

01 24.03.23

Ct. No. 04

Akd

WPA 2096 of 2010

**Paschim Banga Muslim Marriage
Registrars & Quzis Union & Anr.**

Vs.

The State of West Bengal & Ors.

**Mr. Tushar Kanti Mukherjee.
... for the petitioners.**

The challenge in the instant writ petition was restricted to the notification dated October 15, 2009 published in the Extraordinary Kolkata Gazette on October 27, 2009. The age of superannuation of the Muhammadan Registrars was fixed at 65 years or such licence is revoked or suspended by the Government, whichever is earlier.

Muhammadan Registrars were appointed under the Bengal Muhammadan Marriages and Divorces Registration Act, 1876 to discharge the duties entrusted therein and originally there was no outer cap reserved in the said Act. All the appointments were subject to the revocation or suspension of such licence by the appropriate Government.

The writ petition was filed assailing the said notification solely on the ground that fixing an outer cap limit for such designated post is bad, invalid, illegal and opposed to the parent Act; in other words, it is sought to be contended that by virtue of the subordinate/delegated legislation the spirit of the parent Act cannot be superseded nor can be violated on any score.

There were divergent opinions of this Court as slew of writ petition came to be filed and after noticing the inconsistent views having taken by the Bench of equal strength, the matter was referred to a Special Bench/Larger Bench to decide the same.

Our attention is drawn to an order of the Special Bench rendered in W.P. 9435 (W) of 2003 dated 23rd November, 2010, wherein the aforesaid notification was taken note of and on the basis thereof the Special Bench held that the reference has become infructuous immediately upon publication of the amended Rules.

Although the notification dated 15th October, 2009 is the subject matter of challenge in the writ petition which has been placed before us to decide the point of reference, but our attention is drawn to a subsequent notification dated 6th January, 2017 published in Extraordinary Kolkata Gazette on 19th January, 2017, wherein the age of superannuation of every Muhammadan Registrar which was initially fixed at the age of 65 years has been extended to 68 years.

The subsequent notification would reveal that the earlier notification is impliedly superseded and no longer in existence. Since the challenge was restricted to notification dated 15th October, 2009, which is no longer in existence because of the subsequent notification dated 6th January, 2017, in our opinion the reference has become infructuous and is mere academic.

In view of the above, the writ petition is disposed of.

(Harish Tandon, J.)

(Shampa Sarkar, J.)

(Rabindranath Samanta, J.)

