

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P.No.16816 of 2010

Pulavar K.Vembu

.. Petitioner

Vs.

1. The Directorate of Matriculation Schools,
Chennai - 6.

2. The Correspondent,
Sri Chakravarthy International Matriculation Academy,
recognized by Government of Tamil Nadu,
No.6, GST Road, St. Thomas Mount,
Chennai - 16.

.. Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of mandamus directing the respondents to permit the petitioner to render her service as Tamil teacher in the 2nd respondent till her age of superannuation i.e. 31.05.2011 with all her service benefits and further direct the respondents to pay the dues to the petitioner which she is entitled to.

For Petitioner : Mr.Avinash
for Mr.V.Raghavachari

For Respondents: Mr.Digvijaya Pandian
Addl. Government Pleader
for 1st respondent

O R D E R

The petitioner has filed this writ petition seeking issuance of a writ of mandamus to direct the respondents to permit the petitioner to render her service as Tamil Teacher in the 2nd respondent school till her age of superannuation, i.e. 31.05.2011, with all her service benefits and further direct the respondents to pay the dues to the petitioner which she is entitled to.

2. The petitioner was appointed in the second respondent school, which is a Matriculation School, as Tamil Teacher on 09.06.1980. The petitioner has been conferred with the title

"Pulavar". The petitioner claims that she is entitled to hold the post till she attains the age of 60. However, the second respondent, during August 2008, informed the petitioner that she is not entitled to continue in the post, as she attained 58 years. Thereafter, from September, 2008, the petitioner was engaged on consolidated pay. It is alleged that similar treatment was given to all retiring teachers.

3. The petitioner states that she has been discharging the duty on consolidated pay from September, 2008 till 03.06.2010, though she was not allowed to sign the attendance register from April, 2010. It is alleged that from February, 2010, till May, 2010, she was not paid salary by the second respondent.

4. It is the case of the petitioner that as per the Rules governing the Matriculation Schools, she is entitled to hold the post till she attains 60 years and when the Rules are explicitly clear, the petitioner ought to have been continued in service till 31.05.2011.

5. In such premise, the present writ petition is filed for the relief stated supra.

6. The learned counsel appearing on behalf of the petitioner submitted that the teachers serving in the matriculation schools are entitled to hold the office till 60 years of age and, therefore, it is unjust to superannuate them at the age of 58 years.

7. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents justified the action of the second respondent.

8. I heard Mr. Avinash, learned counsel for Mr. V. Raghavachari, learned counsel for the petitioner and Mr. Digvijaya Pandian, learned Additional Government Pleader for the 1st respondent and perused the documents available on record.

9. Before proceeding further, it would be apposite to refer to Clause 18(i) of the Code of Regulations for Matriculation Schools, which reads as under:

"18(i) The members of the staff including the principal will retire at the age of 60 (sixty) as permitted by the University. If they have to retire in the middle of the academic year, they will continue to be reemployed till the close of the academic year, i.e., 31st May. The Director is empowered to give extension for a period of two years only. One year at a time in respect of Principals of Matriculation Schools who attain the age of 60 in special cases provided that the

service conduct and character of the Principal are extraordinarily satisfactory and the management also recommends and he/she is physically fit to continue in service for the period to be extended."

10. The entire thrust of the argument advanced by the learned counsel appearing on behalf of the petitioner is that by virtue of the above said clause, the petitioner ought to have been permitted to continue in service till she attained 60 years and retiring her at 58 years is arbitrary and against the provisions of the Code.

11. The learned counsel for the petitioner in support of the above said plea placed heavy reliance on a decision of the Hon'ble Supreme Court in *Raj Soni v. Air Officer in charge Administration* and another, AIR 1990 SC 1305, wherein the Hon'ble Supreme Court held as under:

"12. The respondent-management has not produced any Rules or Bye-laws either framed by the management itself or otherwise to show that there was any uniform provision for retirement of teachers at the age of 58 years. The averments of the petitioner that Section 208 of the Delhi Education Code was being followed and the teachers were superannuated at the age of 60 years have not been specifically denied. Rather these averments have been tacitly admitted. Even otherwise every institution must frame and follow a uniform rule for superannuating its employees. The age of superannuation cannot be left to the whims of the employer to enable him to retire different employees at different ages. In the absence of any regulation, Byelaws or policy-decision by the respondent-management regarding the age of superannuation, we accept the contention of the petitioner that prior to the coming into force of the Act and the Rules the management was following the Delhi Education Code which provided 60 years as the age of superannuation for the school teachers. In that view of the matter under Rule 110 of the Rules, the petitioner being an existing employee was entitled to be retired at the age of 60 years.

