

(2002) 07 RAJ CK 0083
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1320 of 1998

S.K. Popli (Dr.)

APPELLANT

Vs

Rajasthan Non-Government Educational Institutions Tribunal
and Others

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 16(1)
Rajasthan University Ordinances, 2009 — Ordinance 67A

Citation : (2003) 3 RLW 1907 : (2003) 1 WLC 95 : (2002) 5 WLN 413

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : M.S. Singhvi, for the Appellant; M.R. Singhvi and Ravi Bhansali, for the Respondent

Final Decision : Dismissed

Judgement

Tatia, J.—This appeal is directed against the order dated 31.3.1998 of the Rajasthan Non-Government Educational Institution Tribunal, Jaipur.

2. The fact of the case are that the petitioner was appointed as Lecturer (English) in B.J.S. Rampuria Jain College on 21.7.1967. The B.J.S. Rampuria Jain College is a Society registered under the Societies Registration Act and is an aided non-government educational institution. It is running Graduate and Post-graduate College in Bikaner. According to the petitioner, in view of the Ordinance 67A of the Rajasthan University Ordinances, the petition can be retired on attaining the age of 60 years and the petitioner cannot be retired at the age of 58 years even after coming into force of the Rajasthan Non-government Educational Institution Act, 1989 (for short "the Act of 1989"). The petitioner's contention is that at the time of entering the service with the respondent-College, no agreement was executed by the petitioner with Managing Committee of the respondent - College with the petitioner and, therefore, the petitioner's service conditions can be governed by the proforma agreement provided under the Rajasthan University

Ordinances because of the reason that a decision was taken by the University that the Ordinances framed by the University of Rajasthan shall continue to be in force and the teachers of the respondent - College are required to be retired only on attaining the age of superannuation as provided under the Ordinance 67A. Even in the Act of 1989, first proviso to Sub-section (1) of Section 16 of the Act of 1989 provides that the rights and benefits accruing to an employee of an existing institution under the grant-in-aid Rules in force at the commencement of this Act, shall not be varied to the disadvantage of such employee and the second proviso to sub-section of Section 16 of the Act of 1989 provides that every such employee shall be entitled to opt for such terms and conditions of service as were applicable to him immediately before the Commencement of this Act. Since the petitioner was governed by the Rajasthan University Ordinances wherein he has a right to remain in service till attaining the age of 60 years, therefore, in view of the above provisos of Sub-section (1) of Section 16, any provision which is against the rights and benefits under the grant-in-aid Rules in force at the commencement of the Act of 1989 cannot be varied to the disadvantage of such employees. The reduction in age from 60 years to 58 years in view of the Rule 45 of the Rajasthan Non- government Educational Institution (Recognition, grant-in-aid and Service Conditions etc.), Rules, 1993 (for short, the Rules of 1993), in case of teachers and other employees except Class IV employees, is a provision effecting the accrued right of the petitioner and is also provision disadvantageous to the petitioner and hence it cannot be applied in view of Sub-section (1) of Section 16 of the Act of 1989.

3. In addition to above, the learned counsel for the petitioner submits that even as per Rule 45 of the Rules of 1993, extension can be allowed by the State Government upto the age of 60 years in case of teachers who are engaged in postgraduate teaching of research work and extension upto five years is permissible. The respondent-College passed a resolution on 30.3.1990 which provides that the cases of all the employees reaching the age of 58 years be recommended to the government for extension of period. Therefore, even if the petitioner is governed by the Rules of 1993 and is to be retired at the age of 58 years then in view of the resolution of the Managing Committee of the respondent-College dated 30.3.1990, the petitioner's case is required to be forwarded to the State Government for extension of service for further period of two years from the date when the petitioner attains the age of 58 years so the petitioner can be superannuated on attaining the age of 60 years.

4. In reply, the respondents submitted that as per the Rules of 1993, the age of superannuation of the petitioner is 58 years and under special circumstances only, the government may waive this condition and allow the extension. So far as the case of the petitioner is concerned, the extension could have been allowed, at best, for two years, that too, when the managing Committee of the respondent - College deems it proper to grant extension. It is also submitted that earlier, the extension was to be allowed by the State Government but under the Ordinance dated 18.6.1997 (Annexure-9), the discretion vests with the Managing

Committee of the institution that they may grant extension to the employee whose extension is being deemed necessary by the Managing Committee. The extension of the age of superannuation is a discretion of the Managing Committee of the respondent - College and the State Government and the same cannot be enforced by way of writ petition. It is also submitted that Ordinance 67 and 67A are not applicable in the present case and service conditions of the petitioner have to be governed by Rule 45 of the Rules of 1993 which provides the age of superannuation as 58 years.

