
(1978) 05 AHC CK 0130

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10107 of 1975

Smt. Hafizan Bai

APPELLANT

Vs

Uttar Pradesh Board of Basic Education and Another

RESPONDENT

Date of Decision : 01-05-1978

Acts Referred:

Companies Act, 1956 — Section 3
Constitution (Forty-Second Amendment) Act, 1976 — Section 58
Constitution of India, 1950 — Article 226
Uttar Pradesh Basic Education Act, 1972 — Section 13
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 2

Citation : (1978) AWC 503

Hon'ble Judges : V.K. Mehrotra, J;H.N. Seth, J

Bench : Division Bench

Advocate : K.P. Srivastava, for the Appellant;

Final Decision : Disposed Of

Judgement

H.N. Seth, J.—Petitioner, who was an employee of the Basic Education Board, was compulsorily retired from service with effect from 22-9-1975. Being aggrieved by that order, she approached this Court for relief under Article 226 of the Constitution.

2. Learned Counsel for the Uttar Pradesh Board of Basic Education moved an application and contended that as the Petitioner comes within the purview of the U.P. Public Services Tribunal Act, 1976 and she can seek relief from the Tribunal constituted under that Act, this petition has, in view of the provisions contained in Section 58 of the Constitution (42nd Amendment) 1976, abated.

3. Learned Counsel for the Petitioner attempted to meet the objection raised by the Counsel for the Board by contending that as an employee of the U.P. Basic Education Board, the Petitioner did not fall within the definition of the expression "public servant" as used in Section 2(b) of the U.P. Public Services (Tribunals) Act, 1976. Accordingly, the provisions of the U.P. Public Services Tribunal Act do

not apply to her and she is not entitled to claim any relief under that Act.

4. We are unable to accept this submission. The expression "public servant" who comes within the purview of the U.P. Public Services Tribunal has been defined as follows:

"Public Servant" means every person-

(i) in the service or pay of the State Government, remunerated by fees or commission for the purpose of any public duty by the State Government or

(ii) in the service or pay of a local authority and corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government (not including a University) or any company (as defined in Section 3 of the Companies Act, 1956) (Act No. 1 of 1956), in which not less than fifty per cent of the paid up share capital is held by the State Government.

A perusal of the U.P. Basic Education Act, 1972 which provides for the constitution of the Basic Education Board clearly shows that the Basic Education Board is a Corporation whose activities are fully controlled by the State Government. It is not necessary for us to enumerate all the provisions contained in the Act which indicate that activities of the Basic Education Board are fully controlled by the State Government. It will, in this connection, be sufficient to refer to Section 13 of the Act, marginal heading of which is "control by the State Government." The Section provides that the Board has to carry out all such directions as may be issued to it from time to time by the State Government, for the efficient administration of this Act. This clearly shows that the Basic Education Board is a corporation which is controlled by the State Government. Learned Counsel for the Petitioner urged that the word "corporation" as used in the Public Services (Tribunal) Act, 1975 was intended to cover cases only of such corporations which carry on commercial activity and which are capable of being owned as a property is owned by the State Government. As Basic Education Board is neither a local body nor is it such a corporation its employees do not qualify as "public servant".

5. We see no reason or justification to so limit the scope of the word "corporation" occurring in the Clause in the U.P. Public Service (Tribunal) Act, which defines public servant. Mere perusal of the definition of the expression "public servant" as used in the Act shows that it is intended to cover the cases not only of the persons employed by the corporations which are owned by the State Government but also that of the employees of corporations which are controlled by the State Government. In the context of legal position as it prevails today, the State Government has been enabled to exercise control, not only over corporations which are capable of being owned in the same way as a property is owned, but also over such corporations which are not capable of being so owned. Keeping in view the objective of the U.P. Public Service (Tribunals) Act, there is, in our opinion, no good reason to artificially limit the meaning of the word

"corporation" to corporations that merely carry on commercial activity and to treat the employees only of such corporations, if they, were controlled by the State, as public servant and not to treat the employees of other corporations controlled by the State Government as public servant.

6. As the Petitioner is a public servant who comes within the purview of the U.P. Public Services (Tribunals) Act, this petition has, as provided in Section 58 of the Constitution (42nd Amendment) Act, abated and we direct accordingly. In the circumstances we direct the parties to bear their own costs.