

STATE OF WEST BENGAL AND ORS. A
v.
GOPAL CHANDRA PAUL AND ORS. ETC.

JULY 14, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.] B

Service Law :

West Bengal Service Rules—Part I: Rule 75—Superannuation—58 years in respect of Government employees—Higher age limit of 60 in respect of teaching staff—Inspecting staff—Whether entitled to higher retirement age—Held: No. C

Under Rule 75 of the West Bengal Service Rules - Part I, Government servants other than class IV shall retire on attaining the age of 58 years, with a proviso that it will not be applicable in cases where higher age-limit upto 60 years for retirement had been fixed by the Government. By notification the age of superannuation of teaching staff was fixed at 60. D

The Inspecting staff in the Education Department claimed parity with the teaching staff in respect of the higher retirement age. The High Court allowed the same, against which the State of West Bengal preferred the present appeal. E

On behalf of the appellants, it was contended that since the inspecting staff was neither a feeder post to the teaching staff nor the rules prescribed for transfer of inspecting staff to become member of the teaching staff, the Inspecting staff should be required to retire on their attaining the age of 58 years. F

The respondents contended that practice had grown that the teaching staff and inspecting staff are interchangeable and in the absence of material to the contrary, it must be deemed to have been admitted that the teaching staff and the inspecting staff are inter-changeable and hence entitled to parity in respect of higher retirement age viz. 60 years. G

Allowing the appeal, this Court

HELD : 1. Inspecting staff governed by the statutory rules are not H

A on par with the teaching staff. Therefore, they are required to retire compulsorily on attaining the age of superannuation of 58 years and shall retire in the afternoon of the last day of the month in which he/she attains the age of 58 years. [147-D]

B 2. Statutory rules do not prescribe transfer of the inspecting staff or the teaching staff to the other service as a mode of recruitment nor is it a feeder post for the other service. In other words, the teaching staff and inspecting staff are two distinct and independent services and the two streams never mingled at any stage. The qualifications, the mode of recruitment and service conditions are separate. The cadres are distinct.
 C The inspecting staff are entirely to look after the inspection of the schools while the teaching staff are required to impart education to the students.
 [146-D-E]

D 3. When statutory rule 75 expressly prescribes the maximum superannuation of 58 years to all Government employees excluding the excepted class or classes and the teacher is one such class, an Inspector, a distinct cadre, by no stretch of imagination can be taken as a teacher. The second proviso is an exception to rule 75 which enables the State Government to grant the benefit by a notification and pursuant thereto the statutory notification was issued prescribing superannuation of 60 years for a teacher. Rule 75 is unequivocal and clear. Stray incidents of transfer by subordinate officers would not give legitimacy to claim parity at the stage of superannuation. [146-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6191 of 1995 Etc.

F From the Judgment and Order dated 4.8.94 of the Calcutta High Court in C.R. No. 1755 M(W) of 1989.

V.R. Reddy, Additional Solicitor General, Tapas Ray and H.K. Puri for the Appellants.

G A.K. Sen, V.B. Joshi and G.S. Chatterjee for the Respondents.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. Leave granted

H Shorn off procedural wrangles, the core question in these appeals is

whether the superannuation at the age of 60 years available to the teaching staff of the Government schools of the Education Department of West Bengal would stand extended to the inspecting staff of the said Department. The learned single judge and Division Bench reached their decision on intertransferability, at some stage of the teaching staff and the inspecting staff, which position was not accepted by the State and held that the inspecting staff would stand on parity with the teaching staff and thereby the benefit of super annuation of 60 years would be applicable to the inspecting staff. Rule 75 of the West Bengal Service Rules-Part I, (for short, 'the Rules') in Chapter X provides superannuation of the government employees other than a member of the group 'D' (Class-IV) service who shall retire from service compulsorily with effect from the afternoon of the last date of the month in which the employee attains the age of 58 years. The second proviso thereto adumbrates an exception that "provided further that the age for retirement as prescribed in this rule shall not be applicable in cases where higher age-limit upto 60 years for retirement has been fixed under any general or special orders of Government." In the notification No. 1995- Edu(A)17A-1/81 dated October 1, 1981, it was stated that "notwithstanding anything contained in the Rules, the date of compulsory retirement of a teacher of a Government Education Institution shall be the date on which he attains the age of 60 years which was superseded ultimately by notification No. 0426- Education dated May 29, 1990. Therein the Governor, while extending the last date to file option by all categories of teaching staff of Government schools and Government Madrashes up to June 4, 1990, stipulated thus:

