

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.10222 of 2013

AND

WRIT PETITION No.318 of 2014

WRIT PETITION No.10222 of 2013

Between:

Ari Siva Ramakrishnaiah

..... PETITIONER

And

The Central Board of Secondary Education rep. by its Secretary, Sikasha
Kendra-2, Delhi and two others

.....RESPONDENTS

WRIT PETITION No.318 of 2014

Between:

K. Sulochana

..... PETITIONER

And

The Central Board of Secondary Education rep. by its Secretary, Sikasha
Kendra-2, Delhi and two others

The Court made the following:

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.10222 of 2013

AND

WRIT PETITION No.318 of 2014

COMMON ORDER:

In both the writ petitions, common questions of law and facts would arise for consideration. Therefore, they are disposed of by a common order.

These two writ petitions are filed questioning the action of the respondents authorities in denying 2010 Revised Pay Scales (9th pay revision commission), arrears of earlier pay revisions, dearness allowance, house rent allowance, city compensatory allowance permissible under each revised scales, earned leave encashment, medical leave with full salary, gratuity and other allowances. They also question the action of the respondents in retiring them from service at the age of 58 years which according to them is contrary to CBSE Affiliation Rules and Service Conditions as illegal and arbitrary. They sought to issue a direction of similar nature to continue them in service till they complete the age of 60 years.

The petitioners in both the writ petitions are working as teachers in the second respondent institution. The second respondent institution is affiliated to Central Board of Secondary Education (for short 'CBSE'). It is the version of the petitioners that the second respondent institution has to follow the affiliation Bye-laws of CBSE, failing which the affiliation shall be withdrawn. They relied on bye-law No.13 of CBSE Affiliation Bye-law with regard to gratuity, age of superannuation of employee on attaining the age of 60 years. The petitioners contend that retiring them at the age of 58 years is contrary to bye-law No.30 of CBSE and therefore, the proceedings issued by the respondents 2 and 3 are liable to be set aside and a direction be given to the respondents to continue them till the petitioners complete the age of 60 years.

The other contention as already mentioned is that the petitioners were denied the revised pay scales of 2010 from its effective date and they claim arrears which have become due on account of non-implementation of the revised pay scales.

In the course of their counter affidavit the respondents 2 and 3 contended that though the institution adopted Central Board of Secondary Education pattern with effect from 01.05.1980, the service conditions of the petitioners and other employees are governed by the provisions of A.P. Education Act, 1982. As per condition No.2 of the affiliation proceedings of CBSE an agreement in the specified form has to be executed with each teacher and under the agreement it is mentioned that the service conditions of teacher would be governed by the relevant State Act. Clause 5 of the contract executed by the writ petitioners specify that the rules framed by the school managing committee are in conformity with existing statutes and norms set by the A.P. Government and/or as amended from time to time. Section 78-A of the A.P. Education Act, 1982 prescribes the age of superannuation of the staff in aided, private educational institutions. The age of retirement of every teacher from service is on the afternoon of the last day of the month in which one attains the age of 58 years. All the teachers working in the respondents institutions are being retired on completion of age of 58 years only. The petitioner in W.P.No.318 of 2014 is due for retirement on 31.01.2014 on attaining the age of 58 years. The petitioner in W.P.No.10222 of 2013 is due for retirement on 30.06.2013 on attaining the age of 58 years. It is further submitted that as per the CBSE norms and bye-laws of the society, the school has to follow service rules as prescribed under the Education Act of the relevant State in the country and that the school has framed service rules in accordance with the provisions of Education Act of the State of Andhra Pradesh according to which the retirement age is 58 years.

Nextly, it is submitted that the Management has been re-appointing the teachers after retirement depending on their capacity and willingness to work and as such if the petitioners make any representation, after their retirement, the management may consider them for re-appointment if they are interested to work beyond the date of retirement subject to suitability.

As regards the pay scales, it is submitted that the contention of the

petitioners that they are entitled for salaries and arrears as per the CBSE norms is misconceived and baseless. The petitioners were paid State scales of pay in the respondent No.3 institution and they received the salaries without any protest. There is no discrimination in the payment of salaries of the teachers in the third respondent institution. The school authorities have implemented the 9th PRC recommendations to teaching staff with effect from 01.08.2013 and the writ petitioners were also extended the same benefits. It is further submitted that the condition No.6 of the Affiliation bye-laws fixed up proceedings dated 28.01.2011/07.02.2011 wherein provisional affiliation to the third respondent school were extended beyond 31.03.2010 for a further period of five years with effect from 01.04.2010 to 31.03.2015. The service conditions have to be strictly followed as per the State Education Act and staff be given appointment/confirmation letters etc. Therefore, according to the respondents, the conditions prescribed for renewing affiliation that the service conditions of the staff shall be as per the State Education Act. As per the Section 78-A of the A.P. Education Act, the age of retirement is on the last day of the month in which the teacher attains the age of 58 years. The respondents followed the provisions of A.P. Education Act in case of the petitioners. It is further contended that the submission made by the petitioners that the salary must be equivalent to State scales or central scales is equally misconceived and baseless. As per the condition No.5 of affiliation renewal order, the pay and allowances of the teachers shall be on par with the State Government scales. There is no violation of CBSE regulation in regard to the teachers of the school are always paid state government scales as adopted by the school from time to time.

