

(2009) 01 MAD CK 0322

Madras High Court

Case No: Writ Petition No. 21898 of 2004

Y. Doss

APPELLANT

Vs

Padma Seshadri Bala Bhavan
Senior Secondary School

RESPONDENT

Date of Decision: Jan. 23, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 9A

Hon'ble Judges: M. Jaichandren, J

Bench: Single Bench

Advocate: S. Vaidyanathan, for the Appellant; T.T. Ravichandran, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Jaichandren, J.

Heard Mr. S. Vaidyanathan, the learned Counsel appearing for the petitioner and Mr. T.T. Ravichandran, the learned Counsel appearing for the respondent.

2. The facts, in a nutshell, are as follows:

The petitioner was working as a Watchman in the respondent School, which is affiliated to the Central Board of Secondary Education, New Delhi. The petitioner had rendered more than 14 years of service, having joined in the service of the respondent School in the year, 1990, as a class-IV employee. The respondent School is affiliated to the Central Board of Secondary Education, New Delhi, in accordance with the Affiliation Bye-laws of the Central Board of Secondary Education. In accordance with the said Bye-laws, the petitioner is entitled to continue in service upto the age of 60 years. Chapter VII of the Bye-law deals with the service rules of the employees of the affiliated Institutions. As per clause No. 25, the Selection

Committee, consisting of the Head of the Institution and a nominee of the School Managing Committee, can recruit and appoint class-IV staff. Clause 25 of the Bye-laws provides the procedures for the appointment of the employees and the recruitment of teachers and other staff. Clause 30 relates to the conditions regarding the retirement of the employees of the affiliated Institutions.

3. Though the respondent School is an autonomous body, it is subject to the terms and conditions prescribed in the Affiliation Bye-laws, as it is an Institution affiliated to the Central Board of Secondary Education, New Delhi, under the said Bye-laws. Accordingly, the salary and the other allowances of the petitioner should be on par with the corresponding categories of the employees in the State Government Schools. Similarly, the age of retirement of the petitioner should also be the same as that of the Government servants, who are similarly placed. Therefore, the action of the respondent School in retiring the petitioner from service, on his attaining the age of 58 years, is arbitrary, illegal, contrary to the Affiliation Bye-laws of the Central Board of Secondary Education, as well as the relevant provisions enshrined in the Constitution of India. In such circumstances, the petitioner has preferred the present writ petition, under Article 226 of the Constitution of India.

4. No counter affidavit has been filed on behalf of the respondent.

5. The learned Counsel appearing on behalf of the petitioner had contended that as per the Bye-laws and the norms adopted by the respondent School to follow the Government Rules and Regulations, with regard to the age of retirement of its employees, the petitioner cannot be retired on his completion of 58 years of age, as the age of retirement of class-IV employees of the State Government is 60 years, as per Rule 56(1) of the Fundamental Rules governing the service conditions of the Government Servants. Further, the age of retirement of the petitioner is to be construed to be 60 years of age, on par with the Government servants, as per the Fundamental Rules applicable to them. As it has become a service condition relating to the petitioner, it cannot be altered without a notice being issued, u/s 9A of the Industrial Disputes Act, 1947. Therefore, the action of the Management of the respondent School, in retiring the petitioner at the age of 58 years, cannot be sustained in the eye of law.

6. The learned Counsel appearing on behalf of the petitioner had also contended that the Central Board of Secondary Education, New Delhi, had issued a notification No. CBSE/AFF/19/2004/23322-30567, dated 12.10.2004, in exercise of the powers conferred by Clause 2 of Rule 1, under Chapter 1 of the Affiliation Bye-laws of the Board, amending clause 30 of the Bye-laws, with effect from 18.6.2004. After the said amendment, Clause 30.1 of Chapter VII of the Affiliation Bye-laws reads as follows:

Every employee including Head of Institution shall retire from service on attaining the age of 60. However, if the age of superannuation falls during the academic

session, the concerned employee will retire at the end of the academic session.

Provided further that if such employee is a recipient of National/State/CBSE Teachers Award, he may be considered for a further extension of service for two years after attaining the age of superannuation provided he is medically fit and is prepared to serve the school. The school Managing Committee after considering such case of extension of service, shall forward the details to the Board. Amendment.

