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W.P.No.8713 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 04.06.2024

Orders pronounced on : **11.06.2024**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.8713 of 2024
and W.M.P.Nos.9735 and 9736 of 2024

T.Velvalli

.. Petitioner

Versus

1. The Secretary,
Central Board of Secondary Education,
New Delhi.

2. The Joint Secretary, Regional Office,
Central Board of Secondary Education,
Anna Nagar West, Chennai - 40.

3. Kalakshetra Foundation,
Rep. by its Director,
Thiruvanmiyur, Chennai - 41.

4. The Deputy Director,
Kalakshetra Foundation,
Thiruvanmiyur, Chennai - 41.

.. Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for (i) a Writ of Certiorarified Mandamus, after calling for the records pertaining to the order, dated 12.02.2024 issued by the 4th respondent in F.No:A/50/2022-2024, quash the same and consequently, direct the respondents 3 and 4 to retain and continue the petitioner services as Librarian in Besant Arundale Senior Secondary School till the end of the academic session, that is up to 31.03.2025 and (ii) a Writ of Declaration, declaring that the notification dated Nil published in the official website of 3rd respondent, in so far as calling for applications to fill up the post of Librarian in Besant Arundale Senior Secondary School, even prior to the date of her retirement which falls due on 31.03.2025 as illegal and invalid in law and forbear the respondents 3 and 4 from selecting, filling up and appointing any person as Librarian in Besant Arundale Senior Secondary School till the end of academic session, that is up to 31.03.2025.

For Petitioner : Mrs.R.Vaigai, Senior Counsel
for Mr.V.Ajay Khose

For Respondents : Mr.G.Nagarajan, CBSE Counsel
for RR-1 and 2

: Mr.Vaibhav R.Venkatesh,
for RR-3 and 4

ORDER

This Writ Petition is filed challenging the order, dated 12.02.2024, whereby, the petitioner was informed that she would be retiring from services of the organisation on 31.05.2024 on attaining the age of



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superannuation and for a declaration declaring the notification issued by the third respondent Foundation in their website for filling up the post of Librarian in Besant Arundale Senior Secondary School before the date of retirement of the petitioner which falls due on 31.03.2025 as illegal and invalid and consequently, to forbear the respondent Nos.3 and 4 from selecting, filling up and appointing any person as Librarian in the said School.

2. The case of the petitioner is that she is working as a Librarian in the Besant Arundale Senior Secondary School which is a unit of the third respondent Foundation. She completes 60 years of age as of 25.05.2024. The above-mentioned School is affiliated to the CBSE. The academic session of the CBSE Schools starts on the 1st of April of every year and ends on the 31st of March of the subsequent year. By the Affiliation Bye-laws issued by the CBSE, as per the amended Rule 30.1, every employee, including the Head of the institution, shall retire from service on attaining



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the age of 60 years. However, if the date of the superannuation falls during the academic session, the concerned employee, including the Head of the institution will retire at the end of the academic session. Therefore, the retirement date of the petitioner will only be on 31.03.2025. The consistent practice of the third respondent Foundation is to permit the employees to continue until the end of the academic year and a list of 16 employees, whose retirement was extended until the end of the academic year, is also furnished in the typed set of papers filed along with the Writ Petition. Even though the writ petitioner is working as a Librarian, she is treated on par with the teaching staff for all practical purposes and is even mentioned in the list of the teaching staff. Therefore, the petitioner alone cannot be singled out and subjected to discriminatory treatment, hence the Writ Petition.

3. This Writ Petition is resisted by the fourth respondent by filing a counter-affidavit. It is the case of the fourth respondent that the third respondent Foundation is an autonomous body constituted under an Act of



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Parliament, namely, *Kalakshetra Foundation Act, 1993*. The School is run by the third respondent Foundation and is affiliated to the CBSE. The age of retirement of the employees in the said School under the Foundation is 60 years and the petitioner attains the age of superannuation i.e., 60 years as of 25.05.2024 and as such, was sought to be retired from the afternoon of 31.05.2024.

4. The date of retirement is governed by Fundamental Rule 56 (of the Central Government Service) which is applicable in respect of the third respondent institution. The reliance placed by the petitioner in respect of the Bye-law 30.1 is incorrect. The said Bye-law is also repealed by the CBSE itself and is no longer in force. As per the amended Bylaws, for the conditions of service which include the age of retirement, the institutions are given liberty to adopt the service rules of the employees of the appropriate Government. The appropriate Government in the instant case would be the Central Government. Therefore, the third respondent Foundation has



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adopted the Fundamental and Supplementary Rules applicable to the Central Government servants. There is no enabling provision to extend the age of retirement beyond the period of 60 years as the same is specifically mentioned in Fundamental Rule 56.

