

B. NARAYANA MURTHY & ORS. ETC.**A**

v.

STATE OF ANDHRA PRADESH ETC.

May 6, 1971

[S. M. SIKRI, C. J., G. K. MITTER, C. A. VAIDIALINGAM,
I. D. DUA AND V. BHARGAVA, JJ.]**B**

Educational Institutions—Raising age of retirement of teachers—Re-fixing it at lower age—Validity—Whether violative of Arts. 14 and 16 of Constitution.

The retirement age of teachers in the service of the Andhra Pradesh Government, Zilla Parishads, Panchayat Samitis and Municipalities was fixed at 55 years till 1964 when Government raised the age of superannuation to 58 years. In 1966 the age was raised to 60 years, but, on November 3, 1967, Government issued a G.O. cancelling with effect from November 30, 1967, the two earlier G.Os. extending the age of retirement; and corresponding changes were made in the rules relating to teachers in the service of Zilla Parishads, Panchayat Samitis and Municipalities.

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Some teachers challenged the G.O. dated November 3, 1967 and the High Court, holding that the teachers whose term had already been extended had a vested right to continue, directed the State Government not to give effect to the G. O. and the consequential rules as against such teachers. In pursuance of the judgment of the High Court Government issued a memorandum dated November 8, 1968, giving effect to the directions of the High Court and also providing that teachers who had attained the age of 55 years after November 30, 1967, should be dealt with under the G.O. dated 3rd November, 1967, and should be retired on attaining the age of 55 years.

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The petitioners challenged the memorandum on the ground that by not extending the benefit of the judgment of the High Court to them, and by fixing November 30, 1967, as the date for determining who should retire, Government acted arbitrarily and violated the equality rule embodied in Arts. 14 and 16 of the Constitution.

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HELD: (1) It was open to the Government to reduce the age of retirement without exposing such reduction to any constitutional infirmity. Fixing November 30, 1967, as the date for the classification of teachers who should retire at the age of 55 years could not be considered irrational or unreasonable. The object of raising the retirement age was to solve the problem of the dearth of qualified teachers because of the opening of new schools and the need for maximum utilisation of trained intelligensia. As soon as the dearth of qualified teachers disappeared Government restored the retiring age to 55 years. [748F, 750C]

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(2) If the Government order dated November 3, 1967, was valid then the petitioners had to retire at the age of 55 years notwithstanding the fact that after their initial employment the retirement age was raised first to 58 years and then to 60 years, because, those intermediary orders had been cancelled by the G.O. dated November 3, 1967, before the earlier Government orders became operative by actually retaining in service the present petitioners after their superannuation under the earlier rule. The

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A other employees were given benefit pursuant to the order of the High Court which had since become final. Merely because by some subsequent orders the extended date of retirement was accepted in respect of those employees it would not entitle, by itself, the present petitioners to claim similar extension of age of retirement. The directions given by the High Court provide a valid differentia and the petitioners could not claim to be equated with those employees who had been given such benefit. [748G-749C]

B (3) It could not be said that the Government having accepted the judgment of the High Court, the earlier orders increasing the age of compulsory retirement must automatically be held to be revived. The Government only gave the benefit of the decision of the High Court to those employees whose cases were covered by the principle laid down by the High Court. [749H; 750B]

C (4) Fundamental rule 56(a) does not govern the teachers employed by the Municipalities, Zilla Parishads and Panchayat Samitis. [751A]

D (5) The submission that the rules applicable to the teachers employed by such bodies were intended to be in conformity with the fundamental rule is of no avail to the petitioners because those rules could not be considered to have been automatically modified as a result of any amendment in the fundamental rule 56(a), when there is no consequent modification of the rules governing teachers employed in such bodies. [751B]

ORIGINAL JURISDICTION : Writ Petitions Nos. 144, 216, 217, 221, 223, 242, 247 to 249, 308 and 324 of 1970.

E Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights.

L. M. Singhvi, Kanta Rao and K. Rajendra Chaudhuri, for the petitioners (in W. P. No. 144/1970).

B. Kanta Rao and K. Rajendra Chaudhuri, for the petitioners (in W. P. No. 21 of 1970).

F *M. C. Chagla, S. S. Shukla and B. Kanta Rao*, for the petitioners (in W. P. No. 249 of 1970).

