(2009) 11 MAD CK 0242

In the Madras High Court

Case No : Writ Petition No. 17285 of 2009 and M.P. No''s. 1, 1 and 2 of 2009

Subbamma APPELLANT

Vs

Central Board of Secondary Education and Others RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:
Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 2(7)

Citation : (2009) 11 MAD CK 0242

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Lakshmi Narayanan, for the Appellant; G. Nagarajan, for R1 and R. Priya Kumar, ACGSC, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The two petitioners who were employed as Graduate teachers in the fifth respondent School were sought to be retired at the age of 58 years on the ground that the age of retirement in respect of teachers was only 58.

2. On the contrary, the petitioners contended that as per the Affiliation by-laws of the Central Board of Secondary Education (CBSE), the retirement age as per Rule 30 is 60 years. If the age of superannuation fell during academic session, the concerned employee will retire at the end of the academic session. It is on these grounds they had prayed for continuance in their service till they attain 60 years and further prayed that they should be allowed to continue in service till the end of the academic year 2011-2012.

3. Notice was ordered on these writ petitions. Mr. G. Nagarajan, learned Counsel appearing for the first respondent stated that no relief was claimed against them. But however, he pointed out that as per Rule 24 of the Affiliation Bylaws, each school affiliated to the CBSE will frame Service Rules for its employees as per the Education Act of the respective State or Union Territory. If such Act makes adoption of the same obligatory, otherwise as per Service Rules given in

subsequent paras. It was also stipulated that each school shall enter into Service Contract with each employee as per the provisions of the Education Act, if not obligatory as per the State Education Act.

4. It is seen from the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 that they have not been made applicable to the schools affiliated to CBSE namely, the first respondent. A perusal of Section 2(7)(b) of the Act defining ''private school'' also excludes the school established or administered or maintained by the Central Government or the State Government or any local authority. Therefore, the first portion of the Rule 24(1) may not apply.

5. It is also fairly admitted that there was no service contract entered into with each employee stipulating the age for retirement. In the absence of the same, it must be held that Rule 36 of the Affiliation Bylaws will come into operation in respect of retirement age of teachers working in CBSE schools including the fifth respondent.

6. However, in the counter affidavit filed by the contesting respondents, it was stated that though the School has framed By laws, under Rule 20(a) of the Bylaws and conditions of the Society, it was the Management Committee which will have the power to decide such matters including the appointment of the employees and fixing their conditions of service. It was also stated that the school has been following the service conditions in respect of salaries by adopting the scales of pay prescribed by the Tamil Nadu State Government. Therefore, if that is accepted then all the service conditions available to school teachers working under the Tamil Nadu State Boards will also apply. In such case, the petitioners will have to be retired at the age of 58 only. It was also stated that there was no Rule stipulating the continuance in service beyond the age of superannuation. Therefore, the petitioners case will have to be rejected on these grounds. This Court is unable to agree with these submissions.

7. When an identical issue came up before this Court with reference to Matriculation School teachers, the Management of the said school made similar contention namely, that the teachers were bound by the contract with the Management and the Code of Regulations applicable to Matriculation teachers will not be applicable and that the demand for retention in service as per Clause 18 of the Code of Matriculation Schools will not apply.

8. In Venkateswaran Vs. The Director of School Education and Others, , this Court accepted the case of the teachers. In paragraphs 9 to 11 it was observed as follows:

9. In the instant case, the petitioner being a teacher, whose employment was at the mercy of the 4th respondent, was compelled to sign the terms and conditions of service, which is contrary to clause 18 of the Code, which will prevail over Clause 17 of the terms and conditions of service. The terms and conditions of the agreement entered into between the petitioner and the 4th respondent school is

admittedly a contract entered into between the parties who are not equal in bargaining power. Clause 17 of the terms and conditions of services, is arbitrary and unreasonable and therefore void inasmuch as the same is contrary to Clause 18 of the Code. Therefore, I am of the considered view that Clause 17 is not binding between the parties inasmuch as the parties to the contract were not equal in the bargaining power, which had resulted in great disparity between the parties. Consequently, the services of the petitioner till he attained the age of 60 years has necessarily to be regularised by the respondents.

10. Further more, the right to continue in service till the end of the academic year i.e., till 31st May, is unconditional as per Clause 18(1) of the code and, therefore, the petitioner is also entitled to for the salary till 31.05.1998 in the light of the decision of a Division Bench of the Court, in Sundaram v. The Secretary C.S.I. Diocese of Madras, Madras and Ors. dated 6.12.1994, the teachers are entitled to continue in service till the end of the academic year and the Department is bound to pay the salary of the teachers whose valid right to continue in service till the end of the academic year was denied.

11. In the result, even though the petitioner was permitted to continue in service till 18.4.1988 by virtue of interim orders of this Court, the respondents are directed to regularise the services of the petitioner till 18.4.1988 and further they are directed to pay salary as per the rules till 31st May, 1988 and pass appropriate orders in this regard within three months from the date of receipt of copy of this order.

9. Mr. Priya Kumar, learned Counsel for the contesting respondents submitted that the school would have subsequently appointed teachers in the place of the present teachers. Such a contention will not defeat the legal right of the petitioners. If employees are restored to service by Court orders then the person appointed in their posts will have to be sent out. Therefore, this Court is not inclined to disallow the claims made by the petitioners only on the ground that subsequent appointments have been made in the places of the petitioners. In this context it is necessary to refer to the judgment of the Supreme Court in Punjab National Bank Ltd. v. All India Punjab National Bank Employees Federation and Anr. reported in AIR 1960 SC 160, where similar contention was rejected by the Supreme Court.

10. It is necessary to extract para 63 of the judgment which is as follows:

63. ... As had been held by this Court in the National Transport and General Co. Ltd. v. The Workmen Civil Appeal No. 312 of 1956, D/-22-1-1957 (SC), however much the court may sympathise with the employer''s difficulty caused by the fact that after the wrongful dismissals in question he had engaged fresh hands, the court cannot "overlook the claims of the employees who, on the findings of the tribunals below, had been wrongly dismissed". In the case of such wrongful dismissal the normal rule would be that the employees thus wrongfully dismissed must be reinstated.

The hardship in question", observed this Court, "has been brought about by the precipitate action of the appellants themselves who dismissed their workmen without holding the usual enquiries after framing a proper charge against them. If they had proceeded in the usual way and given a full and fair opportunity to the workmen to place their case before the enquiring authority, the result may not have been so hard.

These observations are equally applicable to the conduct of the Bank in the present appeals.

11. In the light of the above, the writ petitions stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

