

Madurai Kamaraj University

Vs

Dr. K. Rajayyan

Civil Appeal No. 373 of 1985

(Ranganath Misra, G. L. Oza JJ)

02.12.1987

JUDGMENT

RANGANATH MISRA, J. –

The Madurai Kamaraj University is in appeal by special leave. The respondent was Professor and Head of the Department of Modern History in the University having joined such post in 1970. The Syndicate of the University took a decision on April 7, 1984 which runs thus :

The Syndicate at its meeting held on April 7, 1984 considered the question of continuance of the services of Dr. K. Rajayyan, Professor of Modern History, beyond the age of 55 years and resolved as follows :

It is seen from the reports of Dr. M. J. Koshi dated June 29, 1983 and of the Discipline Committee of the Syndicate dated January 19, 1984 relating to the Ph.D. thesis on 'History of Arcot under Nevayats and Wallajah Nawabs (1700-1801)' of Thiru P. Sarveswaran that the thesis is not his original work and contains a number of passages and paragraphs copied verbatim from the book "History of Madurai 1936-1801" by Dr. K. Rajayyan. Dr. K. Rajayyan as supervisor of the thesis had certified that the thesis is the original work of Thiru P. Sarveswaran.

This conduct of Dr. K. Rajayyan is reprehensible and has brought disrepute to the University in having led to the acceptance of the thesis and award of the degree of Ph.D. to Thiru P. Sarveswaran. Considering these facts and his past antecedents it is not in public interest to continue his services.

In these circumstances, it is resolved that the services of Dr. K. Rajayyan be not continued beyond 55 years of age under Section 7 of Chapter VII read in conjunction with Ordinance 29 of Chapter XXIV of the Madurai Kamaraj University Calendar Volume 1.

Accordingly Dr. K. Rajayyan is relieved of his post as Professor of History with effect from April 7, 1984. Dr. S. Manicka, Reader in the School will take charge of the School from him immediately.

Pursuant to the resolution, the respondent was relieved from service on April 7, 1984 and he assailed the decision of the University by filing a writ petition before the Madras High Court. The learned Single Judge after hearing parties came to the conclusion that the decision of the University was appropriate and the writ petition was dismissed. The respondent carried an appeal to the Division Bench of the court challenging the order of the learned Single Judge and that appeal was allowed by holding that the respondent was entitled to be in service till he attained the age of 58 years. When special leave was granted in this Court, an order staying the operation of the appellate

judgment of the High Court was made on condition that the respondent would be paid all his emoluments including arrears due to him in case he had been reinstated.

2. Under the Madurai University Act, 1965, the Senate is the highest authority and the executive power to administer the University is vested in the Syndicate subject to the overall control of the Senate. Section 20 of the Act authorises the Syndicate to make ordinances to prescribe inter alia conditions of service of teachers and other employees of the University. Ordinance 29 in Chapter XXIV laying down the conditions of service of the employees of the University provided thus :

The date of compulsory retirement of a University servant in superior service shall be the date on which he attains the age of 55 years. He shall not be retained in service after that age except on public grounds, with the sanction of the Syndicate, which must be recorded in writing but must not be retained after the age of 60 years provided that this will not affect the extension of services or re-employment already sanctioned by the Syndicate.

3. Statute 7 of Chapter VIII makes provision for University Professor, Teachers and Lecturers. Statute 7 provides :

Except in the case of experienced men who have already gained distinction in their subject and who have been appointed as Professors, appointments shall be in the first instance for a period of two years and shall be subject to confirmation at the end of that period. Thereafter the appointment shall be permanent, subject to age limit which shall be 60 years. Subject, however, who have been physically fit after the age of 55 years and subject to the provisions of Law 5 and subject to Statute 29 of Chapter XXIV. A member of the teaching staff may be permitted to retire after attaining the age of 55 years on proportionate pension.

4. It is relevant to indicate here that the University, has a Gratuity-cum-Pension-cum-Providence Fund-cum-Insurance Scheme for teachers. Paragraph 4(c) of the Scheme prescribes that the age of retirement shall be completion of 60 years of age. The service, if any, after the completion of 60 years of age will not be considered for purposes of pension, provident fund or gratuity.

5. There is no dispute that with effect from April 25, 1979, Ordinance 29 of Chapter XXIV was amended and in place of 55 years 58 years was substituted. In fact, the Senate approved the amendment carried by the Syndicate at its meeting on October 11, 1979, retrospectively from April 25, 1979. The Division Bench of the High Court fixed the age of retirement of the respondent on completion of 58 years on the basis of this amendment.