"(i) The age of superannuation of teaching staff of Government Schools and Madrashes, appointed on or after 1.1.86, is fixed at 60 years.

(ii) The age of superannuation of teaching staff of Government Schools and Government Madrashes, appointed prior to 1.1.86, who elect to come over to the revised scale of pay shall be 60 years. They may, however, retain their old scale of pay under ROPA Rules, 1981 to get the benefit of extension of services, on year to year basis, upto 65 years subject to the condition that they are physically fit and mentally alert. Such extension of service should be sanctioned by the Competent Authorities and would be subject to the result of the relevant case now sub-judice.

A (iii) The teaching staff of Government School and Government Madrasahs, who had been enjoying the extension of service on year to year basis on and from 1.1.86 to the date of issue of this order may also come under the revised scale of pay provided they have already retired or agree to retire on or before 4th June, 1990.

B This order modifies the earlier order No. 81-Edn(B)/1M- 3/82 dated 31.3.86."

C Thus, it would be clear that the age of superannuation of teaching staff of Government Schools and Government Madrasahs appointed prior to January 1, 1986, who elect to opt to the rules, shall be 60 years. This would also be applicable to those teaching staff who had been enjoying the extension of service of year to year basis on and from January 1, 1986 to the date of May 29, 1990 provided that they have already retired on agreeing to retire on or before June 4, 1990. It is manifest that Rule 75 of the Rules would be applicable to all Government staff except Group 'D' and employees covered by the notification issued under the 2nd proviso. The normal Rule of superannuation of all Government servants except the excepted class of employees is 58 years. For the teaching staff, the superannuation is 60 years.

E The question is whether the inspecting staff is entitled to retire of their attaining superannuation upto 60 years. The contention of Shri V.R. Reddy, learned Additional Solicitor General, is that the service conditions of the teaching staff and the inspecting staff are regulated by statutory rules issued under proviso to Article 309 of the Constitution. The teaching staff is neither a feeder post, nor transfer of inspecting staff as a teacher is a mode of recruitment. The recruitment to the respective cadres is either by direct recruitment or promotion from the specified feeder posts. Since the inspecting staff is neither a feeder post to the teaching staff nor the rules prescribe for transfer of inspecting staff to become a member of the teaching staff, the inspecting staff should be required to retire on their attaining the age of 58 years. Shri A.K. Sen, learned Senior counsel for respondents, repelled the contention arguing that practice has grown that the teaching staff and inspecting staff are interchangeable which position was not controverted by the appellants either by filing an affidavit in opposition in the High Court nor placed any contrary material in this Court. Thereby, it must be deemed to have been admitted that the teaching

staff and the inspecting staff are interchangeable. On that premise, the inspecting staff stands on parity with the teaching staff. Thereby the inspecting staff are entitled to retire on attaining the age of 60 years. We find no force in the contention. A

