

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 1254 of 2009

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus to declare the impugned proceedings L.Dis.No.622/ Admin-V-1./ 200-2 dated 29.08.2009 of the Commissioner and Director of Higher Education, Commissionerate of Collegiate Education, Nampally-Respondent No.1 herein, as ultra virus the provisions of Rule 22 (2) (II) read with Section 57 (3) (k) of the Andhra Pradesh Universities Act, 1991 and set aside the same and consequently hold that petitioner is entitled to continue until he completes the age of 60 years.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner was appointed as permanent lecturer in third respondent college on 20.08.1973. The third respondent college is affiliated to Osmania University-fourth respondent and is receiving aid from the State Government and University Grants Commission. Hence, the third respondent college is to be treated as a private aided college. It is stated that on 22.06.2008, the petitioner made a representation seeking to continue his service till he completes the age of 60 years,

which was rejected on 29.08.2008. Challenging the same, the present writ petition came to be filed.

3) Respondent Nos.1 and 2 filed their counters stating that the relief sought by the petitioner is squarely covered by the Judgment of the Apex Court in *Bharat Kumar and others v. Osmania University and others*¹ wherein the Apex Court held that the “*State Government must implement the UGC recommendations of the scheme and it was rightly found to be untenable.*” It was also held that the “State Government in its discretion, as a matter of state policy can decide to restrict the age and not increase it to 60 or as the case may be to 62 keeping in view the financial liabilities or constraints that may arise if the scheme is to be implemented in toto. Accordingly, the Government issued G.O.Ms.No.150, HE (UE-II) Department, dated 18.08.2007, having decided to continue the existing age of superannuation as 60 years in respect of the University Teachers and 58 years in respect of College teachers. It is further stated in the counter that the representation dated 22.05.2008, submitted by the petitioner to the A.P.State Legal Aid Authority, stating that the Government has not issued the relevant G.O. for continuance of service from 58 years to 60 years for the Government and Aided College Teachers, was examined and rejected on the

¹ (2007) 11 SCC 58

ground that the age of superannuation is 58 years as per G.O.Ms.No.150 and the same was informed to the petitioner vide proceedings Rc.No.622/ Admin-V-1/ 2002, dated 29.08.2008.

4) The main argument of the learned counsel for the petitioner is that the petitioner was appointed in the year 1973 as Lecturer in a college which was affiliated to the University and in view of Rule 22 (2) of the Universities Act the retirement age of a person working in the Universities should be treated as 60 years and not 58 years. According to him, G.O.Ms.No.36 which was made the basis to reduce the age to 58 years cannot be invoked against the petitioner, as he has to be treated as a teacher of the University.

5) The Government Pleader for Education would submit that since it is an aided post, the petitioner is governed by the Rules which are applicable to the State Government Employees. According to her, even as per the averments made in the affidavit filed in support of the writ petition, the petitioner became the Principal of the College on 09.12.2006 which was a grant-in-aid vacancy. Since the affidavit is silent as to whether the post of lecturer to which he joined was a grant-in-aid post, the petitioner cannot claim his retirement age as 60 years.

6) A perusal of the impugned order shows that the reason for rejecting the request of the petitioner was that as per G.O.Ms.No.36, Education (J) Department, dated 19.01.1985, the age of superannuation of all the employees of the State Government is 58 years and accordingly, he must retire on attaining the age of 58 years. The order further shows that G.O.Ms.No.150, Higher Education (C.E.II) Department, dated 18.08.2007, wherein the age of superannuation of 60 years was continued only in respect of University Teachers.

7) Two issues crop up for consideration in the present writ petition. (1) Whether the petitioner, who was appointed as a Lecturer in the year 1973 in a college affiliated to Osmania University, is governed by Rule 22 (2) of the Universities Act and (2) Whether the petitioner, who became the Principal of the College in the year 2006, which is a grant-in-aid post, has to be treated as a Government Servant.

8) The entire affidavit does not say that the salary which was being paid to the petitioner was governed by U.G.C. scales, and it is not his case that since he is receiving the scales as per U.G.C. his retirement should be at 60. In short, his plea appears to be that as per Rule 22 (2) of the Universities Act, 1991, his retirement age has to be treated as 60.

9) On the other hand, the plea of the Government is that since the petitioner became the Principal in the year 2006 which was an aided post, he is governed by the provisions of the G.O.Ms.No.36 issued in the year 1985.

10) A Division Bench of this Court in *P.Visweswara Rao v. State of Andhra Pradesh, Education Department, Hyderabad*² dealt with a situation where the petitioner therein joined in the college, as a teacher, on 22.08.1968. Though he is entitled to continue in service till 30.11.1991, the respondents therein issued proceedings dated 29.09.1989, retiring the petitioner at the age of 58 years ie. by the A.N. of 30.11.1989. A similar contention came to be raised that the retirement age of the persons, who are working as teachers in the affiliated colleges of Osmania University and other University is 60 years. In fact the argument of the Government Pleader in the said case was also that the said post being a grant-in-aid one and in view of G.O.Ms.36, the retirement age is only 58 years, as he has to be treated as a Government Servant.