5. A reply affidavit is also filed to the counter-affidavit filed by the fourth respondent. In the reply affidavit, the petitioner has stated that all along the petitioner was treated only as a teaching staff and even in respect of other service conditions, this Court, by the order, dated 09.07.2010 in W.A.No.1360 of 2006, held that the post of Librarian should be treated as a teaching post. The petitioner has also actually performed teaching duties including paper correction work etc. The respondents cannot alter the conditions of service to the prejudice of the employees without the approval of the Central Government as per Section 20 of the *Kalakshetra Foundation Act, 1993*. Therefore, the petitioner's Writ Petition is liable to be allowed.



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6. Heard *Mrs.R.Vaigai*, learned Senior Counsel for the petitioner, *Mr.G.Nagarajan*, learned CBSE Counsel for the respondent Nos.1 and 2 and *Mr.Vaibhav R.Venkatesh*, learned Counsel for the respondent Nos.3 and 4.

7. *Mrs.R.Vaigai*, learned Senior Counsel for the petitioner submits that firstly, the reliance placed on Fundamental Rules is incorrect in view of Section 20 of the *Kalakshetra Foundation Act, 1993*. Unless and otherwise there is a previous approval of the Central Government, the terms and conditions of any employee shall not be altered to his disadvantage. The Affiliation Bye-laws of the CBSE are bound to be followed by the institution. The action of the respondents, being an authority of the State, should be fair and reasonable and should not be discriminatory. The action of the respondents seeking to retire the petitioner with effect from 31.05.2024, is discriminatory because, for every other teaching staff, the third respondent Foundation has been permitting retirement only at the end of the academic session and the petitioner alone is singled out. No reason



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whatsoever has been mentioned for meting out such a treatment. Merely because the third respondent institution has discretionary powers, the same cannot be exercised unfairly or unreasonably.

8. In support of her submissions, the learned Senior Counsel relies upon the judgment of the Hon'ble Supreme Court of India in ***H.L.Trehan and Ors. Vs. Union of India and Ors.***¹, more specifically, to paragraphs Nos.11 and 12 of the said judgment. For the proposition that acting fair is one of the facets of Article 14 of the Constitution of India, reliance is placed on the judgment of the Hon'ble Supreme Court of India in ***K.I.Shephard and Ors. Vs. Union of India and Ors.***². Reliance is also placed on the judgment of the Hon'ble Supreme Court of India in ***The Manager, Government Branch Press and Anr. Vs. D.B.Belliappa***³, more specifically, to paragraphs Nos.15 and 25 of the judgment to contend that whenever an organisation is taken over, the same cannot be done to the disadvantage of

1 (1989) 1 SCC 764

2 (1987) 4 SCC 431

3 (1979) 1 SCC 477



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the employees. The treatment meted out to the petitioner is without any rationale or reason and hence would amount to hostile discrimination.

9. The learned Senior Counsel also relying upon the salary slips of the petitioner as well as another employee, submits that as far as the third respondent institution is concerned, it is the actual date of retirement that is postponed till the end of the academic session and the entire salary is paid. For the proposition that any prospective amendment or new rules cannot be applied in the case of the petitioner, the learned Senior Counsel relies upon the judgment of this Court in ***Aasha K.R. Vs. The Central Board of Secondary Education and Ors.*** in W.P.No.9165 of 2019, dated 08.08.2019, more specifically, relying upon paragraph No.10 of the said judgment. The learned Senior Counsel also relies upon the judgment of this Court in ***P.K.Gomathi Vs. The Central Board of Secondary Education and Ors.*** in W.P.No.5345 of 2010, dated 04.09.2019 to contend that as per the Bye-laws, the petitioner is entitled to the benefit. For the same proposition, the



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judgment of this Court in ***K.Sriram Vs. The Central Board of Secondary to Education and Ors.*** in W.P.No.32944 of 2019, dated 24.01.2020 is also relied upon.

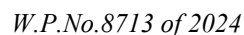
10. To contend that the petitioner's service should be equated to a teaching post, the judgment of this Court in ***T.Velvalli Vs. Union of India and Ors.*** in W.P.No.29064 of 2019 etc., (batch cases), dated 18.11.2022 is pressed into service. The learned Senior Counsel also fairly brings to the notice of this Court to the judgment of this Court in ***Pakala Ramadas Vs. Government of India and Anr.*** in W.P.No.31114 of 2023, dated 26.10.2023, whereby, the denial of continuation of employment until the end of the academic year was approved by this Court in the circumstances of the said case. The learned Senior Counsel would thus contend that fixation of the date of retirement only by relying upon the Fundamental Rules which work to the disadvantage of the petitioner, is illegal and secondly, the discriminatory treatment meted out to the petitioner is violative of Article 14



