

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :24.07.2019
Pronounced on:08.08.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.9165 of 2019 and
W.M.P.No.9697 of 2019

Aasha K.R.

... Petitioner

Vs.

1.The Central Board of Secondary Education,
Rep. By its Secretary,
PS-1-2-Institutional Area I.P. Extn.
Patparangai, Delhi - 110 092.
Having its regional office at
Plot 1630 A, "J" Block 16th Main Road,
Chennai - 600 040.

2.The Director,
Ordinance Factory Board,
Esplanade East, Kolkata - 700 069

3.The General Manager,
Heavy Vehicle Factory,
Avadi, Chennai - 600 054.

4.The Chairman
HVF English Medium Educational Society,
Vijayanta Senior Secondary School,
H.V.F. Estate, Avadi, Chennai - 600 054.

5.The Secretary
HVF English Medium Educational Society
Vijayanta Senior Secondary School
H.V.F. Estate, Avadi, Chennai - 600 054.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to treat the service of the petitioner as one in regular service till 11.05.2021 and pay the benefits due to her under such service.

For Petitioner : Mr.V.Raghavachari

For 1st Respondent : Mr.G.Nagarajan

For RR 2 to 5 : Mr.V.Chandrasekaran

ORDER

The petitioner was a Teacher working in the 4th respondent school. She was originally joined in the year 1988 as Primary Teacher and worked in the school as such for a period of 31 years. The school is affiliated to the 1st respondent viz., Central Board of Secondary Education. According to the Bye Laws of the 1st respondent, the age of retirement of the teaching staff is 60 years. Rule 30 of the 1st respondent provides for retirement of employee at the age of 60, which reads as under:

"Rule 30 - Each employee including Head of Institution shall retire from service on attaining the age of 60. However, if the age of superannuation falls during the Academic session, the concerned employee will retire at the end of the academic session."

2.The petitioner's date of birth is 11.05.1961 and if the age of retirement is taken into account as 60 years and retirement falls due only in May 2021.

3.The 2nd respondent factory was formed under the control of Ministry of Defence and comes under the control of Ordinance Factory Board (OFB) at Calcutta. The 4th respondent school run by the Heavy Vehicles Factory, the 2nd respondent herein and a society was formed to run the school. The 2nd and 3rd respondents have financial supervisory control over the school. The members of the society are appointed by the General Manager of HVF.

4.According to the petitioner, as per Rule 24 of the CBSE Bye Laws, the school is permitted to frame their own service regulations for its employees. But, as far as the 4th respondent school is concerned, no service regulations have been formed and therefore, they are governed by the Bye Laws of the 1st respondent. In anticipation of impending retirement of the petitioner at the age of 58 in May 2019, a representation was sent by the petitioner on 06.03.2019. However, without accepting a request of the petitioner, the petitioner was ordered to be retired in May 2019 at the age of 58. In fact, the petitioner while making a representation has brought to the knowledge of the school authorities about a decision of this Court, which was

rendered in identical circumstances in respect of the same school, which held that the age of retirement of the teacher/staff was 60 years. Despite the same, the petitioner was retired in May 2019. Therefore, the petitioner is before this Court for issuance of writ of mandamus directing the respondents to continue the petitioner in service till 11.05.2021 and further direct the payment of the benefits due to such service.

5.Mr.V.Raghavachari, learned counsel appearing for the petitioner would submit that this Court had already on an occasion to deal with the issue and the learned single Judge of this Court in W.P.No.17285 & 17266 of 2009 on 04.11.2009 has held that the petitioner therein viz., teachers of the same 4th respondent school were entitled to serve till the age of 60 as per Rule 30. This decision dated 04.11.2009 was followed by the learned Judge of this Court in his order dated 09.11.2009 in W.P.No.11878 of 2009 in respect of the same 4th respondent school. The learned Judge in W.P.No.11878 of 2009 in paragraphs 7 and 8 has clearly held as follows:

"7. The 5th respondent school in which the petitioner is presently working is a self-financing private school affiliated to the Central Board of Secondary Education for the purpose of syllabus only. The 3rd respondent is a Government of India, Ministry of Finance, Production Unit manufacturing Heavy Vehicles (Battle Tank) for the Defence Forces of our Nation. In an effort to accommodate the children of the employees working in the Battle Tank Factory, the schools are run in the estate areas exclusively meant for the kids of the employees alone. The Vijayanta Senior Secondary School, the 5th respondent herein is a self-financing Private School run by HVF English Medium Educational Society which is also registered as per the Tamil Nadu Societies Registration Rules. No funds are received from the State Government. The school is having its own bye-laws amended from time-to-time and the 5th respondent school is run by the members of the society as per the syllabus of the Central Board of Secondary Education in English Medium. The CBSE has got its own bye-laws. As per bye-law No.3, the Board may affiliate several categories of schools all over India and abroad and it can even affiliate a school run by autonomous organisation, any private or unaided schools established by Societies registered under the Societies Registration Act, 1860. Bye-law 19(x) states that it shall have powers to lay down conditions of service as per norms of CBSE/Government, and to approve promotion/appointment/termination of