The provisions of Andhra Pradesh Education Act apply to respondent No.3 school and respondents 2 and 3 have adopted the service rules of the Andhra Pradesh Education Act, 1982 as they are obligatory for every school established in the State of Andhra Pradesh. The same condition was specified in the affiliation order granted for the first time vide proceedings dated 17.12.1979 with effect from 01.05.1980 to the school. Even in the renewal affiliation dated 28.01.2011/07.02.2014 it was clearly specified that

the service rules of the State Act are applicable. Therefore, according to the respondents the claim made by the petitioners is misconceived and baseless.

Contending as above, the respondents sought to dismiss the writ petitions.

I have heard Sri Kasa Jaganmohan Reddy and Sri K.S.Murthy, learned counsel appearing for the petitioners and Sri G.Vidyasagar, learned Senior Counsel representing Smt. A.Chaya Devi and Smt. K.Udayasri, learned counsel appearing for the respondents.

The main contention advanced on behalf of the petitioners is that since the second respondent institution is affiliated to CBSE the petitioners who are working in third respondent school are governed by Bye-law No.30 of the CBSE according to which the age of superannuation of a teacher is 60 years. On the other hand, the respondents relied on condition No.5 of terms and conditions of service entered into between the teachers and the second respondent which reads as under:

"5. These rules are framed by the school Managing committee of the management in conformity with the existing statutes and norms set by the Andhra Pradesh Government or as amended from time to time by them. The management reserves to itself the right to amend, alter or add to any of these rules, without giving any previous notice. Such amendments shall be communicated in writing and be binding on all teachers."

Relying on the said condition the respondents contend that the petitioners who have agreed to retire on attaining the age of 58 years under the agreement, cannot now turn around and contend that they shall be retired on completing the age of 60 years as per Bye-law No.30 of CBSE. They also refer to Condition No.24 of the agreement which states that the scale of D.A., H.R.A. and other allowances will be admissible as per the State Government rules/orders in force or issued from time to time. The management has a right to modify the rates of allowances wherever necessary. Thus, the contention

of the respondents is that the rules framed by the school managing committee are in conformity with existing statutes and norms set by the A.P. Government and/or as amended from time to time. Accordingly, they have been following the rules. Since then, the age of retirement of teachers is 58 years only, however, in some deserving cases, the management has been reappointing some teachers after retirement depending on their capacity and willingness to work. Therefore, according to the respondents there is no merit in these writ petitions. The respondents, however, agreed that they are governed by the provisions of the Andhra Pradesh Education Act, 1982. The Andhra Pradesh Education Act No.1 of 1982 was Amended by Act No.1 of 2015 which came into force with effect from 02.06.2014. The Amendment is extracted hereinbelow:

“ACT NO 1 OF 2015 AN ACT FURTHER TO AMEND THE ANDHRA PRADESH EDUCATION ACT, 1982. Be it enacted by the Legislature of the State of Andhra Pradesh in the Sixty-fifth year of the Republic of India as follows:

(1) This Act may be called the A.P. Education (Amendment) Act, 2014.

(2) It shall be deemed to have come into force with effect on and from the 2nd June, 2014.

2. In the A.P. Education Act, 1982, in Chapter XIII, in Section 78-A:- Section 78-A, Act No 1 of 1982. (1) for sub-section (1) and proviso thereunder the following shall be substituted, namely :-

" (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 A.P. 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 A.P. 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."

It is true that every teacher or member of the non-teaching staff employed in any aided private educational institution, shall retire from service on attaining the age of 60 years. 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 A.P. 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.

Since the Legislature uses the specific words any aided educational institutions, the Amended Section 78-A cannot be made applicable to each and every educational institution.

In the instant case, the second and third respondents are not the aided private educational institutions and therefore, the amended Section 78-A cannot be made applicable to the petitioners.

As regards the pay scales, since the respondents 2 and 3 institutions are governed by A.P. Education Act, they are liable to pay the petitioners the scales equivalent to the teachers in the State Government schools. The respondents also admitted that they have adopted the service rules of the A.P. Education Act and they are obligated to pay the scales equivalent to the State Government teachers. The petitioners did not furnish any particulars as to the arrears which have become due to be paid to them. However, if any such arrears have become due, the respondents are directed to calculate the arrears which are admissible under the A.P. Education Act, 1982 and pay them to the petitioners within a period of three months from the date of receipt of a copy of this order. Further, if any of the petitioners is continued in service by virtue of the interim order passed by this Court, the salary paid to such petitioner shall not be recovered from them.

Accordingly, both the writ petitions are disposed of without any order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in

consequence.

Date:07.04.2016
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R.KANTHA RAO,J

THE HON'BLE SRI JUSTICE R.KANTHA RAO

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