

CWP No.13212 of 2012

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.13212 of 2012
Date of decision:22.04.2016

Hafiz Abdul Hameed

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Arvinder Singh, Advocate,
for the petitioner.

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Mr. Gulam Nabi Malik, Advocate,
For respondent Nos.2 and 3.

Mr. S.K.Jain, Advocate, with
Mr. Akshay Jain, Advocate, for the Punjab Wakf Board.

Rakesh Kumar Jain, J.

This order shall dispose of five petitions bearing CWP Nos.13212, 13239, 13242, 13244 and 17284 of 2012 as the issues involved in all the five cases is the same. However, the facts are being extracted from CWP No.13212 of 2012.

The petitioner was appointed as Imam of the Masjid Tila Baba Zafar Shah, Ajit Gate, Patiala on 09.12.1976 in the pay scale of 70-4-90/5-100+D.A. with the responsibility of religious education, cleanliness and lighting of the mosque. The petitioner is aggrieved

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against the order dated 31.05.2012 passed by the Chairman of the Punjab Wakf Board (hereinafter referred to as the “Board”) by which he has been retired after attaining the age of 65 years.

Counsel for the petitioner has submitted that at the time when the petitioner was appointed as Imam, the Wakf Act, 1954 (hereinafter referred to as the “Act”), the Punjab Wakf Rules, 1964 (hereinafter referred to as the “Rules”) and the Punjab Wakf Regulations, 1966 (hereinafter referred to as the “Regulations”) were in operation. The power to make rules flows from Section 67 and to make Regulations from Section 68 of the Act, in which Section 68(ii)(e) provides for the regulations of the terms and conditions of the service of the officers and servants of the Board. It is further submitted that the term “employee” is defined in Regulation 2(d) of the Regulations to mean any person in the employment of the Board and includes Imams, Mauzzans, Care-takers, Teachers, Khadims and Mujawirs. It is submitted that the terms and conditions of the service of Imam are defined in Regulation 53, which is reproduced as under:-

“53. Terms and Conditions of Service of Imams, Mauzzans, Care-takers, Teachers, Khadims and Mujawirs-
Section 68(2)(e): The provisions of regulations from 21 to 52 shall not apply to Imams, Mauzzans, Care-takers, Teachers, Khadims and Mujawirs in so far they are inconsistent with the following provisions:-

- (1) The appointing authority and the punishing authority in the case of Imams, Mauzzans, Care-takers, Teachers, Khadims and Mujawirs shall be the Board. All appointments to these posts shall be made on the recommendation of Religious Affairs Committee.

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- (2) The Religious Affairs Committee will interview the candidates, test their knowledge and submit its recommendations to the Board. The Imams shall possess the following qualifications:-
 - (a) candidates who possess the degree of “Farighul-Tehsil” shall be classed as of Grade-I.
 - (b) candidates who have passed “Oafva and Oadoori” or are Hafiz Oari with knowledge of Muslim theology, shall be classed as of Grade II.
- (3) A person to be appointed as Mauzzan shall possess elementary knowledge of Massaaail of Namaz and Roza.
- (4) A person to be appointed Khadim or Mujawir shall be “Ba-shara”, be regular in the observance of Roza and Namaz be acquainted with “Fateha and Darood” and be physically fit to maintain the Dargah.
- (5) All kinds of leave to Imams, Mauzzans, Care-takers, Teachers, Khadims and Mujawirs shall be sanctioned by the Secretary. The Secretary shall also make officiating arrangements, in case any of the posts fall vacant, in consultation with the Chairman and in emergent cases he can also suspend any such employee with the approval of the Chairman. But the Secretary shall place all cases of officiating arrangement and suspension before the Board, which meets immediately after such orders.”

It is further submitted that the Act has been repealed by Section 112 of the Wakf Act, 1995 (hereinafter referred to as the “Act of 1995”) and with that the rules and regulations have also been repealed and that the Board had no jurisdiction to adopt the rules and regulations *mutatis mutandis*, as has been done in its meeting on 07.12.2005, as provided under Sections 110 and 111 of the Act of 1995, which are also reproduced as under:-

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“110. Powers to make regulations by the Board.—(1)

The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:-

- (a) the time and places of the meetings of the Board under sub-section (1) of Sec. 17;
- (b) the procedure and conduct of business at the meetings of the Board;
- (c) the constitution and functions of the committees and the Board and the procedure for transaction of business at the meetings of such committees;
- (d) the allowances or fees to be paid to the Chairperson or members of the Board or members of committees;
- (e) the terms and conditions of service of the officers and other employees of the Board under sub-section (2) of Sec. 24;
- (f) the forms of application for registration of wakfs further particulars to be contained therein and the manner and place of registration of wakfs under sub-section (3) of Sec. 36;
- (g) further particulars to be contained in the register of wakfs under Sec. 37;
- (h) the form in which, and the time within which, the budgets of wakfs may be prepared and submitted by the mutawalli and approved by the Board under sub-section (1) of Sec. 44;
- (i) the books of accounts and other books to be maintained by the Board under Sec. 79;
- (j) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same;
- (k) persons by whom any order or decision of the Board may be authenticated; and

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(1) any other matter which has to be, or may be, provided by regulations.

