
(2012) 01 AHC CK 0742

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5263 of 2012

Vijay Kumar Grover

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Uttar Pradesh State Road Transport Corporation Act, 1950 — Section 45
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 12., 26, 37, 4

Citation : (2012) 4 ADJ 418

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : M.K. Upadhyay, for the Appellant; Jitendra Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Sudhir Agarwal, J.—By means of impugned order, petitioner, who is admittedly a Group "C" employee, has been retired on attaining the age of 58 years in accordance with Regulation 37 of U.P. State Road Transport Corporation Employees (other than Officers) Service Regulations, 1981 (hereinafter referred to as "1981 Regulations"). Learned counsel for the petitioner submitted that under Government Order dated 20.12.2011 the State Government has taken a policy decision in extending the age of retirement from 58 to 60 years and, therefore, petitioner is entitled to be retired at the age of 60 years and cannot be made to retire at 58 years.

2. The submission is thoroughly misconceived. It is admitted that statutory provision has not been amended so far. Government order, being an executive order cannot override a statutory provision. It is well settled that whenever Rules or Regulations provide something, it cannot be overridden by an executive order. An executive order can be issued and enforced only where the statutory provision is silent to fill in the gap but not to be supplemented. In *Indra Sawhney and others v. Union of India and others*, 1992 (Suppl) 3 SCC 217, the Apex Court

held that though the executive orders can be issued to fill up the gaps in the rules if the rules are silent on the subject but the executive orders cannot be issued which are inconsistent with the statutory rules already framed. In *Laxman Dundappa Dhamanekar and Another Vs. Management of Vishwa Bharata Seva Samiti and Another*, , also the same view was taken. In *Laxman Dundappa Dhamanekar and Another Vs. Management of Vishwa Bharata Seva Samiti and Another*, , the Court said that statutory rules cannot be overridden by executive orders or executive practice and merely because the Government has taken a decision to amend the rules does not mean that the rule stood obligated. So long as the rules are not amended in accordance with the procedure prescribed under law the same would continue to apply and would have to be observed in words and spirit. In *Chandraprakash Madhavrao Dadwa and Others Vs. Union of India and Others*, , also the Apex Court expressed the same view holding that the executive orders cannot be conflicted with the statutory rules of 1977.

3. Moreover, a policy decision even if taken by Government would not entitle an employee to enforce such policy decision ignoring the existing statutory provision inasmuch as the rights of employees are governed by existing statutory provision and not what is likely, to be amended in future unless the amendment is made with retrospective effect which is not the case here.

4. The Regulations have been framed by exercising powers u/s 45 of U.P. State Road Transport Corporation Act, 1950. It reads as under:

37. Retirement on attaining the age of superannuation.-An employee of Group "C" shall retire on attaining the age of 58 years and that of Group "D" shall retire on attaining the age of 60 years:

Provided that if the date of retirement falls on or after the second day of the month, the date of retirement shall be the last day of the month.

5. Admittedly it has not been amended so far. The mere executive decision conveyed by State Government that in principle it is agreeable for extension of age of retirement of employees of public corporations from 58 to 60 years by itself would not result in a deemed or automatic amendment in the statutory regulations unless it is done in accordance with procedure prescribed therefor. The regulations can be amended in the manner the same were framed and there is no question of an automatic amendment of regulations. Atleast to this extent even learned counsel for the petitioner has not disputed the exposition of law. That being so when a particular procedure is prescribed for amendment of regulations and said procedure has not been followed so far, the existing regulations have to be implemented.

6. The first principle applicable herein would be when a statute required a thing to be done in a particular manner, then it should be done in that manner alone and not otherwise. The principle was recognized in AIR 1936 253 (Privy Council) and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgments, which we do not propose to refer all but would

like to refer a few recent one.

7. In *Dhananjaya Reddy v. State of Karnataka*, 2001 (4) SCC 9, in para 23 of the judgment the Court held :

It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all.

8. In *Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others*, , it was held :

It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.

9. The judgments in *Captain Sube Singh and Others Vs. Lt. Governor of Delhi and Others*, .

10. In *Competent Authority Vs. Barangore Jute Factory and Others*, , it was held :

It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning.