Admittedly, the Governor exercising the power under proviso to Article 309 of the Constitution, issued statutory rules (Annex B of paper book) prescribing rules for recruitment to the posts of District Inspector of Schools and Additional District Inspector of Schools in the West Bengal Educational Service. The Method of recruitment is (i) by selection (direct recruitment), departmental candidates being eligible to apply, or (ii) by promotion from the confirmed Assistant Inspector of Schools. *Explanation:* These posts shall be filled up by promotion and direct recruitment in the ratio of 2:1. The *Qualifications for direct recruitment* are (i) A second class Master's degree of a recognised University in India or an equivalent degree, (ii) a degree in teaching of an Indian University or equivalent degree, (iii) three years' experience of Inspection work or in teaching in a school, (iv) ability to undertake touring. (v) familiarity with modern outlook and method of school inspection. (vi) capacity for planning and organisation. (vii) good power of expression in Bengali-spoken and written. B C D

Similarly, on December 19, 1975, the Governor issued statutory rules regulating recruitment to the posts of Head Master of Government High Schools in the West Bengal Senior Educational Service (Annex C of Paper Book). The method of recruitment has been specified therein which is by direct recruitment or by promotion from confirmed Headmasters in the West Bengal Educational Service (Men's Branch) either by selection, departmental candidates being eligible to apply. Similarly the ratio of 2:1 has been prescribed in direct recruitment. The qualifications for direct recruitment have been provided thus: E F

"Qualifications for direct recruitment

Essential: G

(i) A second class Master's degree of a recognised University of an equivalent degree.

(ii) a first class degree in Teaching and/or Education of a recognised University or an equivalent degree, H

- A (iii) ten year teaching experience in recognised second schools,
 (iv) capacity for developing corporate life and maintaining discipline in secondary schools,
 (v) familiarity with the latest development in secondary education,
 B and
 (vi) good power of expression in Bengali-spoken and written.

Desirable:

- C (i) A post-graduate degree in Education or an equivalent degree, and
 (ii) administrative experience."

D It would thus be clear that the statutory rules do not prescribe transfer of the inspecting staff or the teaching staff to the other service as a mode of recruitment nor is it a feeder post for the other service. In other words, the teaching staff and inspecting staff are two distinct and independent services and the two streams never mingled at any stage. The qualifications, the mode of recruitment and service conditions are separate.
 E The cadres are distinct. The inspecting staff are entirely to look after the inspection of the schools while the teaching staff are required to impart education to the students.

F The question is whether the pollutant source, obviously maneuvered at some stage without statutory amendments to the rules, can provide legitimacy and would form foundation to claim the benefit of superannuation of 60 years? The answer is obvious. when statutory rule 75 expressly prescribes the maximum superannuation of 58 years to all Government employees excluding the excepted class or classes and the teacher is one such class, an Inspector, a distinct cadre, by no stretch of imagination can be taken as a teacher. The second proviso is an exception to rule 75 which
 G enables the State Government to grant the benefit by a notification and pursuant thereto the statutory notification was issued prescribing superannuation of 60 years for a teacher. Rule 75 is unequivocal and clear. Stray incidents of transfer by subordinate officers would not give legitimacy to claim parity at the stage of superannuation. Giving countenance to such a
 H contention breeds corruption, nepotism and favoritism.

The High Court relied upon a judgment of a single Judge in which the Government had not filed counter and that judgment formed foundation as precedent for later cases. The statutory rules were neither referred to nor construed. Another judgment of the High Court of Delhi in which a teacher appears to have been transferred to the inspecting staff, who, when sought to be superannuated on attaining the age of 58 years, questioned the same. The High Court had given him the benefit of 60 years since he was recruited as a teacher. Apart from the correctness of the jurisdiction of the Delhi High Court to grant the relief to a teacher government by the rules, the ratio therein has no application to the facts and it cannot form the base to grant the relief of superannuation of 60 years to the members of inspecting staff.

We, therefore, hold that inspecting staff governed by the statutory rules are not on par with the teaching staff. Therefore, they are required to retire compulsorily on attaining the age of superannuation of 58 years and shall retire in the afternoon of the last day of the month in which he/she attains the age of 58 years. The appeals are accordingly allowed but in the circumstances without costs.

G.N.

Appeals allowed.