated 26.12.2014. The State Government found that the Government order dated 30th January, 2014 is not applicable in the case of the petitioner by which the age of the superannuation of the employees has been enhanced from 58 years to 60 years in as much as the petitioner retired from service on 31.12.2013, prior to the date of issuance of the said Government order dated 30th January, 2014. The said order is being challenged in the instant writ petition.

5. Learned Counsel for the petitioner submitted that the impugned order is illegal in as much as it has not considered the case of the petitioner properly.

6. We do not find any substance in the argument of learned Counsel for the petitioner that the age of the petitioner should be taken into consideration as 60 years in view of the Government order dated 30th January, 2014, which has already been adjudicated by a Division Bench of this Court vide order dated 11.7.2014 passed in Review Application No. 107780 of 2014. This order still stands. The State Government has also expressed an opinion that the Government order dated 30th January, 2014 is not applicable in the case of the petitioner in as much as he retired from service on 31.12.2013, prior to the date of issuance of the said Government order dated 30th January, 2014. In the facts and circumstances of the case, we do not find any error apparent in the impugned order which requires interference by this Court. The writ petition fails and is accordingly dismissed.