

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.25349 OF 2014

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, 1949, is filed by the petitioner to issue a writ of *Mandamus* by declaring that the 3rd respondent-college is governed by the A.P. Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014 and, consequently, direct the respondents 1 and 2 to continue him in service with all consequential benefits till he attains the age of 60 years.

The case of the petitioner, in brief, is that, he joined as Lecturer in Commerce on 03.02.1983 in the 3rd respondent-college and his services were absorbed into grant-in-aid in the year 1990; thereafter, he was promoted as Principal on 13.07.1999 and since then discharging his duties to the utmost satisfaction of the 3rd respondent-college. The 3rd respondent-college is governed by the A.P. Education Act, 1982 (for short, 'the Act').

Section 78-A of the Act deals with the age of superannuation of the staff in aided private educational institutions; Section 78-A(1) prescribes the superannuation age of the non-teaching staff employed in private educational institutions, excluding the last grade service, as 58 years and it further provides that a teacher or a member of the non-teaching staff, who was already attained the age of 58 years, and continuing in service on the date of commencement of the Andhra Pradesh Education (Amendment) Act, 1993 shall retire on the afternoon of the last day of the month of the commencement of the Act. As per Section 78-A(2) of the Act, every member belonging to the last grade service shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years.

Therefore the petitioner, being principal of the 3rd respondent-college, has to retire from service on attaining the age of superannuation *i.e.*, 58 years on 31.08.2014, in terms of section 78-A of the Act. While the matter stood thus, the Government of Andhra Pradesh amended the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 (for short, 'the Act of 1984') *vide* Act 4 of 2014. According to Section 3 of the Act of 1984, the word 'sixty years' is substituted in the place of 'fifty eight years'. Therefore, the amendment is deemed to have come into force with effect from 02.06.2014 and in pursuance of Section 3 of Act 23 of 1984, the petitioner is entitled to continue in service till he attains the age of 60 years but non-implementation of Section 3 of Act 23 of 1984 by the respondents 1 and 2 in 3rd respondent-college, the petitioner is due to retire from service on the last day of the month in which he attains the age of 58 years. Subsequently, the governing body of the 3rd respondent-college unanimously resolved to extend the superannuation age of the petitioner up to 31.08.2016, instead of 31.08.2014, *vide* their resolution dated 18.07.2014 and addressed a letter dated 28.07.2014 to the 2nd respondent to accord permission for their resolution to continue the petitioner in service till he attains the age of 60 years *i.e.*, up to 31.08.2016 in terms of Section 78-A of the Act read with Section 3 of the Act 23 of 1984 but it was not considered till date. Thus, non-implementation of Section 3 of Act 23 of 1984 to the 3rd respondent-college, causing retirement of the petitioner from service on the last day of the month in which he attained the age of 58 years is illegal and arbitrary and, hence, prayed to allow the writ petition.

Respondents did not file any counter.

By virtue of the interim order dated 01.09.2014, passed by this Court in W.P.M.P. No.31701 of 2014, the petitioner is being permitted

to continue in service as Principal of the 3rd respondent-college, in terms of the resolution dated 18.07.2014, until further orders, as such his continuation is litigious employment.

Learned counsel for the petitioner mainly contended that the petitioner is going to retire from service on 31.08.2016 and, till today, the representation of the 3rd respondent-college dated 28.07.2014 is pending with the Government; therefore, sought a direction to continue the petitioner in service till he attains the age of 60 years.

As seen from the material available on record, the 3rd respondent is an aided college, which is being managed by the executive committee. Undisputedly, the petitioner was Principal of the 3rd respondent-college by the date of issuance of proceedings by the Government and it is equally not in dispute that the service conditions of the petitioner are governed by Section 78-A of the Act, where the age of superannuation was 58 years but by virtue of Section 3 of the Act 23 of 1984, as amended by Act 4 of 2014, the superannuation age prescribed for the Government employees is applicable to the teaching staff working in the 3rd respondent-college and the 3rd respondent-college passed a resolution adopting Section 3 of the Act 23 of 1984 as amended by the Act 4 of 2014, dated 28.07.2014 and forwarded the same to the Government to pass appropriate orders enhancing the age of superannuation of the petitioner working in the 3rd respondent-college, which is still pending.

The Government did not file any counter explaining the reasons for non consideration of the representation dated 28.07.2014 and the resolution passed by the executive committee of the 3rd respondent-college, in adopting the amended Section 3 of the Act 23 of 1984 to extend the age of superannuation from 58 to 60 years to the teaching staff, which are still pending.

By virtue of the interim order dated 01.09.2014, the petitioner is enjoying all the benefits including salary and going to retire soon on 31.08.2016. Considering all these facts and circumstances of the case, I find that it is a fit case to direct the respondents 1 and 2 to take necessary action on the resolution passed by the 3rd respondent-college enhancing the superannuation age from 58 to 60 years in terms of Section 3 of Act 23 of 1984 as amended by Act 4 of 2014 and to dispose of the representation dated 28.07.2014, within a period of 15 days from the date of receipt of a copy of this order, and communicate the same to the petitioner and 3rd respondent-college for taking further action, if any.

Accordingly, with the above direction, the Writ Petition is disposed of.

In consequence, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 18-04-2016.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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