
(1997) 11 AHC CK 0101
In the Allahabad High Court
Case No : C.M.W.P. No. 35802 of 1996

Smt. Satyawati Verma

APPELLANT

Vs

U.P. State of Electricity Board and another

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79
Intermediate Education (Amendment) Act, 1951 — Section 16A, 16B, 16C, 16D, 16D(10)
Uttar Pradesh Education Act, 1921 — Section 169, 16G, 16G(2), 16H, 16H(2)
Uttar Pradesh Education Regulations, 1921 — Regulation 21
Uttar Pradesh Rajya Viduyt Parishad Shikshak Viniyamavali, 1995 — Regulation 37

Citation : (1998) 1 AWC 681

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : A.S. Diwekar, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Narain, J.—The petitioner, on receiving notice dated 20.8.1996 that she will retire on 14.2.1997 on attaining the age of 58 years filed this writ petition claiming that she is entitled to retire at the age of 60 years.

2. The core question is as to whether the petitioner is liable to be retired at the age of 58 years in view of Regulation 37 of U. P. Rajya Vidyut Parishad Shikshak Sewa Viniyamavali, 1995 (hereinafter referred to as Viniyamavali) which provides the age of retirement as 58 years or at the age of 60 years as provided under Regulation 21 of Chapter III of the Regulations framed under U. P. Intermediate Education Act, 1921. There is no controversy on facts.

3. The U. P. State Electricity Board, a body constituted under the Electricity (Supply) Act, 1948 (hereinafter referred to as the Act) started a school. Initially It was a Junior High School and later on it was raised to Intermediate College and known as Vidyut Parishad Kanya Inter College. Kasimpur, Aligarh

(hereinafter referred to as the Institution). It was recognised as an educational institution under the provisions of U. P. Intermediate Education Act on 22.7.1975. The petitioner was appointed as C. T. grade teacher in the Institution on 19.7.1972. She was promoted in L.T. grade on 1.9.1986. In the year 1995 the Board framed Regulations for the employees in educational cadre u/s 79(c) of Electricity (Supply) Act, 1948 known as U. P. Rajya Vidyut Parishad Shikshak Sewa Viniyamavali. Regulation 37 provided that the members of the educational service shall retire at the age of 58 years. The petitioner was given notice to retire at the age of 58 years on 20.8.1996 in pursuance of this regulation.

4. Learned counsel for the Board submitted that the Board has framed Regulations u/s 79(c) of the Electricity (Supply) Act, 1948 which provides that the Board may by notification in the Official Gazette make regulations not inconsistent with the Act and the Rules made thereunder to provide duties of officers and other employees of the Board and their salaries, allowances and other conditions of service. The Regulations have been framed under the Central Act. The Regulations framed under the Intermediate Education Act, 1921 are State legislation and cannot override the provisions of Central legislation. It is submitted that non-obstinate clause in Section 16G of U. P. Intermediate Education Act will have no overriding effect over the provisions of Regulation 37 of the Regulations of 1995 framed by the Board as it has been framed under the Central legislation. Reliance has been placed upon *Dr. K K. Gupta v. State of U. P.* 1993 (3) ESC 232 , wherein it was held that if a person has been employed by the Board, his age of retirement will be determined by the Rules/ Regulations framed by the Board. The rules which prescribe the age of retirement at 60 years of the Government Servant, will not be applicable to the employees of the Board as the Government Servants' age of retirement is prescribed under Fundamental Rule 56. In *Rajasthan State Electricity Board and Others Vs. Laxman Lal etc. etc.*, the regulations framed by the Board was held to have statutory force. In *Gir Raj Kishore Sharma v. U. P. State Electricity Board* 1993 (67) FLR 595 , the Court held that the regulations framed by the Board have overriding effect on the U. P. Industrial Laws. In *Punjab State Electricity Board and Another Vs. V.N. Sharma*, the Supreme Court held that the regulations framed by the Electricity Board have overriding effect on other laws.

5. There is no legal issue on this point. The regulations framed under the U. P. State Electricity Board regarding service conditions of its employees will have overriding effect over other laws.

6. The controversy, however, does not rest here. The issue arises when the Electricity Board seeks recognition of its institution under the provisions of U. P. Intermediate Education Act, 1921. Once it decides to take recognition. It binds itself with the conditions of the recognition and the provisions of the Act under which it seeks recognition. In this context, it is necessary to refer certain relevant provisions of U. P. Intermediate Education Act, 1921. Section 2 (d) defines "recognition" means recognition for the purpose of preparing candidates

for admission to the Board's Examination. Section 2 (b) defines "Institution" which means a recognised Intermediate College, Higher Secondary School or High School and includes, where the context so requires, a part of an institution, and "Head of Institution" means the Principal or Head Master, as the case may be, of such institution. Once the institution becomes a recognised institution, the provisions of U. P. Intermediate Education Act, 1921 will be applicable. The Committee of Management of the institution has to run the institution in accordance with the Scheme of Administration as approved u/s 16A of the Act. This section provides that notwithstanding anything in law, document, or decree order of a Court or other instrument, there shall be a scheme of Administration for every institution, whether recognised before or after the commencement of the Intermediate Education (Amendment) Act, 1951. Section 16D confers the power to inspect from time to time any recognised institution and also to take such steps as has been provided u/s 16D of the Act including the power to appoint authorised controller. Section 16G (1) provides that every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by Regulations and any agreement between the Management and such employee in so far as it is in consistent with the provisions of this Act or with the Regulations shall be void. Sub-section (2) of Section 16G reads as under :

