

C. Sankaranarayanan, Etc. Etc.

Vs

The State of Kerala

Civil Appeals Nos. 1789-1791 of 1969

(K. S. Hegde, A. N. Grover JJ)

04.05.1971

JUDGMENT

GROVER, J. -

1. These appeal by special leave are from a judgment of a division bench of the Kerala High Court affirming the decision of a learned Single Judge who had dismissed writ petitions of the appellants.
2. The appellant in C.A. 1789 of 1960, entered service as a teacher in a private aided school on March 14, 1946. Both the appellants in C.A. 1790 of 1969, had joined service originally as teachers in aided schools but they entered Government school service on August 17, 1958 and December 18, 1948, respectively, Similarly in C.A. 1791 of 1969, the appellant joined Government service as a teacher and attained the age of 55 on July 2, 1968.
3. It appears that on November 22, 1965, all associations of Government and private aided school teachers of which the appellants were member submitted a memorandum to the Government making various demands. One of these (No. 11) was that the age of retirement of school teachers should be raised to 60 years. On July 14, 1966, the Government issued an order by which the age of retirement was raised from 55 to 58 years. Paragraph 8 of this order was in the following terms :

"The age of retirement of all teachers including Head Master of aide schools will be raised to 58 with effect from July 1, 1966. This will be subject to the condition that the appointing authority may with previous approval of the Director of Public Instruction in the case of High and Training Schools require the teacher to retire after he attains the age of 55 years, on three months' notice without assigning any reason. The teachers may also after attaining 55 years, voluntarily retire after giving three months' notice to the appointing authority."

The order mentioned above was followed by an amendment in the relevant rules in the Kerala Education Rules framed under the Kerala Education Act, 1958 (Act 6 of 1959). On May 4, 1967, another order was issued by the Government in supersession of the previous orders. By this order the age of compulsory retirement of all Government employees and aided school teachers whose age of retirement on superannuation under the existing order was 58 years was lowered to 55 years. It was, however, stated that all those who had already crossed the age of 55 years or who might attain the age of 55 within a period of three months from the date of the order would retire only on the date of expiry of three months. The necessary amendments were formally made both in the Kerala Education Rules framed under the Act 6 of 1959 and the Kerala Service Rule made by the Governor in exercise of the powers conferred by the proviso to Article 309 of the Constitution.

4. We may at this stage refer to the relevant statutory provisions and the rules. Act 6 of 1959 was enacted to provide for the better organisation and development of educational institutions in the State. Section 12(1) of the Act provides that the conditions of service of teachers in aided schools including the conditions relating to pay, pension, provident fund, insurance and age of retirement shall be such as may be prescribed by the Government. Section 36 confers power on the Government to make rules. The rules which have been framed under Section 36, namely, the Kerala Education Rules 1959, hereinafter called the "Education Rules" originally contained Chapter XXVII. In February, 1965, the Chapter was renumbered as XXVII-A. Another Chapter XXVII-B was added. Rule 8 in Chapter XXVII-A appearing under the head "pension" is in the following terms :

"8. The age of retirement on superannuation shall be 55 years.

Note. - In the case of those who were in service of any aided school prior to September 4, 1957, the age of retirement on superannuation shall be 60 years subject to the condition that the service beyond 55 years shall not qualify for pension and gratuity under those rules."

In Chapter XXVII-B the following rules may be noticed :

"1. The rules in this chapter shall come into force on October 1, 1964.

2. These rules shall apply to teachers in aided schools to whom the rules in Chapter XIV(C) Kerala Education Rules apply.

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4. The date of compulsory retirement on superannuation applicable to teachers of Government schools shall apply to teachers of aided schools."

Chapter XIV(C) relating to conduct rules contains two provisions which may be reproduced :

"1. The Rules in this Chapter shall apply to -

(i) Teachers of aided schools who are in service on October 1, 1964, and who opt under Rule 2 to be governed by these rules; and

(ii) Teachers appointed after October 1, 1964 :

Provided that nothing contained in this Chapter shall apply to teachers who continue in service after attaining the age of 55 on or before May 4, 1967.

2. Subject to the provisions of Rule 1 teachers who in service on October 1, 1964, shall be given the option either to continue under the rules in Chapter XIV-B or to come under these rules. Such opinion shall be exercised within a period of three months from the commencement of these rules, or within such further time as Government may specify in this behalf. The option once exercised shall be final. Teachers who have not exercised any option within the prescribed period shall be deemed to have opted these rules."

5. It is common ground that the appellant in C.A. 1789 of 1969, exercised the option in terms of the above rules. Thus by virtue of Rule 2 in chapter XXVII-B, read with Rule 4 the date of his

compulsory retirement on superannuation would be the same as was applicable to teachers of Government schools.

