

Neutral Citation No. - 2024:AHC-LKO:35223

**AFR**

**Reserved On:- 29.04.2024**

**Delivered On:- 29.05.2024**

**Court No. - 20**

**Case :-** WRIT - A No. - 1736 of 2024

**Petitioner :-** Krishna Kumar Shukla

**Respondent :-** State of U.P. Thru. Secy. Secondary Education Lko. And 4 Others

**Counsel for Petitioner :-** Amrendra Nath Tripathi

**Counsel for Respondent :-** C.S.C., Raj Kr Singh Suryavanshi, Surendra Pratap Singh

**Hon'ble Shree Prakash Singh, J.**

1. Heard Sri Amrendra Nath Tripathi, Advocate assisted by Sri Sant Singh Rayakwar, learned counsel for the petitioner, Sri Shailendra Kumar Singh, learned Chief Standing Counsel, Sri Vivek Shukla, Sri Pankaj Patel and Sri Tushar Verma, learned Additional Chief Standing Counsels for the State, Sri S.P. Singh, learned counsel for the opposite party no. 5 and Sri R.K. Singh Suryavanshi, learned counsel for the opposite party no. 4

2. Under challenge is the order dated 10th January 2024, whereby, the petitioner was forced to unlawfully retired on 30th April 2024, and further a writ of mandamus is sought, commanding and directing the respondent to allow the petitioner to continue on his post of Ad-hoc Principal till end of Academic Session, that is 31.03.2025, in terms of Regulation 21 of the Regulations framed under Chapter IIIrd of the UP Intermediate Education Act, 1921, with full salary and other benefits.

3. Factual matrix of the case is that the petitioner was appointed as a Lecturer (Agriculture), on 3rd March 1989, in Bakshi Ka Talab Inter College District Lucknow, thereafter, the service of the petitioner was regularised with effect from 7th August 1993, by the order of Deputy Director (Secondary Education), VIth Region, Lucknow, vide order dated 17th October 1994, and since then he was working to his best of efficiency and his work and conduct was always above board.

4. Later on, the petitioner was recommended for State Teachers Award 2019-2020, and he was awarded with the State Teachers Award on 3rd September 2020 and since, State Government had a policy for the State Teachers Awardees for extension of services till 65 years' of age, which came into effect vide Government Orders dated 30th December 2014 and 30th June 2015, and in view thereof, the petitioner was also accorded the extension of services up to 65 years' of age, vide order dated 29th March 2022, and thus, the petitioner was to be retired on attaining the age of 65 years, but the petitioner felt aggrieved by the issuance of the retirement notice dated 10th January 2024, wherein, the date of superannuation, is shown as 30th April 2024, on the premises that he is entitled for the benefit of Academic Session, that is up till 31st March 2025, in terms of the provisions envisaged under Regulation 21 of the Regulations made under the UP Intermediate Education Act, 1921 (hereinafter referred as Act, 1921).

5. Contention of the counsel for the petitioner is that the impugned order/retirement notice dated 10th January 2024 is arbitrary, illegal and violative of Article 14 of the Constitution of India as the same is passed in the most mechanical and arbitrary manner. He submits that the Regulation 21 of the Regulations framed under Chapter IIIrd of the Act, 1921, very specifically provides for automatic extension of service period, by way of session benefits to those who are retiring between second day of April and 30th March of Academic Session. Therefore, the retirement notice dated 10th January 2024, wherein, the date of

superannuation is mentioned in between the aforesaid period but no session benefit is given, is perverse on its face and suffers arbitrariness.

6. Further contention of the counsel for the petitioner is that the petitioner is regularly teaching and taking classes, satisfactorily and he is fit, mentally and physically. He submits that if the petitioner gets retired in the mid academic session, the education of students will adversely suffer and affect and as the policy makers were aware about the instant hardship, therefore, a provision under Chapter III, Regulation 21 under the regulations, was framed. Next contention is that the provisions of Chapter III, Regulation 21, have it's perspective and constructive interpretation which is very clear that the interest of the students is a paramount goal of a welfare state and therefore, once a State awardee is completing his or her age, in between 2nd April to 30th March, should be given the benefit of academic session, otherwise, the interest of the students would hamper.

