

(2009) 04 AHC CK 0317

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17574 of 2007

Yamuna Narayan Mishra

APPELLANT

Vs

State of U.P.And others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 21

Citation : (2009) 04 AHC CK 0317

Hon'ble Judges : Dilip Gupta, J

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The petitioner has sought the quashing of the order dated 6th March, 2007 passed by the Director of Education (Madhyamik) U.P. Lucknow. He has also sought a direction that he should be permitted to continue in service till he attains the age of 62 years which is the age of superannuation prescribed under Regulation 21 contained in Chapter III of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act").

2. The petitioner was appointed as a Lecturer (Sanskrit) in the Janata Intermediate College, Mau Aima, Allahabad (hereinafter referred to as the "College") on 22nd July, 1971. He took charge as the Officiating Principal of the College on 12th September, 1998. The dispute in the present petition is about the age of superannuation. According to the petitioner, his age of superannuation is 62 years whereas according to the respondents his age of superannuation is 60 years.

3. When this dispute earlier came up before this Court, at the instance of the petitioner, the petition was disposed of with a direction to the Director of Education to decide the dispute in accordance with law after calling for the records from the Institution, as well as the Office of the District Inspector of Schools and after affording opportunity of hearing to the Committee of Management.

4. Pursuant to the direction issued by this Court, the Director of Education decided the dispute against the petitioner by the order dated 6th March, 2007 by holding that his age of superannuation would be 60 years. In coming to the said conclusion, the Director of Education observed that the petitioner had submitted his option form on 30th January, 1992 in accordance with the Government Order dated 4th November, 1991 for opting that his age of superannuation will be 60 years. He has further observed that subsequently the petitioner had also sent a communication dated 1st July, 2003 to the District Inspector of Schools, Allahabad for opting that his age of superannuation will be 58 years and the Associate District Inspector of Schools by the communication dated 6th August, 2003 had accepted this request of the petitioner. The Director of Education has, therefore, observed that even the last option given by the petitioner was to treat his age of superannuation as 58 years (now enhanced to 60 years) and, therefore, the representation was liable to be rejected.

5. I have heard Sri V.K. Singh, learned counsel for the petitioner and Sri P.N. Saxena, learned Senior Counsel assisted by Sri H.N. Pandey for the Committee of Management. The learned Standing Counsel has appeared on behalf of respondent nos. 1 to 4.

6. Sri V.K. Singh, learned counsel for the petitioner submitted that in terms of the Full Bench decision of this Court in Smt. Prabha Kakkar Vs. Joint Director of Education, Kanpur & Ors., 2000 (2) ESC 1118, the acceptance of the option by the Regional Deputy Director of Education and its communication to the teacher was absolutely necessary and since in the present case the Regional Deputy Director of Education did not accept the option and nor was the acceptance communicated to the petitioner, it cannot be said that he had given option that his age of superannuation will be 60 years. He, therefore, submitted that under Regulation 21 contained in Chapter III of the Act, the petitioner was entitled to continue upto the age of 62 years and the view to the contrary taken by the Director of Education is incorrect.

7. Sri P.N. Saxena, learned Senior Counsel appearing for the Committee of Management as well as the learned Standing Counsel appearing for respondents, however, submitted that the option exercised by the petitioner on 30th January, 1992 in terms of the Government Order dated 4th November, 1991 had been accepted by the Regional Deputy Director of Education and its acceptance was also communicated to the Committee of Management of the College by the communication dated 25th March, 1992 and, therefore, the option exercised by the petitioner had become final. They further submitted that in any view of the matter, the petitioner had again opted that his age of superannuation should be 58 years as is clear from the communication dated 1st July, 2003 sent by him to the District Inspector of Schools who, thereafter, by his communication dated 23rd August, 2003 also conveyed the acceptance to the Management as well as the petitioner. They further submitted that there is no infirmity in the order passed by the Director of Education.

8. I have carefully considered the submissions advanced by the learned counsel for the parties.

9. In order to appreciate the rival contentions of the parties, it would be necessary to refer to the various Government Orders that have been issued from time to time regarding the option to be submitted by the teachers of Government aided private Institutions regarding the age of superannuation.

