

(1996) 11 AHC CK 0042

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 31379 of 1996

Smt. Sudesh Mukul

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 30

Citation : (1997) 1 UPLBEC 18

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : R.G. Padia and Prakash Padia, for the Appellant; S.C. and P.K. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard Dr. R. G. Padia for the petitioner and Sri P. K. Mukerjee for the respondent Nos. 3 and 4.

2. The grievance of the petitioner is that she has been retired of the age of 58 years while she claims that she should have been retired at the age of 60 years. Learned counsel for the petitioner relied on the bye-laws of the Central Board of Secondary Education which he has quoted in paragraph 1 of the writ petition. In my opinion, these bye-laws can not be said to have statutory force. The condition of employment of the Our Lady Fatima Higher Secondary School, Aligarh, has been Annexed as C. A.-1 to the counter-affidavit and it has been mentioned therein that the retirement age is 58 years.

3. Moreover, I am the opinion, that this writ petition is not maintainable for two reasons (1) it is minority institution and hence protected by Article 30 of the Constitution vide St. Joseph's Higher Secondary School, Meerut Cantt. and Others Vs. Ravi Shankar Sharma and Others, (2) it is an un-aided private institution and hence no writ petition is maintainable.

4. Learned counsel for the petitioner relied on the decision of this Court in Arvind

Kumar Sharma v. Central Board of Secondary Education, New Delhi and Anr. 1996 (2) UPLBEC 1337. This decision does not relate to a minority institution and hence is distinguishable. Moreover the decision of the Division Bench in Saint Joseph's case (supra) has not been considered by the learned single judge, and hence this decision cannot prevail over the Division Bench ruling.

5. Learned counsel for the petitioner then referred to the decision of Supreme Court in Central Board of Secondary Education v. Ms. Vineeta Mahajan and Anr. 1993 (22) ALR 532. A perusal of this decision does not show whether it relates to minority institution. The question about the maintainability the writ petition was also not considered and hence this decision is also distinguishable.

6. For the reasons given above, this writ petition is dismissed.