7. Adding his arguments he has drawn attention towards the order dated 29th March 2022 and submitted that the intent of the order is very clear that the same grants the benefit of the academic session and non-granting of the benefit of academic session by the impugned order dated 10th January 2024 is in contravention of the order dated 29th March 2022. Concluding his argument, he submits that the order dated 10th January 2024 is not only violative of the Government Order dated 29th March 2022, but that also goes against the provisions of Chapter IIIrd of the Regulations, made under the Act, 1921. Thus, the order impugned is unsustainable.

8. Contrary, the learned counsel appearing for the opposite parties have opposed the aforesaid contentions vehemently and submitted that the benefits of extension of age, till 64 years to the teachers working in the non-government aided institution has been provided with certain restrictions and conditions, enumerated in the Government Orders dated 6th May 1982, 4th December 1986, 23rd October 1991, 27th June 1994,

29th June 2004 and 30th September 2013. So far as the extension of tenure, till the academic session ending on 31st March 2025 is concerned, is opposed on the ground that extension in terms of Regulation 21 does not cover the further extension of academic session to the State Awardees. It is added that the Regulation 21 could be segregated in two distinct parts; the first part is that the age of superannuation for the post of Principal, Headmaster/Teachers to which, it attach the provisions of session benefit, allowing him to continue till the end of academic session, unless a written request is made to the contrary, two months prior to attaining the age of superannuation. Secondly, it contemplates extension in service in addition to the first part upon conditions that are prescribed by the State Government, that session benefits allowing the teachers to continue till the end of academic session, allowing the end of academic session under Regulation 21 is restricted only to the first part and not to the second part and this would not apply automatically unlike the first part and therefore, it is well within the domain of State Government to provide extension only up till the end of calander month, in which the petitioner will attain the age of superannuation and once an employee has attained the age of superannuation, he has no right to any continuance in service or any extension of his services, unless provided under any law.

9. Further contention is that the order dated 29th March 2022 is very clear in its terms as it speaks specifically that the same shall be counted after completing the age of superannuation up till 31st March 2022 and specific, date that is 1st April 2022 is provided, meaning thereby, that those teachers who have completed their age of superannuation after completing the benefit of academic session, their age of 65 years will be counted from 1st April 2022, and therefore, the order dated 10th January 2024 is in consonance with the Government Order dated 29th March 2022, which can no way be controverted by the petitioner.

10. In support of their contentions, they have placed reliance on a judgement and order in case of **Dr. Murli Shyam Pathak Vs. State of**

**U.P and Ors decided on 24.05.2019**, reported in **2019 7 ADJ 172**, wherein, it has been held that ‘in the facts of the present case also the petitioner was granted sessions benefit when he attained the age of superannuation, specified in Regulation 2021, in as much as, he would have retired on 1st April 2015, itself. His continuation beyond 1st April 2015 was on account of session benefit which continued up till 24th June 2015. Extension in age of up to 65 years, was allowed only till 24th June 2015 and a second session benefit would therefore, otherwise would not be available to him’.

11. Concluding their arguments, they submit that there is no force in the contention of the counsel for the petitioner, and thus, no interference is warranted.

12. Having heard the learned counsel for the parties, and after perusal of the material placed on record, it transpires that the petitioner has sought relief that he is entitled for the benefit of academic session as he is completing the age of 65 years in between second day of April and 30th March

13. The petitioner has assailed the notice dated 10th January 2024, issued by the Manager, Committee of Management, Bakshi ka Talab, whereby, he has been shown to be retired on 30th April 2024, while completing the age of 65 years. From perusal of the Government Order dated 30th December 2014, it is evident that such teachers who are the awardee of National/State Teachers Award would get the benefit of the retirement till 65 years of age and it was clarified that this benefit would also be accorded to those teachers, who have been granted two years service extension as per the Government Order dated 6th May 1982, vide order dated 29th March 2022. It is provided that the petitioner including the other teachers of the different colleges mentioned in the order would get extension of service up till 65 years of age.

