

Judgment reserved on 08.10.2010
Judgment delivered on 12.11.2010

CIVIL MISC. WRIT PETITION NO.11111 OF 1996

Smt. Sumitra Dhuliya

vs.

Director of Education & others

Hon'ble Ferdino Inacio Rebello, Chief Justice

Hon'ble Sunil Ambwani, J.

Hon'ble Dilip Gupta, J.

1. Smt. Sumitra Dhuliya served on the post of Professor in Central Paedological Institute, Allahabad (in short, 'CPI, Allahabad), upto the age of 58 years, and retired on superannuation on 31.3.1996. She claimed benefit of Government Order dated 21.3.1984, providing that those teachers, who are engaged in teaching in Government institutions, will be entitled to continue till the end of the academic session i.e. 30th June of the year during which they are going to retire, if their date of birth falls between 2nd July and 29th June of the academic session. She was not given the benefit of the extension of service provided by the Government Order dated 21.3.1984. She filed the writ petition praying for a writ of mandamus commanding the Director of Education (Madhyamik), U.P. Lucknow-respondent no.1, and the Additional Director of Education (Madhyamik), Education Directorate, UP Allahabad-respondent no. 2 to extend her services upto 30.6.1996. By an interim order dated 29.3.1996 she was permitted to continue to serve on the post, which she was holding. The Division Bench, at the time of hearing of the writ petition on 21.4.2009, noticed an apparent conflict in the view taken by the two Division Benches in the same year. It

was found that in **Sarju Prasad vs. State of UP and others Civil Misc. Writ Petition No. 896 of 1967** decided on 14.3.1997 a Division Bench of this Court held that the Government Order is applicable only to the teachers, who are teaching in a particular session, and not to the training institutes. In a later Division Bench decision in the same year in **Rajpati Pandey vs. State of UP and others Civil Misc. Writ Petition No. 20756 of 1990** decided on 02.05.1997 a Division Bench held that the Government Order dated 21.3.1998 will also apply to Central Paedological Institute, Allahabad (CPI), as it is a Government institute and teaching takes place in the said institute. The matter was thus referred to a larger bench to resolve the conflict.

2. In our opinion, following questions arise for consideration by us:-

“1. Whether the Government Order dated 21.3.1984, providing for extension of service after superannuation to the Teachers, Headmasters and Principals of Government Schools and Colleges upto end of the academic session i.e. 30th June, following the date on which they attain the age of superannuation, with certain conditions, is applicable to the staff of the training institutes such as Central Paedological Institute, Allahabad (CPI)?

2. Whether the Division Bench judgment in Civil Misc. Writ Petition No. 20756 of 1990 (Rajpati Pandey vs. State of UP and others) decided on 2.5.1997 giving extension of service after 30th June next following the date of superannuation to the Professors of the Central Paedological Institute, Allahabad was correctly decided? and;

3. Whether the view taken by Division Bench in Civil Misc. Writ Petition No. 896 of 1967 (Sarju Prasad vs. State of UP and others) decided on 14.3.1997 lays down the correct law?”

3. Brief facts giving rise to the writ petition are that the petitioner

was selected as LT grade teacher by UP Public Service Commission in the year 1962, and was appointed on a substantive post until she was selected in the grade of Lecturer by the Commission and appointed in substantive capacity as Lecturer in the year 1974. She was confirmed on the post of Lecturer on 4.3.1987. The date of birth of the petitioner is 11.3.1938. In the year 1996, in which she was to attain the age of superannuation, she was serving as Professor in CPI, Allahabad. In paragraph-4 of the writ petition, she claimed that she was serving as Professor, in Research-cum-Teaching Institute, and is taking classes and that she was also incharge of the Model School under the CPI, Allahabad. The CPI is involved in research activities, which include developments and modification of textbooks of students upto Intermediate level. It also imparts training to make students, known as Licentiate of Teaching (L.T.). The activities of research and training are combined activities undertaken by the institute. As a teacher in the institute since 1988, it is alleged, the petitioner was doing both research and teaching work and as incharge of a Model School, a Junior High School, imparting education from Classes I to VIII. She was involved in day-to-day activities of the school including the syllabus, curriculum and overall teaching activities under her guidance. She therefore claimed to be entitled to be given the benefit of extension of services until the end of the academic session i.e. June 30, 1996.

