(2011) 11 AHC CK 0060

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31167 of 2007

Suresh Kumar Gadi — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2012) 1 ADJ 729 : (2012) 132 FLR 964

Hon'ble Judges : Vinay Kumar Mathur, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Sri Upendra Singh, learned counsel for the petitioner and Sri M.C. Tripathi, learned Additional Chief Standing Counsel for the State.

2. The petitioner while working as lecturer in the Institute of Engineering and Rural Technology, Allahabad attained the age of superannuation of 60 years on 1st February, 2004 but was given the advantage of continuance in service, till the end of current academic session, therefore he actually retired on 30th June, 2004. Since the petitioner has been denied gratuity, he has approached this Court under Article 226 of the Constitution of India.

3. The petitioner urges that he having given the option for retirement at the age of 60 years, he is entitled for the gratuity but the respondents have denied the said benefit.

4. Learned counsel for the State, in response, submitted that the petitioner has not given his option on or before 1st July, 2003 i.e. one year before the date of retirement, therefore, he is not entitled to the aforesaid benefit of gratuity. Submission of the respondents is, that as per the Government Order dated 25th May, 2002, this option was to be given, one year before the date of retirement whereas admittedly the petitioner had given his option on 8th May, 2004.

5. Learned counsel for the State has drawn our attention to the order dated 15th June, 2006 passed by the Finance Controller Technical Education Directorate U.P. at Lucknow which refuses the award of gratuity to the petitioner on the aforesaid ground.

6. It is the admitted case of both the parties that initially the age of retirement of teachers in the institution like the present one was 58 years. This age of 58 years was enhanced to 60 years with an option to the teachers to either opt for retirement at the age of 58 years and obtain gratuity or to work for extended period up to 60 years without the benefit of gratuity.

7. The Government Order of 25th May, 2002 was applicable for the teachers who retire at the age of 58 years and also at the age of 60 years, as mentioned above, making it obligatory upon the teachers to opt within the time prescribed for having gratuity.

8. This age of retirement was enhanced from 60 years to 62 years vide Government Order dated 21st February, 2004.

9. A perusal of the aforesaid Government Order, which is on record, shows that the Governor while extending the age from 60 years to 62 years of the teachers of the technical institutions also provided that such teachers, who opt for being retired at the age of 60 years will be entitled for gratuity but those who give their option to work till the age of 62 years will not be given gratuity but will be entitled for pension only.

10. The aforesaid Government Order thus is very clear on the subject of payment of gratuity and pension vis-a-vis the age of retirement chosen by the teacher concerned. The language used in the Government Order dated 21st February, 2004 further makes it abundantly clear that after the enhancement of the age from 60 years to 62 years option was to be given by the teachers concerned to have gratuity or to have pension alone depending on the fact that they seek retirement at the age of 60 years or at the age of 62 years. This option naturally could be given only when the age of retirement was enhanced from 60 to 62 years and when the same was asked for.

11. Any Government Order requiring an option for gratuity or pension with respect to the age of retirement earlier prescribed i.e. 58 or 60 years, would not be sufficient to conclude whether the teacher wants to be retired at the age of 60 years or at 62 years. It was only when the age of retirement was enhanced from 60 years to 62, the occasion, to give an option would arise.

12. This is also evident from the fact that the Government Order dated 21st February 2004 speaks of fresh options in terms of the aforesaid Government Order. It does not say that the option already exercised with regard to the age of 58 or 60 years will be valid for the present enhanced age also, rather it asks for fresh option. Such option could be given by the teachers only after 21st February, 2004 and not before.

13. The view taken by the Finance Controller that the petitioner has not given option for being retired at the age of 60 years on 1st July, 2003, is not based on any reasonable principle. It stands concluded from the Government Order dated 21st February, 2004 which in fact supersedes all the pre existing Government Orders as mentioned in column IV of the said Government Order that on enhancement of the age of retirement from 60 to 62 years, fresh option was to be given.

14. There is also another aspect of the matter namely a teacher who opts for being retired at the age of 60 years is entitled for gratuity and pension both, whereas a teacher who opts for retirement at the age of 62 years is not entitled for gratuity and in that circumstance, he would be paid salary for two years continuous service.

15. Thus, there cannot be a teacher who would neither be allowed service up to age of 62 years nor gratuity even though he retires at the age of 60 years merely because he has not given the option prior to the issuance of the Government Order dated 21st February, 2004.

16. The teacher is required either to work at the age of 62 years and get salary for the said period or he is to retire at the age of 60 years with the benefit of gratuity.

17. In the instant case admittedly the petitioner retired on attaining the age of 60 years at the end of the current academic session and was not allowed to continue in service up to the age of 62 years. If, the petitioner had retired on attaining the age of 60 years and has given his option after the issuance of the Government Order dated 21st February, 2004 when he was in service, it cannot be said that his option was in any way invalid. The option given by the petitioner on 8th May, 2004 could not have been said to be an option not in accordance with the said Government Order.

18. From a perusal of the records, it is established that the petitioner retired at the age of 60 years and thus, is entitled for the benefit of gratuity.

19. We, therefore, direct the authority concerned to pay his entire amount of gratuity within a maximum period of two months from the date of receipt of a certified copy of this order, which has been withheld without any valid reason for such a long time.

20. We further direct that the petitioner shall also be entitled to and be paid interest @ 10% per annum on the delayed payment of gratuity from the date when it became due, till it is actually paid.

21. The order of the Finance Controller, Technical Education Directorate U.P. at Kanpur dated 15.6.2006 is hereby quashed. The writ petition is allowed. No order as to costs.

