

State of U.P. and Others

Vs

Dr. Ramesh Prasad

Civil Appeal No. 2559 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

11.01.1996

JUDGMENT

1. Leave granted.

2. Though notice was sent to the respondent on September 10, 1993 in usual course, till date the report of the service of notice has not been sent nor the acknowledgment received. Under these circumstances, the notice must be deemed to have been served on the respondent.

3. The only controversy in this case is whether the respondent-teacher imparting teaching in Moti Lal Nehru Medical College, Agra is entitled to remain in service till he attains the age of superannuation of 60 years. Making such a claim, the respondent filed a writ petition in the High Court. The High Court even without considering the relevant provisions had directed the State Government in the impugned order dated December 21, 1990 in CMWP No. 33277/90 to continue the respondent in service till he attains the age of superannuation of 60 years virtually allowing the writ petition. Calling this order in question, the above appeal by special leave has been filed. We have directed the learned counsel to place before us the relevant Rules. Section 2 (18) of the U. P. State University Act, 1973 (for short, 'the Act') defines the teacher. The Section reads thus :

"2 (18). 'teacher'. means a person employed for imparting instruction or guiding or conducting research in the University or in an Institute or in a constituent affiliated or associated college and includes a Principal or Director."

4. University Teacher has been defined in Section 2 (19) of the Act which reads as under :

"2 (19) 'teacher of the University' means a teacher employed by the University for imparting instruction and guiding or conducting research either in the University on in an Institute or in constituent college maintained by the University."

5. By exercising the power under Section 49 (d) of the Act, the State Government had framed the statutes and Statute 16.24 prescribes superannuation of 60 years for the teachers of the University. Under Statute 17.01, it is stated that the provisions of the Chapter shall not apply to teachers of any college exclusively maintained by the State Government or Local Authority.

6. Under Regulation 459 of U. P. Civil Services Regulations, the date of compulsory retirement of a Government servant (in other words superannuation) is such as may from time to time be prescribed

thereof in the Financial Hand Book, Vol. II. In Fundamental Rule 56 (a) contained in the U. P. Financial Handbook, Vol. II to IV, it is provided thus :

"56 (a). Except as otherwise provided in other clauses of this rule, the date of compulsory retirement of a Government servant, other than a Government servant in inferior services, is the date on which he attains the age of 58 years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds, which must not be retained after the age of 60 years except in very special circumstances."

7. Regulation 520 of the U. P. Civil Services Regulations also envisages that an officer who is in receipt of a superannuation or rearing pension shall not be re-employed or continue to be employed in service paid from general revenues or from a local fund, except on public grounds. Extension or re-employment on extension of the terms of employment may be given under the circumstances enumerated thereunder, which read as under :

(i) By the Government of India in the Administrative Department concerned, when the pensioner served before retirement of a Gazetted appointment directly under the Government of India or belonged to an Imperial Service or Imperial Branch of any Service, or was an officer, who before retirement, has a post usually filled by officers of an Imperial Service or Branch :

(ii) In other cases, by the State Government under whose administration the pensioner is re-employed;

(iii) By any authority, subordinate to a State Government, when the State Government may delegate its powers under this article in respect of pensioner re-employed in establishments under the control of such authority.

NOTE :- A State Government may declare that the restrictions contained in this Article shall not apply to any particular local fund or to local funds of any particular class in its territories, or that they shall apply subject to such modifications as it may direct."

8. It would thus be clear that the University teachers are governed by the Act and the statutes made thereunder. By operation of Statute 16.24, the superannuation of a University teacher has been prescribed at 60 years. The teacher of any college exclusively maintained by the State Government or a Local Authority is a Government servant governed by the Regulations referred to hereinbefore. The statutes made under the Act envisage that the University teachers are a class for whom specific age of superannuation has been prescribed under the statute governed by the provisions of the Act, whereas the teachers, though are working in the Medical Colleges maintained by the State Government, are governed by the State Government Service Rules prescribed in the Regulations which prescribes the superannuation on attaining the age of 58 years. Thus the doctor-teachers working in the Medical Colleges maintained by the State Government are not entitled to remain in employment on attaining the age of 58 years, unless there is an express order made by Government covered by the Regulation 520 of the U. P. Civil Service Regulations. The order of the High Court is *ex facie* illegal. If the respondent remained in service after he attained 58 years, by virtue of the order of the Court, he must be deemed to have retired on his completing 58 years with resultant consequences.

9. The appeal is accordingly allowed. The order of the High Court is set aside and the writ petition stands dismissed. No costs as the respondent is not appearing. Appeal allowed.