

(2012) 03 AHC CK 0273

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 5251 of 2007

Tej Bahadur Nigam and Others

APPELLANT

Vs

Nagar Nigam, Kanpur and
another

RESPONDENT

Date of Decision: March 23, 2012

Acts Referred:

- Uttar Pradesh State Universities Act, 1973 - Section 50(6)

Citation: (2012) 5 ADJ 472

Hon'ble Judges: Sunil Ambwani, J; Manoj Misra, J

Bench: Division Bench

Advocate: Ashok Khare and Aditya Kumar Singh, for the Appellant; S.C. and M.C. Tripathi, for the Respondent

Final Decision: Dismissed

Judgement

1. The petitioners retired on attaining the age of 62 years serving as permanent teachers in Acharya Narendra Dev Nagar Nigam Mahila Mahavidyalaya, Harsh Nagar, Kanpur Nagar, a Post Graduate College affiliated to Kanpur University. They have been paid their pension and gratuity. By Government Order dated 4.2.2004 the State Government enhanced the age of retirement of teachers from 60 years to 62 years with further stipulation that all retiral benefits available on attaining 60 years of age would continue even on retiring at the age of 62 years. On a report submitted by the Mukhya Nagar Lekha Parikshak, Nagar Nigam, Kanpur Nagar on 1.4.2006 to the effect that in terms of the Government Order dated 30.3.1983 read with Government Order dated 4.2.2004 a teacher retiring at the age of 60 years is not entitled to both the benefit of pension and gratuity, they have been asked to submit options, whether they would retire at the age of 62 years. By this writ petition the petitioners have prayed for quashing the communication dated 6.6.2006 issued by the Principal of the College and to quash the report dated 1.4.2006 submitted by the Mukhya Nagar Lekha Parikshak, Nagar Nigam, Kanpur Nagar as also the order

dated 30.5.2006 passed by the Up Nagar Ayukt (Shiksha) Nagar Nigam, Kanpur Nagar, and to disburse the amount of gratuity to the petitioners within a period specified by this Court.

2. We have heard Shri Ashok Khare, Senior Advocate assisted by Shri Aditya Kumar Singh for the petitioners. Learned Standing Counsel appears for the State respondents. Shri M.C. Tripathi appears for the Nagar Nigam, Kanpur Nagar.

3. The Nagar Nigam, Kanpur Nagar is constituted for the city area of Kanpur Nagar under the U.P. Municipal Corporation Act, 1959. It has established, runs and administers a Post Graduate College in the name of Acharya Narendra Dev Nagar Nigam Mahila Mahavidyalaya, Harsh Nagar, Kanpur Nagar. The College is affiliated to Kanpur University. The petitioners were appointed on different dates on the teaching posts. The petitioner No. 1 was appointed as Tabala Sangatkar in the year 1966. He became Demonstrator in the year 1973 and was sanctioned the pay scale of Lecturer on 1.10.1983. The petitioner No. 2 was appointed as Lecturer in Education in temporary capacity, on 2.8.1966. On the recommendations of the Public Service Commission, U.P., she was given regular appointment as permanent Lecturer on 8.9.1967. She was confirmed with effect from 1.7.1973 and was sanctioned Reader's pay scale in the year 1987. The petitioner No. 3 was appointed as Junior Lecturer on 14.10.1974 on the recommendations of U.P. Public Service Commission. He was confirmed on 5.1.1978 and was sanctioned the Reader's pay scale in the year 1987. The petitioner No. 4 was appointed as Lecturer in Zoology on 29.8.1968. He was given regular appointment on the recommendation of the UP Public Service Commission on 12.3.1970 and was also sanctioned Reader's pay scale.