S. S. Shukla and B. Kanta Rao, for the petitioners (in W. P. Nos. 216, 248 and 324 of 1970).

G *Sarjoo Prasad and A. Subba Rao*, for the petitioners (in W. P. No. 217 of 1970).

A. Subbh Rao, for the petitioners (in W. P. No. 247/1970).

K. Jayaram, for the petitioners (in W. P. Nos. 223 and 242 of 1970).

H *B. Kanta Rao and G. Narasimhulu*, for the petitioner (in W. P. No. 308 of 1970).

P. Ram Reddy and A. V. V. Nair, for respondents No. 1 W. P. Nos. 144, 216, 217, 221, 223, 242, 247, 248 and 249 of 1970.

P. Ram Reddy and *P. Parameswara Rao*, for respondent Nos. 6 and 28 (in W. P. No. 217 of 1970), respondents Nos. 4 and 10 (in W. P. No. 223/70), respondents Nos. 84, 38, 52, 83 and 120 (in W. P. No. 247/1970), respondent No. 2 (in W. P. No. 248).

The Judgment of the Court was delivered by

Dua, J.—This batch of writ petitions raise common questions of fact and law and have, therefore, been heard together and are being disposed of by a common judgment. As the salient features of all the writ petitions are similar in essential particulars, we may, for understanding the nature of the controversy, only refer to the facts of writ Petition No. 217 of 1970 (*B. V. Subhaiah & Ors v. State of Andhra Pradesh & Ors.*), because Shri Sarjoo Prasad who led the arguments on behalf of the petitioners addressed us by reference to this writ petition as illustrative of the common controversy.

Writ Petition No. 217 of 1970 has been presented in this Court by 387 teachers under Art. 32 of the Constitution praying for a writ in the nature of *mandamus* or order or direction restraining the respondents from giving effect to, (i) the orders, G. O. Ms. No. 2219 dated November 3, 1967, read with Government of Andhra Pradesh Memo No. 6573 dated November 8, 1968 and G. O. Ms. No. 1321 dated June 17, 1969, (ii) the substituted r. 14 of the Rules made under the Andhra Pradesh Municipalities Act, and (iii) the substituted r. 16 of the Rules made under the Panchayat Samitis and Zilla Parishads Act. A declaration is also claimed to the effect that order No. G. O. Ms. No. 2219 dated November 3, 1967 read with Government Memo No. 6573 dated November 8, 1968 and G. O. Ms. No. 1321 dated June 17, 1969, Note 2 of the Fundamental Rule 56(a) and the Rules made under the Andhra Municipalities Act and Andhra Pradesh Panchayat Samitis Zilla Parishads Act are illegal and unconstitutional and for a further declaration that the rules laid down in G. O. Ms. No. 3099 dated November 30, 1964 and No. 1596 dated June 26, 1966 are applicable to the petitioners subject to the conditions stipulated in those orders.

These petitioners claim to be working as permanent teachers in the service of Zilla Parishads, Panchayat Samitis and Municipalities for the last 25 or 30 years. According to their averments, the retirement age for the teachers in the service of the Andhra Pradesh Government, Zilla Parishads, Panchayat Samitis and the Municipalities is fixed at 55 years. Under F. R. 56(a) and the Subsidiary Rules of the Andhra Pradesh Government 1962, a government servant may however be retained in service after completing 55 years with the sanction of the Government and in

A special circumstances he may even be retained in service after 60 years. Rule 14 of the Establishment Rules made under the Andhra Pradesh Municipalities Act, 1959, and r. 16 of the Rules made under the Andhra Pradesh Zilla Parishads and Panchayat Samitis Act, 1959, also fix the age of retirement at 55 years for the employees of these bodies. The Fundamental Rule providing for extension of the age of retirement with the sanction of the Government on public ground was also claimed in the petition to be applicable to the employees under the Municipalities, Zilla Parishads and Panchayat Samitis, though at the hearing no serious attempt was made to substantiate this averment, or to show it advances their case.