6. We may first deal with the contentions raised on behalf of the appellant in the above appeal. It was claimed on his behalf that the provisions of Chapters XXVII-A and B were not mutually exclusive and he was entitled to the benefit of Rule 8 in Chapter XXVII-A. As he was in service of an aided school prior to September 4, 1957, his age of retirement on superannuation was to be 60 years. The approach of the division bench was that the provisions of Chapter XXVII-A and Chapter XXVII-B when read together leave no doubt that the two chapters are mutually exclusive. Chapter XXVII-B makes independent and separate provisions which are inconsistent with those contained in Chapter XXVII-A. As the appellant in C.A. 1789 of 1969, is a teacher in an aided school the age of compulsory retirement by virtue of Rule 4 of Chapter XXVII-B would be the same as that of teachers of Government schools. The age of compulsory retirement for the letter class of teachers was 55 and it followed that that would be the age of superannuation for the aforesaid appellant. Reliance was placed also on Rule 2(a) of Chapter XIV-C which expressly states that teacher who come under the provisions of Chapter XIV-C shall retire at the age of 55. We fully concur with the view of the learned Judges of the High Court and are unable to accede to the contention that in spite of the clear wording of the various rules to which reference has been made the appellant, who is a teacher in an aided school, can get the benefit of Rule 8 of Chapter XXVII-A. That cannot possibly be applied to him as that was a general rule and when he opted to be governed by the said rule contained in Chapter XXVII-B and Chapter XIV-C he was relegated to the same position as that of a teacher of Government school even in the matter of superannuation.

7. Another point which has been strenuously urged is that the Government orders which followed the memorandum submitted by the teacher were the result of an understanding which could well be regarded as a binding agreement or contract between the Government and the teacher from which it was not open to the Government to resile unilaterally. Alternatively a rule similar to that of estoppel could be invoked. The first limb of this argument was disposed of by the learned Single Judge by rightly pointing out that the power of the Government under Article 309 of the Constitution to make rules regulation the conditions of service of Government employees or of teachers in aided schools under Section 12 of Act 6 of 1959, could in no way be fettered by any agreement even if such an agreement was proved. We have not been shown any principle or authority on which an agreement or contract could be spelt out from the document relied upon. Nor it is possible to understand how the power conferred by Article 309 of the Constitution or by the statutory provisions could be curtailed or fettered in any manner by any alleged agreement or contract. The rule of estoppel can hardly be invoked in the circumstances of the case although support was sought from certain decisions of this Court.

8. In *Union of India and Others v. M/s. Indo-Afghan Agencies Ltd.*, ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889) this Court held that where a person had acted upon the representation made in the export promotion scheme that import licence upto the value of the goods exported would be issued and had actually exported goods his claim for an import licence for the maximum value permissible by the scheme could not be arbitrarily rejected. It was observed that the claim in that case was founded upon the equity which arose as a result of representation made on behalf of the Government in the export promotion scheme and the action taken by the respondent there acting upon the representation. Even though Section 115 of the Evidence Act was not in terms applicable it was still open to respondent who had acted on that representation to claim that the Government should be bound to carry out the promise made by it though not recorded in the form of a formal contract as required by the Constitution. These principles can hardly be applied here because there is

no question of any representation having been made by the Government which was acted upon to their detriment by the appellants. Moreover the conditions of service could be indisputably changed in exercise of the powers contained in Article 309 of the Constitution and Act 6 of 1959. In such a situation it was not open to the appellants to invoke the principle of the rule of estoppel.

9. Our attention has also been invited particularly on behalf of the appellants in C.As. 1790 and 1791 to exhibits P-6 and P-7. Exhibit P-6 is a copy of proceedings of the District Education Officer, Kottayam. It contains a mention of order, dated March 10, 1967, in which it is stated that the age of compulsory retirement of all officers in the State had been raised to 58 as per the Government orders mentioned therein. The continuance beyond the age of 55 of these teachers was subject to suitability. A list of certain teachers was given who were allowed to continue in service till 58 years of age. Similarly exhibit P-7 is a copy of the proceedings of the District Educational Officer, Palghat, in which the name of teachers who were to continue beyond the age of 55 was given. This was apparently done after the age of superannuation had been raised to 58 with effect from July 1, 1966, vide exhibit P-4 (G.O.), dated July 14, 1966. But then, as has been noticed before, the age of retirement was again lowered to 55 years. Change in the rule relating to retirement can be validly made and it does not attract either Article 311(2) or Article 14 of the Constitution : See *Bishun Narain Mishra v. State of Uttar Pradesh and Others* ((1965) 1 SCR 693 : AIR 1965 SC 1567 : (1965) 2 SCJ 718).

10. Reliance has also been placed on behalf of the appellants on Rules 5 and 6 of the Kerala Service Rules. According to Rule 5 nothing in the Rules or in any rule made thereunder shall operate to deprive any person of any right or privilege to which he is entitled by or under any law or by the terms of any contract or agreement subsisting between such person and Government on the date the Rules came into force. Section 6 says that subject to the provisions of Rule 5 nothing in the Rules or any rule made under the Rules shall operate to affect to the disadvantage of any person holding a substantive post under Government to whom the Rules apply, the conditions of service in respect of pay, leave, allowances, pension or any other matter which are applicable to him : (a) on the dates these rules came into force, or (b) by virtue of any order or rule made by the Government unless such person gives his consent". The point sought to be made is that once the age of retirement was raised to 58 it could not be reduced to 55 owing to the provisions of these Rules. This matter was not raised before the division bench of the High Court and the normal practice of this Court is not to allow a new point to be raised except in a case of a very special nature time in this court in the present appeals.

11. The appeals fail and are dismissed but we leave the parties to bear their own costs.

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