

(2000) 11 AP CK 0013

Andhra Pradesh High Court

Case No: Writ Petition No. 22109 of 1995

D. Kodandapani

APPELLANT

Vs

Commissioner of Collegiate
Education, A.P., Hyderabad and
others

RESPONDENT

Date of Decision: Nov. 7, 2000

Acts Referred:

- Andhra Pradesh Education Act, 1982 - Section 2

Citation: (2001) 1 ALD 107 : (2001) 1 ALT 308

Hon'ble Judges: B.S.A. Swamy, J

Bench: Single Bench

Advocate: Mr. E. Kalyan Ram, for the Appellant; Government Pleader for Higher Education, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner who was a Principal in B.T. College, a private aided college at Madanapalle, filed this writ petition assailing the proceedings RC No.2241/P4 of 1995, dated 1-9-1995, of the first respondent-the Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad, wherein the first respondent held that the petitioner was not eligible for the revision of pension as he continued in service up to 60 years i.e., 31-5-1993, and that the petitioner was entitled to draw pension as per the A.P. Liberalised Pension Rules 1961. Now the question that falls for consideration of this Court is whether the A.P. Liberalised Pension Rules, 1961 or The A.P. Aided Degree, Oriental and Junior Colleges Staff Pension Rules, 1993 are applicable to the petitioner for payment of pension.

2. The factual background that led to the issuance of the A.P. Aided College Staff Pension Rules, 1993 has to be referred before deciding the controversy involved in this writ petition. As per the original scheme, the age of retirement for the teaching

and non-teaching staff working in the aided colleges in 60 years without any pensionary benefits.

3. I need not go into the entire factual background under which pension benefits were extended to the teaching and non-teaching staff working in the private aided colleges as they were dealt with by my learned brother Justice G. Bikshapathy elaborately in Writ Petition No.8665 of 1996 and Batch dated 28-11-1997 where under His Lordship directed the Government to extend retirement benefits under Part-A of the Andhra Pradesh Aided Degree, Oriental and Junior Colleges Staff Pension Rules, 1993 (hereinafter referred to as "Pension Rules, 1993") to the staff who retired from service between 29-10-1979 and 1-11-1992.

4. Coming to the facts of the case, the Government reduced the age of superannuation from 60 years to 55 years to the teaching staff working in the private aided colleges in G.O. Ms. No.591 dated 28-5-1977. Though this Court has taken the view that the G.O.No.591 is prospective in operation and it is not retrospective in operation and as such the teaching staff who were appointed prior to that date have to be continued up to 60 years, the Supreme Court in Civil Appeal No.154-71 of 1981 and batch dated 13-7-1993 in [State of Andhra Pradesh, etc., etc. Vs. S.K. Mohinuddin, etc., etc.](#) , held that the G.O. is retrospective in operation and with regard to the teaching staff who worked beyond 58 years under the interim orders of this Court and the Supreme Court, made the following observation :

"Before we part, we may clarify that in view of our above decision the employees who would have retired at the age 55 years pursuant to G.O. Ms. No.591 dated 25th May, 1977 and those who would have retired at the age of 58 years with effect from 1st October, 1979, will be given the benefit of pension as if they have retired at the age of 55 and 58 years, respectively. However, payment made by way of salary and allowances on account of their continuance in service up to the age of 60 years under Court Orders will not be recovered or adjusted."

5. The above Order was passed as the retirement was refixed as 58 years during the pendency of the appeal in Supreme Court. From this, it is seen that the Supreme Court made it clear that the pension benefits for the employees who worked beyond the age of superannuation has to be worked out as per their age of superannuation. But, the service rendered by them beyond the age of superannuation shall be ignored for the purpose of working out the pensionary benefits to them. At the same time, payment made towards salary and allowances shall not be recovered from them. The Andhra Pradesh Education Act, 1982 was amended by Act 17 of 1993 by giving statutory effect to the executive instructions issued earlier reducing the age of superannuation from 60 years to 58 years to both the teaching and non-teaching staff and made a declaration that the staff who attained the age of superannuation but continuing on the date of commencement of Act 17 of 1993 shall retire on the after noon of a 31-7-1993. u/s 2(iii)(a) of the said Act, a provision was made for payment of pension with effect from 1-11-1992 in accordance with

such separate rules as may be made in that behalf for those staff who retired from service at the age of 58 years/60 years respectively; and (b) Members of teaching and non-teaching staff who continued in service beyond 58 years for any reason shall be entitled to pension with effect from 1-11-1992 in accordance with such separate rules as may be made in that behalf.

