

T. P. George and Others

Vs

State of Kerala and Others

Civil Appeal Nos. 1680-87 and 1672-78 of 1992

(M. H. Kania, S. Mohan JJ)

24.03.1992

ORDER

1. Special leave granted.
2. Heard learned counsel for the parties.
3. We are in agreement with the observations of the Division Bench of the Kerala High Court in Writ Appeal No. 223 of 1991 quoted in the impugned judgment which run as follows :

"Though Clause 26 of the scheme provides that the age of superannuation for teachers should be 60 years, and the scheme contemplates certain improvements in providing for assistance in that behalf, it is not a scheme which is statutorily binding either on the State Government or the different Universities functioning under the relevant statutes in the State of Kerala. What the State Government has done by its order dated March 13, 1990 is to implement the UGC Scheme including revision of scales of pay in relation to teachers in Universities including Kerala - Agricultural University, affiliated colleges, Law Colleges, Engineering Colleges and qualified Librarians and qualified Physical Education Teachers with effect from January 1, 1986, subject however to the express condition that insofar as the age of retirement is concerned, the present fixation of 55 years shall continue. The contention of the appellant is that the State Government having accepted the UGC Scheme, and as the scheme provides for a higher age of 60 years, once the State Government accepted the scheme, all the clauses of the scheme became applicable. It is not possible to accede to this contention. Firstly, as already stated the UGC Scheme does not become applicable because of any statutory mandate making it obligatory for the Government and the Universities to follow the same. Therefore the State Government had the discretion either to accept or not to accept the scheme. In its discretion it has decided to accept the scheme, subject to the one condition, namely, insofar as the age of superannuation is concerned, they will not accept the fixation of higher age provided in the scheme. The State Government having thus accepted the scheme in the modified form, the teachers can only get the benefit which flows from the scheme to the extent to which it has been accepted by the State Government and the concerned Universities. The appellant cannot claim that major portion of the scheme having been accepted by the Government, they have no right not to accept the clause relating to fixation of higher age of superannuation. That is a matter between the State Government on the one hand and the University Grants Commission on the other, which was provided certain benefits by the scheme. It is for the University Grants

Commission to extend the benefit of the scheme or not to extend the benefit of the scheme, depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the same. That is a matter entirely between the State Government on the one hand and the University Grants Commission on the other. Teachers of the private institution concerned are governed by the statutes framed under the relevant statutory enactment. As long as the superannuation remains fixed at 55 years and as long as the State Government has not accepted the UGC's recommendation to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they are entitled to retire on attaining the age of 60 years."

4. We may clarify the scheme referred to as UGC (University Grants Commission) Scheme of 1986, framed by the Government pursuant to the Malhotra Committee's Reports. We may further point out that it is clear from paragraph 4 of the circular dated June 17, 1987, addressed by the Ministry of Human Resources Development, Department of Education, to the Education Secretary of all States/UTs (Union Territories) that the adoption of the scheme was voluntary, and the only result which might follow from the State Government not adopting the scheme might be that it may not get the benefit of the offer of reimbursement from the Government to the extent of 80 per cent of the additional expenditure involved in giving effect to the revision of pay scales as recommended by the scheme.

5. We may further point out that the teachers in Universities are governed in respect of their conditions of service and the age of retirement by the separate statutes made by the Universities concerned. On the other hand the teachers in private colleges or affiliated colleges are governed in respect of their conditions of service by regulations or rules framed by the Government (separate state (sic set) of statutes). In these circumstances, the two classes of Universities teachers and teachers in private colleges cannot be regarded as similar for purposes of conditions of service as to bring the case under Article 14 of the Constitution.

6. Although the appeals and the writ petitions, in our view, cannot succeed, we do feel that age of retirement fixed at 55 years in the case of teachers of affiliated colleges is too low. It is only after a teacher acquires several years of teaching experience that he really becomes adept at his job and it is unfortunate if the students have to lose the benefit of his experience by reason of an unduly early age of retirement. However, it is not for the Court to prescribe the correct age of retirement but that is a policy function requiring considerable expertise which can properly be done by the State Government or the State Legislature or the Universities concerned. We hope that some time in near future, the State Government will be able to consider the question and determine the age of retirement as it best thinks fit.

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