the employees as well as to grant special increments or rewards to the staff. Bye-law 30 deals specifically with retirement of teachers which was extracted already for easy reference. As per bye-law 30, it says that, notwithstanding anything contained in these rules or otherwise every employee including the Head of institution shall retire from service on attaining the age of 60. However, as the age of superannuation falls during the academic session, the concerned employee will retire on the end of the academic session. In view of the notwithstanding clause, the arguments advanced by the learned counsel for the respondents 1 to 3 that the 5th respondent has got its own bye-laws by which the age of superannuation of the employees to retire on attaining the age of 58 would not sound fine tune with the import of bye law 30 of the CBSE because the notwithstanding clause mentioned in bye-law No.30 specifically worded that every employee including the head of the institution 'shall' retire from service on attaining the age of 60 will have to be accepted as a correct answer for the question raised by the learned counsel for the petitioner. However, the further argument of the learned counsel for the respondents 1 to 3 that it would be financially not viable to retire the teachers on attaining the age of 60 cannot be legally accepted. Since the bye-law of the CBSE mandatorily imports a clear retirement age for all its employees attaining the age of 60 and further that the concerned employee will retire at the end of the academic session, the 5th respondent school is to follow bye-law 30 in the matter of retirement of every employee including the petitioner herein.

8. In view of the foregoing reasons, the Writ Petition is allowed. The respondents are directed to permit the petitioner to retire on attaining the age of superannuation at the age of 60 on 31.7.2011. Consequently, connected Miscellaneous Petitions are closed. There is no orders as to costs."

6. The learned Judge has also relied on Bye Law 30 of CBSE holding that the age of retirement was 60 years. Therefore, Mr.V.Raghavachari, learned counsel for the petitioner would submit that the issue of retirement age of the petitioner is no more res integra and the same has been settled by this Court. Unfortunately, despite the settled legal position, the petitioner was retired from service in May 2019.

7.Per contra, on behalf of the 1st respondent, Mr.G.Nagarajan, learned counsel has entered appearance and counter affidavit has been filed. In the counter affidavit of the 1st respondent, it is averred as follows:

"5.As per the new Affiliation Bye Laws 2018 (Date of notification 18.10.2018) under Chapter 5, qualifications, Recruitment, and service rules, in respect of Principal, Vice Principal, Teacher and other Staffs are given under Bye Law 5.3 says:

"The school shall define the service rules of teaching and non-teaching staff on the lines of the service rules of the employees of Appropriate Government. The service rules shall be approved by the School Management Committee and the Trust/Society/ Company running the school and invariably have specific and well documented provisions in which includes the age of retirement under 5.3.6."

Under the circumstances, the old amended Affiliation Bye Law which prescribes age of retirement on completion of 60 years no longer exists and it cannot be relied upon by the petitioner."

8.According to the above averments, under Chapter 5, the Bye Laws were amended on 18.10.2018 that service conditions of the employees would be on the lines of the employees of the appropriate Government. Therefore, the old prescription of 60 years of age was no longer exists. As per the amended Bye Laws, the petitioner was retired at the age of 58 years, which is well in tune with the service conditions of the employees of the State Government of this State.

9.On behalf of the respondents 2 to 5, a separate and detailed counter affidavit has been filed. In the counter affidavit, it is stated that the society Bye Laws as provided for prescription of conditions of service applicable to staff and the power is vested in the Managing Committee. The 4th respondent, being a private school and not a Government school, the conditions of service, as applicable to the Central Government Teachers, are not applicable to the petitioner, being a Teacher in a private school. The retirement of the petitioner was in tune with the age prescribed by the State Government Teachers i.e. 58 years and Bye Law 20 of the 4th respondent Educational Society empowers the Managing Committee to decide upon the matters regarding the conditions of service applicable to its staff. The respective learned counsel appearing for the 1st respondent and respondents 2 to 5 have made their submissions on the basis of above averments.

