
(2003) 04 AHC CK 0281
In the Allahabad High Court
Case No : C.M.W.P. No. 15977 of 2003

Sushila Tyagi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2003) 5 AWC 4402

Hon'ble Judges : Ghanshyam Dass, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Ashok Khare and V.D. Chauhan, for the Appellant; B.N. Singh, Pankaj Mithal and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for seeking direction to the State to implement the decision of the University Grants Commission (hereinafter called the U.G.C.), revising the age of superannuation for teachers from 60 to 62 years and for further direction to the Respondents not to interfere with the working of the Petitioner as Principal in the Degree College till she attains the age of 62 years.

2. Facts and circumstances giving rise to this case are that Petitioner had been appointed as a Lecturer in N.R.E.C. College, Khurja, Bulandshahr, affiliated with Agra University in 1974. Subsequently, she was appointed as the Principal in 1984. On 18.10.1994, Petitioner joined Kunwar R.C. Mahila Maha Vidyalaya, Mainpuri as its Principal. The age of superannuation as per existing Rules is 60 years. However, in view of the provisions of the Statute 16.15, a teacher which includes the Principal also, shall remain in service till the end of the academic session, i.e., 30th June, of the year following. Thus, Petitioner is entitled to continue as a Principal upto 30th June, 2003. Petitioner's date of birth is 8.12.1942 and thus she ought to have retired w.e.f. 7th December, 2002. But in view of the aforesaid provision, she is entitled to continue in service upto

30.6.2003. Petitioner claims that as the U.G.C. has made recommendations to increase the age of superannuation of teachers from 60 to 62 years, Respondents should be directed to implement the said recommendations and Petitioner be permitted to hold the office of Principal till she attains the age of 62 years, i.e., till 7.12.2004 and further upto 30.6.2005 by virtue of the other statutory provisions.

3. Shri Ashok Khare, learned senior advocate appearing for the Petitioner has submitted that once the recommendation has been made by the U.G.C. long back and it has a binding effect on statutory authorities, the Petitioner is entitled for the relief claimed herein.

4. On the contrary, learned standing counsel Shri Rai has vehemently opposed the issue contending that unless the statutory rules are amended by the competent authority, Petitioner is not entitled for any relief whatsoever.

5. A Division Bench of this Court in Prof. Chandra Prakash Jha and Ors. v. Vice Chancellor, Allahabad University and Ors. 2001 (2) UPLBEC 1134, has dealt with the issue in detail and held that this Court is not competent to issue mandamus to the Respondents to increase the age of teachers and amend the rules accordingly. However, it made strong recommendations to the statutory authorities to consider the recommendations made by the U.G.C.

6. Be that as it may, as no direction had been issued by this Court nor it is permissible in law to issue such directions, the said judgment remains merely a recommendation and does not create any legal right in favour of the Petitioner. It is settled law that writ petition under Article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by the Petitioner that there is a breach of the statutory duty on the part of the Respondents. Therefore, there must be judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the Court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction. *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, ; *State of Kerala Vs. Smt. A. Lakshmikutty and others*, ; *Mani Subrat Jain and Others Vs. State of Haryana and Others*, ; *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, ; *Rajendra Singh Vs. State of Madhya Pradesh and others*, and *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*,

7. In the instant case in absence of any statutory provision or amendment thereof providing for 62 years of age of superannuation, Shri Khare could not point out any provision which creates a legal right in favour of the Petitioner and for which writ petition has been filed. Permitting the Petitioner to continue in service till she attains the age of 62 years in absence of any amendment in the statute by the Legislature or competent authority would amount to passing an

order in flagrant violation of the statutory provisions.

8. The Court has no competence to issue a direction contrary to law. Vide Union of India and Another Vs. Kirloskar Pneumatic Company Limited, ; State of U. P. and others Vs. Harish Chandra and others, and Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others,

9. In State of Punjab and others Vs. Renuka Singla and others, , dealing with a similar situation, the Hon"ble Apex Court observed as under:

We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations.