10. A Government Order dated 17th December, 1965 was issued providing for Contributory Provident Fund, Special Life Insurance, Pension including Family Pension to all teachers serving in the State Aided Primary Schools, Junior High Schools, Higher Secondary Schools, Degree Colleges and Training Colleges. The pensionary benefits admissible to the teachers serving in the Government aided private Institutions were not at par with the aforesaid benefits and so to remove the disparity and in order to provide the same pensionary benefits to the teachers of the Government aided private Institutions, the State Government issued the Government Order dated 31st March, 1978. However, as the age of superannuation in case of teachers serving in Government Colleges was 58 years, the teachers serving in Government aided private Institutions were asked to opt for age of superannuation at 58 years for getting the aforesaid pensionary benefits at par with the teachers serving in the Government Colleges. Under this Government Order dated 31st March, 1978, if a teacher opted to superannuate at the age of 58 years he was to get deathcumretirement gratuity alongwith other pensionary benefits. In pursuance to this Government Order, options were exercised by some teachers but large number of teachers could not take the benefit and, therefore, another Government Order dated 6th October, 1990 was issued to give one more opportunity to the teachers to exercise their options. This Government Order was further clarified by the Government Order dated 4th November, 1991 requiring the teachers to exercise their options within a period of 90 days, if they wanted that their age of superannuation to be 60 years.

11. Controversy arose as to whether the option once exercised by a teacher could be changed, modified or withdrawn subsequently and in view of conflicting decisions, a Larger Bench was constituted for giving its opinion to the following questions:

"1. Whether in the Scheme provided in the Government Orders dated 10.8.1978, 6.10.1990 and 4.11.1991 and the Rules of 1981 acceptance of the option exercised by the teacher and its communication was necessary to make it final and irrevocable?

2. Whether the option exercised by teacher became final and irrevocable after it was counter signed by the District Inspector of Schools?

3. Whether by efflux of long time the option exercised by teacher in pursuance of the Government Orders could be legally deemed to have been accepted and it could not be changed or revoked?"

12. The Full Bench, after referring to the aforesaid Government Orders and the Circular dated 30th October, 1990 issued by the Director of Education pursuant to the Government Order dated 6th October, 1990, observed that in view of the specific requirement of acceptance of the option by the Regional Deputy Director of Education and communication of the same to the concerned employee, it was difficult to accept that formal acceptance of the option exercised by the teacher was not necessary. The Full Bench, accordingly observed that the act of acceptance of option by the Regional Deputy Director of Education and its communication to the employee was necessary in order to make it final. It also observed that the counter signature of the District Inspector of Schools on such option could neither be taken as acceptance nor could it attach any kind of finality to it. The observations to this effect are as follow:

".....The circular order dated 30th October, 1990 issued by the Director of Education in pursuance of the Government Order dated 6th October, 1990, clearly provided that the acceptance/nonacceptance of the option exercised shall be communicated by the Regional Deputy Director of Education to the concerned employee within the specified time hence countersigning of the option by the District Inspector of Schools could not be taken as acceptance of the same. The purpose behind the requirement of countersigning by District Inspector of Schools was perhaps to ascertain that the option was exercised by the correct persons and he satisfied other conditions which were necessary for exercise of the option. The obligation of the District Inspector of Schools was thus to authenticate the signature of executing of the option and information supplied by him in the prescribed proforma. Thus our conclusion is that the act of acceptance of the option by the Deputy Director of Education and its communication to the employee was necessary in order to make it final. The counter signature of District Inspector of Schools on such option could neither be taken as acceptance nor could it attach any kind of finality to it. The questions No.1 and 2 are answered accordingly."

13. It is in the light of the aforesaid decision of the Full Bench that the present controversy has to be examined.

14. There is a dispute between the parties as to whether the petitioner had actually exercised his option in the year 1991. In so far as the option said to have been exercised by the petitioner on 30th January, 1992 pursuant to the Government Order dated 4th November, 1991 it is the stand of the petitioner that he did not submit such option but the Committee of Management maintains that the petitioner had submitted his option that his age of superannuation will be 60 years and this option was thereafter forwarded by the Committee of Management alongwith the options exercised by 31 others teachers to the District Inspector of Schools on 2nd February, 1992 and thereafter by the communication dated 25th March, 1992, the Regional Deputy Director of Education intimated the Manager/Principal of the College that the option forms forwarded by the College have been accepted.

