

A. Kodandam Vs. Principal, Kamala Nehru Polytechnic for Women, Hyd. and ors.

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Court : Andhra Pradesh

Decided On : Jul-15-1998

Reported in : 1998(6)ALD173

Judge : B.S.A. Swamy, J.

Acts : Andhra Pradesh Technical Education Subordinate Service Rules - Rule 1; Supernnauation Act - Sections 3 and 3(2); [Constitution of India](#) - Article 309

Appeal No. : WP No. 11660 of 1994 and Batch

Appellant : A. Kodandam

Respondent : Principal, Kamala Nehru Polytechnic for Women, Hyd. and ors.

Advocate for Def. : Mr. M.V. Ramana Reddy ;for M. Ravindranath Reddy, Adv.

Advocate for Pet/Ap. : Mr. G. Dasaradharami Reddy, Adv.

Judgement :

ORDER

1. These three petitions are interconnected and can be disposed of by a common order.

2. The petitioners in these writ petitions are working as lab attenders in Kamala Nehru Polytechnic and they questioned the action of the respondents in determining their ages on the basis of a medical certificate given by a Forensic Professor, Gandhi Hospital in the year 1984 without reference to the date of birth entered in the service records as per the medical certificate given by the Civil Surgeon, Nampally General Hospital. They also contended that the authorities are trying to retire them at the age of 58, while they, being attenders wider last grade service are entitled to be in service upto the age of 60 years.

3. The respondents filed counter by contending that all the petitioners herein are working as lab attenders which forms part of A.P. Technical Subordinate Service and the post of attender in last grade service has no bearing on the issue to be adjudicated in these writ petitions. There is a difference in the scales of pay and the nature of work of the lab attenders is altogether different from that of an attender of the last grade service and once the distinction is admitted, the petitioners cannot claim that they can be continued in service upto 60 years of age. Their date of birth was entered in the service records at the time of their entry to the service on the basis of a declaration given by them without any supporting material. In those circumstances, the management has taken a decision to send them to medical examination and directed them to obtain certificates in proof of their age from a competent medical practitioner. Pursuant to the said communication, the petitioners approached Civil Surgeon, Nampally General Hospital and produced the certificates given by him. From the certificate it is seen that the Civil Surgeon simply filled up the gaps in manuscript and certified the age of the petitioners on the basis of appearance without determining their age on any scientific basis and in a manner known to law. At the same time, it is the case of the respondents that they did not alter the date of births in their service register on the basis of the certificate given by the Civil Surgeon, Nampally General Hospital. After some time when the matter came up for consideration before the Committee they felt it desirable to get the ages of these individuals determined in a scientific manner instead of acting upon a bald certificate given by the Civil Surgeon, Nampally General Hospital without any basis. Accordingly, all the petitioners were directed to appear before the Professor, Forensic Medicine, Gandhi Medical College, by Proceedings dated 8-5-1993. Pursuant to the said communication all

the petitioners appeared before the Professor, Forensic Medicine, Gandhi Medical College, Basheerbagh, Hyderabad and while certifying their ages, he not only considered the physical appearance but also subjected them to radiology and other examinations and certified the age of the petitioner. Acting upon the certificate issued by the Professor, Forensic Medicine, Gandhi Medical College, the date of birth of the petitioners originally entered were altered and as per the revised date of birth they are sought to be retired on attaining the age of superannuation. Subsequently, the petitioners filed writ petitions and obtained interim orders for their continuance.

4. From the foregoing narration effects, I am called upon to decide whether the post of a lab attender is different from that of a last grade servant and whether the petitioners are entitled to continue in service till they attain the age of 60 years.

5. Whether the action of the respondents in correcting the date of birth on the basis of the medical certificates given by the Professor, Forensic Medicine, Gandhi Hospital can be sustained in law.

6. As far as the employees working in Polytechnics in the State of Andhra Pradesh, is concerned their service conditions, are governed by the Andhra Pradesh Technical Education Subordinate Service Rules issued in G.O. Ms. No. 113, General Administration (Rules) Department, dated 7-9-1961. Under Rule 1 Class V Category 8 deals with the posts of Attenders including Work: Shop Attenders, Laboratory Attenders in Engineering Colleges, Polytechnics and Industrial Training Institutions. Under Rule II the appointment to these posts can be made either by direct recruitment or by promotion or by transfer from any class or category in the service. These writ petitions are concerned with the age of retirement of the Laboratory Attenders under general category. Under Section 3 of Superannuation Act (Act 23 of 84) every Government employee not being a workman and not being in last grade service has to retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. Under Section 3(2) of the Act an employee belonging to last grade service shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. From this it is evident that all other employees i.e., State