5. The learned counsel for the petitioner relied upon the judgment of the Division Bench of this Court delivered in the case of : G.N. Tandon v. State of Rajasthan and Ors. WLR 1997 93 : , wherein the RLW 1997 (1) Raj. 605 Division Bench of this Court while considering the controversy with respect to the age of superannuation of employee who had agreement with the institution containing term of retirement at the age of 60 years held as under:-

"This vested right could not have been taken away by the Act No. 19 of 1992 and the Rules framed thereunder, inasmuch as Section 16 of the Act itself provides that the rights and benefits accruing to an employee of an existing institution under the grant-in-aid Rules in force at the commencement to the Act, shall not be varied to the disadvantage of such an employee."

6. In the above referred case, there was an agreement between the petitioner and the institution, executed on 20.1.1966 wherein it was provided that the age of superannuation will be 60 years. The Division Bench also referred the decisions of the two earlier writ petitions: M.S. Chhonkar v. State of Rajasthan, S.B. Civil Writ Petition No. 1214/90 K.B.L. Mathur v. State of Rajasthan, S.B. Civil Writ Petition 973/91, wherein the similar view was expressed.

7. The learned counsel for the respondents submitted that Division Bench in subsequent decision after considering the case of G.N. Tandon held that employee is to retire on attaining age of 58 years. In this case of Mohan Lal Jangid v. The State of Rajasthan and Ors. RLW 1999 (2) 1280 wherein it has been held that since the petitioner opted for revised pay scale on a condition that the age of superannuation shall be governed by the grant-in-aid Rules then it amounts to voluntary acceptance of age of retirement on attaining the age of 58 years. In this Mohan Lal Jangid's case, the Division Bench of this Court specifically observed as under:-

"In this case we need not go into the question whether the petitioners service conditions are governed under Rule 45(1) and (2) of the Rules of 1993 or under Ordinance 67-A of the Rajasthan University Ordinances, in view of the fact that the petitioner specifically entered into an agreement exercising the option that he shall retire on attaining the age of 58 years."

Thereafter, the Division Bench held that the petitioner exercised the option and elected the revised pay scale with effect from 1.1.1986. The petitioner having exercised his option taking the revised pay scale on the condition that his age of

superannuation shall be governed by the grant-in-aid rules. There is voluntary change of contracts as regards the age of superannuation and the petitioner cannot be permitted to blow hot and cold at the same breath. In the light of the above reasoning's, the judgment delivered by the Division Bench in the case of G.N. Tandon (supra) was distinguished by the Division Bench in the case of Mohan Lal Jangid (supra).

8. Yet another judgment of the Division Bench delivered in the case of Dr. Kailash Chandra Mittal v. State of Rajasthan and Ors., D.B. Civil Writ Petition No. 544/999 decided on 8.10.1999 is there. In this case of Dr. Kailash Chandra Mittal, the case of Mohan Lal Jangid was considered and in Mohan Lal Jangid's case, the case of G./N. Tandon was already considered. In the case of Dr. Kailash Chandra Mittal the Division Bench of this Court held as under:-

"In our considered opinion, the judgment given by this Court In Mohan Lal Jangid's case (supra) is sufficient authority to lay down that the petitioner was to be retired at the age of 58 because he has voluntarily entered into a personal contract with the respondents for retiring him at the age of 58, as he wanted to get the benefit of the revised pay scales, in view of this judgment, we were not required to go into the question of Ordinance 67A, but in the judgment referred to above, the question of applicability of ordinance 67A was not gone into, therefore, we permitted the petitioner to address the Court on this aspect as well."

9. A bare perusal of the Division Bench judgments in the cases of Mohan Lal Jangid v. State of Rajasthan (supra), and in Dr. Kailash Chandra Mittal, referred to above, the Division Bench gave preference to the contracts entered into between the employer and the institution and did not decide the question of applicability of Ordinance 67A in the case of Mohan Lal Jangid, therefore, the Division Bench while deciding the case of Kailash Chandra Mittal permitted the petitioner to address on this aspect of the matter. The Division Bench in the case of Kailash Chandra Mittal considered the Ordinance 67A and other provisions of law and held as under:-

"The age of superannuation of an employee is a private contract in between petitioner in accepting new pay scales, has accepted the age of retirement as 58. The University Ordinance 67A has no role to play as discussed above. In view of the execution of Ord. 67A, the law laid down in Mohan Lal Jangid's case (supra) will hold the filed."

