

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT APPEAL No. 190 OF 2016

J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

Visakhapatnam Port Trust and an educational society run by it are the two appellants before us, while the respondent-writ petitioner is a teacher working in the school run by the 2nd appellant educational society.

Visakhapatnam Port Trust is constituted under the Major Port Trusts Act, 1963. It functions under the administrative control and supervision of the Ministry of Shipping and Surface Transport, Government of India. As a model employer, it takes care of the welfare and well-being of its thousands of work-force. It not only makes available quality infrastructure in the form of constructing colonies and providing all other attendant civic amenities, such as playgrounds, *kalyanamandapams*, etcetera, but also established four schools at four different locations in Visakhapatnam City to cater to the educational needs and requirements of the wards of the employees. In one such school, the writ petitioner, the respondent herein, was working. Incidentally, the State Government was admitting some of the educational institutions in the private sector to grant-in-aid. By admitting an educational institution to grant-in-aid, the State Government sanctions not only a maintenance grant to the school management, but would also ensure that the salary and allowances are paid to the teachers and the post-retirement benefits are also paid by the State itself directly without any control in that regard being exercised by the management of the educational institution concerned. So far as the conditions of service of the employees are concerned, it is a fundamental principle that it is for the employer to frame appropriate conditions of service for its servants. The classification, control and discipline over the employees is the

prerogative of every employer. Employees have no direct say in the matter of settling those conditions of service. Incidentally, they may represent to the management for its consideration 'what should be an appropriate ideal condition of service'. It is thereafter, for the management to focus its attention and taking into account various other factors, which are relevant, including its own financial capacity to meet and live up to the conditions so required, may frame appropriate conditions of service. But however, under the Andhra Pradesh Education Act, 1982 (for short, 'the Act'), the State Government has been granted liberty and power to frame the conditions of service, including fixation of age of superannuation for the employees admitted to grant-in-aid. In the instant case, the State Legislature has amended the Andhra Pradesh Education Act, 1982, through Act No. 1 of 2015, which was deemed to have come into force with effect on and from 02.06.2014. Sub-section (1) of Section 78-A of the Act has been amended by way of substitution. The substituted provision reads as under:

“(1) Every teacher or member of the non-teaching staff employed in any aided private educational institution, shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Provided that every teacher or member of the non-teaching staff employed in any aided private educational institution who retired from service on attaining the age of fifty eight years on and from 2nd June 2014 to the date of publication of the Andhra Pradesh Education (Amendment) Act, 2014, shall be re-inducted into the service/post as such with effect from the date of publication of the said Act.

Provided further that the said interregnum period from the 2nd June 2014 to the date of the publication of the Andhra Pradesh Education (Amendment) Act, 2014 shall be treated in such manner as may be prescribed.

(2) In the Explanation thereunder for the words “fifty eight years or sixty years, as the case may be”, the words “sixty years” shall be substituted.”

By virtue of this substitution and by virtue of bringing it into force

with effect on and from 02.06.2014, the date with effect from which the composite State of Andhra Pradesh has been bifurcated and State of Telangana has been carved out and formed, every teacher or member of the non-teaching staff employed in any aided private educational institution shall retire from service on the After Noon of the last day of the month in which he attains the age of 60 years. If one has already retired by the time the Amending Act No. 1 of 2015 is made, the proviso now added requires that retired teacher or non-teaching staff member to be re-inducted into the service/post. Since the writ petitioner is sought to be retired on attaining the age of 58 years, which was the provision available prior to the amendment of Section 78-A of the Act, he instituted the Writ Petition. The relief prayed for by the writ petitioner was to direct the respondents therein, the appellants herein, to continue him in service until he attains the age of 60 years. It was resisted on two grounds:

- 1) the bye-laws framed by the 2nd appellant educational society did not provide for the age of superannuation as 60 years and hence, the writ petitioner cannot be continued in service up to 60 years; and
- 2) he is an un-aided employee and hence, the amended provision contained under Section 78-A of the Act does not get attracted to his case.

While it is true that the bye-laws framed by the 2nd appellant society have not specified 60 years as the age of superannuation for its employees, but nonetheless, bye-law 15, which sets out the power of the Executive Committee, clearly indicates in clause (d) thereof that fixing of scales and service conditions of the teaching and non-teaching staff of the society and the schools shall generally conform to the scales and other service conditions prevailing in similar aided schools in accordance with the Andhra Pradesh Education Rules.

Taking this into account and consideration and read with the amended provision contained under Section 78-A, the learned Single Judge allowed the Writ Petition by his order dated 08.09.2015. It is this order, which is under challenge in this Clause 15 Letters Patent Appeal.

Ms. Uma, learned Standing Counsel for Visakhapatnam Port Trust would urge that if the writ petitioner is admitted to grant-in-aid by the State Government, the appellants would never have hesitated to continue him in service up to the age of 60 years, as his salary and other allowances would be paid by the State Government directly. Whereas, he is an unaided teacher in the educational institution run by the 2nd appellant society and hence, his age of superannuation is liable to be regulated by the society. The society's decision to retire him on attaining the age of 58 years cannot be described as unwarranted or arbitrary decision and hence, it should not have been interdicted.

We regret our inability to concede to this contention. The contention of the learned Standing Counsel for the appellants that the status of the writ petitioner-respondent is an unaided teacher, in our opinion, makes no difference for the purpose of attracting the provision contained under the amended Section 78-A of the Act. What Section 78-A(1) now sets out is that 'every teacher or member of the non-teaching staff employed in any aided private educational institution shall retire from service on the After Noon of the last day of the month in which he attains the age of 60 years'. Crucial expressions to be noticed are these: "*employed in any aided private educational institution*". What is therefore, essential to be noticed is that a teacher or a member of a non-teaching staff shall be employed in any private educational institution. It is therefore, not necessary that he should be admitted to grant-in-aid.

In the instant case, there is no dispute on the factual count that the school in which the respondent-writ petitioner was working is

admitted to grant-in-aid by the State Government. Therefore, the said school answers the expression “private educational institution” and hence, sub-section (1) of Section 78-A, as amended, gets attracted.

This apart, if the management of any private aided educational institution has framed appropriate regulations in accordance with law, prescribing a different age of superannuation to its teachers or non-teaching members, duly classifying them as aided members of the staff and non-aided staff members, the occasion would have come for one to examine the sustainability of any such artificial classification. In the instant case, there is no such classification attempted by the 2nd appellant society by framing any separate regulation governing the age of superannuation. On the other hand, bye-law 15 (d) left a clear impression that the service conditions of the teaching and non-teaching staff of the society and the schools, obviously run by it, shall generally conform to the other service conditions prevailing in similar aided schools in accordance with the Andhra Pradesh Education Rules. That means, bye-law 15(d) has conferred power on the Executive Committee to prescribe the conditions of service of its employees to fall in line with the general conditions of service prevailing in the rest of aided schools in the State. Therefore, when we examine bye-law 15(d) also, it leaves us with an impression that the 2nd appellant never intended to prescribe a different age of superannuation for such of those teachers, who are yet to be admitted to grant-in-aid.

Hence, we see no merit in this Writ Appeal and it is accordingly, dismissed. No costs.

Consequently, the miscellaneous applications, if any shall stand disposed of.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

12th April 2016

ksld