services, Ministerial Services and Superior services have to retire at the age of 58 years. The age of superannuation for the employees covered by last grade service rules is 60 years. Admittedly the petitioners are working in Kamala Nehru Polytechnic exhibition grounds, Nampally run by the Exhibition Society was admitted to grant-in-aid. It is not in dispute that the management of the College resolve to adopt Government Rules as far as its employees working in Polytechnics are concerned. Though the post of Attender and Lab Attender were shown under the same category, from the inception of the services, their scales of pay are different and as per the clarification given by the Director of Technical Education, the service of Lab Attenders is being treated as superior service. Following the 6th Pay Commission Report, the Government issued G.O.(P) No. 162, Finance & Planning (FWPC 1) Department, dated 20-5-1993 revising salaries of various categories of employees working in Government and it is not in dispute that the Government was releasing the grant on the basis of the pay scales given to the Government employees. The pay scales of the employees under various categories working in Technical Education Department was shown in Schedule-I to the G.O. and as per this G.O. the pay of Lab Attender was increased from Rs.780-1275 to 1475-2675 and the Laboratory Attender is entitled to have the benefit of eligibility increment. The post of Laboratory Attender was shown at serial No.89 while Attender was shown at serial No.101 and the same was treated as a common cadre along with Watchman, Sweeper, Scavenger, Cook, Bus-Cleaner, Bus-Cleaner-cum-Sweeper. At serial No.I the pay scales of common category was increased from Rs.740-15-950-20-1150-1375-25-1475-30-1625-40-1825-50-2075-60-2375. From this it is evident that though Lab Attenders and Attenders were shown in the same class and category, for the purpose of pay fixation, seniority etc., they are treated as separate categories. The Management having entertained a doubt addressed a letter to the Regional Joint Director in Letter No.22, dated 20-4-1992 and sought for clarification from the Regional Joint Director, Technical Education, by pointing out the anamoly. The officer concerned in his Memo No.RJD (H)/ B/KNPW/HYD of 95, dated 28-4-1997 gave a clarification that the services of Lab Attenders comes under statutory service under clause 3, whereas the Attenders are permitted to retire from service after attaining the age of 60 years since they come under last grade service. On the basis of the said

clarification the Management issued individual office orders informing the petitioners regarding the date of retirement. Questioning the same, they filed the present writ petitions.

7, It is true that in the Technical Education Subordinate Service Rules both the posts of Lab Attenders and Attenders were shown in the same category. Though the Regional Joint Director claims that the Lab Attenders are in superior service whereas the Attenders are in last grade service, the same is not reflected in the service rules by way of bringing suitable amendment even after the anomaly was pointed out. But at the same time on that ground I cannot permit the petitioners to retire at the age of 60 years for the simple reason that were never treated as same category for the purpose of seniority, promotion, etc. and the pay scales given to the Lab Attenders and Attenders are altogether different. If we take the functions of these two categories, it is crystal clear that the Lab Attenders will be assisting the regular staff in the Laboratory whereas the Attenders will be attending to the mineral works of the Institution. Hence I cannot hold that these Lab Attenders also come under last grade service as there is a difference in pay and in the discharge of their duties. Accordingly I hold that the Lab Attenders and Attenders form separate categories and they have nothing to do with each other. In the light of the view taken by me, the petitioners who are in superior service have to retire at the age of 58 years as contemplated under Section 3 of Superannuation Act (ActNo.23 of 84).

Issue No. 2: Admittedly, at the time of entering into the service, the petitioners have not produced any documentary evidence in support of their age. Though late they have realised that there is a need to fix the age of these individuals, the Management directed these individuals to appear before the Superintendent, Nampally Government Hospital and get the Age Certificate. Accordingly, they have gone to the Superintendent, who in turn gave the Certificate in the following manner:

'This is to certify that I have examined Sri Kodandam S/o. Sri Narsaiah according to his own statement his age 46 years and as per appearance 46 years.'

8. From this it is seen that the Superintendent has issued the Certificate without subjecting the individual to the necessary test to be conducted for determination of the age and the Superintendent has issued the Certificate by seeing the appearance of the individual before him. As the Management are not satisfied with the Certificate, they have directed these employees to appear before the Gandhi Hospital, Secunderabad, for determination of their age. Professor, Forensic Medicine having got the opinion of Dental Surgeon and Radiology Professor certified the dates of each of the individuals. It is suffice to extract how the Certificate was given by this Professor in the case of P.Sailoo, the petitioner in writ petition No.1 1890 of 1997:

'From the general, physical, dental and radiological examination I am of the opinion that Sri P. Sailoo is aged about 54 years.'

9. I am of the opinion that P. Sailoo is aged about 54 years as on the date of issuance of the Certificate i.e., 13-5-1993. Now on the basis of his Certificate in the light of the clarification received from the Regional Joint Director of Technical Education, the individual office orders were served on these employees intimating the date of their retirement.