4. The petitioner made a representation on 28.8.1996 to give her three months' extension of services upto June, 1996. In her representation she stated that she is regularly teaching in Government CPI and that in the previous session she was teaching the subject of Psychology to L.T. grade teachers. She has been incharge of the Model School attached to the CPI and has, for a period of one year, worked as Administrative Officer in the Government CPI. Her

representation was forwarded by the Director of State Educational Research and Training Council, Lucknow to the Directorate of Education on 19.3.1996. The petitioner sent a reminder on 19.3.1996, and thereafter filed the writ petition.

5. In the counter affidavit of Smt. Prema Rai, Principal of CPI, Allahabad, it is stated that the petitioner was appointed as Assistant Mistress in L.T. Grade on 31.10.1961 in a temporary vacancy, and was confirmed in the said grade on 1.4.1970. She was selected on the post of Lecturer and was appointed on 26.6.1971. She was promoted on ad-hoc basis as Professor in the grade of Rs. 770-1670 and was posted in Government CPI, Allahabad on 19.12.1988. She had joined the institute on 20.12.1988, and since then she is working on the said post. The work in CPI, Allahabad, is to conduct research on various education systems and to develop education work. The main work assigned to the institute is to conduct research work and to impart training to teachers. The function of the post held by the petitioner is not to teach the students admitted in the institute for obtaining LT certificate. She is required to conduct educational research for re-orientation of educational system. The petitioner does not teach or impart education or take classes. In fact, she was working on the post doing research work and thus the conditions laid down in the Government Orders dated 21.3.1984 and 20.4.1995 for extension of term, until the completion of academic session, are not applicable to her. In paragraph-5 of the counter affidavit, it is stated that the petitioner was not doing teaching work or imparting education in the said institute. She was only doing research work. The Model School attached to CPI, Allahabad was being headed by a Headmaster and is engaged in imparting education to children from Classes-I to VIII. Only supervision work was entrusted by the then Principal of CPI Allahabad, and no teaching work was allotted to her.

She was not teaching the students of the Model School. In para-10 of the counter affidavit, it is stated that the CPI Allahabad is a non-educational institution and is different from other Schools and Colleges. The CPI, in which the petitioner was posted on the post of Professor, does not have any academic session of its own, and like any other Government office, it is open throughout the year. The incumbents earn their leave of 31 days for rendering services throughout the year, unlike the staff of the teaching institution, where earned leave is admissible only for one day in a month as vacations are availed by them.

6. In the rejoinder affidavit, the petitioner has stated that she has been engaged as a teacher from the date of her initial appointment. For 40 years she has been working as a teacher. The institute undertakes both research and teaching work. It revises syllabus from Class-I to Intermediate and makes suitable recommendation for its revision, conduct seminars, workshops and other research orientation work. Apart from these the institute also conducts LT training for male. The designation of all teachers of CPI is a Professor, which means a teacher of the highest grade. The work of revision of syllabus, introduction of new lessons etc. are only of peripheral nature. The petitioner is primarily a teacher. From the beginning of her association with the institute in the year 1988, she was teaching and was imparting teaching to LT students. The petitioner has annexed the time tables, curriculum of training, practicals, projects and publication to demonstrate that she was also doing teaching work.

7. A supplementary affidavit was filed by the petitioner reiterating that she was a teacher and that she had taught in Government Girls Inter College Lansedown, Pauri Garhwal; Government Girls Inter College, Dehradun; Government Girls

School, Allahabad and is presently teaching in CPI, Allahabad. She teaches the subjects of Methodology, Education, Psychology amongst other subjects in the institute. In the similar circumstances, Shri U.D. Pandey a teacher in CPI was also given extension of service. He was allowed to teach upto 30th June, 1991.

8. In the supplementary counter affidavit, Shri Ram Dutt Tewari, Professor, Government, CPI, Allahabad has reiterated that the petitioner was not doing any teaching work. There is no session so far as the institution CPI Allahabad is concerned. It runs for whole of the year, and as such the petitioner is not entitled to sessions benefit. The State has relied upon judgment in **Saryu Prasad yadav s. State of UP and others** (supra) in which this Court had denied the sessions benefit to Professors of CPI.

