
(2009) 07 AHC CK 0272

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33318 of 2009

Smt. Veerawali

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 2(h), 2(m)

Citation : (2009) 122 FLR 861

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Pradeep Pandey and Kamlesh Shukla, for the Appellant; J. Prasad and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Petitioner before this Court claims to be working as teacher in the primary section of a recognized and aided junior High School. It is claimed that the service conditions of the teachers of Junior High School including their age of retirement are regulated by the U.P. Recognised Basic Schools (Junior High School) (Recruitment & Conditions of Service of Teachers) Rules, 1978. It is stated that vide amendment in Rule 14 of the aforesaid 1978 Rules, vide notification dated 25th October, 2005 the age of superannuation of Head Master and Assistant Teacher has been extended from 60 to 62 years. It is, therefore, contended that the petitioner being part and parcel of the junior High School are entitled to the benefit to the said amendment and to continue the service till they attain the age of 62 years. Reliance has also been placed on the Government Order dated 4.2.2004 whereby teachers of the Parishadiya Junior Basic School, Parishadiya Senior Basic School as well as recognized and aided Senior Basic School have been directed to retire on attaining the age of 62 years only. It is in this background that the petitioner challenge the notice issued by the Manager of the institution dated 22.6.2009 informing the petitioners that he shall retire on attaining the age of superannuation i.e. 60 years. The notice makes mention of

the letter of the Senior Finance & Accounts Officer, Ghaziabad dated 25.5.2009 which in turn mentions that teachers of primary section of an aided Junior High School shall retire on attaining the age of 60 years only as has been clarified by the Joint Director of Education (Mahila Shiksha) Allahabad vide her letter dated 19.9.2007.

2. I have heard Counsel for the parties and have gone through the records of the writ petition.

For the purposes of appreciating the controversy raised in the present writ petition it would be worthwhile to reproduce the definition of Junior Basic School and Senior Basic School as contained in Rule 2(h) and Rule 2(m), of the U.P. Basic Teachers Service Rules, 1981, which have been framed for regulating the service condition of teachers appointed in Basic Schools under control and management of U.P. Basic Education Board, namely:

2(h). "Junior Basic School" means a Basic School where instructions from class I to V are imparted.

2(m). "Senior Basic School" means a Basic School where instructions from classes VI to VIII are imparted.

3. The extent of application of the 1981 Rules has been provided under Rule 3 namely teachers of institutions transferred to the Board i.e. Basic Shiksha Pansnad and teachers employed in Basic & Nursery schools established by the Board.

4. It may be recorded that the aforesaid 1981 Rules have no application qua the petitioner inasmuch as they are admittedly discharging duties in the primary section of a recognized aided Junior High School under the control and management of a private society.

5. So far as the aided and recognized Junior High Schools are concerned the term and conditions of the teachers appointed therein are regulated by the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment & Conditions of Service of Teachers) Rules, 1978. Rule 2(e) of the aforesaid Rules of 1978 reads as follows:

2(e). "Junior High School" means an Institution other than High School or Intermediate College imparting education to boys or girls or both from Classes VI to VIII (inclusive)." While recognized school is defined under Rule 2 (h) and reads as follows:

"Recognized School" means any Junior High School not being an institution belonging to or wholly maintained by the Board or any local body recognized by the Board as such.

6. From the aforesaid it is apparently clear that the aforesaid Rules of 1978 will apply only to the institutions where education is imparted from Class VI to VIII (both inclusive) and it is in respect of teachers working in such recognized Junior

High Schools that the age of superannuation has been provided for under Rule 14 as 62 years after amendment dated 25th October, 2005.

7. It may be recorded that the aforesaid Rules, 1978 do not contemplate any service conditions including appointment etc. qua primary sections said to be attached to a Junior High School. This Court has, therefore, no hesitation to record that Rules of 1978, have no application qua appointment or other service conditions of teachers working in primary sections of an attached Junior High School. In view of the aforesaid neither Rule 14 nor the Government Order No. 289/79-6-04-28(5)/2004 dated 4.2.2004 will have any application qua the age of retirement of teachers working in primary sections of an attached Junior High School like the petitioner. This Court may clarify that under the Government Order dated 4.2.2004 it has specifically been provided that the teachers working in aided and recognized Senior Basic School (Junior High School) alone are entitled for extension of their age of retirement to 62 years.

8. The petitioners are admittedly working as teachers of primary section of an attached Junior High School and are not covered by the Rules of 1978 and the Government Order dated 4.2.2004. Therefore, they cannot claim benefit of age of extension provided to the teachers of Parishadiya Junior Basic School and Parishadiya Senior Basic School and to the teachers of aided and recognised Senior Basic Schools.

9. This Court may now refer to the order of Hon"ble High Court dated 11.5.2009 passed in Civil Misc. Writ Petition No. 24442 of 2009 (Smt. Krishna Sharma v. State of U.P. and others) which has been enclosed along with writ petition. Suffice is to point out that the same is only an interim order and no law has been laid down therein. It has no binding effect, specifically in view of the fact that this Court has finally decided the present writ petition.

In view of the aforesaid, the writ petition is dismissed.