6. According to the University, Ordinance 29 had been incorporated into Statute 7 and the amendment by Ordinance 29 brought about from April 25, 1979, was not available to be read into Statute 7. This reasoning did not appeal to the High Court. Nor are we prepared to accept that contention. From the material on record it can safely be concluded that the University had made special provisions for teachers. Statute 7 which has been framed in exercise of powers under Section 20 of the Act, fixes the age of superannuation of teachers at the age of 60 years subject to physical fitness after the age of 55 and subject to the provisions of Law 5 in Statute 29 of Chapter XXIV. Reference to Ordinance 29 which prior to amendment fixed the age of retirement at 55 and after amendment at 58 years seems to be out of place. Once Statute 7 is taken as a special provision for the teachers and the age of superannuation is prescribed at 60 years subject to physical fitness after

55 years of age, the provision of Ordinance 29 which previously fixed the age of superannuation at 55 and after amendment at 58 would run counter to the main provision in Statute 7. This would be so, as in no case a teacher could continue after the age of 55 years or beyond 58 years after the amendment. The provision in Statute 7 that a member of the teaching staff could be permitted to retire after attaining the age of 55 on proportionate pension makes it clear that the age of 55 is not the normal age of superannuation. If that was so, there was no necessity to provide for permission to retire on proportionate pension. For quite some time, University teachers have been enjoying the benefit of service up to 60 years particularly after the University Grant Commission prescribed that as the age of retirement of Professors and a distinction is being maintained between teacher and non-teacher employee of the University in regard to retirement. In court of the hearing, a copy of the report of the Committee on revision of pay scales of teachers in Universities and Colleges prepared by the University Grants Commission was placed before us. In paragraph 5.9.2 relating to the age of superannuation, it has been stated that the present age of 60 should continue but in case on the recommendation of the Fourth Pay Commission, Central Government was prepared to increase the age of retirement of its employees beyond 58 years, the age of retirement of teachers should be correspondingly enhanced beyond 60 years. We agree with the counsel for the University that this is not a document on which much reliance can be placed for disposing of the appeal. It cannot, however, be disputed that this would throw light on the prevailing situation. On the documents already on record and referred to above, we conclude that teachers in the appellants-University are entitled to continue till they attain the age of 60 years and the decision of the Syndicate in retiring the respondent at the age of 55 years was wholly inappropriate. The resolution of the Syndicate cast a stigma on the respondent and in case premature retirement was contemplated, the respondent should have been given opportunity of being heard regarding the allegations against him in an appropriate disciplinary proceeding. It is not the case of the University that when the respondent attained the age of 55 he was not in a physically fit condition and thus he could be asked to retire in terms of Statute 7. In these circumstances, we agree with the Division Bench of the High Court that the order of retirement was bad. We have already held that the appropriate age for superannuation is 60 - a benefit which the High Court has not given to the respondent. On this finding, the appeal by the University is liable to be dismissed.

7. We have already held that the appropriate age for a teacher to superannuate is 60 years. An attempt has been made by the respondent to move this Court for filing Special Leave Petition No. 5395 of 1986 to claim that relief. This petition is barred by limitation by 411 days. On July 29, 1986, notice was ordered to be issued on that application and the matter was tagged to the civil appeal by the University. The reasons given for the delay are not at all impressive. The respondent has stated :

Now that the special leave petition preferred by the University challenging the judgment of the High Court has been admitted and is pending before the Hon'ble Court in Civil Appeal No. 373 of 1985, the petitioner feels and believes that a grave prejudice will be caused to him, if the decision of the High Court holding that the age of retirement is 58 years and not 60 years is not challenged by the petitioner. It has, therefore, become necessary for the petitioner also to challenge the judgment of the High Court.

This is no reason - much less germane - to make out sufficient cause for the long delay. The special leave petition is dismissed as barred by limitation.

8. The appeal by the University is dismissed. Since the University had forced the respondent to

come to court, and be dragged up to this Court we, would ordinarily, have directed costs to be paid to him. But as already stated this Court by the interim order directed that the respondent should be paid all his dues without requiring the respondent to work. In these circumstances, while dismissing the appeal, we leave the parties to bear their respective costs. The appellant is directed to make payment of all the outstanding dues of the respondent within two months from today.

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