9. Shri Shashi Kant Shukla, learned counsel appearing for the petitioner submits that the Division Bench in **Rajpati Pandey's** case(supra) has correctly given the benefit of extension of service to a Professor of CPI upto 30th June of the year in which he was retiring. The Division Bench found that he was originally appointed on the post of teacher in 1962, and had worked for substantial part of his service as a teacher. For a short period the petitioner was on a non-teaching post. When such teaching and non-teaching posts are such that an employee can be transferred from one post to another, the petitioner cannot be deprived with the benefit of the Government Order dated 21.3.1984, particularly when at the time of retirement he was holding a teaching post. The principle, on which the Government order was issued, as it appears from the Government order itself, does not justify the exclusion of the petitioner from the benefit. The only conditions, which have been prescribed in the Government Order dated 21.3.1984, are appearing from the same and no case was made out by the respondents that any of the conditions

was lacking. The Division Bench thereafter proceeded to observe that the CPI is a Government institute. The Government Order itself indicates that same applies to Government institutions in which teaching takes place. The post held by the petitioner upto his retirement was the post of Professor and thus he is entitled to the benefit of extension of service.

10. Shri Shukla submits that the Government Order dated 21.3.1984 was issued to give benefit to all the teachers teaching in educational institutions. All the conditions of the Government Order dated 21.3.1984 are applicable to the teachers of the CPI, Allahabad. He relies upon paragraphs 210, 211 and 226 of the Education Code which defines 'academic session' and which also includes academic session for training institutions under heading 'Training Sessions'. He has relied upon a long career of the petitioner as a teacher, her designation as a Professor, the curriculum, and the time table annexed to the rejoinder affidavit, and submits that the petitioner was a teacher, and was serving in a Government Training Institute for imparting training to the teachers. She was, therefore, entitled to the benefit of the Government Order dated 21.3.1984 for extension of service.

Shri M.C. Chaturvedi, Chief Standing Counsel appearing for the State, submits that the Government Order dated 21.3.1984 provides for the objects in which the extension of service as an exception to the general rule was given to the teachers of the Government educational institutions. In the Government Schools and Colleges the retirement of the teacher in the middle of the academic session disturbed the teaching work. The appointment of new teachers, or their transfers and promotions takes some time and that new teachers or transferred and promoted teachers take some time to start the teaching work with the same speed. The State Government

in supersession of its earlier Government Orders dated 8.2.1970, 12.5.1977 and 6.2.1978, issued directions in public interest as an exception to the Fundamental Rule 56 (a) of Financial Handbook Vol.2 Part II to IV, to provide for extension of service of those Teachers, Headmasters and Principals, who retire in between the academic session (i.e., 1st July and before 30th June), and are attaining the age of 58 years upto the end of the academic session i.e. 30th June, subject to conditions (i) that their work and conduct during the period of service has been satisfactory; (ii) they are physically and mentally fit; (iii) they are teaching some subjects regularly in the school, and further subject to the conditions that in all such cases, it will be necessary for the competent authority to obtain order from the State Government. Paragraph-4 of the Government Order dated 21.3.1984 provides that those officers, who are not doing any teaching work, should not be assigned teaching work in the last year of their service to give them benefit of extension of service upto 30th June. Later on the demand of the Rajkiya Shikshak Sangh, on 20.4.1995 the Government Order dated 21.3.1984 was partly amended to give the benefit of extension upto the end of the academic session i.e. 30th June, without any specific order to that effect, unless the concerned Principal has brought to the notice of competent authority any adverse fact prior to their retirement. The Principal was made responsible to submit his report informing any such fact regarding the health of the government teachers, or the extent to which his work was unsatisfactory to deny to him the benefit of extension of service.

12. Learned Chief Standing Counsel submits that the Government Orders dated 21.3.1984 and 20.11.1995 were further amended by Government Order dated 31.7.1998 by providing that the sessions benefit will not be given automatically to the Headmaster/Principal

unless they give written information/application one month prior to attaining the age of superannuation to the competent authority. He submits that the benefit of extension of service to teachers is correlated to the academic session. The exception to the statutory rules of superannuation, is primarily for the benefit of students and not for the teachers. Where in the government institutions there are no students and there is no academic session, nor the concerned teacher is teaching any subject regularly in such academic session, the benefit is not made applicable.

13. Shri Chaturvedi submits that in **Sarju Prasad's** case (supra) the Division Bench deciding the case of Professor of CPI Allahabad had dismissed the writ petition for giving benefit of extension of service on the ground that he was not doing any teaching work and further that there is no session so far as the Central Paedological Institute, Allahabad is concerned. The institution runs for the whole of the year. The petitioner earned leave and is not entitled for the benefit to continue upto the end of the academic session, applicable to the teachers engaged in teaching work for a particular session. The Division Bench did not find anything in Paragraphs 210, 211 and 226 of the Education Code to give benefit to the petitioner.