4. The retirement age of the teachers of the Degree Colleges was increased by the State Government to 62 years with the clarification that with the increase of age the teachers will continue to get all retiral benefits, which were available to them when the retirement age was 60 years. The petitioners retired on attaining the age of 62 years on 24.7.2005, 25.3.2006, 15.9.2005 and 14.6.2006 respectively after allowing them to complete the running academic session. They did not retire on exercising or availing any option, to serve upto 62 years of age. The earlier orders of their retirement at 60 years were modified by the Nagar Nigam on 26.4.2004, modifying the date of their retirement upto the age of 62 years.

5. The Mukhya Nagar Lekha Parikshak, Nagar Nigam, Kanpur Nagar (Accounts Officer) submitted a report on 1.4.2006 to Up Nagar Ayukt (Shiksha) to the effect that under Government Order dated 30.3.1983, the teachers of privately managed and aided college were entitled to benefit of pension and gratuity on retiring at the age of 58 years, while the benefit of payment of gratuity was not available to such teachers retiring at the age of 60 years. Based upon this report, the Up Nagar Ayukt (Shiksha) Kanpur Nagar by his order dated 30.5.2006 directed the Principal of the College to get options forms filled from all concerned teachers and consequently a

communication was given to the petitioners on 6.6.2006 to forward an option form to the effect that in terms of the Government Order dated 4.2.2004 each of the teachers is given option to retire at the age of 62 years, and in such view of the matter he will not be entitled to receive the payment of gratuity, in terms of Government Order dated 30.3.1983.

6. Shri Ashok Khare, learned counsel appearing for the petitioners submits that the purpose of the communication dated 6.6.2006 is to deprive petitioners from payment of gratuity, whereas under the terms and conditions of their service their retirement age was increased without exercising any options and with the condition that both pension and gratuity will be payable to them. He submits that the Government Order dated 4.2.2004 protects all the retiral benefits as were available when the retirement age were 60 years, and in view of the continuation of such benefits even on the enhancement of the retirement age of 62 years, there is no justification for the respondents to take objection and to ask the petitioners to fill up option forms.

7. Shri M.C. Tripathi, learned counsel appearing for the Nagar Nigam, Kanpur Nagar has relied upon the affidavit of Dr. Uma Kanti Tiwari, Principal of the College, in which it is stated that initially by a Government Order dated 30.3.1983, in respect of the teachers of non-Government aided colleges the age of superannuation was increased from 58 to 60 years, with the conditions that those retiring at 58 years will be paid both pension and gratuity and those retiring at 60 years will be paid either pension or gratuity. Subsequently by Government Order dated 4.2.2004 the age of superannuation was increased to 62 years in which it was provided that the benefits, which were admissible to an incumbent retiring at the age of 58 years, and 60 years shall be the same for superannuation at the age of 60 years and 62 years. By Government Order dated 30.3.2007 the Government took a decision that incumbent retiring at the age of 60 years shall be entitled to gratuity, leave encashment, session"s benefit and pension; whereas an incumbent retiring at the age of 62 years shall only be entitled to pension.

8. It is submitted that subsequently the Government changed the policy by Government Order dated 31.5.2007 providing that an incumbent, who retires at the age of 62 years, shall be entitled to pension as well as sessions" benefit. Shri Tripathi submits that as per Government Orders dated 30.3.1983, 30.3.2007 and 31.5.2007, the petitioners, having availed the benefit of retirement at the age of 62 years, are not entitled to payment of gratuity. Like all other non-aided institutions the payment of gratuity is not being paid to the teachers opting to retire at the age of 62 years.

9. We have considered the submissions, and perused the Government Orders. The teachers of the non-Government aided colleges were entitled to count their services in the Government aided Intermediate Colleges rendered regularly on the condition that they deposit the contribution of their pension in the Government treasury. Para-2 of the Government Order provided that those teachers, who opts to retire at

