

# SUPREME COURT OF INDIA

Ahmedabad Education Society

Vs.

Gilbert B. Shah

(S. R. Babu and Ruma Pal JJ.)

08.12.2003

## JUDGMENT

### **S. Rajendra Babu, J.**

1. The basic issue raised for consideration in these appeals is the retirement age or the respondents, who were teachers with the Appellant Society. According to the appellant, the retirement age of teachers in their school is 58 in accordance with the Sub-rule (1) of the Rule 34 in Schedule - F of the *Bombay Primary Education (Gujarat Amendment) Rules, 1978* (Hereinafter, Amendment Rules). Respondents - teachers claimed that they could continue in service till the age of 60 as per the Rule 29 of the Leave Rules of the Appellant Society. which is applicable in their case, it is also their case that the applicability of Leave Rules is saved by virtue of Sub-rule (3) of the Rule 34 in Schedule-F of the Amendment Rules.

2. The relevant Rules are extracted hereunder:

Sub-rules 1 and 3 or Rule 34 in Schedule - F of the Amendment Rules:

"34. Age of superannuation of Teachers: (1) An employee shall retire at the age of 58 years. However, a review of the work will be undertaken at the age of 55 years for deciding whether he deserves to be continued beyond the age of 55.

(2). \*\*\*

(3). These rules shall not apply to employees who are already employed on a contract basis for a definite period. However, the management shall not make any appointments on contract which would defeat the provisions of these rules."

Rule 29 of the Leave Rules:

"The age of retirement for servants of the society will ordinarily be 60 years but the Governing Body may require a Medical Certificate of fitness after the age of 55."

3. Facts as emerging from the Original Civil Suit and the subsequent Appeal before the High court leading to these appeals by special leave are as under:

4. That one Mr. Shiv Prasad Valjibhai was appointed as a teacher in a Primary School owned by the Appellant Society. He was informed by the Appellant that he would be retiring from service on completion of 55 years in 1983. Shiv Prasad Valjibhai filed the Civil Suit No 2001 of 1983 in the City Civil Court at Ahmedabad, mainly seeking a declaration that his age of retirement is 60 and also prayed for other consequential relief. Some of the Respondents herein impleaded themselves as parties in the said Suit. The Appellant/Defendant maintained the stand that the Respondents/Plaintiffs are to be retired at the age of 58 as they are following the Rules and Regulations applicable to the teachers of the Municipal School Board.

5. The Civil Court relied upon *Jayantilal Ratilal Thakkar v. State of Gujarat and Ors.*<sup>1</sup> wherein it was held that there is no security of tenure and no statutory protection for employees in a primary school run by a private body. It was also held in that case that the security of tenure of a primary school teacher is governed by master and servant relationship or by contract between the parties. Based on this ruling the Civil Court found that by virtue of Sub-rule 3 of the Rule 34 of the Amendment Rules, which says that "these rules shall not apply to employees who are already employed on a contract basis for a definite period" the Respondents/Plaintiffs are entitled to continue in service up to the age of 60. Because once the Amended Rules become inapplicable the Rule 29 of the original Leave Rules, which was a part of the terms and conditions of the contract, will determine the tenure of teachers. Civil Court pointed out that the Appellant/Defendant have not brought on record any copy of the relevant Municipal Board Rules that is said to have been followed by them, it is also pointed out that in a reply to the notice for the production of documents, the Appellant/Defendant stated that "as regards Municipal School Board Rules in force in 1957 and in 1960, we are not in possession of the same." Taking into account all these aspects Civil Court rejected the contention that the Appellant-Defendant is following the Rules and Regulations applicable to the teachers of the Municipal School Board. Moreover, in another reply to the interrogatories at Ex. 8 (before Trial Court) the Appellant/Defendant stated that "Leave Rules ore terms of the contract of service of such employees whose service conditions are not governed by the Statute or statutory rules and they are framed for persons whose terms and conditions of service are governed by the contract entered into by and between such employees and the Society." Thus concluded that the original Leave Rules determine the terms and conditions of the service of these Respondents, Another contention put forwarded by the Appellant/Defendant before the Civil Court is that Sub-rule (3) of Rule 34 of the Amended Rules is applicable only to those who are employed on a contract basis for a definite period. Pertaining to this the Civil Court found that since the Respondents/Plaintiffs were appointed up to the ago of 60; their appointment is for a definite period, it was also held that the rule making authority appeared to have decided not to disturb such advantageous and beneficial conditions of service that were operating in favour of the employees. With these reasoning prayers in the Plaint were allowed.

