
(2011) 02 AHC CK 0239

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5272 of 2011

Smt. Sharda Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 2(18), 50(1)

Citation : (2011) 02 AHC CK 0239

Hon'ble Judges : Sunil Ambwani, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mrs. Durga Tiwari, learned Counsel for the Petitioner. Learned Standing Counsel appears for the Respondents.

2. As seniormost teacher serving in Sakaldiha P. G. College, Chandauli, the Petitioner was appointed in the absence of regular Principal (to be appointed by direct recruitment through the U.P. Higher Education Service Commission) as Officiating Principal of the college by the order of the Committee of Management of the College dated 7.7.2009. The regular Principal has not been appointed by the U.P. Higher Education Service Commission so far. The Petitioner attained the age of superannuation on 31.12.2010. Under the U.P. State Universities First Statute (Age of Superannuation, Scales of Pay and Qualifications of Teachers) 1975, made in exercise of the powers conferred under Sub-section (1) of Section 50 of the U.P. State Universities Act, 1973, the Petitioner has to retire under Statue 7, on the last day of the month on attaining the age of 62 years. The proviso to Statute 3 (3), provides that if the date of superannuation does not fall on June 30th, the teacher shall continue in service till the end of academic session i.e. June 30th following, and she will be treated as on reemployment from the date immediately following the date of his superannuation till June 30th following.

3. The Regional Higher Education Officer, Varanasi has by his order dated 17.1.2011 has directed the Manager of the Committee of Management of the college to immediately hand over the charge of Officiating Principal to the next seniormost teacher, giving rise to this writ petition.

4. In the present case it is not disputed that the Petitioner has a right to continue as teacher under proviso to Statute 3 (3) of the U.P. State Universities Statute, 1975 until 30th June following as upto 30th June, 2011. The Petitioner, however, claims that on her reemployment she also has right to continue as Officiating Principal of the college. She has relied upon Statute 10-B of the U.P. State Universities First Statute 1975, and the judgments of this Court in Prof. K.N. Pandey v. Chancellor Mahatma Gandhi Kashi Vidyapith Varanasi 1999 (2) UPLBEC 1205 and Meerut College Parivar Kalyan Samiti Vs. State of U.P. and others, to support her claim.

5. Mrs. Durga Tiwari also relies upon the Full Bench judgment in Surendra Prasad Agnihotri v. State of U.P., Special Appeal No. 1987 of 2009 connected with Special Appeal No. 1991 of 2009 decided on 20.5.2010, holding that in respect of intermediate college a teacher who has already been appointed as Officiating Principal by virtue of seniority on attaining the age of superannuation in the extended period of service shall continue as Officiating Principal and not simply as teacher.

6. Learned Standing Counsel on the other hand relies upon the judgment of the Supreme Court in S.K. Rathi v. Prem Hari Sharma and Ors. 2000 (4) E.S.C. 2278 (SC) in which it was held in paragraphs 4, 5 and 6 as follows:

4. On a query raised by us, learned Counsel for the Respondent drew our attention to a decision of the Government contained in document dated 16th February, 1999, in which it was, inter alia, stated that for Teachers like Respondent No. 1 the age of superannuation was 60 years. The said decision further states that no extension in service shall be granted but "if the date of superannuation of a teacher does not fall on June 30, the teacher shall continue in service till the end of the academic session i.e. June 30 following". This is the clause on which reliance is placed by the learned Counsel in support of the decision of the High Court.

5. There is no doubt that the said decision would enable Respondent No. 1 to continue as a Teacher, which is his substantive appointment, up to 30th June following the day when he attained the age of 60 years, but this clause cannot allow him to continue as an acting Principal which is a different post altogether. It cannot be disputed that the post of Principal and of the Teacher is not the same. It is a Teacher on promotion who is appointed as a Principal and there is no decision of the Government giving extension beyond the age of 60 years to a Principal. This being so, the appeal is allowed and the decision of the High Court permitting Respondent No. 1 to function as Principal of the Institution till 30th June, 2000 is set aside.

6. However, we make it clear that the observations made in this order will not prejudice the Petitioner's case in the disposal of the writ petition.

7. A Division Bench of this Court in *Dr. R.C. Gupta v. State of U.P. and Ors.* 2002 (1) E.S.C. 320 (All.) followed the judgment of *S.K. Rathi (Supra)*, and held that there is a difference between permanent Principal and adhoc Principal. It was observed that there is very basic difference between the two. The permanent Principal has right to the post of Principal and adhoc Principal has no such right. An adhoc/ temporary or Officiating Principal having no right to the post could not continue as adhoc or acting Principal on reemployment after 30th June after he crossed the age of superannuation.

8. We have considered the submissions and the judgments cited before us. In *Meerut College Parivar Kalyan Samiti v. State of U.P. (Supra)* the Division Bench decided the question as to whether the benefit of Statute 17.15 may be given to the Principal of affiliated college. The Court was not concerned with the question whether such benefit could be given to Officiating Principal of the college. The Division Bench held that Section 2 (18) of the State Universities Act, 1973, which defines a teacher, includes person employed (for imparting instructions or getting or conducting research in the University or in an institute or in a constituent affiliated or associated college) and includes Principal or Director. The Court held that by this reckoning, a Principal of affiliated college will be deemed to teacher and therefore he was entitled to the benefit of Statute 17.15, which provided benefit of continuing even after superannuation on reemployment until June 30th of the close of the academic session. It was held that since no resolution of Committee of Management is required to be passed in this regard, and reemployment takes place by operation of law, the Petitioner (as permanent Principal), will be treated as reemployed from the date immediately following superannuation till June 30th. The Division Bench in para 5 distinguished the judgment in *S.K. Rathi's* case of the Supreme Court on the ground that Section 2 (18) of State Universities Act, 1973 was not brought to the notice of their Lordships.

9. We find that the Division Bench in *Meerut College Parivar Kalyan Samiti (Supra)* was not called upon to consider the question whether the benefit of reemployment could be given to the Officiating Principal, to continue to officiate as Principal of the college. The Court missed the main point, which was decided by the Supreme Court in *S.K. Rathi* and subsequently in *R.C. Gupta's* case, that whereas permanent Principal can continue as Principal till 30th June next following after the age of superannuation, the adhoc or acting Principal can only continue as Lecturer till 30th June after he has crossed the age of superannuation.

10. After going through the case law cited before us and relevant provisions of the Statute, we have no doubt that the judgment of the Supreme Court in *S.K. Rathi's* case and the judgment of Division Bench in *Dr. R.C. Gupta's* case hold the field. Whereas permanent Principal in Degree Colleges can continue as

Principal till 30th June next following his age of superannuation, the adhoc or acting Principal can only continue as Lecturer till 30th June after she has crossed the age of superannuation.

11. A teacher is reemployed after she attains the age of superannuation till 30th June, for the benefit of students. The difference between permanent teacher and officiating Principal is clear and apparent. The benefit of reemployment is given with the object to avoid inconvenience to be caused to the students, by withdrawal of teacher in the middle of academic sessions. There is no such object and purpose in reemploying the Officiating Principal. We may also observe that on re-employment such teacher does not continue to be the seniormost teacher in the college. A person reemployed for a specific purpose, continues in employment only for that purpose, namely as a teacher. For all other functions, she loses her seniority and has to stand at the bottom of the grade. There is a difference between reemployment and extension of the age of superannuation. The purpose and nature of appointment has to be taken into account in conferring the benefits. The ratio of the judgment of Supreme Court in S.K. Rathi's case squarely covers the point of determination.

12. The writ petition is dismissed.