(1997) 08 AHC CK 0010

In the Allahabad High Court

Case No : C.M.W.P. No. 3364 of 1983

Triloki Nath Saxena — APPELLANT

Vs

Rookee''s High School and Others — RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Cantonments Act, 1924 — Section 116, 117(1), 280
Cantonments Fund Servants Rules, 1937 — Rule 22
Constitution of India, 1950 — Article 21
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G, 16G(1), 16H, 16H(1), 16H(2)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 21

Citation : (1997) AWC 422 Supp

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Pramod Kumar Jain and P.N. Saxena, for the Appellant; Sabhajit Yadav and S.C., for the Respondent

Final Decision : Allowed

Judgement

D.K. Seth, J.—The Petitioner was appointed as a Teacher in Rookee''s High School on 8th July, 1951. He was promoted to the post of Principal of the said School on 10th January, 1972. The said School was a High School since 1937 and was being run by the Cantonment Board, Bareilly. The School was brought within the grant-in-aid scheme of the State Government even before 8th of July, 1951. The Petitioner claims that by reason of the provisions of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the 1921 Act''), as amended from time to time uptil 1983, and the Regulations framed thereunder, the Petitioner was eligible to continue till 60 years of age which he would be attaining on 31st of July, 1985. The Petitioner was informed by a letter dated 10th December, 1982 (Annexure 3) that he would be attaining the age of superannuation on 25th July, 1983 and, therefore, would retire from 31st July, 1983. Thereupon the Petitioner made a representation on 16th March. 1983 which was considered by the

Cantonment Board in its meeting held on 3rd June, 1983. He was sought to be retired on 31st July, 1983 on attainment of the age of 58 years by Resolution No. 11 dated 3rd June, 1983 which is Annexure ''5'' to the writ petition. The said Resolution was communicated to the Petitioner by a letter dated 1st July, 1983 which is Annexure ''6''. The orders contained in Annexures ''3'' and ''6'' have since been challenged by means of this writ petition.

2. Mr. P.N. Saxena, learned Counsel for the Petitioner, contends that by reason of Section 16G of the 1921 Act, the provisions relating to superannuation of a teacher contained in the said Act and the Regulations framed thereunder being applicable to the Petitioner, he is eligible and entitled to retire at the age of 60 years. He had referred to various provisions of the Cantonment Act, 1924 and the 1921 Act and the Regulations framed thereunder in support of his contention. He had also relied on a few decisions with which I shall be dealing with at the appropriate stage. He points out that by a Circular dated 21st August, 1972 issued by the Ministry of Defence which is Annexure ''7'' to the writ petition, the Petitioner is eligible and entitled to retire at the age of 60 years.

3. The Cantonment Board Respondent had filed their counter-affidavit and made out a case that since the School is run by the Cantonment Board and the Petitioner being an employee of the said Board, the condition of his service is governed by the relevant Rules governing the services of the employees of the Board. Therefore, according to the Board''s Rules, the Petitioner is required to be retired at the age of 58 years. The provision of the 1921 Act and the Regulation framed thereunder does not apply. The alleged Circular contained in Annexure ''7'' being only a Circular cannot supersede the statutory provision and, as such, is not enforceable.

4. Mr. Sabhajit Yadav, learned standing counsel, on the other hand, contends that in view of Section 9(4) of the 1921 Act, the State Government has power to alter, amend or modify the Regulations framed under the 1921 Act but the State Government having not specified any thing in respect of the Teachers serving under the Cantonment Board, the Petitioner cannot come within the purview of the 1921 Act.