15. The records also indicate that subsequently the petitioner also sent a communication dated 1st July, 2003 to the District Inspector of Schools with a request that the earlier option exercised by him should be changed and that his age of superannuation should be treated as 58 years. The District Inspector of Schools by the communication dated 23rd August, 2003 addressed not only to the Manager/Principal of the College but also to the petitioner conveyed his acceptance.

16. Sri V.K. Singh, learned counsel appearing for the petitioner contended that though he had not submitted any option form on 30th January, 1992 but even if it is presumed that he had submitted the said option form, then too the acceptance of the option form by the Regional Deputy Director of Education was not intimated to him and, therefore, in terms of the Full Bench decision of this Court in Smt. Prabha Kakkar (supra), the option exercised by him could not be acted upon. He further submitted that even the second letter submitted by the petitioner on 1st July, 2003 for treating his age of superannuation to be 58 years was accepted by the District Inspector of Schools only and not by the Regional Deputy Director of Education. He, therefore, submitted that in terms of the aforesaid Full Bench decision of this Court, it cannot be acted upon.

17. Sri P.N. Saxena, learned counsel appearing for the Committee of Management as well as the learned Standing Counsel, however, submitted that it has been found as a fact in the impugned order that the petitioner had submitted the option form on 30th January, 1992 that his age of superannuation will be 58 years. They further submitted that the said option form had been sent by the College for acceptance and subsequently the Regional Deputy Director of Education by the communication dated 25th March, 1992 intimated the Manager/Principal of the College that the option form had been accepted. It is, therefore, their contention that the option exercised by the petitioner that his age of superannuation will be 60 years had attained finality.

18. It needs to be mentioned that the Manager/Principal of the College have admitted that the age of superannuation of teachers under Regulation 21 contained in Chapter III of the Act had been increased from 60 to 62 years and, therefore, the option that the age of superannuation will be 58 years should be taken to be 60 years.

19. It is, therefore, clear that the main thrust of the submission of the learned counsel for the respondents is based on the option exercised by the petitioner on 30th January, 1992 that his age of superannuation should be taken as 58 years. It is their contention that the petitioner had submitted this option form pursuant to the Government Order dated 4th November, 1991 and the option was accepted by the Regional Deputy Director of Education who thereafter sent the communication dated 25th March, 1992 to the Manager/Principal of the College conveying the acceptance. There is, however, nothing on the record to indicate that this acceptance was ever conveyed to the petitioner. It is for this reason that Sri V.K. Singh, learned counsel appearing for the petitioner submitted that in

terms of the Full Bench decision of this Court in Smt. Prabha Kakkar (supra) wherein the acceptance of option by Regional Deputy Director of Education and its communication to the teacher concerned was found to be necessary, the option exercised by the petitioner is of no consequence and, therefore, the petitioner will attain the age of superannuation at 62 years in terms of Regulation 21 contained in Chapter III of the Act.

20. In view of the aforesaid Full Bench decision of this Court in Smt. Prabha Kakkar (supra), this contention of the learned counsel for the petitioner deserves to be accepted.

21. The petitioner may have opted that his age of superannuation should be 58 years by sending a communication dated 1st July, 2003 to the District Inspector of Schools but this option was never accepted by the Regional Deputy Director of Education and, therefore, acceptance by the District Inspector of Schools and its communication is of no consequence.

22. The inevitable conclusion, therefore, is that the petitioner will attain the age of superannuation in accordance with Regulation 21 contained in Chapter III of the Act at 62 years. The view to the contrary taken by the Director of Education in the impugned order dated 6th March, 2007 cannot be sustained. Accordingly, the order dated 6th March, 2007 passed by the Director of Education is set aside. The petitioner has attained the age of 62 years by now. It is, therefore, directed that the arrears of salary shall be paid to the petitioner treating his age of superannuation to be 62 years within a period of three months from the date a certified copy of this order is produced by the petitioner before the District Inspector of Schools.

23. The writ petition, therefore, succeeds and is allowed to the extent indicated above.