7. It has also been submitted that the amended Rule 33(C)(iv) of Chapter II states that the Board reserves the right to withdraw the Permanent Affiliation granted to a School, in case of violation of the Rules or the non-fulfillment of the essential conditions laid down by the Board. Since the Affiliation Bye-laws of the Central Board of Secondary Education has statutory force, even though it is contractual in nature, it is binding on the respondent School and therefore, any violation of the conditions prescribed in the Affiliation Bye-laws could be implemented by way of a direction issued by this Court, under Article 226 of the Constitution of India.

8. The learned Counsel appearing on behalf of the petitioner had also contended that Clauses 8 and 9 of Schedule IV to the Industrial Disputes Act, 1947, make it mandatory for the respondent Institution to follow and to implement certain conditions of service, with regard to its employees. Since such statutory conditions have been violated by the respondent School, a direction could be issued by this Court to the respondent School, to implement such mandatory conditions of service, with regard to its employees.

9. The learned Counsel appearing for the petitioner had also contended that the Management of the respondent School had issued a communication to the petitioner, dated 5.7.2004, stating that the petitioner was due to retire, on 6.8.2004, on his completion of 58 years of age. Since the amended Bye-laws of the Central Board of Secondary Education had been given effect to from 18.6.2004, prescribing the age of retirement of the employees of the affiliated Institutions, as 60 years, the petitioner would also get the benefit of being continued in service till he attains the age of 60 years.

10. The learned Counsel appearing for the petitioner had also contended that when the petitioner had signed the Circular of the petitioner Management, dated 18.4.2000, the age of retirement of the petitioner was only 58 years. However, the age of retirement had been increased to 60 years by way of an amendment of the Bye-laws, with effect from 18.6.2004, by a notification, dated 12.10.2004, issued by the Central Board of the Secondary Education, New Delhi. Since the Bye-laws had been given retrospective operation, the benefit of the said Bye-laws, increasing the age of retirement of an employee of an Affiliated Institution, would also be applicable to the petitioner. Therefore, the respondent School is bound to implement the conditions of service prescribed under the said Bye-laws.

11. Per contra, the learned Counsel appearing for the respondent School had contended that the Affiliation Bye-laws of the Central Board of Secondary Education, New Delhi, would not be binding on the respondent School, as it does not have the binding force of law. Even if it is said to be binding on the respondent School, it would not vest any right in the petitioner, retrospectively, by way of increasing his retirement age to 60 years. Further, the writ petition, filed under Article 226 of the Constitution of India, cannot be maintained against a private, unaided School, such as the respondent School. Further, the petitioner has not been in a position to show the source from which the Affiliation Bye-laws have emanated and as to how they derive their binding nature. Since the Bye-laws cannot be said to be a law, it would not have any binding force as it could only be taken to be a contract, as admitted by the learned Counsel for the petitioner and therefore, it cannot be enforced against the respondent School, by invoking the jurisdiction of this Court, under Article 226 of the Constitution of India.

12. The learned Counsel appearing for the respondent had also contended that the petitioner cannot seek for a direction from this Court against the Central Board of Secondary Education, to enforce its Bye-laws against the respondent School, since the said Board is not a party in the present writ petition.

13. The learned Counsel appearing for the petitioner had relied on the following decisions in support of his contentions.

13.1. In *Dunlop India Limited v. Their Workmen* 1972 L.L.J. v 2 1 the Supreme Court had held that the conclusions of the Tribunal that the workman is entitled to continue in service till he attains the age of 60 years, could be supported since the age of retirement of the company staff employed in Bombay is 60 years and that there were no rules, regulations, binding agreements or standing orders, regarding the age of superannuation of its employees, to the contrary.

13.2. In *John Paulraj, A.P. v. Central Board Of Secondary Education* 1999 WL.R. 23, a Division Bench of this Court had held that a writ would lie against an Unaided Private Educational Institution, if an element of Public interest and a corresponding public duty is involved in the proceedings sought to be challenged in such a writ petition.

Relying on the said decision, the learned Counsel appearing for the petitioner had submitted that in the present case, the Affiliation Bye-laws of the Central Board of Secondary Education is of a binding nature and it casts a mandatory obligation on the respondent School to comply with the terms and conditions of service prescribed therein.

13.3. In *A. Johnson v. Director Of School. Edn.* 2004 (3) L.L.N.333, this Court had held that the termination of the service of a teacher of a minority educational institution could be questioned by a writ petition, if the order had been passed without evidence or if it is of a perverse nature or if the punishment imposed is arbitrary,

malafide, capricious or if the punishment imposed is shockingly disproportionate to the allegations levelled against the person on whom the punishment is imposed.