5. I have heard the learned Counsel for the parties at length. The case made out in the counter-affidavit shows that by reason of Section 116, Chapter VIII of the Cantonments Act, if the funds at its disposal permit reasonable provisions are to be made for establishing and maintaining or assisting Primary Schools while Section 117 (1) provides furthering educational objects by measures other than the establishment and maintenance of Primary Schools. In exercise of powers u/s 280 (c). Rules have been framed by the Central Government in respect of appointment, control, supervision, suspension, removal, dismissal and punishment of servants of the Board which is titled as Cantonment Fund Servants Rules, 1937. By an amendment made in the year 1983, grant of pension-cum-gratuity was introduced which was already granted by virtue of a Circular dated 5th August, 1976 issued by the Government of India with effect

from 1st May, 1976. Thus it appears that Pension and Gratuity Scheme which was originally introduced through a Circular was subsequently introduced in the Rules in the year 1983. But it is not the case of Cantonment Board that despite the said Circular, pension-cum-gratuity was not paid with effect from 1st May, 1976 and was paid only with effect from 1st February, 1983 when the said amendment came into being. It is also the case made out that the 1921 Act is not applicable in the case of the Petitioner and that in terms of Rules governing the Petitioner''s service, he is due to retire on attaining the age of 58 years as has been prescribed in the said 1937 Rules. The Circular contained in Annexure ''7'' has been sought to be explained away that the Circular cannot override the said Act and the Rules.

6. Now let us examine as to how far the 1921 Act and the Regulations framed thereunder are applicable to a teacher employed by the Cantonment Board. Now Section 16G of the 1921 Act governs the condition of service of the Heads of the Institution, teachers and other employees in a recognised Institution. It provides that such conditions of service as may be prescribed by Regulations are applicable to such teachers along with agreements between the Management and the employee so far the same is not inconsistent with the 1921 Act or the Regulations. Such agreement, so far as it is inconsistent with the provisions of the 1921 Act or the Regulations framed thereunder have been declared to be void. ''Institution'' defined in Section 2 (b) of the 1921 Act means a recognised ...High School. ''Recognition'' means, according to Section 2 (d) ''recognition for the purpose of preparing candidates for admission to the Board''s Examinations''. In the present case, the Petitioner has contended that the School is a recognised Institution and was also included in the grant-in aid scheme by the State Government. The said statement has not been denied in the counter-affidavit. Therefore, admittedly the School is a recognised Institution within the meaning of Section 16G. Therefore, if the 1921 Act and the Regulations framed thereunder provide retirement at the age of 60 years, in that event, the same would be applicable to such employee even if there is any agreement between the Management and the employee for retirement at the age of 58 years which, according to Section 16G, would be void to that extent. But in the present case, it is not an agreement but it is a rule prescribed for retirement at the age of 58 years. There is no provision in the 1921 Act for nullifying anything inconsistent with the provisions of the 1921 Act and the Regulations framed thereunder with those of any Statute. By reason of Section 16H, Section 16G is not applicable to a recognised Institution maintained by the State Government or the Central Government. Whereas in the case of recognised Institution maintained by the local Bodies, the State Government may declare that all or any of the provision referred to in Sub-section (1) of Section 16H shall not apply or shall apply subject to such limitations, modifications or additions notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

7. The State Government, by a notification dated 13th June, 1979 which is

Annexure ''2'' to the writ petition, declared that Section 16G would be applicable to such Institution in terms of Section 16H with the modification that the condition of service of the Head of the Institution and the teachers would exclude the other employees and the words "other persons" occurring in Sub-section (1) of Section 16G was replaced by the word "every teacher and Head of the Institution". Thus by reason of the said declaration, only in respect of the teachers and the Head of the Institution the provisions of Section 16G of the 1921 Act were made applicable.

8. In the said notification contained in Annexure ''2'', it was specified that Section 16G was being made applicable to the recognised Institutions maintained by the Local Bodies in exercise of the power contained u/s 16H of the said Act as specified in Schedule II of the said notification. Section 16H (2) makes it clear that this application specified in the said notification is due to have effect notwithstanding anything inconsistent in any other law for the time being in force. Therefore, the said notification would be effective by reason of Section 16H (2) of the 1921 Act despite specific rules being the Cantonment Fund Servant Rules, 1937 so far as it is inconsistent with regard to the provisions of Section 16G and the Regulations framed thereunder. In view of the said notification contained in Annexure ''2'', the grounds taken by the Cantonment Board cannot be sustained.