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11. Per *contra*, *Mr.Vaibhav R.Venkatesh*, learned Counsel for respondents Nos.3 and 4, submits that the entire prayer made in the Writ Petition is only concerning the date of retirement. Fundamental Rule 56, which is the rule adopted by the third respondent Foundation categorically states that the retirement age shall be 60 years and the services of the employees cannot be extended beyond the period of 60 years. The third respondent foundation appreciates the long and meritorious services of the petitioner, however, in the absence of any rule entitling the petitioner to be continued, the petitioner's services cannot be continued beyond 31.05.2024. The only rule that is relied upon by the petitioner is Affiliation Bye-laws. The said Affiliation Bye-laws came into force in the year 2014 and were repealed in the year 2018. Therefore, the same does not give any right to the petitioner. In the absence of the rule, it is the governing body of the Foundation, which has the discretionary power to extend the services till the



12. As far as the learned Counsel for the respondent Nos.1 and 2 is concerned, he would submit that it is correct that the Affiliation Bye-laws, of the year 2014, are repealed and as of date, there is no such statutory rule issued by the CBSE directing re-employment even concerning the teaching staff. It is left to the discretion of the concerned schools to adopt such rules.

13. I have considered the rival submissions made on either side and perused the material records of the case.



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14. As far as the age of retirement is concerned, there is no dispute between the parties. Originally, it was 58 years and it was increased by the Central Government to 60 years as per the recommendations of the Fifth Central Pay Commission. Thereafter, necessary amendments were carried out, including in Fundamental Rule 56. It can be seen that originally, the Affiliation Bye-laws in Bye-law 30.1 stood as follows and was amended with effect from 18.02.2014 as follows:-

Exiting Rule 30.1	Amended Rule 30.1
Notwithstanding anything contained in these rules or otherwise every 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.	Notwithstanding anything contained in these rules or otherwise every 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.
Provided further that if such employee is a recipient of National/State/CBSE Teachers Award. He may be considered for a further extension of service for two years after attaining the age of	Provided further that if such employee is a recipient of National/State/CBSE Teachers Award, he/she shall superannuate from service on attaining the age of 65 subjected to meritorious service,



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superannuation provided he is good health and good conduct. medically fit and is prepared to serve the school. The school managing committee after considering such case of extension of service, shall forward the details to the Board.

15. The said Bye-law was further amended with effect from 20.12.2016 which reads as follows:-

Exiting Rule 30.1	Amended Rule 30.1
Notwithstanding anything contained in these rules or otherwise every 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. Provided further that if such employee is recipient of National/State/CBSE Teachers' Award, he/she shall superannuate from service on attaining the age of 65 subjected to meritorious service, good health and good conduct.	Notwithstanding anything contained in these rules or otherwise every employee including Head of institution shall retire from service on attaining the age of 60 years. However, if the age of superannuation falls during the academic session, the concerned employee including Head of Institution will retire at the end of the academic session. Provided, if such employee including Head of Institution is a recipient of National Award only, he /she may be considered for a further extension of service for two years after attaining the age of superannuation subject to



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meritorious service, impeccable character, sound health, good leadership, management qualities and outstanding results throughout.

The school managing committee after considering such exceptionally meritorious cases of extension of service, shall forward the details to the Board for prior approval. Further, no extension shall be given without prior approval of the Board.

16. However, the said original Bye-laws are no longer in force as revamped Affiliation Bye-laws have come into force with effect from 08.10.2018. As per Clause 18.2 of the revamped Affiliation Bye-laws, all the existing provisions regarding affiliation regulations and any notification or orders issued thereunder are repealed as per Clause 18.2.1 which reads as follows:-

"18.2 Repeal and Saving

18.2.1 The existing provisions regarding Affiliation regulations and any notification or orders issued there under are hereby repealed by these Bye-laws."

17. There is no clause regarding the extension of the retirement date



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till the end of the academic year. The only relevant Clause 5.3 reads as hereunder:-

"5.3 The school shall define the service rules of teaching & 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 respect of the following:

5.3.1 Appointments

5.3.2 Medical Certificate, Character Certificate, etc.

5.3.3 Probation (including Extension of Probation)

5.3.4 Confirmation

5.3.5 Termination of Service due to Abolition of Posts, etc.

5.3.6 Age of retirement

5.3.7 Working Days and Working hours

5.3.8 Number of Teaching Periods

5.3.9 Maintenance of Record by the Teachers

5.3.10 Attendance of Employees

5.3.11 Contributory Provident Fund - Pension Scheme

5.3.12 Representations to the School Management

5.3.13 Permission to add Qualifications

5.3.14 Application for Another Post

5.3.15 Private and other Tuitions

5.3.16 Leave, Grant of Leave

5.3.17 Duties and Code of Conduct for Employees

5.3.18 Service Books

5.3.19 Performance Appraisal Reports

5.3.20 Disciplinary Procedure: Suspension and Reinstatement etc.

5.3.21 Constitution of Disciplinary Committee

5.3.22 Penalties (Minor and Major), Powers of Imposing Penalties and Procedure of Imposing Penalties etc.



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5.3.23 Payment of Pay and Allowances on Reinstatement"