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On November 20, 1964, the Government of Andhra Pradesh issued G. O. Ms. No. 3099 raising the age of superannuation to 58 years subject to medical fitness and satisfactory work and conduct in respect of the Head-Masters and teaching staff in Government service and also in the institutions under the Zilla Parishads and Panchayat Samitis and Municipalities. On June 28, 1966,

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the Education Department of Andhra Pradesh issued G. O. Ms. No. 1596 raising the age of retirement to 60 years subject to certain conditions. On August 26, 1966, a clarification was issued whereby extension of service upto 60 years was stated to be subject to only two conditions, namely, medical fitness and satisfactory work and conduct. On November 3, 1967 the Government of Andhra Pradesh issued G. O. Ms. No. 2219 cancelling with effect from November 30, 1967, the earlier Government orders extending the age of retirement of teachers, first from 55 to 58 and then from 58 to 60 years. This order also contained a direction for making suitable rules under the Panchayat Samitis and Municipalities Act separately by the Panchayat Raj and Health, Housing and Municipal Administration Departments so as to give effect to the Government's decision. It was however provided in this order that the teachers affected thereby would be continued in service till the end of the academic year 1967-68 in order to ensure continuity in the academic teaching. On November 16, 1967, new r. 16 was substituted for old r. 16 by

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means of which the age of superannuation of officers and servants of Panchayat Samitis and Zilla Parishads was reduced to 55 years. On November 20, 1967, new r. 14 was substituted for the old r. 14, similarly reducing the retirement age to 55 years, in respect of the employees of the establishments under the Municipalities. On March 14, 1968, Fundamental Rules 56(a) was amended by the Governor under Art. 309 of the Constitution by adding to it Note 2, according to which a government servant retained in service after the date of compulsory retirement could be retired at any time without notice and without assigning any reason.

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It appears that some teachers, other than the present petitioners, feeling aggrieved by these orders approached the Andhra Pradesh High Court for relief under Art. 226 of the Constitution. On April 16, 1968, Chinnappa Reddy, J., allowed those writ petitions and directed the Andhra Pradesh Government not to give effect to G. O. Ms. No. 2219 dated November 3, 1967, and the amendment to the Fundamental Rule and the Rules under the Municipalities Act, Panchayat Samitis and Zilla Parishads Act, insofar as they affected the rights of the petitioners in those petitions. Another batch of teachers employed by the Zilla Parishads, Panchayat Samitis and the Municipalities, other than the present petitioners, along with a few teachers employed by private establishments also applied to that High Court under Art. 226 of the Constitution with similar grievance. Those writ petitions were disposed of by the same learned Judge on August 7, 1968. The State in those cases tried, without success, to get over the earlier judgment in the case of the teachers by relying on the decision of the Supreme Court in *B. S. Vadera v. Union of India & Ors.*⁽¹⁾ which upheld the validity of retrospective operation of Rules made under Art. 309 of the Constitution.

On appeal from the earlier judgment of the learned Single Judge, a Division Bench of the Andhra Pradesh High Court on April 14, 1969, agreed with the single bench in holding that the cancellation of the extension of the service of the writ petitioners by the impugned orders was inoperative. In the meantime, in pursuance of the judgment of the learned Single Judge the Government had on November 8, 1968, issued a Government Memo providing as under :

"1. Teachers employed by Municipalities, Zilla Parishad and Panchayat Samithis.

(a) Teachers whose services have been extended up to the age of 60 years by specific individual orders should be retained in service until they attain that age.

(b) Teachers who attained the age of 55 years before 30-11-1967 and in whose favour there are specific individual orders extending their services up to 58 years should be retained in service until they attain the age of 58 years, and thereafter their cases for further extension up to the age of 60 years should be considered by the competent authorities in accordance with the G. O. Ms. 3099 Edn. dated 20-11-1964 and G. O. Ms. No. 1596 Edn. dated 28-6-1966.

(1) W.P.No. 96 of 1967 decided on March 27, 1968, since reported as [1968] 3 S.C.R. 575.