6. Pursuant to the Amendment Act 17 of 1993 the present Rules i.e., Andhra Pradesh Aided Degree, Oriental and Degree Colleges Staff Pension Rules, 1993 were issued in G.O. Ms. No.2 Education (C.E.III) Department, dated 5-1-1994 and they came into force on and from 1-11-1992. These rules consist of three parts: Part-A deals with the teaching and non-teaching staff who retired from service on attaining the age of 58 years and Last Grade Staff who retired from service on attaining the age of 60 years. Part-B deals with the teaching and non-teaching staff who retired from service on attaining the age of 60 years i.e., as per their term of appointment and are alive as on 1-11-1992. Part-C deals with the teaching and non-teaching staff who continued in service beyond 58 years and retired from service before completing the age of 60 years.

7. Under Part-A the Andhra Pradesh Revised Pension Rules, 1980 were made applicable mutatis-mutandis to all the teaching and non-teaching staff of Private Aided Degree, Oriental and Junior Colleges who retired from service on attaining the age of 58 years and the members belonging to the Last Grade Service of Private Aided Degree, Oriental and Junior Colleges who retired from service on attaining the age of 60 years before or after the commencement of the Andhra Pradesh Education (Amendment) Act, 1993 and alive.

8. Under Clause (b) the staff who have retired at the age of 58 years, even prior to commencement of Act No.17 of 1993 are also made eligible for availing the benefit under the Andhra Pradesh Pension Rules, 1980 and are given the right to claim re-fixation of their pension as per the rules.

9. Under Part-B, the Andhra Pradesh Liberalised Pension Rules, 1961 were made applicable mutatis-mutandis to all such members of teaching and non-teaching staff of private aided Degree, Oriental and Junior Colleges who retired from service on attaining the age of 60 years and are alive as on 1-11-1992. Provided that the maximum ceiling limit on pension as provided in Rule 3 of the Andhra Pradesh Liberalised Pension Rules, 1961 shall not be applicable to the above staff members.

10. Under Part-C, the Pension formula given in Part-A is also made applicable to those teaching and non-teaching staff of Private Aided Degree, Oriental and Junior Colleges who continued in service beyond the age of 58 years and retired from service before completing the age of 60 years after coming into force of the Andhra Pradesh Education (Amendment) Act, 1993 (Act 17 of 1993) and alive. The service rendered beyond 58 years in any case shall not count as qualifying service and it shall be treated as just service, not qualifying in any manner for pensionary benefits.

In other words, Part-C is intended to give effect to the judgment of the Supreme Court referred to supra [State of Andhra Pradesh, etc., etc. Vs. S.K. Mohinuddin, etc., etc.](#) and also intended to cover those staff who continued in service beyond the age of 58 years and retired from service before completing the age of 60 years after the Amendment Act 17 of 1993 came into force.

11. Now the issue has to be examined which part of the Rules i.e., Part-A or Part-B or Part-C is applicable to the petitioner. It is not in dispute that before the Amendment Act 17 of 1993 came into force, the Management tried to retire the petitioner from service on attaining the age of 58 years as per the executive instructions given by the Government and the petitioner filed Writ Petition No.6042 of 1991 questioning the said action and that writ petition was allowed by this Court on 25-2-1992. Thereafter, he retired from service on attaining the age of 60 years on 31-5-1993 before the Supreme Court passed the Order on 13-7-1993.

12. It is the contention of the learned Counsel for the respondents that as the petitioner retired from service after attaining the age of 60 years, only Part-B of the Pension Rules, 1993 should be made applicable. I do not find any merit in this contention for the simple reason that the pension scheme was extended to the staff working in the private aided colleges in Mid 70s and the scheme underwent several changes from time to time. According to me, Part-B of the Pension Rules, 1993 is applicable to those teachers who retired from service on attaining the age of 60 years as per their term of contract and who are alive as on 1-11-1992 but not those staff who continued in service beyond the age of superannuation prescribed by the Government by way of executive insurrections under the interim orders of this Court and retired on attaining the age of 60 years or retired before completion of 60 years under the orders of the Supreme Court dated 13-7-1993. Part-C of the Pension Rules, 1993 is in respect of the teaching and non-teaching staff who continued in service beyond the age of 58 years and retired from service after the Amendment Act 17 of 1993 came into force and alive but retired from service before completing the age of 60 years. The services rendered by them beyond 58 years in any case shall not count as qualifying service. But the learned Government Pleader for Higher Education tries to argue that Part-C of the Pension Rules 1993 is applicable only in case of teachers who continued in service beyond the age of 58 years and retired from service before completing the age of 60 years after the Amendment Act 17 of 1993 came into force and alive. Admittedly, though these rules were given retrospective effect and came into force on 1-11-1992, they were issued after the judgment of the Supreme Court and the Supreme Court made it very clear that the staff who continued in service beyond the age of 55 years pursuant to the G.O. Ms, No.591 dated 28-5-1977 and the staff who retired from service at the age of 58 years with effect from 1-10-1979 will be given the benefit of pension as if they have retired at the age of 55 and 58 years respectively. If the argument of the learned Government Pleader is given any credence, the G.O. is silent with regard to the teachers who continued in service beyond the age of 58 years under the interim