(3) All regulations made under this section shall be published in the official Gazette and shall have effect from the date of such publication.

111. Laying of rules and regulations before State Legislature.-- Every rules made under Sec. 109 and every regulation made under Sec. 110 shall be laid, as soon as may be after it is made, before the State Legislature.”

Counsel for the petitioner has also submitted that even for the sake of arguments, it is presumed that the Regulations would still survive as no other regulations have been made under the Act of 1995, still the Religious Affairs Committee only had the jurisdiction to recommend candidates for the purpose of their appointment as Imams, Mauzzans, Care-takers, Teachers, Khadims and Mujawirs to the Board but neither the Religious Affairs Committee nor the Board had the jurisdiction to fix the age of retirement of the Imam, which is conspicuously absent in the regulations itself. It is further submitted that if the Board wanted to fix the age of retirement of the Imam, the Regulations have to be amended which can only be done by the State Legislature in view of Section 111 of the Act of 1995 because the Regulations deal with the service conditions of the employees of the Board and the age of retirement is also a part of the service condition.

Counsel for the respondents have submitted that determination of the service conditions of its employee is the sole prerogative of its employer and the retirement age of Imam serving with the Board as 65 years is also a policy decision taken by the Competent Authority in accordance with the law and in the larger public interest. It is

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submitted that the petitioner has failed to cite any provision either of the Act or the Act of 1995 or of the Rules and Regulations which provides that the Imam has to serve the Board throughout his life, rather the respondents have referred to Regulation 30 in which it is provided that no employee of the Board shall be retained after the age of 65 years. Regulation 30 is reproduced as under:-

“30. Compulsory Retirement.- Section 68(2)(e):- (1) The date of compulsory retirement of an employee of the Board is the date on which he attains the age of 60 years. He may be retained in service after that date in exceptional circumstances with the sanction of the Board on public grounds which must be recorded in the resolution of the Board; provided he is medically fit, but he must not be retained after the age of 65 years.

(2) No extension shall be granted for more than a period of one year at a time and in the case of extension of a Class I and Class II employee beyond the age of 60 the medical fitness as aforesaid shall be certified before such extension.”

It is further submitted that as per Section 24 of the Act of 1995, the service conditions of the employees of the Board have to be regulated by the regulations. Section 24 of the Act of 1995 is reproduced as under:-

“24. Officers and other employees of the Board.—(1)

The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in consultation with the State Government.

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(2) The appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by regulations.”

It is also argued by learned counsel for the respondents that as per Section 112(2) of the Act of 1995, notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

I have heard learned counsel for the parties and examined the available record with their able assistance.

It is an admitted fact that the Act has been replaced by the Act of 1995 and the Rules have now been superseded by the Punjab Wakf Rules, 2010 but the Regulations have not been replaced under the Act of 1995 and have been adopted on 07.12.2005 *mutatis mutandis* and are governing the service conditions of the employees of the Board as the petitioner himself is relying upon Regulation 53 in his petition to contend that the Religious Affairs Committee has only got the jurisdiction to recommend the Board appointment of various employees.

It appears that the petitioner has missed Regulation 30 of the Regulations in which it is provided that the age for compulsory retirement of an employee of the Board shall be 60 years, who may be retained in exceptional circumstances till the age of 65 years after giving repeated extensions and in order to overcome that situation to

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arise time and again, it is decided by the Board on 29.07.1997 to fix the age of retirement of Imam as 65 years instead of 60 years.

Insofar as the petitioner is concerned, he has already attained the age of 65 years and should not have any grievance even if the decision is taken by the Board on 29.07.1997 to fix the age of 65 years instead of 60 years as the date of retirement but the Board, in any case, cannot extend the age of retirement beyond 65 years in contravention of Regulation 30 of the Regulations.

Thus, in view of the aforesaid facts and circumstances, the case set up by the petitioner cannot be accepted, where he has submitted that there is no provision in the Regulations about the date of retirement of the Imam, which is clear from Regulation 30 that all employees of the Board have to retire at the age of 60 years which can go upto 65 years by way of extension and since the petitioner has already attained the age of 65 years, he has rightly been retired from the service of the Board.

Consequently, all the five petitions are hereby dismissed being denuded of any merit, though without any order as to costs.

April 22, 2016
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(Rakesh Kumar Jain)
Judge