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18. It can be seen that the age of retirement is governed by the said clause. Thus, the Affiliation Bye-laws now leave it to the concerned trust/society/company running the School to have specific and well-documented provisions in respect of the same. It can be seen from the minutes of the 52nd meeting of the Governing Board of the third respondent Foundation that they have resolved to adopt the Fundamental Rules of the Central Government. The Fundamental Rule 56 provides for the retirement upon the attaining age of 60 years.

19. Therefore, this Court finds that there is no enabling rule or provision for the petitioner to claim an extension of the date of retirement until the end of the academic year. In the absence of any rule, reliance is only placed on the past practice of the third respondent Foundation, whereby, even after the repealing of the CBSE Bye-laws, the services of four teachers have been extended until the end of the academic year.



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20. The contention on behalf of the petitioner is that the services of the petitioner, who is a Librarian, are also akin to the teaching services and the post has been treated as a teaching post in respect of fixation of pay scale etc. There can be no quarrel over the proposition that the post of Librarian is also akin to the teaching post. In the present-day scenario, when teaching is shifting from imparting to guiding, a Librarian can also be equated to that of a Teacher. It may be so that while fixing the scale of pay and classifying the cadre etc., such post can be treated on par with the teaching post. However, continuing the services of the employees after the date of superannuation in the middle of the academic year has a specific context. The services of the Teachers in the educational institutions are continued because the Teacher teaching the subject alone will be in the knowledge as to what further has to be imparted on the students, how to evaluate them and know their deficiencies/understanding of the subject and therefore, it is expedient and necessary that the same individual continues to guide the



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students till he sits for the final examination. If viewed from that context, the reasoning of the respondents in not extending the services until the completion of the academic year on the ground that she is a non-teaching staff, cannot be termed as unfair and arbitrary.

21. The particulars of 16 staff members who have been given the extension, are mentioned in the list annexed along with the typed set of papers. Admittedly, all the 16 persons are Teachers. Therefore, it cannot be said that the petitioner alone was discriminated.

22. Considering the petitioner as teaching staff for several other purposes cannot be extrapolated and imbibed into the process of granting an extension of services till the end of the academic session. Therefore, neither the petitioner is entitled to an extension of retirement date based on any rule nor do I find that the action of the respondents is unreasonable or arbitrary.



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23. As far as the contention regarding the adoption of the Fundamental Rules is concerned, Section 20 of the *Kalakshetra Foundation Act, 1993* which is relied upon by the learned Senior Counsel for the petitioner is extracted hereunder:-

"20. Transfer of service of existing employees.-- On and from the appointed day, every officer or other employee, employed immediately before the appointed day in connection with the affairs of Kalakshetra shall become an officer or other employee of the Foundation and shall hold office by the same tenure and remuneration and on the same terms and conditions as to pension, gratuity and other matters as he would have held under the Board of Trustees or any other body, in whatever capacity, if this Act had not been passed and shall continue to do so, unless and until his employment in the Foundation is terminated or until his tenure, remuneration and other terms and conditions are duly altered by the Foundation:

Provided that the tenure, remuneration and other terms and conditions of service of any such officer or employee shall not be altered to his disadvantage without the previous approval of the Central Government."

24. Thus, it can be seen that the third respondent Foundation is entitled to alter or re-fix the terms and conditions of services of the employees, but, prior approval of the Central Government is necessary if only, it is altered to the disadvantage of the employee.



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25. Therefore, only if the adoption of the Fundamental Rules results in a disadvantage to the petitioner or any other employee, a prior approval of the Central Government would be required. The age of retirement is 60 years. There is no other rule or terms and conditions of service which was prescribed or which was prevalent in the third respondent Foundation to extend the date of retirement until the end of the academic year as on the date of adoption of the Fundamental Rules. Therefore, it cannot be contended that the employee is put to any disadvantage by the adoption of the new terms and conditions of service. In the absence of any rule or entitlement, the ratio in the judgments relied upon by the learned Senior Counsel will not apply to the facts and circumstances of the instant case.

26. For the aforementioned reasons, this Writ Petition is without any merits and is accordingly dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



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Neutral Citation: yes

grs

To

1. The Secretary,
Central Board of Secondary Education,
New Delhi.
2. The Joint Secretary, Regional Office,
Central Board of Secondary Education,
Anna Nagar West, Chennai - 40.



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