Orders of this Court and retired from service either on completion of 60 years or before that date pursuant to the orders of the Supreme Court and it is not the case of the Government that they are not entitled for pension benefits.

13. It is to be seen that under Amendment Act 17 of 1993, the teaching and non-teaching staff working in the private aided colleges who retired from service at the age of 58 years/60 years respectively are entitled to pension with effect from 1-11-1992 in accordance with such separate rules as may be made in that behalf. This provision makes it very clear that the staff who retired from service in the ordinary course of employment on attaining the age of superannuation are entitled for pensionary benefits and as such separate rules are to be framed by the Government. To my mind, Part-B of the Pension Rules, 1993 is intended for the class of staff i.e., who retired from service on attaining the age of superannuation as per their term of agreement either prior to 1-11-1992 or thereafter but not the class of staff who continued in service beyond the age of superannuation and continued till they attained the age of 60 years or continued under the orders of this Court and retired on 31-7-1993 as per the Amendment Act 17 of 1993 or under the orders of the Supreme Court. If the contention of the learned Government Pleader that Part-C is applicable only to those teachers who continued in service beyond the age of 58 years and retired after the Amendment Act 17 of 1993 came into force is accepted, the other class of staff covered by the orders of the Supreme Court will be left out and it results in hostile discrimination and the same offends the Article 14 of the Constitution of India. In fact, my learned Brother Justice G. Bikshapathy in Writ Petition No. 8665 of 1996 and batch having considered the Pension Rules, 1993 gave the following direction:

"For the foregoing reasons, the writ petitions are allowed to the extent indicated above. Consequently, the following directions shall issue to the respondents:

(1) That the teachers and other staff working in the private aided colleges, who retired from service between 29-10-1979 and 1-11-1992 shall also be eligible for the benefit of RPR 80 with effect from the respective dates of their retirements and their pension shall be notionally fixed taking into account the increases if any made from the date of their retirement till 1-11-1992. The actual monetary benefits of re-fixed pension as on 1-11-1992 shall be released to them. The arrears arising out of the re-fixation as directed above, shall be paid to them within three months. In case any pensioner who has retired during the period and expired as on the date, the arrears arising out of the said re-fixation shall be paid to the wife or legal heirs of the deceased pensioner."

14. On this ground also the contention of the learned Government Pleader cannot be given any credence.

15. Part-B of the Pension Rules, 1993 deals with the class of staff who retired from service prior to 1-11-1992 and who are alive on that date without fixing any cut off

date i.e., the staff of private aided colleges who retired from service without reference to the date of retirement if they are live as on 1-11-1992, are entitled to the pension under the A.P. Liberalised Pension Rules, 1961. Admittedly, in this case, the petitioner retired from service on 31-5-1993 on completion of 60 years pursuant to the judgment of this Court in Writ Petition No.6042 of 1991 dated 25-2-1992, which has become final, hence, the question of retirement prior to 1-11-1992 and alive as on the date as contemplated under Part-B of the Pension Rules, 1993 does not arise in this case. As the judgment in the case of the petitioner was not modified, it is open to the Court to take a decision that he is entitled to count his service up to 60 years for working out the pension. But as the Supreme Court declared the legal position, I would like to follow the same and direct the respondents to fix the pension of the petitioner under Part-C of the Pension Rules, 1993 i.e., the staff who continued in service beyond the age of superannuation and retired from service before completing the age of 60 years after coming into force of the Amendment Act 17 of 1993. The services rendered by him beyond 58 years shall not count for pension as directed by the Supreme Court.

16. In the light of the view taken by me, the proceedings of the first respondent in Rc.No.2241/P4 of 1995 dated 1-19-1995 are quashed.

17. In the result, the writ petition is allowed by directing the respondents to refix the pension of the petitioner by applying Part-C of the Andhra Pradesh Aided Degree, Oriental and Junior Colleges Staff Pension Rules, 1993 within two months from the date of receipt of a copy of this Order and pay the arrears within two months thereafter. No costs.