A (c) The cases of teachers who attained the age of 55 years before 30-11-1967 but in whose favour there are no specific individual orders of extension of service should be considered by the competent authorities in accordance with G. O. Ms. No. 3099 Edn. dated 20-11-64 and G. O. Ms. No. 1596 Edn. dated 28-6-1966.

B (d) Teachers who attained the age of 55 years after 30-11-1967 should be dealt with under G. O. Ms. No. 2219. Education dt. 3-11-1967 and they should be retired on attaining the age of 55 years. Any such person continued in service after attaining 55 years as a result of the High Court's stay orders should be considered as on extension and their extension terminated immediately."

C On March 17, 1969, the Government issued a Memorandum (No. 5929/HI/68) directing all the Block Development Officers, Secretaries of Zilla Parishads and Secretaries of Municipal Councils not to oust the teachers who had attained 55 years of age before November 30, 1967, merely because there were no extension orders in their favour. This Memorandum also desired that proposals for extension of service of teachers be promptly forwarded to the District Educational Officers concerned without delay.

D On June 17, 1969, r. 16(2) of the Rules relating to the establishments under the Panchayat Samitis and Zilla Parishads was amended so as to bring it in conformity with the decision arrived at pursuant to the judgment of the High Court.

E The petitioners before us are feeling aggrieved by cl. (d) of the Memorandum issued by the Government on November 8, 1968, and it is this clause which is the main target of challenge on behalf of the petitioners.

F Mr. Sarjoo Prasad who led the attack on behalf of the petitioners and addressed us in support of Writ Petition No. 217 of 1970 categorized his challenge under three heads :

G (1) that the classification made by the Government order fixing November 30, 1967, as the date for determining as to who should retire at the age of 55 years and whose service should be extended is arbitrary and highly discriminatory;

H (2) that the Government order dated November 3, 1967 can only affect persons joining service after that date and not those who were already in service because their service conditions could not be unilaterally changed to their prejudice; and

(3) that Government is estopped to vary the date of retirement of the petitioners because they had on the faith of the modified conditions of their service arranged their affairs on the basis of their retirement at the age of 60 years. By way of illustration it was pointed that their contributions to the provident fund and their life insurance policies had been so planned as to suitably fit in with their retirement at the completion of 60 years.

We did not permit Mr. Sarjoo Prasad to raise points Nos. (2) & (3) because they did not pertain to any fundamental right of the petitioners. In so far as point No. (1) is concerned the learned counsel concentrated on the contention that the classification based on November 30, 1967 as the dividing line for determining the age of retirement was arbitrary and highly discriminatory, and it denied to the petitioners on irrational grounds equal opportunity with those employed along with them. The Government Order No. 2219 dated November 3, 1967, which cancelled the earlier orders extending the age of retirement reads as under :

“G. O. Ms. No. 2219 Edn. Dated 3rd Nov., 1967.

Reading the following :—

1. G. O. Ms. No. 3099 Education dated 22-11-1964
2. G. O. Ms. No. 1596 Education dated 28-6-1966, and
3. Memo No. 8553-H. 1/66-1-1 Education dated 26-8-1966

ORDER :

The Government hereby direct that the orders contained in the Government Orders first and second read above, as subsequently amended, extending the age of retirement of teachers from 55 to 58 and from 58 to 60 years be cancelled with effect from 30th November 1967. Suitable rules under the Panchayat and Municipalities Act will be made separately by the Panchayat Raj and Health, Housing and Municipal Administration Departments to give effect to the above decision.

(2) The teachers who are affected by the orders in para 1 above, will however be continued in service till the end of the academic year 1967-68 in order to ensure continuity in the academic teaching.”

On behalf of the respondents justification for first increasing the age of compulsory retirement to 58 and then to 60 years and

A later restoring it to 55 years is stated in the counter-affidavit in the following words :

B the G. O. did not contemplate any classification for it fixed a uniform date for retirement of teachers, who have completed 55 years but who got extension of the period of service, even before they attained their 60th year. It is only in compliance with the order of the Hon'ble High Court of Andhra Pradesh dated 16-4-1968 in Writ Petitions Nos. 3105 of 1967, etc. holding that teachers whose term has already been extended up to their 60th year have got a vested right to continue till their 60th year that they were allowed to continue. It is also significant that the Writ Appeal preferred by this respondent against the judgment was also dismissed. The writ petitions filed by the teachers who did not complete their 55th year before the G. O. reducing the age of retirement was passed were dismissed by the same High Court in Judgment dated 7-8-1968 in W. P. Nos. 1741 of 1968 etc. As such even if there are some anomalies in the working out of the G. O. that will not be a ground for striking out the G. O. as it treats alike all in the same category. x x x the object for raising the retirement age was to solve the problem of dearth of qualified teachers because of the opening of new schools and the need for the maximum utilisation of trained intelligensia.”

