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10.01.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 27292 of 2023

Smt. Pritilata Bhuniya (Adhikary)
Vs.
State of West Bengal & Ors.

Mr. Tapas Kumar Sinha,
Mr. S. Balial
...for the petitioner

Mr. Moniruzzaman,
Mr. Soumik Dey
...for the State

1. The present challenge has been thrown to the *vires* of Rule 10 of the West Bengal Hindu Marriage Registration Rules, 2010 and to Rule 14 of the West Bengal Special Marriage Rules, 2010. In both the said Rules, it is argued that for non-official Marriage Officers, the retirement age stipulated is 68 years, whereas the said Rules do not apply to the *ex officio* Marriage Registrars as per sub-rule (4) of each of such respective Rules.

2. It is contended by placing reliance on the provisions of the said two Rules and the parent Acts, that is, the Hindu Marriage Act and the Special Marriage Act that the nature of function discharged by both *ex officio* Marriage Officers as well as non-official Marriage Officers are the same. As such, it is complained that the provisions in the

Rules of non-applicability of the retirement age to *ex officio* Marriage Officers is palpably discriminative against the non-official Marriage Officers and is violative of Article 14 of the Constitution of India. The *vires* of the Rules is challenged on such ground.

3. Despite service, learned Advocate General is not present. However, learned counsel for the State appears and argues in support of the *vires* of the said Rules. A written instruction is handed over in court today which clearly submits in clause 6 thereof that so far goes the question of the *ex officio* Marriage Officers and *ex officio* Hindu Marriage Registrars, they are all State Government employees and they all retire at the age of 60 years.

4. Of course, it is evident from the very language of the Rules that the *ex officio* members are, as per description, “*ex officio*”, that is, their appointment as Marriage Officers is specifically on the strength of their State Government posts. Hence, since the retirement age of the State Government employees is universally 60 years as per the version of the State itself, naturally after retirement, they cannot be retained as *ex officio* Marriage Officers.

5. Hence, by necessary implication, since the retirement age of State Government employees is 60 years, the retirement age of *ex officio* Marriage

Officers is cut off at 60 years of age. Hence, the ground of discrimination pleaded by the petitioner, who is a non-official Marriage Officer under the Hindu Marriage Act and the Special Marriage Act, is not tenable, since the non-official members' retirement age is 68 years, whereas the *ex officio* Marriage Officers' retirement age is 60 years.

6. Hence, the challenge to the vires of the concerned Rules has to be turned down on the above grounds.

7. Accordingly, W.P.A. No. 27292 of 2023 is dismissed in the light of the above observations.

8. There will be no order as to costs.

9. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)