10. It is clear from the Division Bench judgment delivered in the case of G.N. Tandon (supra) that the Division Bench was of the opinion that when there is an agreement between the employee and the institution with respect to the age of retirement, it cannot be varied to the disadvantage of such an employee. In the case of Mohan Lal Jangid (supra), another Division Bench did not address on the effect of Rule 45(1) and (2) of the Rulers of 1993 and effect of Ordinance 67A of the Rajasthan University Ordinance in view of the agreement between the

employee and the institution. When this situation was came before the third Division Bench in the case of Kailash Chandra Mittal (supra), the Division Bench considered the ambit and effect of the Ordinance 67A along with the relevant provisions of law as well as Rules framed thereunder which includes grant-in-aid to Non-Government Educational Cultural and Physical Education Institutions in Rajasthan, 1963, the provisions of Rajasthan Non-Government Educational Institution Act, 1989 which was given effect from 1.1.1993 and the rules known as Rajasthan Non-Government Educational Institution (Recognition, Grain-in-aid and Service Condition etc.) Rules, 1993 and, after considering all above provisions held that "framing of Ordinance 67A was never authorised by the Act of 1946 to give any power to the University to frame the service conditions of Government aided private colleges teachers" and further held as under:-

"In the light of above decision, it can be unhesitatingly held that the legislature has given power to the State Government to fix the age of superannuation. The State has fixed it as 58. The employees have also opted for 58. In this background, Ordinance 67A of the University has no role to play."

and concluded that:-

"The age of superannuation of an employee is a private contract in between the employee and the college. The petitioner in accepting new pay scales, has accepted the age of retirement as 58. The University Ordinance 67A has no role to play."

The Division Bench further held:-

"In view of the exclusion of Ordinance 67A, the law laid down in Mohan Lal jangid"s case (supra) will hold the field."

11. Therefore, the controversy is concluded by the judgment in the case of Kailash Chandra Mittal (supra).

12. Here in this case, it is an admitted case of the petitioner that there is no written contract between the petitioner and the institution, therefore, proforma provided under the Rajasthan University Ordinances will be applicable to the petitioner. In view of this stand also, it is clear that there is no written contract between the petitioner with the institution providing for retirement age as 60 years, therefore, the petitioner cannot claim his right to continue in service by virtue of any binding contract. So far as performa agreement is concerned, admittedly it has not been executed between the petitioner and the institution, therefore, and also in view of the Division Bench of this Court wherein it has been held that the Act of 1989 and the Rules framed thereunder will have precedence over the Ordinance 67A then the petitioner cannot be held entitled for benefit of having age of superannuation as 60 years.

13. The next contention of the learned counsel for the petitioner is that since the institution has taken a decision on 30.1.90 to recommend cases of all the lecturers who are reaching the age 58 years for extension of two years" of

service in future, therefore, the institution was bound to recommend/grant extension of service of the petitioner for two years. A bare perusal of Rule 45 of the Rules of 1993, it is clear that the rule is that the employee shall retire on attaining the age of 58 years and, in special circumstances, the extension of service period can be granted. The decision of the institution dated 30.3.1990 runs just contrary to the statutory provisions inasmuch as the requirement where the rule is that recommendation/grant for extension of service period can be when there exists special circumstances for such recommendation/grant. It requires consideration on merit with reason and recommendation/grant cannot be without any special circumstances. Therefore, there is no force in the claim of the petitioner for extension of service period in the light of the resolution dated 30.3.1990 of the Managing Committee of the respondent-College wherein the institution had taken decision to recommend/grant extension of service of all employees irrespective of the fact whether there exists any reason for that as required under rule.

14. The learned counsel for the petitioner vehemently submitted that other persons were granted extension in the light of the resolution dated 30.3.1990 whereas the petitioner was denied. The petitioner has placed on record a copy of the order dated 22.1.1998 (Annexure-3) by which the petitioner's request for extension of period of service was rejected. A bare perusal of the order dated 22.1.1998 (Annexure-3) reveals that application of the petitioner was considered by the managing Committee and, after consideration, the order was passed. Even if on wrong assumption in view of resolution dated 30.3.1990, even then the petitioner cannot claim benefit by asking the institute to do the same mistake if has been done by the institute in other cases. Therefore, if there is no special circumstance, no extension can be granted. Nothing is placed on record to show that there was any special circumstance to the satisfaction of the institution for recommending the name of the petitioner for grant of extension of service period by the Managing Committee. Therefore, I do not find any force in this submission also.

15. The tribunal in its order dated 30.3.1998 considered all the points raised before it and rightly rejected the petition of the petitioner.

16. Therefore, there is no force in this writ petition and the same is hereby dismissed.