E It is further explained in the counter-affidavit that as soon as the dearth of qualified teachers disappeared, the retirement age was again restored to 55 years. In this counter-affidavit it is also pointed out that “if the G. O. is struck down, it will mean extension of services of thousands of teachers, when there is really no need for them.”

F After a faint attempt to challenge the validity of the Government Order No. 2219 dated November 3, 1967, the learned counsel expressly confined his challenge only to the subsequent orders made by the Government. Now if G. O. No. 2219 dated November 3, 1967 is valid, then obviously the petitioners have to retire at the age of 55 years notwithstanding the fact that after their initial employment their retirement age was raised by Government orders, first from 55 to 58 years and then to 60 years because those intermediary orders had been cancelled by G. O. No. 2219 before they became operative by actually retaining in service the present petitioners after their superannuation under the earlier rules. Merely because by some subsequent orders the extended date of retirement was accepted in respect of those employees

in whose favour either specific orders had been made extending their age of retirement from 55 to 58 or to 60 years, or who had, after crossing the 55 years age limit, been actually retained in service pursuant to the modified directions, notwithstanding that those directions were later cancelled, would not by itself entitle the present petitioners to claim similar extension in their age of retirement on the basis of the equality rule embodied in Arts. 14 & 16 of the Constitution. The other employees were given benefit of the directions pursuant to the orders of the High Court which have since become final. This clearly provides a valid differentia and the present petitioners cannot claim to be equated with those employees who had been given such benefits.

The learned counsel contended that the case of the present petitioners is identical with that of the teachers who had applied to the Andhra Pradesh High Court and had secured orders in their favour. The present petitioners, it was argued, having also acquired a vested right by virtue of the Government orders raising their retirement age to 60 years are entitled to claim from this Court similar orders as were made by the High Court in favour of the petitioners in the two writ petitions. We do not think there is any such fundamental right possessed by the present petitioners as would entitle them to claim similar relief from this Court in the present proceedings. The two categories of the teachers employed by the three local bodies are distinct and separate. We are not concerned with the question whether the High Court was right in granting relief to the petitioners in the two earlier cases, though the respondent has in the counter-affidavit questioned the correctness of those orders. They became final and are binding on the parties to those proceedings. The present petitioners did not secure similar orders and now their retirement age having been restored to the original limit of 55 years the petitioners cannot claim the higher age limit. No doubt during a short period the increased age limit for retirement remained in force. But, as is rightly conceded by all the counsel for the various petitioners, it is open to the Government in this case to reduce the age of retirement without exposing such reduction to any constitutional infirmity.

In this connection it may be pointed out that the Andhra Pradesh High Court also had by a subsequent order denied relief to some of the teachers similarly placed as the present petitioners, holding their case to be distinguishable from that of the teachers who had successfully applied for relief in the earlier two writ petitions.

The submission, that when the Government itself accepted the judgment of the Andhra Pradesh High Court striking down the Government order reducing the retirement age to 55 years,

- A** then the earlier order increasing the age of compulsory retirement must automatically be held to be revived, is unacceptable. The Government, it is noteworthy, made the impugned orders after the decision of the Andhra Pradesh High Court with the object of giving the benefit of that decision to all the employees whose cases were covered by the principal laid down by the High Court.
- B** The case of the present petitioners is quite different and is not covered by the rule laid down by the High Court.