10. The learned Counsel for the petitioners strenuously contended that having sent the petitioners to the Superintendent, Nampalli Hospital for fixation of the age and acted upon the Certificate given by the Superintendent, the respondents are stopped from sending these employees to Gandhi Hospitals once again. I have no hesitation to reject this contention for the simple reason that even according to the petitioners they did not produce any proof in support of their claim with regard to their age at the time of entry. Though they were sent to Nampalli Government Hospital, in 1987, the Management did not act upon the Certificates given by the Superintendent of Nampalli Hospital. Ofcourse they would have immediately sent the petitioners for obtaining a proper report on the age of the petitioners by sending them to an expert. But for various reasons the management did not act for some time and ultimately in the year 1993 they have done so and the Professor in Forensic Medicine has given the Certificates fixing the age of superannuation. In fact the right of the management to conduct an enquiry for determination of the

age and the declaration given by the employee was upheld by the Supreme Court in the State of Orissa v. Dr. Binapani Dei, : (1967)11LLJ266SC . In that case the appointing authority accepted the date of birth as disclosed by the respondent at the time of her entry into the service and entered the same in the Service Register. Subsequently the Government seemed to have received some objections against the date of birth as declared by the respondent. Having held an enquiry, the State Government issued a show-cause notice why her date of birth should not be altered and the respondent tried to justify her date of birth on the basis of the School record. By order dated 27-6-1963, the Government determined the date of birth of the 1st respondent as 16-4-1907 and declared that she should be deemed to have retired on 16-4-1962. Thereafter the respondent approached the High Court on the ground that no opportunity of showing cause against the action proposed was given by the Government and the same was found favour with High Court. On an appeal preferred by the Government of Orissa, their Lordships of the Supreme Court observed that:

'The first respondent held office in the Medical Department of the Orissa Government. She, as holder of that office, had a right to continue in service according to the rules framed under Article 309 and she could not be removed from office before superannuation except 'for good and sufficient reasons'. The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an enquiry if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth.'

11. Hence the petitioners cannot find fault with the action of the management in trying to get the ages of these petitioners re-determined by a competent Doctor in the field, The matter can be looked at from another angle. The petitioners, if they are aggrieved by the action of the respondents, they would have approached this Court or made a representation to the management that when once their date of birth is determined in a manner known to law, the same cannot be altered by asking them to appear before some other Doctor, moreso nearly after 6 years. But on the other hand, these petitioners with eyes wide open appeared before all the authorities i.e., the Professor-Forensic Medicine, Gandhi Hospital, Nampally and

Radiological Department, who in their turn certified the ages of the individual employees and issued Certificates. Now having received the retirement notices, the petitioners again turn round and contend that the management is estopped from altering the date of birth at any rate. The Medical Certificates were issued way back in 1993 and I am not prepared to un-settle the settled things by reopening the matters at this belated stage. For the above reasons I am not inclined to interfere with the orders of the management in trying to retire the petitioners on attaining the age of 58 years and accordingly the same is upheld.

12. The learned Counsel for the petitioners brought to my notice that the petitioners are continuing in service by virtue of the interim orders granted by this Court and he apprehends that his clients may be asked to pay back the salaries received after their date of retirement. It is needless to observe that as the petitioners discharged their duties attached to the posts under the orders of this Court beyond their age of superannuation, the question of recovering the salaries paid for the period after retirement does not arise. The same view was taken by their Lordships of the Supreme Court in *Collector of Madras & Others v. K, Rajamanickam*, : (1995) 11 LLJ 677 SC . But at the same time the services rendered by them after the date of superannuation shall not be taken into consideration for working out pensionary benefits. It is needless to observe that the petitioners shall be paid their retirement benefits as early as possible at an early date at any rate not later than 3 months from the date of receipt of a copy of this order.

13. WP Nos. 11890 of 97, 11865 of 1996 ' are accordingly dismissed. No costs.

14. Though for all practical purposes, the facts of this case i.e., WP No. 11660 of 1994 are similar to the facts of the employees in writ Petition No. 11890 of 97 and batch, the only difference in this case is that the management seemed to have acted on the Certificate given by the Superintendent, Nampalli Hospital. Taking advantage of this situation, the learned Counsel for the petitioner contends that as the date of birth was already entered in the Service Register and as it has become final, the management is estopped from altering the date of birth of this employee. The position is made clear by the Supreme Court in *State of Orissa v. Dr. Binapani Dei* (supra) that even if the date of birth is entered in the Service

Register, it does not preclude the Government from holding an enquiry if they are having sufficient reason to believe that the date of birth as entered in the Service Register is not correct. Further, the petitioner along with others appeared before Gandhi Medical Hospital, Nampalli and got the age Certificate issued by the Professor of Forensic Department of Gandhi Medical College. Hence I cannot settle the unsettled things at this belated stage.

15. Accordingly this writ petition also fails and it is accordingly dismissed. No costs.

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