10. By way of reply, Mr. V. Raghavachari, learned counsel for the petitioner would submit that as regards the amendment to the Bye Laws of the CBSE, such amendment cannot have retrospective effect since the petitioner came to be appointed, before the amendment, when she was originally appointed in the year 1988. With reference to the amendment to the CBSE Bye Laws and the application of the present petitioner, he would rely on a decision of this Court reported in 2012 (4) CTC 577, F. Nirmalkumar David V. The Director, Gandhigram Institute of Rural Health and Family Welfare Trust. In the said judgment, the learned Judge of this Court has dealt with an amendment to a Clause in Service Rules which came into effect from 01.04.2006 and held that such amendment will have a prospective effect. The learned Judge in paragraph 31 of the order has observed the following:

"31. Moreover, it should also be taken notice of that amendment to Clause 16 of the Service rules, 2003, which came into effect from 1.4.2006 will have a prospective and it could be applicable to the staff who have joined the service of the Institute after the amendment. Therefore, this amendment could not be given effect to the Petitioners' case and they are entitled to continue in service up to 60 years in view of the provision under Section 56(1)(a) of the Fundamental Rules. Though the Respondent-Institute has taken a stand that they had the benefit of Government grant from 1.7.2008, it is not disputed that they have joined the service in the year 1981 and they have been promoted as Peon-cum-Daftry and Attender respectively."

11. In effect, the learned Judge has held that an amendment to the rules will have prospective application and cannot be applied to the staff who were already recruited and serving. Therefore, he would submit that in all fours the petitioner is entitled to continue till May 2021, till she attains the age of 60 years.

12. This Court considered the rival submissions of the counsels and perused the materials and the decisions cited on behalf of the petitioner.

13. It is a fact that the 4th respondent school is affiliated to the 1st respondent viz., CBSE and the Bye Laws of the CBSE are applicable to the 4th respondent school in which the petitioner was employed as a Teacher. In respect of the same school, two learned Judges of this Court have clearly held that the Teachers were entitled to serve the school till they attain the 60 years of age. Both the learned Judges have relied on Bye Laws 30 of the CBSE which governed the service conditions of the Teachers

of the 4th respondent school. Moreover, in the absence of a clear Bye Laws in regard to retirement age of the petitioner, as far as the 4th respondent school is concerned, the Bye Laws of the CBSE is automatically made applicable with reference to the service conditions of the employees of the 4th respondent school. When similarly placed Teachers have obtained orders from this Court holding that their age of retirement is only 60 years and in fact, they continued till the age of 60 years, this Court does not think that the present petitioner can be treated differently in the matter of retirement age. If any such different treatment is to be meted out that could be grossly violative of Articles 14 and 16 of the Constitution of India.

14. Even otherwise, if the amendment to the Bye Laws which came into effect 19.10.2018 is to be considered, as rightly relied on by the learned counsel for the petitioner in a decision of this Court reported in 2012 (4) CTC 577 (cited supra), such amendment prescribing a different condition of service can be made applicable only prospectively and the petitioner, who joined much before the amendment was brought in, cannot be allowed to suffer a new condition of service to her detriment. Admittedly, the petitioner was appointed as Teacher in 1988, 20 years before the amendment and therefore, such amendment can at best be applied prospectively, when staff are appointed after the said date of appointment. Further, the fact of the 4th respondent school affiliated with the 1st respondent Board would mean that the Bye Laws of the Board would automatically apply including the service conditions of the employees and the Bye Laws of the 1st respondent Board shall prevail over any local arrangement of the 4th respondent school with its staff. In any case, the absence of any particular service conditions regarding age of retirement formulated by the 4th respondent society has not been disputed except stating that the power is with the Managing Committee. Such general power vested with the Managing Committee does not empower the 4th respondent school to retire its staff contrary to the specific Bye Laws of the 1st respondent Board.

15. For the above said reason, this Court is of the considered view that the petitioner has made out a clear case for grant of relief as the claim of the petitioner is squarely covered by the decision cited by the learned counsel appearing for the petitioner and also on the basis of the Bye Laws of the 1st respondent Board. In the said circumstances, the Writ Petition is allowed and a writ of mandamus is issued directing the respondents 4 and 5 to reinstate the petitioner in service as Teacher and continue her in service till she attains the age of 60 years and pay her all benefits as admissible. The respondents 4 and 5 are directed to pass appropriate orders in complying with a direction within a period of two weeks from the

date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

Sgl
To

- 1.The Secretary,
The Central Board of Secondary Education,
PS-1-2-Institutional Area I.P. Extn.
Patparangai, Delhi - 110 092.
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H.V.F. Estate, Avadi, Chennai - 600 054.

+1cc to Mr.V.Raghavachari Advocate, S.R.No.67862
+1cc to Mr.G.Nagarajan Advocate, S.R.No.67914

GP(CO)
CB(25/09/2019)

W.P.No.9165 of 2019