The impugned Government order fixing November 30, 1967, as the date for founding the classification of teachers who should retire at the age of 55 years and those who should get the benefit of the interim orders extending the age of retirement to 58 or 60 years cannot be considered to be either irrational, or unreasonable or having no nexus with the object to be achieved by reducing the age of retirement. The problem of unemployment in our country is undoubtedly a complex problem and opinions may differ how best to solve it. But that would not raise any question of fundamental right with which alone we are concerned in the present proceedings. The position as stated in the counter-affidavit in the case before us, however, furnishes a complete answer to the petitioner's contention. The classification made by the Government does not suffer from any infirmity as it is founded on rational nexus with the object to be achieved.

E Shri Chagla appearing in support of Writ Petition No. 249 of 1970 also made attempt to challenge the Government Order dated November 3, 1967. But nothing new was urged and the learned counsel had, with his usual candour, to concede that the Government could lawfully reduce the age of retirement without attracting constitutional infirmity.

F Dr. Singhvi appearing in support of Writ Petition No. 144 of 1970 drew our attention to Fundamental Rule 56(a) as amended by the Andhra Pradesh Government in 1965 and submitted that according to the amended sub-rule "the date of compulsory retirement of a Government servant, whether ministerial or non-ministerial and in the last grade service is the date on which he attains to the age of 55 years and 60 years respectively". According to the learned counsel the petitioners are non-ministerial government servants in the last grade service and are, therefore, entitled to remain in service till they attain 60 years of age. This submission appears to us to be inconsistent with the petitioners' case as pleaded in the writ petitions. In the writ petitions it has been assumed that according to the F. R. 56(a) the teachers have ordinarily to retire at the age of 55 years. In any event, whether or not the amended F. R. 56(a) fixed the retirement age of non-ministerial government servants at 60 years, and whether or not

the petitioners are covered by this rule, seems to be immaterial because it has not been shown that the teachers employed by the Municipalities, Zilla Parishads and Panchayat Samitis are governed directly by this Fundamental Rule. The submission that the rule applicable to the teachers employed by such bodies was intended to be in conformity with the Fundamental Rule is of little avail to the petitioners because those Rules could not be considered to have been automatically modified as result of the amendment in F. R. 56(a) in 1965. It is not disputed that there is no such modification in the Rules which directly govern such teachers. The argument based on the amended F. R. 56(a) is, therefore, of no assistance to the petitioners.

Dr. Singhvi's criticism that the position taken up in the counter-affidavit that the rule "last come, first go" applies to the petitioners is unfounded also cannot benefit the petitioners. The petitioners have to retire at the age of 55 years because the benefit under the intermediary directions, which have since been cancelled, cannot after cancellation be claimed by them under any provision of law. This contention is, therefore, also repelled. Dr. Singhvi referred us to *Bishun Narain Mishra v. State of Uttar Pradesh and Others*(¹); *State of Assam and others v. Premadhar Baruah and others*(²); and to an unreported decision of this Court in *The State of U. P. and Anr. v. Kishan Chand Dhaun*(³). These decisions do not advance the petitioners' case. In *Bishun Narain Mishra*(¹) this Court observed:

"Now it cannot be urged that if Government decides to retain the services of some public servants after the age of retirement it must retain every public servant for the same length of time. The retention of public servants after the period of retirement depends upon their efficiency and the exigencies of public service, and in the present case the difference in the period of retention has arisen on account of exigencies of public service."

In *Premadhar Baruah*(²) it was observed by this Court:

"As we have already indicated paragraph 4 of the memorandum flowed from F. R. 56(a). The Government could retain a Government servant beyond the age of superannuation. The Government has also the discretion to withdraw such retention in service because the retention does not confer any right on the Government servant."

(1) [1965] 1 S.C.R. 693.

(2) A.I.R. [1970] S.C. 1314.

(3) C.A. No. 1832 of 1968 decided on Dec. 12, 1968.

- A** It is not understood how these decisions are helpful to the counsel. The unreported decision had to deal with a different problem and nothing said in that judgment has been shown to assist the petitioners before us.

- B** In the other writ petitions the counsel merely adopted the arguments raised by Mr. Sarjoo Prasad and Mr. Chagla, and therefore they do not call for any comment.

In the final result, all the writ petitions are dismissed, but in the circumstances with no order as to costs.

V.P.S.

Petitions dismissed.