14. The service conditions of Professors working in the Government CPI, Allahabad are regulated by U.P. Educational Teaching (Subordinate Gazetted) Service Rules, 1993. The Rules do not provide for age of superannuation. Rule 17 of the Rules is in the nature of residuary clause, provides as follows:-

“17. **Regulation of other matters.-** In regard to the matters not specifically covered by these rules or by special order, persons appointed to the service shall be governed by the rules, regulations and orders applicable generally to Government servants serving in connection with the affairs of the State.”

15. The age of superannuation of Government servants in UP is

regulated by the Fundamental Rules 56 (a) falling under Chapter IX of the Financial Hand Book Vol. II, Parts II to IV. Rule 56 (1) provides as follows:-

“56 (a) Except as otherwise provided in this rule, every Government servant other than a Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.”

16. The rules of superannuation prescribed in respect of public servants are based on consideration of life expectancy, and the capacity of the civil servant, having regard to the climatic conditions in which they work and the nature of work, they do. The rules do not involve the exercise of any discretion. They apply uniformly to all public servants, under the category, in respect of which they are framed. In **Ram Deka vs. General Manager, North East Frontier Railway AIR 1964 SC 600** the Supreme Court said that the competent authority may frame rules under Article 309 of Constitution which corresponds to Section 124 of the Constitution for compulsory retirement of a government servant. All those rules as laid down in **State of Bombay v. Saubhag Chand M. Doshi AIR 1957 SC 892** will be valid provided they fix both the age of superannuation and an age of compulsory retirement and the services of permanent civil servants are terminated between these two points of time. In **Ram Autar Pandey v. State of Uttar Pradesh, AIR 1962 All 328 (FB)** a Full Bench of our Court observed:-

“The purpose of Fundamental R. 56 is not to confer upon Government servants any right to be retained in service up to a particular age, but to prescribe the age beyond which they may not be retained in service.

This shows the intention with which the rule was framed. What to say of a vested right, not even a right was intended to be

conferred by R. 56. The petitioner could not, therefore, say that because at one stage 58 was the age of superannuation according to the rule a right was conferred upon him under which he could insist that he should be retained in service till that age and that the rule-making authority had lost its right to change the rule and to reduce the age of superannuation to a lower figure.”

17. In this reference, we are concerned with extension of service as an exception to FR-56 (a), to the petitioner. Any exception to the rule of universal application, has to be strictly construed. In **State of Assam vs. Basanta Kumar Das AIR 1973 SC 1252** the Supreme Court held in a case of Professor and Head of Department of Physics in Government Cotton College, Guwahati that a government servant has no right to continue in service beyond the age of superannuation prescribed in the statutory rules. If he is retained beyond that age it is only in exercise of the discretion of the Government. In **B.N. Mishra vs. State of UP AIR 1965 SC 1567** it was held that the State Government was not obliged to retain the services of every public servant for the same length of time. The retention of public servants after the period of retirement depends upon their efficiency, and exigencies of public service. If the Government decides to retain the services of some government servants after the age of retirement, it must retain every government servant for the same length of time. The retention of public servants after the period of retirement depends upon their efficiency, and exigencies of public service. In **State Bank of Bikaner and Jaipur and others vs. Jag Mohan Lal 1989 Supp 1 SCC 221** the Supreme Court, considering the refusal of the bank to grant extension to the respondent upon his completion of 58 years, held that the retention beyond the age of superannuation is within the discretion of employer. There is no right to continue in service beyond the age of superannuation. The extension to some employees does not imply discrimination against those who were not

given extension.

18. In order to meet the difficulties faced by the students on the change of a teacher in educational institutions in the middle of the academic session, the State Government decided by Government Order dated 21.3.1984, to carve out an exception for giving benefit of extension of service to the teachers upto the end of the academic session, subject to the conditions that their work and conduct is satisfactory; they are fit both physically and mentally, and are teaching any subject regularly in the school. The Government Order provided for exemption of each case individually by the State Government, on presentation of such facts by the competent authorities. Later the Government Order dated 20.4.1995 removed the condition of consideration of each case individually and supplemented it with the condition that the extension will not be granted if any adverse fact is reported against the teacher. The Principals were made responsible to report at least one month before the superannuation, any adverse fact such as unsatisfactory work, or the unfitness of such teacher. The condition precedent of extension of service, namely employment of the teacher in a Government educational institution to be terminated by superannuation in the middle of the academic session, is thus to be strictly complied with.