14. The order dated 29th March 2022 is extracted as under:-

*“उत्तर प्रदेश शासन*

शिक्षा अनुभाग-8

संख्या-463/15-8-22-2006(1)/2021

लखनऊ: दिनांक 29 मार्च, 2022

कार्यालय - ज्ञाप

प्रदेश के राज्य पुरस्कार प्राप्त अध्यापकों को शासनादेश संख्या-1772/15-(14)-30(67)/71, दिनांक 06.5.1982 यथासंशोधित शासनादेश दिनांक 04.12.1986, 23.10.1991, 27.06.1994, 30.09.2013, 30.12.2014 एवं दिनांक 30.06.2015 में निर्धारित व्यवस्था / प्राविधानों एवं शासनादेश दिनांक 30.12.2019 द्वारा निर्धारित प्रारूप पर शिक्षा निदेशक (मा०) उ०प्र० द्वारा उपलब्ध कराये गये प्रस्तावों का परीक्षण किया गया तथा शिक्षा निदेशक (मा०) उ०प्र० की सस्तुति एवं अभिलेखीय साक्ष्यों के आधार पर सेवा विस्तार समिति द्वारा की गयी संस्तुति के दृष्टिगत सम्यक विद्यारोपरान्त श्री राज्यपाल शासनादेश दिनांक 30.12.2014 के राज्य अध्यापक पुरस्कार प्राप्त अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों में कार्यरत निम्नलिखित प्रधानाचार्यों/ शिक्षकों को दिनांक 31.03.2022 को सत्रांत लाभ सहित अधिवर्षता आयु पूर्ण करने के पश्चात दिनांक 01.04.2022 से 65 वर्ष की आयु तक के लिए सेवा विस्तार प्रदान किये जाने की सहर्ष स्वीकृति प्रदान करते हैं:-

| नाम/पदनाम                                         | विद्यालय का नाम                           |
|---------------------------------------------------|-------------------------------------------|
| डॉ कंचन प्रभा शुक्ला, प्रधानाचार्य                | जैन इण्टर कालेज, नई मण्डी, मुजफ्फरनगर।    |
| डॉ० भूदेष्वर पाण्डेय, प्रधानाचार्य                | जगत जीत इण्टर कालेज, इकौना, श्रावस्ती।    |
| श्री कृष्ण कुमार शुक्ला, प्रवक्ता                 | बक्शी का तालाब इण्टर कालेज, लखनऊ।         |
| श्री उमा शंकर यादव, प्रवक्ता / तदर्थ प्रधानाचार्य | गन्ना विकास इण्टर कालेज मुण्डेरवा, बस्ती। |

2- उपरोक्त प्रधानाचार्यों/शिक्षक, जिस विषय के शिक्षक हैं उन्हें संबंधित विषय में वादन करना अनिवार्य होगा तथा सेवाविस्तार की अवधि में अपने पद पर ही तैनात रहेंगे।

(जय शंकर दुबे)

विशेष सचिव।”

15. From bare reading of the above order, it is evident that the same is in consonance with the Government Order dated 30th December 2014, which does not provide the benefit of the academic session to those teachers who have been given the benefit of service extension till 65 years of age.

16. The government order dated 30th December 2014 is quoted hereinunder:-

शिक्षा (8) अनुभाग :

लखनऊ: दिनांक 30 दिसम्बर, 2014

विषय :- प्रदेश के राष्ट्रीय/ राज्य अध्यापक पुरस्कार प्राप्त शिक्षकों को सेन्ट्रल बोर्ड आफ सेकेण्ड्री एजुकेशन के सर्कुलर संख्या-22 दिनांक 18.02.2014 में दी गई व्यवस्था के आधार पर सेवा विस्तार की अवधि में वृद्धि।

महोदय,

उपर्युक्त विषयक आपके पत्र संख्या-सा0(1)शि0/3924/2014-15, दिनांक 25.8.2014 का कृपया सन्दर्भ ग्रहण करें।