10. Similarly, in Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others, , the Hon"ble Apex Court has held as under:

"The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law."

11. Thus, in this fact-situation, we are of the candid view that relief sought by the Petitioner to allow her to hold the office of Principal till 30.6.2005 cannot be granted by this Court.

12. It is also settled legal proposition that neither the Court can legislate nor it can issue direction to the State Government to legislate a law in a particular manner. At the most, if the Court comes to the conclusion that a particular provision is ultra vires or unconstitutional, it can simply struck down the same, or in a particular case, read down a particular law to meet a particular situation. But this case does not fall in that category.

13. In Union of India v. Deoki Nandan Aggarwal AIR 1992 SC 96, the Hon"ble Supreme Court observed as under:

It is not the duty of the Court either to enlarge the scope of legislation or the intention of the Legislature when the nature of the provision is plain and unambiguous. The Court cannot re-write, re-cast or re-frame the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts.

Moreso, the Court does not have the power to issue a direction to the Legislature to enact in a particular manner.

14. In Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others, , the Hon"ble Apex Court has held that writ court, in exercise of its power under Article 226, has no power even indirectly to require the Executive to exercise its law-making power. The Court observed that it is neither legal nor proper for the High Court to issue direction or advisory sermons to the Executive in respect of the sphere which is exclusively within the domain of the Executive under the

Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. The Courts cannot usurp the functions assigned to the Executive under the Constitution and cannot even indirectly require the Executive to exercise its law-making power in any manner. The Courts cannot assume to itself a supervisory role over the rule-making power of the Executive under Article 309 of the Constitution.

While deciding the said case, the Hon"ble Court placed reliance on a large number of judgments, particularly *Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others*, ; *State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others*, . In *Asif Hameed and others Vs. State of Jammu and Kashmir and Others*, , the Hon"ble Apex Court observed as under:

While doing so, the Court must remain within its self-imposed limits. The Court sits in judgment on the action of a co-ordinate branch of the Government. While exercising power of judicial review of administrative action, the Court is not an Appellate Authority. The Constitution does not permit the Court to direct or advise the Executive in matter of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or Executive.

15. It is for the Government to prescribe the qualifications laying down the eligibility and other service conditions. The Court cannot start probing the relevancy of the same. The Court cannot examine the wisdom, merit or efficacy of the policy of the Legislature to see whether it effectuates the purpose of the Act. (Vide *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*,

16. Therefore, it is not possible for this Court to issue any direction to the Respondents to give effect to the recommendations made by the U.G.C. to increase the age of superannuation for teachers from 60 to 62 years.

17. We also find no force in the submission made by Shri Khare that Petitioner has a legitimate expectation that she would be given an opportunity to serve the college for a longer period considering the recommendations made by the U.G.C. for the reason that unless the rules are amended accepting the said recommendations, Petitioner cannot have any legitimate expectation.

18. In *Union Territory, Chandigarh Admn. and others Vs. Managing Society, Goswami, GDSDC*, , it has been held by the Hon"ble Supreme Court that the terms of contract must be read and enforced in consonance with the statute and not otherwise even if the contract contains the terms contrary to the statutory provisions. Similarly, in *A. Mahudeswaran and Others Vs. Govt. of T.N. and Others*, , it has been held that a person can have a legitimate expectation only in consonance with the statute and the rules framed thereunder and not in contravention of the same.

19. Thus, in view of the above, as neither the Petitioner can claim any legitimate expectation nor it can be held that the U.G.C. recommendations can take the form of the statutory provisions unless the competent authority or Legislature adopts the same by making amendment in the rules, and as this Court has no competence to pass the order contrary to law, Petitioner cannot be granted any of the reliefs claimed by her, by this Court.

20. Petition is totally misconceived as has been filed for enforcement of a non-existent legal right, and as such the same is liable to be dismissed as not maintainable.

21. Petition is dismissed accordingly.