11. In *State of Jharkhand and Others Vs. Ambay Cements and Another*, , in para 26 of the judgment, the Court held:

It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way.

12. In effect a similar question was considered by Division Bench of this Court [in which I was also a member with Hon"ble S.R. Alam, J., (as His Lordship then was)] in *Daya Shankar Singh v. State of U.P. and others*, 2008(2) ESC 1220 and this Court has observed:

A modification, amendment etc., therefore, is permissible by exercising the power in the like manner and subject to like sanction and conditions in which the main provision was made initially. Since, Staff Regulations were framed admittedly with the previous sanction of the State Government and by publication in the official Gazette, same can be amended only following the same procedure and not otherwise. Therefore, the proposal/resolution passed by the Board of Directors, UPSWC by no stretch of imagination can be said to have the effect of either amending Regulation 12 of Staff Regulations or to bind UPSWC and its employees to be governed by such resolution/proposal which are inconsistent with the existing provisions contained in Staff Regulations.

13. Moreover, the Government order which is sought to be relied by petitioner also nowhere talks of any straightway grant of benefit of extension of age of retirement to employees of public corporations. Para 2 of Government Order dated 20.12.2011 says that respective corporations shall examine their matter to

find out whether they are financially capable of bearing the burden likely to be caused by extension of age of retirement from 58 to 60 years. If they find that such a burden can be borne by them, the matter shall be placed before the Board of Directors and in case they pass a resolution to this effect for extension of age of retirement from 58 to 60 years, such proposal shall be forwarded to the Administrative department of the concerned corporation for its examination/scrutiny and approval. It is only after obtaining approval of respective department of the concerned corporation, order for extending age of retirement from 58 to 60 years can be issued and not otherwise. It also says that its procedure shall be followed by every corporation separately and extension of age shall be made applicable only after approval of Government for which no financial burden shall be borne by State Government. Therefore, the Government order dated 20.12.2011 by itself does not talk of any suo motu extension of age of retirement from 58 to 60 years but provides a procedure to be followed by respective individual corporation and after following said procedure when approval of concerned department is obtained, only then requisite order can be issued.

14. As already said this very aspect was also considered by this Court in *Daya Shankar Singh* (supra) and in the penultimate paragraphs of the judgment, the Court said:

Now we come to the writ petition pertaining to UPSAICL. There also, the Regulations though not statutory but being part of the conditions of service of the employees, it is not disputed by the petitioners that the same are binding upon the employees of UPSAICL. That being so, unless the same are also amended in accordance with the procedure prescribed therein, it cannot be said that there is any different condition of service providing a higher age of superannuation contrary to the existing Regulations entitling the petitioners to continue in service till 60 years of age. Regulation 26 specifically provides that the age of superannuation cannot be extended without prior approval of the State Government. Therefore, in the absence of any such approval under Regulation 26, the age of superannuation continued to be 58 years, the petitioners are liable to retire on attaining the age of 58 years. Moreover, even under Regulation 4, before amending the Regulation, a procedure has been prescribed which has to be followed by UPSAICL and it is nobody's case that the said procedure has been followed having the effect of amending Regulation 26 in any manner. In view thereof, the petitioners, who are employees of UPSAICL are also not entitled to continue beyond 58 years merely on the basis of a resolution passed by the Board of Directors for increasing the age of retirement from 58 to 60 years.

However, it is made clear that in case, any employee has continued beyond 58 years under interim order passed by this Court and has been paid salary, it would not be equitable to recover the same from such employee and, therefore, respondent shall not make any recovery from any of the petitioners, but it is also

made clear simultaneously that for all other purposes, the petitioners shall be deemed to have been retired on attaining the age of 58 years and their continuance, if any, beyond 58 years pursuant to the interim order of this Court would not confer any benefit upon them.

15. Since the impugned order of retirement has been passed strictly in accordance with statutory Regulations existing and operating on the date, the same cannot be faulted, legally or otherwise, and it warrants no interference. The writ petition lacks merit. Dismissed.