2- प्रदेश के राष्ट्रीय/राज्य पुरस्कार प्राप्त अध्यापकों को उनकी अधिवर्षता आयु के पश्चात दो वर्ष का सेवा विस्तार किये जाने की व्यवस्था शासनादेश संख्या -1772/15-(14)-30 (67)/17, दिनांक 6-5-1982 द्वारा प्रदान की गई है जिससे राजकीय विद्यालयों में कार्यरत शिक्षकों/प्रधानाचार्यों की सेवानिवृत्ति आयु 62 वर्ष एवं अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों में कार्यरत शिक्षकों/प्रधानाचार्यों की सेवानिवृत्ति आयु 64 वर्ष होती है। इन दोनों श्रेणी के शिक्षकों को शासनादेश दिनांक 06 मई, 1982, 04 दिसम्बर 1986, 23 अक्टूबर, 1991, 27 जून, 1994, 29 जून, 2004 तथा 30 सितम्बर, 2013 में वर्णित प्रतिबन्ध एवं शर्तों के साथ उक्त लाभ प्रदान किया गया है।

3- अतः इस संबंध में मुझे यह कहने का निर्देश हुआ है कि सम्यक विचारोपरान्त सेन्ट्रल बोर्ड आफ सेकेंड्री एजुकेशन के सर्कुलर संख्या-22 दिनांक 18-2-2014 में की गई व्यवस्था के क्रम में प्रदेश के राजकीय माध्यमिक विद्यालयों/अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों के राष्ट्रीय/राज्य अध्यापक पुरस्कार प्राप्त शिक्षकों को उनकी उत्कृष्ट सेवा, उत्तम स्वास्थ्य एवं उत्तम कार्य आचरण के आधार पर संबंधित शिक्षकों की अधिवर्षता आयु पूर्ण होने के पश्चात 65 वर्ष की आयु होने तक के लिए सेवा विस्तार दिये जाने की स्वीकृति श्री राज्यपाल सहर्ष प्रदान करते हैं। उक्त व्यवस्था का लाभ ऐसे शिक्षकों को भी दिया जायेगा जिन्हें शासनादेश दिनांक 6-5-1982 के प्राविधानों के अनुसार दो वर्ष का सेवा विस्तार प्रदान किया जा चुका है एवं वे सम्प्रति कार्यरत हैं। अधिवर्षता सेवा का लाभ उपरोक्त प्रस्तर-2 पर पात्रता विषयक शासनादेशों के प्रतिबन्धों के अन्तर्गत होगा।

4- यह आदेश वित्त विभाग के अशासकीय संख्या -ई-11/1499/दस-2014, दिनांक 26 दिसम्बर 2014 में प्राप्त उनकी सहमति से निर्गत किए जा रहे हैं।

भवदीय,

(जितेन्द्र कुमार)

प्रमुख सचिव

17. From perusal of the order 29th March 2022, there is no such provision of benefit of academic session to the petitioner and law is very clear on this point started from the judgement and order in case of **Nazir Ahmad Vs King-Emperor, 1936 SEC OnLine PC 41**, rendered by the Privy Council, wherein, it has been held that 'where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all' and the other methods of performance are necessarily forbidden.'

18. This court has also considered the judgement and order rendered in the case of **Chandra Kishore Jha Vs. Mahavir Prasad and Others**, reported in (1999) 8 SCC 266, wherein, the following principle is laid down:-

"17.....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner; then it has to be done in that manner and in no other manner. (See with advantage: *Nazir Ahmad v. King Emperor* [(1935-36) 63 LA 372 : AIR 1936 PC 253 (II)] , *Rao Shiv Bahadur Singh v. State of V.P.* [AIR 1954 SC 322 : 1954 SCR 1098] , *State of U.P. v. Singhara Singh* [AIR 1964 SC 358 : (1964) 1 SCWR 57] .) An election petition under the rules could only have been presented in

*the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done....."*

19. Further, in case of **Cherukuri Mani Vs. Chief Secretary, Government of Andhra Pradesh and Ors, (2015) 13 SCC 722**, it has been held by the Apex Court that 'where the law prescribed a thing to be done in a particular manner, following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure'.

20. In the order dated 29th March 2022, the further benefit of the 'academic session' is not granted for the State Awardees Teachers, who are given the extension of service, up till age of 65 years, and therefore, in absence of any provision for grant of benefit of academic session, the same cannot be allowed to the petitioner.

21. In view of the abovesaid submissions and discussions, the writ petition lacks merit, hence is **dismissed**.

22. No order as to cost.

23. Consigned to record.

**Order Date :- 29.05.2024**

Anurag, PS Gr-I