"Without prejudice to the generality of the powers conferred by subsection (1). Regulations may provided for-

- (a) the period of probation, the conditions confirmation and the procedure and conditions for promotion and punishment, (including suspension pending or in contemplation of inquiry or during the pendency of investigation, inquiry or trial in any criminal case for an offence involving moral turpitude) and the emoluments for the period of suspension and termination of service with notice ;
- (b) the scale of payment of salaries ;
- (c) transfer of service from one recognised institution to another ;
- (d) grant of leave and Provident Fund and other benefits ; and
- (e) maintenance of record of work and service.

These sections refer to a "recognised institution".

There is no compulsion upon any institution to obtain recognition from the Board of High School and Intermediate Education but once it takes recognition under the provisions of the Act, it binds itself to be governed by the provisions of the Act and the Regulations framed under it. The Committee of Management can enter into agreement with an employee but it must not be inconsistent with the provisions of the Act or Regulations framed under the Act. Any authority under any Act, if it seeks recognition of an institution under the provisions of Intermediate Education Act of 1921, the term and conditions of service of the employees of the institution shall be such as may not be inconsistent with the

provisions of U. P. Intermediate Education Act, 1921 or Regulations framed under the Act. The authority cannot rely upon any other Regulation framed under any other Act or Regulations framed thereunder whether it is Central or State legislation.

7. Section 16H grants exemption of certain classes of institutions from the operation of certain sections. It provides that the provisions of Sections 16A, 16B, 16C : sub-sections (2) to sub-section (13) of Section 16D and Sections 16E or 16F and 16G shall not apply to recognised institutions maintained by the State Government or the Central Government. Sub-section (2) provides that in the case of recognised institutions maintained by a local body, the State Government may declare that all or any of the provisions referred to in subsection (1) shall not apply or shall apply subject to such alteration, modifications or additions as it may make and the provisions, if any, so made applicable, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

8. The Electricity Board is neither State Government nor the Central Government and it is not covered by sub-section (1) of Section 16H of the Act. It has also not been declared as Local Body under sub-section (2) of Section 16H of the Act. Secondly, there is nothing to show that the State Government has declared that the provisions of Section 16G of the Act will not be applicable to it.

9. Thus every recognised institution has to act in accordance with the provisions of U. P. Intermediate Education Act except where it is covered by the exception given u/s 16H of the Act. It leaves no room for any further controversy. The terms and conditions of service of employees of all the recognised institutions will be the same as provided under the Act and Regulations framed under the Act.

10. A Division Bench of this Court in *Brahm Dayal v. Senior Personnel Executive. Indian Drugs and Pharmaceuticals.* , held that the institution maintained by Indian Drugs and Pharmaceuticals Ltd, is neither State nor Central Government. The institution run by it having recognised under the provisions of U. P. Intermediate Education Act, the age of retirement of its employees will be governed by Regulation 21 of Chapter III of the Regulations framed under the Act and not on the basis of contract entered into by I.D.P.L. with its employees of the institution. In *Km. Shamim Fatima v. Manager, B.V.M. School* 1994 HVD 4 (All) 143, where the institution was recognised under the provisions of U. P. Basic Education Act, it was held that the age of retirement will be 60 years as provided under the U. P. Basic Education (Teachers' Service) Rules, 1981 and not on the basis of contract entered into with the Electricity Board.

11. Regulation 21 of Chapter III of the Regulations framed under the U. P. Intermediate Education Act provides that the age of superannuation of the Principal or Head Master, Matron, Teacher, Clerk or Librarian and other servants shall be 60 years and if the date of superannuation falls within the mid-session, it shall extend to the end of the session. This provision will be applicable in respect

of recognised institution of U. P. Electricity Board and Regulation 37 of U. P. Rajya Vidyut Parishad Shikshak Viniyamavali, 1995 will not be applicable. Such provisions will be applicable when the Board has not taken recognition of the institution under the provisions of U. P. Intermediate Education Act, 1921.

12. In view of the above, the writ petition is allowed. The impugned notice dated 20.8.1996 (Annexure-6 to the writ petition) is hereby quashed. The petitioner shall retire on attaining the age of 60 years as provided under Regulation 21 of Chapter III of the Regulations framed under the U. P. Intermediate Education Act. In the circumstances, however, the parties shall bear their own costs,