11) From the judgment of the Division Bench referred to above, it is clear that G.O.Ms.No.36, dated 19.01.1985, Education was held to be prospective in nature. It was further held that the same cannot effect the age of

² ALT 1992 (1) 252

superannuation of persons, who were appointed prior to the issuance of said G.O. In the said case the petitioner joined as a tutor on 22.08.1968 and was working as a lecturer when he was sought to be retired. The plea taken was that in view of the judgment of Division Bench of this Court in W.P.No.1890 of 1976 dated 15.09.1997 and since G.O.No.36 dated 19.01.1985 is prospective in nature, the retirement age of a lecturer working in a college affiliated to Osmania University is 60 years. Dealing with the same, a Division Bench of this Court relying upon the earlier Bench judgment of this Court in W.P.No.1890 of 1976, held as under:

“6. The next contention of the learned Government Pleader that the petitioner is bound to retire on attaining the age of 58 years by virtue of G.O.Ms.No. 36.Education dt.19-1-85 is also without substance. The said G.O. was considered in W.P. No. 8705/ 90 and batch dt. 21-9-90. The learned Judge while dealing with the question whether the petitioner herein are entitled to payment of pension on par with other teachers working in Government institutions under the liberalised Pension Rules of 1961 or Pension Rules of 1985 held that the petitioners are entitled to continue till they attain the age of 60 years. We are in agreement with the view expressed by the learned Judge and hold that the age of superannuation of the petitioner is not affected by G.O.Ms. No. 86 Education. The said G.O. is prospective and cannot affect the age of superannuation of the petitioner who was appointed admittedly in the year 1968.

7. Dealing with the contention of the learned Government Pleader that the Grant-in-Aid Code is non-statutory and is not enforceable we have to observe that this is only a feeble attempt "made by the learned Government Pleader at this belated stage. No such plea was taken at the earliest opportunity when there was an attempt to lower the age of superannuation of the teaching staff beginning with G.O.Ms.No. 591 dt.28-5-77 which was held to be not prospective. In W.P. No. 1899/76 dt.15-9-77 referred to above. The subsequent attempts made by the Government by issuing G.O.Ms. No. 1072 dt.26-11-76 and G.O.Ms. No. 71 dated 16-2-83 proved futile and the age of superannuation of the staff appointed prior to 28-5-77 remained unaffected."

12) Subsequently, another division Bench of this Court in *Prof.B.Surya Prakash Rao v. Union of India*³, while referring to the Judgment of the Apex Court in Bharat Kumar case (1 supra) rejected the request made therein.

13) The facts in Bharat Kumar case (1 supra) are that the persons serving as Lecturers, Professors, Readers, Librarians, Physical Education Teachers etc., in different aided private colleges in the State claimed entitlement to continue in service till the age of 62 years. For this purpose they relied on letter No.F.1.22/ 97-U.1 dated 27.07.1998 and the UGC Notification on revision of pay scales bearing No.1-2-1/ 94 (PS) dated 24.12.1998. Relying on the earlier judgment of

³ (2011) SCJ Online (AP) 276

the Apex Court in *T.P.George and others v. State of Kerala*⁴ the Apex Court held that the power of the State or of a State University to prescribe the age of superannuation distinct and different from the age of superannuation stipulated either by the UGC or by the Central Government is not illegal or beyond the scope of the power of the State. The Apex Court categorically held that none of the instruments relied upon by the appellant disclose that the Central Government or the UGC introduced an element of compulsion vis-à-vis the State Governments and the Universities; that the UGC scheme is not a mandatory scheme, in the sense of being binding on the State Government; and that its earlier decision in *T.P.George* (4 supra) continues to hold the field notwithstanding the UGC regulations of the year 1998 or the Central Government's letter dated 27.07.1998. The decision of the High Court rejecting the case of teachers for 62 years as the age of superannuation was upheld and the rejected the appeals.

14) In the light of the observations made by the Apex Court in *Bharat Kumar* case (1 supra), the Government issued G.O.Ms.No.150, dated 18.08.2007, by continuing the age of superannuation as 60 years in respect of university teachers and 58 years in respect of college teachers. As held by the

⁴ AIR 1963 SC 703

Apex Court, the power of the State or of a State University to prescribe the age of superannuation is distinct and different from the age of superannuation prescribed by other agencies or authorities. Accordingly, the request of the University Teachers Association of Andhra University, Sri Venkateswara University and other individual representations for enhancement of age of superannuation of University Teachers from 60 to 62 years was rejected. The same has become final.

15) Hence, in view of the judgment of the Apex Court in Bharat Kumar case (1 supra) and a Division Bench Judgment of this Court in Prof. B.Surya Prakash Rao (3 supra) coupled with issuance of G.O.Ms.No.150, I feel that there are no grounds to grant the relief as sought for by the petitioner.

16) Accordingly, the writ petition is dismissed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

10.11.2017
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