19. We find substance in the contention of learned Chief Standing Counsel, on the averments in the counter affidavit and material placed on record that CPI, Allahabad, is primarily engaged in educational research work, for reorientation of educational system. The institute conducts research work in comparative analysis of educational standards, and facilities in rural and urban areas, the difficulties faced by under-privileged children in the schools; the recommendation for extra-curriculum activities such as debates, organizing special lecturers and seminars. The institute is also

engaged in preparing curriculum and publishing of books relating to teaching. The training of LT grade teachers was also undertaken by the institute for some time. It was later on stopped. A Model School was being run in the premises of CPI, Allahabad in which the teaching of Classes-I to VIII was undertaken. The school had separate teachers with service conditions regulated by the rules framed by Basic Education Board and the regulations applicable to the teachers of the Board.

20. Smt. Prema Rai, Principal of the Government, CPI, Allahabad did not recommend for extension of service of the petitioner vide her letter dated 23.3.1996, to the Director of Education (Secondary) on the ground that the petitioner had not performed any regular teaching work and was engaged in the institute, in research work. The petitioner had orally informed her that she had taught Psychology, as a subject but that there is no proof of such teaching from the time table of the teachers training. In para-3 of her letter she has stated that there is no academic session in the institute. The teachers and Professors in the institute avail 31 days earned leave and also get the benefit of leave encashment. Smt. Dhulia-the petitioner also availed the benefit of earned leave.

21. The object of giving benefit of extension of service beyond the prescribed age of superannuation to the teachers upto end of the academic session i.e. 30th June uniformly, without any reference of individual case, except in case of unsatisfactory work and failing health, is to maintain the continuity in teaching work in educational institutions. In order to ensure that the students do not suffer, on account of the change of teachers in the middle of the academic session, the teachers teaching regular subjects are given extension of service upto the end of academic session commonly known as sessions benefit. The teaching of any subject and the incomplete

academic session, are the twin requirements for allowing the benefit of extension of service to such teachers. If any of these requirements are missing, the teacher is not getting the benefit of the policy, to continue beyond the age of superannuation.

22. The exceptions to the general rule have to be construed strictly in order to achieve the object for which such exceptions are made. The special benefit given to the teachers for avoiding any inconvenience to the students and to maintain the regularity of the academic session, can be availed by teachers only to extend their service after the age of their superannuation, only if they fulfill such conditions laid down in the Government order dated 21.3.1984. Smt. Sumitra Dhulia, the petitioner, was designated as Professor in C.P.I. Allahabad. She was not teaching any subject to the students regularly. The CPI also imparts training to the teachers. The teachers attend to the training sessions, mostly in the vacations. There is no academic session in the institute. The teachers in the institute as Government servants were required to work throughout the year and are entitled to earned leave and also encashment of earned leave, upto the maximum prescribed period of its accumulation. They are as such not entitled to the benefit of extension in service to continue upto 30th June, following the date of their superannuation.

23. The questions posed by us, arising out of two decisions with conflicting opinions, are thus answered as follows:-

“1. The Government Order dated 21.3.1984 granting extension of service to the Teachers, Headmasters and Principals of Government Colleges and Government Degree Colleges, till the end of the academic session i.e. 30th June of the year in which such Teacher, Headmaster or Principals retire, is not applicable to the employees including Professors working in Central Paedological Institute, Allahabad (CPI).

2. The judgment in **Rajpati Pandey vs. State of UP and**

others in Civil Misc. Writ Petition No. 20756 of 1990 dated 2.5.1997, was not correctly decided;

3. The Division Bench judgment in **Sarju Prasad vs. State of UP and others Civil Misc. Writ Petition No. 896 of 1967** decided on 14.03.1997, lays down the correct law;”

We may observe that our opinion has been rendered in respect of the teachers, and Professors of the Central Paedological Institute, Allahabad, and not for the teachers of the Model School, running in the campus of the Institute, from Classes-I to VIII.

The record will be sent back to be listed before the concerned bench to finally decide the writ petition in accordance with the opinion, expressed as above.

Dt.12.11.2010

RKP/