13.4. In [K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another](#), with regard to the case of certain employees of a non-aided private educational institution, seeking parity in pay scales with the employees of the Government Institution, the Supreme Court had held that the employees had an enforceable right as there was an element of public interest due to the fact that there is a right to their education.

14. Per contra, the learned Counsel appearing for the respondent School had relied on the following decisions in support of his contentions:

14.1. In [B. Bharat Kumar and Others Vs. Osmania University and Others](#), the Supreme Court had held that when the scheme initiated by the University Grants Commission, giving the discretion to the State Government to accept or not to accept part of the scheme, it would be perfectly within the powers of the State Government not to accept the suggestions made by the scheme to increase the age of superannuation, or where the State Government accepts a part of the scheme, it is not necessary that the entire scheme had to be accepted by the State Government. Therefore, the plea that the State Government must implement the recommendations of the scheme initiated by the University Grants Commission was untenable.

14.2. Similarly, in [T.P. George and Others Vs. State of Kerala and Others](#), the Supreme Court had held that the University Grants Commission Scheme fixing 60 years as the age of superannuation for teachers of private or affiliated colleges was not binding on the State Government or the universities functioning under the relevant statutes in the State. It is not for the Court of law to prescribe the correct age of retirement as it is a policy function requiring considerable expertise which can properly be done, either by the State Government or the State legislature or by the Universities concerned.

14.3. In [Commissioner of Income Tax, U.P.-II, Lucknow Vs. Bazpur Co-operative Sugar Factory Ltd., Bazpur, Distt. Nainital](#), the Supreme Court had held that there was no power for the Cooperative Societies to make bye-laws with retrospective effect in respect of their business and therefore, the amendment made by the Society will only have prospective effect.

14.4. In [Income Tax Officer, Alleppey Vs. M.C. Ponnoose and Others](#), the Supreme Court had held that the Parliament can delegate its legislative powers within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the Legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may, in express terms or by necessary implication, empower the authority concerned to make a rule or

regulation with retrospective effect. But where no such language is to be found it has been held by the Courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect.

14.5. In [M.K. Gandhi and Others Vs. Director of Education \(Secondary\) and Others](#), , a Full Bench of the Allahabad High Court had held that the bye-laws of the Central Board of Secondary Education is not having statutory force and that a writ petition is not maintainable against an Unaided recognised School.

15. In view of the submissions made by the learned Counsels appearing on behalf of the petitioner, as well as the respondent and on a perusal of the records available and on considering the decisions cited, this Court is of the considered view that the reliefs sought for by the petitioner, in the present writ petition, cannot be granted by this Court.

16. From the records available, it is clear that the petitioner had acknowledged the fact that he was due to retire from service, on his attaining the age of superannuation, at the age of 58 years. Even if it could be said, as claimed by the petitioner, that the respondent school is bound by the Affiliation Bye-laws of the Central Board of Secondary Education, it would not be appropriate for this Court to enforce the same, by invoking its powers, under Article 226 of the Constitution of India, except in extraordinary situations or in situations where this Court finds that a public duty is to be enforced.

17. In the present case, no such situation is found to have arisen to invoke the writ jurisdiction of this Court. Further, efficacious alternative remedies are available to the petitioner to enforce his rights, if any, by way of civil proceedings or by taking re-course to the remedies provided under the Industrial laws, whichever may be appropriate. Further, if it is found that the respondent School had infringed some of the provisions of the Affiliation Bye-laws or it had committed default due to the non-fulfillment of the essential conditions laid down by the central Board of secondary education, New Delhi, while granting affiliation to the respondent School, it may be open to the petitioner to bring it to the knowledge of the said Board for necessary action to be initiated against the respondent School, in accordance with the Bye-laws. The Central Board of Secondary Education, New Delhi, has not been made a party to the present writ petition and therefore, this Court has not had the benefit of its views in deciding the issues raised by the petitioner, with regard to the binding nature of the Affiliation Bye-laws and in respect of the specific remedies available to the petitioner to enforce the said Bye-laws.

18. Even though it may be open to the petitioner to contend that the writ petition may be maintainable against a private unaided school, such as the respondent school, the rights sought to be enforced by the petitioner should fall under the realm of "public duty", which is sought to be enforced. However, in the present case,

the petitioner has not shown sufficient cause or reason for this Court to be persuaded to enforce such a right, said to be vested with the petitioner. In such view of the matter, the writ petition is liable to be dismissed. Hence, it stands dismissed. Consequently, connected W.P.M.P. No. 724 of 2008 is closed. No costs.