

In the Hon'ble High Court of Chhattisgarh,

Bilaspur.

W.P. No. ^{Sr} 4599/2006

Petitioner - ✓ Leelamma M., Aged 55 years,
W/o G. Gevarghese
P.G.T. (III),
R/o 6-B, Street 75, Sector VI, Bhilai,
Tahsil and District- Durg (C.G.)

Versus

- Respondents** ✓ 1. M.G.M. Senior Secondary School,
Sector VI, Bhilai,
Through – The Principal,
M.G.M. Sr. Secondary School, Sector-VI,
Bhilai, Distt. Durg (C.G.)
- ✓ 2. Central Board of Secondary Education
Through- The Secretary,
Shiksha Kendra,
2-Community Center,
Preet Vihar, Delhi- 110092.

P.R. No. 4636/06
Presented by Sri S.K. Verma
dated 24/8/06

Writ Petition Under Articles 226/227 of The Constitution Of India
for the issuance of WRIT in the nature of MANDAMUS
certiorari, Prohibition and for other suitable writ or writs, order
or orders, direction or directions.



17/03/17

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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No.4599 of 2006

- Leelamma

---- Petitioner

Versus

- M.G.M.Senior Secondary School & Anr.

---- Respondents

For Petitioner : Shri Ajay Shrivastava, Advocate
For Respondent No.1: Dr. N. K. Shukla, Sr. Advocate with Shri Vinod Deshmukh
and Shri Vikram Sharma, Advocates

S. B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28/02/2017

Heard.

2. This petition is directed against order dated 31-05-2000, by which, the petitioner is retired from service on attaining the age of 55 years. A short issue arises for consideration in this petition is as to what would be the age of retirement of the petitioner, who is working under the respondent No.1-school and affiliated to the privileges of Central Board of Secondary Education.

3. Learned counsel for the petitioner submits that the issue raised in this petition is squarely covered by order dated 14-01-2010 passed in the case of two other teachers ***Smt. Aleykutty Kuriakose vs. Central Board of Secondary Education & others and Smt. J. Satyalaxmi vs. Central Board of Secondary Education & others***, wherein it has been held that as per the provisions contained in Clause 30 of the Affiliation Bye-Laws, it was provided that every employee of the affiliated institution shall retire from service on attaining the age of superannuation as per corresponding categories of employees of aided/unaided schools of the State/U.T. concerned.



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4. On the other hand, learned counsel for respondent No.1 disputed the aforesaid submission and submits that the respondent institution is minority institution, therefore, the institution has constitutional immunity from such kind of provisions and it can lay down its own rules and regulations governing terms and conditions of services of the employees and the argument based on the provisions relating to provisions of retirement as has been held by this Court in the case of **Smt. Aleykutty Kuriakose** (*supra*), is liable to be rejected as it would be depend upon the institution concerned, in which, the petitioner was working.

5. In the case of **Smt. Aleykutty Kuriakose** (*supra*), this Court examined the proposition of law, as below:-

11. "The respondent No.4/school has neither claimed nor has established that it is protected under the provisions of Article 29 and 30 of the Constitution of India. It is not claim of the respondent No.4/School that it is a minority institution and as such, I cannot pursue myself to go into constitutional protection aspect for want of pleadings, submission and necessary evidences. There is no dispute that the respondent No.4/school is affiliated with the Central Board of Secondary Education. Under the bye-laws, affiliation is defined in clause 1(1) which reads as under:

"(i) "Affiliation" means formal enrolment of a school among the list approved schools of the Board following prescribed/approved of studies upto class VIII as well as those preparing students according to prescribed courses for the Board's examinations."

12. Clause 1(xxii) of the bye-laws defines "Private Unaided School" which reads as under:

"(xxii) "Private Unaided School" means a school run by a Society/Trust duly constituted and registered under the provisions of Central/State Acts not getting any regular grant-in-aid from any Government source(s)."

13. Even if it is correct that the respondent No.4/school is not getting any aid from the State Government, clause 30 would be applicable with regard to the regulation of service condition of the employees of the school. Clause 30 of



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the bye-laws reads as under:

"30. Retirement

- (1) Every employee shall retire from service on attaining the age of superannuation as per corresponding categories of employees of aided/unaided schools of the State/UT concerned.
- (2) The Managing Committee may grant extension as per rules of State/UT if the employee has no mental or physical disabilities and his/her services are beneficial to the Institution.
- (3) The Board will be informed of such extension by the SMC".

14. Bare perusal of the above-stated provisions makes it clear that whether the school is aided or unaided, the employees of the schools which are affiliated with Central Board of Secondary Education would retire from service on attaining the age of superannuation as per the corresponding categories of employees of aided/unaided schools of the State/Union Territory concerned. It is further not in dispute that at the relevant time, the age of retirement of the teachers pursuant to the circular dated 05-11-1985, was 60 years as applicable to aided schools also. Thus, there is a clear departure/violation of clause 30 of the bye-laws.

15. Reading all the provisions together and applying the same to the facts of the case, it is apparent that the impugned 06.9.1992 (Annexure P/5 in W.P.No.3364 of 1993) and the order dated 06.05.1992 (Annexure P/2 in W.P.No.1401 of 1994) whereby the petitioners were directed to retire on attaining the age of 55 years was contrary to clause 30 of the bye-laws which is binding on all the affiliated schools.

16. Reliance of Shri Anthony on a decision of Supreme Court in ***M.P. Vidyut Karmachari Sangh v. M.P. Electricity Board, (2004) 9 SCC 755*** is misplaced. In the present case, the date of retirement of the employee is governed under clause 30 of the bye-laws. In absence of the above-stated bye-laws, employer was free to fix the date of superannuation. Non-compliance of bye-laws may lead to cancellation of affiliation. The respondent No.4 has not produced rules or regulations governing retirement of the employees of the respondent No.4/school except the resolution of the governing body which *ipso facto* may not be binding on the service conditions of the employees.



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18. The contention of learned counsel appearing for the respondent No.4/school that the petitioners could have been terminated even under the terms of the appointment which provides for removal with one month's notice or notice pay in lieu of notice, is rejected. Clause 6 of the terms and conditions clearly provides that the appointment of the petitioners or subject to the service rules and regulations including the conduct rules of the respondent No.4.

19. Bare perusal of the definition clearly implies that bye-laws or in the nature of rules which are binding on the parties governed by the bye-laws. The respondent No.4/school is admittedly affiliated with the Central Board of Secondary Education. The respondent No.4/school is under an obligation to comply with all the provisions of the bye-laws including clause 30 which provides for the age of superannuation."

6. In view of above, this petition also deserves to be allowed and accordingly allowed on the same terms and conditions stated in the order passed in the case of **Smt. Aleykutty Kuriakose** (*supra*).

Sd/-
Manindra Mohan Shrivastava
Judge