9. Be that as it may, the relevant Rules providing retirement age also stands eclipsed to the extent as provided in the Circular dated 21st August, 1972 contained in Annexure ''7'' which specifically provides that the Central Government was pleased to direct that the cases of retention in service of teachers of the Cantonment Board''s School beyond the age of 58 years till the age of 60 years should be dealt with in the light of the provisions contained in the Education Code or other relevant Regulation framed by the Government of the State in which Cantonment is situated. By reason of the said Circular, it was pointed out that the Rules framed under the Cantonment Act relating to the above extent is subject to those prescribed by the State Government.

10. Now whether the said Circular can over-ride the statutory Rules or not is not necessary to be gone into in the facts and circumstances of the case since by reason of the notification u/s 16H, the position stands wholly clarified. On the other hand, it appears that the said Circular contained in Annexure ''7'' supports that of Annexure *2''. The Circular cannot be altogether ignored. The said Circular contained in Annexure ''7'' is binding on the Cantonment Board and have the effect of supplanting or supplementing the Rules. It is not the case of the Respondents that this Circular was ignored and had not been given effect to. Even then the ignorance or non-effect cannot have any impact on the situation generated by reason of the said supplementation of the Rules by the Central Government as back as in 1972 which stands confirmed forcefully by reason of notification contained in Annexure ''2'' issued u/s 16H. It contains a non-obstante clause intending an over-riding effect. Therefore, there is no escape from coming

to the irresistible conclusion that despite inconsistent provision for retirement at the age of 58 years in the Cantonment Fund Servant Rules, 1937, the age of retirement can be governed by the provisions contained in the 1921 Act particularly Section 16G and the Regulation framed thereunder providing the age of retirement at 60.

11. In view of the aforesaid finding, it is not necessary to go into the other questions raised in the present case. The provision of law, as enunciated above, clearly indicates that the Petitioner was entitled to retire at the age prescribed under the provisions contained in Section 16G and the Regulations framed thereunder. Rule 22 of the Cantonment Fund Servant Rules, 1937 stands supplemented or supplanted to the extent of retention till the age of 60 years in terms of the provision contained in the 1921 Act. Therefore, the Petitioner being a Principal or Head of the Institution is entitled to retire on attainment of 60 years of age by reason of Regulation 21, Chapter III of the Rules framed under the 1921 Act on the same terms and conditions as are applicable to any other recognised Institution. The question whether the Cantonment Board is a local Body or not does not seem to be of any substance though it was vehemently sought to be argued by the learned standing counsel. In asmuch as the Cantonment Board is known as Cantonment Board, Bareilly, namely, a Local Body having jurisdiction within the Cantonment area at Bareilly. The said Board is created under the Statute namely, Cantonment Act, 1924. Though controlled by the Government, the Board cannot be said to be a part of the Central Government. It may be an instrumentality or agency of the Government. But for all reasons, it is a local body. Then again the School is a recognised one and has been included in the grant-in-aid scheme. Therefore, it cannot be said that the school is being maintained by the Central Government. The same is maintained by the Cantonment Board, a Local Body.

12. For all these reasons, the writ petition succeeds and is accordingly allowed. It is hereby declared that by reason of the provision of law, as observed above, the Petitioner is eligible and entitled to continue till the age of 60 years being the age of superannuation, namely, till 31st July, 1985. as provided under Regulation 21, Chapter III of the Regulations framed under the 1921 Act on the same terms and conditions applicable to other teachers of such Institution and eligible for all pay and allowances and other service benefits till the age of 60 years, viz., till 31st July, 1985 and all retirement benefits prvable to him. Accordingly, the impugned orders contained in Annexures ''3'', ''5'' and 6'' are quashed. Let a certiorari do issue. The Respondents should make available to the Petitioner as early as possible preferably within a period of six months all such benefits as would be admissible in law to the Petitioner, if not already paid, or such portion as are payable, after adjusting the payments already made, together with the interest at the rate of 18% per annum simple payable thereon calculated from the respective dates on which the respective amounts became due and payable. Accordingly a writ of mandamus do issue.

13. In the result, this writ petition is allowed with costs, assessed at Rs. 1.000.