6. The Appellant challenged the Civil Court Order before a Division Bench of the Gujarat High Court. The Appellant contended before the High Court that Amended Rules had the effect of prevailing over any terms of contract. Second limb of the argument was there was no indication in the order of appointment that the age of superannuation would be 60 years. Regarding Leave Rules the stand was taken that the same was only for guidance for the management that they could retain an employee till the age of 50 and also contended that the Leave Rules are applicable only to Class IV employees and not to teachers.

7. Primarily, after making a detailed survey through various provisions of the Leave Rules, the High Court found that the same is applicable to all the employees of the society including teachers and constituted conditions of service of the employees of the Appellant. Thereafter, the High Court finds that when the employment is purely in the realm of contract and not governed by any statutory provisions, the terms and conditions of the contract will alone govern the field. Regarding the prevalence of Amended Rules over the contractual terms, the High Court finds that the same cannot be interpreted so as to take away the contractual rights. And the fixing of the superannuation age by the Amended Rules is not intended to reduce the tenure of a permanent teacher under the terms of the contract. For these reasons, it is concluded that even without reference to the Rule 34 (3) or the Amended Rules, the teachers have a right to continue till the age of 60. It went on to hold that in view of Section 14(1)(b) of the Specific Relief Act. the teachers were entitled to damages in the event of forced premature retirement. Consequently, the Appeal was rejected.

8. This judgment is impugned before us.

9. The fundamental question for consideration in this case is the nature of the original appointment of the Respondents - teachers. If they were appointed on contractual terms for a definite period, then they could continue in service in accordance with the terms of the original contract, which, by virtue of Rule 29 of the Leave Rules allow them to continue in service till the age of 60.

10. It is not disputed that the respondents were appointed by Letters of Appointment similar to that of one produced as Ext. 50 before Civil Court. One condition in that Letter of Appointment is that the appointee will have to observe the general rules and regulations of the Society. Admittedly Leave Rules are framed by the Society. It is also admitted by the Society that the Leave Rules framed by the Society are terms of the contract of service. The relevant portion of the Civil Court Judgment is extracted:

"...In their reply at Exh. 9, in reply to point Nos. 14 and 15 in the interrogatories at Exh. 8, the defendants have stated that the Leave Rules are terms of contract of service of such employees whose service conditions are not governed by the Statute or statutory rules and they are framed for persons whose terms and conditions of service are governed by the contract entered into by and between such employees and the society..."

(Emphasis supplied)

11. Since this is the accepted position. Leave Rules are the applicable terms of service in case of the Respondents - teachers. As per the original terms and conditions of the contract they were appointed up to a particular age; that is, up to the age of 60. As a result, they could be considered as appointed for a definite period. Sub-rule (3) of Rule 34 of the Amended Rules exempted those persons who are 'appointed for a definite period' from its ambit. Since the Amended Rules exempted the Respondents, the authorities cited before us - *State of J & K v. Shiv Ram Sharma and Ors.* , *B Narayana Murthy v. State of AP.* , and *Roshan Lal Tandon v. Union of India* , are of no assistance in the facts and circumstances of this case. Moreover, the Appellant is a private registered Society. In any case, the terms of contract will determine the terms of service of the employees. In this context, it is unnecessary for us to examine the other issues advanced before us.

12. Hence the decision arrived at by the High Court does not need any interference. This Court had granted an interim order of stay while issuing notice on 11.5.1999 and continued the same subject to the condition of payment of money in the event of the dismissal of these appeals. The respondents or the LRs were entitled to the difference in salary and emoluments, if any, had they continued in service as held by the High Court. Let the appellant compute such amount and pay it to respondents within a period of three months from today.

13. The appeals stand dismissed accordingly.

<sup>1</sup>(1976) 17 GLR 461