

Km. Madhuri Mathur Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Dec-21-2000

Reported in : 2001(1)AWC667; [2001(88)FLR755]; (2001)1UPLBEC751

Judge : V.M. Sahai, J.

Acts : U.P. Intermediate Education Act, 1921

Appeal No. : C.M.W.P. No. 20230 of 1999

Appellant : Km. Madhuri Mathur

Respondent : State of U.P. and Others

Advocate for Def. : K.K. Chand, Adv. and ;S.C.

Advocate for Pet/Ap. : Ashok Khare and ;Yogesh Kumar Saxena, Advs.

Judgement :

ORDER

V.M. Sahai, J.

1. This petition relates to change of option by a teacher. The petitioner was Lecturer in Hindi since 1975 in Gyan Bharati Balika Inter College, Birhana, Kanpur Nagar is a recognised and aided institution. Her date of birth is 25.3.1939. She gave an option to retire at the age of 58 years on 31.12.1990 in pursuance of

Government Order dated 6.10.1990 circulated by Director on 31.10.1990. She withdrew her option on 26.2.1997. The management recommended on 15.3.1997 to the District Inspector of Schools-II, Kanpur Nagar for permitting the petitioner to change her option. The District Inspector of Schools on 19.4.1997 returned the papers that it should again be sent along with the Government Orders. The petitioner filed Civil Misc. Writ Petition No. 16401 of 1997. She claimed that since her option has not been accepted, she could change it. A counter-affidavit was called and interim order was passed on 16.5.1997 and the petitioner was allowed to continue to work till 60 years. The petition was disposed of on 22.7.1998 with the direction to the concerned authorities to decide the petitioner's representation. The District Inspector of Schools on 1.4.1999 rejected the representation of the petitioner and held that the petitioner having exercised option once could not change it. The petitioner has challenged this order dated 1.4.1999 passed by the District Inspector of Schools in this petition.

2. I have heard Shri Yogesh Kumar Saxena, the learned counsel for the petitioner and Shri K. K. Chand the learned standing counsel appearing for respondent Nos. 1 to 5. Notice was issued to respondent No. 6 by registered post. Service on respondent No. 6 is deemed to be sufficient.

3. The learned counsel for the petitioner has urged that the option given by the petitioner was not accepted by the respondents, therefore, she could change the option exercised by her earlier to retire at the age of 58 years and give fresh option to retire at the age of 60 years. On the other hand, the learned standing counsel urged that the option exercised by the petitioner and countersigned by the District Inspector of Schools became final and could not be changed by the petitioner. Therefore, the age of the retirement of the petitioner would be 58 years and not 60 years. In the counter-affidavit filed by the District Inspector of Schools it has been stated that the option given by the petitioner was received through the manager of the institution. It was accepted and returned back through the management. If the option exercised by the petitioner has not been mentioned in the service book of the petitioner, then it was the fault of the management. The option once exercised could not be changed and petitioner retired at the age of 58 years at the end of academic session on 30.6.1997.

4. The question whether option countersigned by the District Inspector of Schools has to be treated as final and binding has been considered by the Full Bench of this Court in *Prabha Kakkar (Smt.) v. Joint Director of Education, Kanpur and others*, (2000) 2 UPLBEC 1378. The Full Bench after considering the various Government Orders issued by the respondents held that the option exercised by the employee has to be made in the prescribed format and it had to be accepted by the Regional Deputy Director of Education and the fact of acceptance or non-acceptance of the option exercised by the employee was required to be communicated by the Regional Deputy Director of Education to the concerned employee within the specified time. Mere countersigning of the option by the District Inspector of Schools could not be taken as acceptance of the option. It held that the act of acceptance of option by the Regional Deputy Director of Education and its communication to the employee was necessary to make the option final. The countersignature by the District Inspector of Schools on such option could neither be taken as an acceptance nor it could attach any finality to the option. The facts of this case demonstrate that option exercised by the petitioner on 31.12.1990 was never accepted by the Regional Deputy Director of Education nor it was communicated by him to the petitioner, therefore, the option exercised by the petitioner on 31.12.1990 could not be given effect to and it remained a dead letter. Therefore, the option given by the petitioner on 26.2.1997 that she would continue in service till the age of 60 years has to be accepted because under Regulation 21 of Chapter-II of the Regulations framed under U. P. Intermediate Education Act, 1921, the age of superannuation of a teacher is provided to be 60 years and the teacher is entitled to continue till the end of academic session. Thus the age of retirement of the petitioner would be 60 years and not 58 years as held by the District Inspector of Schools. She would have retired on 30.6.1999. The impugned order passed by the District Inspector of Schools on 1.4.1999 cannot be maintained.

5. In the result, this writ petition succeeds and is allowed. The order dated 1.4.1999 passed by the District Inspector of Schools, Kanpur Nagar Annexure-11 to the writ petition is quashed. The age of superannuation of the petitioner is held to be sixty years. Since the petitioner would have retired at the age of sixty years at the end of academic session on 30.6.1999, therefore, the respondents are

directed to calculate her arrears of salary and her post-retiral benefits and pay the same to the petitioner treating the age of the retirement of the petitioner to be sixty years, within a period of four months from the date a certified copy of this order is produced before respondent No. 4.

6. Parties shall bear their own costs.

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