the age of 58 years, be entitled to Death-Cum-Retirement Gratuity as well as pension but those, who retire at the age of 60 years, will be entitled to pension and GPF; they will not be entitled for payment of Death-Cum-Retirement Gratuity. The Government Order dated 4.2.2004 was applicable to the teachers of non-Government aided colleges affiliated to the State Universities. The Government Order refers to the decision taken by the State Government, that the age of superannuation of teachers in the Government aided colleges affiliated to the State Universities working on the posts sanctioned by the State Government be enhanced. Consequently the Government Order states in para-2, that Governor of U.P. has been pleased to increase the age of superannuation of these teachers from 60 years to 62 years, and thus all those retiral benefits payable at the age of 60 years will also be made applicable at the age of 62 years. It is further stated in para-3 that those teachers, who are continuing on session's benefit after 1.7.2003, will also be entitled to the benefits of the enhanced age of superannuation and to that effect all previous Government Orders will be considered to be amended. The remaining conditions will be the same. The State Government also directed the necessary amendments to be made in accordance with Section 50 (6) of the U.P. State Universities Act, 1973 in the concerned Rules.

10. The note prepared by the Mukhya Nagar Lekha Parikshak dated 1.4.2006 with reference to Government Orders dated 30.3.1983 and 4.2.2004 records that by subsequent Government Order, while increasing the age of superannuation, it was provided that same conditions, which were applicable to the retirement of 58 years and 60 years by Government Order dated 30.3.1983, will be applicable on the retirement of 60 years and 62 years, namely that those, who retires at the age of 60 years, will be entitled to both pension and gratuity and those, who retires at the age of 62 years, will be given benefit of either pension or gratuity. Since the option forms could not be obtained in pursuance to the Government Order dated 4.2.2004, such options may be obtained so that there may not be any difficulty for giving such teachers the retiral benefits on the date of receipt of the letter dated 6.6.2006 by the petitioners to exercise their options, all of them were continuing on session's benefit upto 30.6.2006 after their retirement. They were, therefore, in service and were not relieved. All of them were getting their salaries. The petitioners are thus not entitled to contend that they were given option forms after they were relieved on attaining the age of 62 years.

11. It is not denied that ordinarily all the petitioners would have retired at the age of 60 years. They got all the benefits of Government Order dated 4.2.2004 for enhancement of the retirement age. The Government Order dated 4.2.2004, was clear to the effect that the benefit of enhanced age of retirement will be available with the same conditions as were made applicable, when the retirement age was increased from 58 years to 60 years. The conditions applicable to the enhanced age of retirement were thus the same as were applicable in terms of the Government Order dated 30.3.1983. The petitioners' retirement age given under Rule 57 of the

U.P. Nagar Mahapalika Shiksha Seva Niyamavali, 1971 was 60 years, prior to the benefit of enhanced age of retirement by Government Order dated 4.2.2004. The State Government clarified the position in Government Order dated 31.5.2007 on the representation of Shri Swamicharan Misra a retired teacher of J.P. Mehta Nagar Nigam Inter College. The Government Order was clear in its term in explaining that those teachers, who retire at the age of 62 years, will not be entitled to gratuity and will be entitled only to the pension and in addition they will also be entitled to session's benefit vide Government Order dated 6.1.2005.

12. The benefit of the enhancement in age of superannuation was clearly in terms with the conditions, which were provided in Government Order dated 4.2.2004 that those teachers of the non-Government aided colleges, who retires at the age of 62 years, will not be entitled to the benefit of gratuity. In view of the clearly stated policy of the State Government of which the petitioners have already drawn the benefit, it was not necessary to obtain the options from the petitioners on 6.6.2006, when all of them except petitioner No. 4 had retired and that the petitioner Nos. 1, 2 and 3 were continuing on session's benefit. The petitioners are not entitled to be allowed to take both the benefits, namely to avail the benefit of retirement at the enhanced age of 62 years, and at the same time avail both pension, sessions benefit, as well as gratuity. Having taken the benefit of enhanced age of retirement, which was dependent upon the options to be exercised and which stage in any case had long expired. The Government Order dated 4.2.2004, does not admit any such interpretation, that those persons, who were not asked to give option and had continued upto 62 years, will be entitled to both the benefits of pension with session's benefit and gratuity. The writ petition is dismissed.