13. The writ petition is, therefore, allowed and the order of the respondents retiring the petitioner at the age of 58 years is quashed. She having already attained the age of 60 years we direct the respondents to pay the petitioner salary and allowances for the period of two years. We further direct that all the post retirement benefits to which the petitioner is entitled be

redetermined assuming the petitioner to have retired at the age of 60 years. The arrears of salary and allowances be paid to the petitioner within three months from today. The respondents being an educational institution we direct the parties to bear their own costs."

12. There is no quarrel with regard to the above said proposition. However, by the time, the petitioner attained 58 years, during August, 2008, the Constitutional Bench judgment of the Hon'ble Supreme Court in T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 was holding the field.

13. The issue with regard to the fundamental right of the minority institutions enshrined in Article 30 of the Constitution of India, came into consideration in several cases. In T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481, the Supreme Court held as under:

Q. 5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee."

(emphasis supplied)

14. The Hon'ble Division Bench of this Court in The Correspondent, Rev. Fr. John Alexander v. J. Lourduraj and others, 2014 6 MLJ 647, on considering an identical issue as the one involved in this writ petition, held as under:

"14. Thus, the contention of the learned counsel for the private respondents/writ petitioners that the service conditions of staff of minority institutions was not in issue in T.M.A. Pai is not correct, inasmuch as the Supreme Court has framed a specific issue in the said judgment and answered the same accordingly, as afore-stated.

15. Moreover, it is for the employer to fix the retirement age of an employee and the same cannot be held as unreasonable or arbitrary, unless it is established by cogent reasons. Needless to state that the age of superannuation of the teachers in Government schools is 58 years. The State has taken a categorical stand that the State does not want to exercise its control over the retirement age of the staff in unaided minority institutions, particularly, in the Management schools, in view of the fact that it is a fundamental right of minority educational institutions to regulate the service conditions of their staff, except the educational qualification of the teachers, to maintain academic excellence.

16. It is also worth-mentioning, at this juncture,

that the Supreme Court has made it clear that excessive control of service conditions of staff is violative of fundamental right of minority educational institutions enshrined in Article 30 of the Constitution of India.

17. Further, the issue as to whether the staff members of unaided minority institutions are entitled to pay scale at par with the Government employees, as provided under Clause 18(ii) of the Code, came into consideration in this Court in The Special Officer, Salem Cooperative Sugar Mills, Matriculation Hr. Sec. School, Mohanur, Namakkal District vs. All Teachers Front, represented by its General Secretary, N. Umathan, Coimbatore - 38 and in connected matters in W.A. Nos.1962 of 2005, etc. batch. A Division Bench of this Court held that the teaching and non-teaching staff are entitled to Government pay scales. Thereagainst, a Special Leave Petition, being S.L.P. (Civil) No.26743 of 2008 was filed before the Supreme Court, wherein, the order passed by the Division Bench of this Court in W.A. No.1309 of 2000 was stayed on 17.11.2008 and the same is pending consideration.

18. For the reasons stated hereinabove, the decision of the appellant school Management to reduce the age of superannuation of its staff members from 60 years to 58 years, cannot be faulted with. As such, the common order passed by the learned Single Judge in the writ petitions stands set aside."

(emphasis supplied)

15. In view of the law enunciated in the decisions, supra, it is amply clear that the second respondent school management is empowered to regulate the service conditions of their staff.

For the foregoing reasons, the writ petition is dismissed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Directorate of Matriculation Schools,
Chennai - 6.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.62820.

W.P.No.16816 of 2010

rrs 24/09/2018.



WEB COPY