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Court : Allahabad

Decided On : Mar-20-2002

Reported in : 2002(3)AWC2135; (2002)2UPLBEC1511

Judge : M. Katju and ;Rakesh Tiwari, JJ.

Acts : Uttar Pradesh Water Supply and Sewerage Act, 1975 - Sections 3, 8, 8(2), 37, 37(1) and 89; Uttar Pradesh Water Supply and Sewerage Rules - Rule 56A; M.P.S.R.T.C. Employees Service Regulations - Regulation 59

Appeal No. : C.M.W.P. No. 3449 of 2002 with 13 other writ petitions

Appellant : Harwindra Kumar

Respondent : Chief Engineer Karmik, U.P. Jal Nigam, Lucknow and ors.

Advocate for Def. : Poonam Srivastava, C.S.C.

Advocate for Pet/Ap. : Shakti Swaroop Nigam and ;Vijai Sinha, Advs.

Judgement :

Rakesh Tiwari, J.

1. The moot point for consideration in this bunch of writ petitions is whether the employees of the U.P. Jal Nigam are entitled to enhancement in their age of superannuation from 58 years to 60 years, at par with U.P. Government servants by virtue of Government Order No. 1098/Ka-1/2001, Lucknow dated 28th November, 2001.

2. The background of the controversy has its roots in the enactment of the U.P. Water Supply and Sewerage Act, 1975. The petitioners were employees in the Local Self Government Engineering Department of the U.P. Government. On enactment of the U.P. Water Supply and Sewerage Act, (U.P. Act No. 43 of 1975) as amended by U.P. Acts No. 10 of 1978, U.P. Act No. 28 of 1978 and U.P. Act No. 5 of 1984, the U.P. Jal Nigam came into existence and by virtue of Section 3 of the Act, the Nigam is body corporate.

3. The contentions of the petitioners are that :

(i) Under Section 37 of the U.P. Water Supply and Sewerage Act, 1975, the service conditions of the petitioners stood preserved as that of a Government servant subject to making of rules by the U.P. Jal Nigam.

(ii) Since neither the U.P. Jal Nigam has framed any rules nor rules have been framed by the State Government changing the service conditions of the petitioners, hence their service conditions remain the same as applicable to Government Employees, and they are to be retired at the enhanced age of superannuation, i.e., 60 years and not 58 years.

(iii) The retirement of the petitioners had so far been governed by Rule 56A of U.P. Financial Handbook and they were being retired at the age of 58 years as per unamended Rule 56A, but by virtue of Government order dated 28.11.2001 (supra), issued by the Governor of U.P., the age of retirement of Government servants was enhanced from 58 years to 60 years. Hence their age of retirement is 60 years, even though necessary amendments in Rule 56A have to be carried out in due course of time.

4. To resolve the controversy, we have to first consider the relevant provisions of the U.P. Water Supply and Sewerage Act, 1975.

5. Section 8 provides for appointment of employees :

(1) Subject to the provision of Sub-section (2), the Nigam may appoint such employees as it considers necessary on such terms and conditions as it thinks fit for the efficient performance of its functions :

Provided that the appointment of such employees as the State Government may, by General or Special order, specify, shall be made in their terms and conditions, shall be determined with the approval of the State Government. (2)

6. Section 37 (1) of the Act states :

'37. Transfer of employees of Nigam.--(1) Save as otherwise provided In this section every person, who was employed in the Local Self Government Engineering Department of the State Government shall on and from the appointed date become employee of the Nigam and shall hold his office or service therein by the same tenure, at the same remuneration and upon same other terms and conditions, and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed date if this Act has not come into force, and shall continue to do so until his employment in the Nigam is terminated or until his remuneration or other terms and conditions of services are revised or altered by the Nigam under or in pursuance of any law or in accordance with any provision which for the time being governs his service :

Provided that nothing contained in this sub-section shall apply to any such employee, who by notice in writing given to the State Government within such time as the State Government may, by general or special order, specify, intimates his intention of not becoming an employee of the Nigam :

Provided further that the services of any employee referred to in the preceding proviso under the State Government shall stand terminated on account of abolition of the post held by him and he shall be entitled from the State Government to compensation equivalent :

Sub-section (4) states :

(4) Every permanent or temporary employee of the Local Self Government Engineering Department of the State Government under Sub-section (1) shall on and from the appointed date, be a permanent or temporary employee of the Nigam, as the case may be against a permanent or temporary post which shall stand created in the establishment of the Nigam with effect from the appointed date.'

7. The petitioners have not given any notice in writing to the State Government within the time prescribed in the first proviso to Section 37 of the Act. The services of such employees have stood transferred to the Jal Nigam in view of Section 37 (1) of the Act, but on the terms and conditions pertaining to the State Government employees on the appointed date, i.e., 18.6.1975 as 58 years, and hence any subsequent change will not automatically become applicable to the employees of the Jal Nigam.

8. The intention of the Legislature from the aforesaid provisions and the scheme of the Act is crystal clear that from the appointed date the employees of the Local Self Government Engineering Department would become employees of the Nigam and hold office for the same tenure, i.e., till 58 years as on the appointed date which was 18.6.1975. The employees of the Nigam, who did not give notice in writing under Section 37 of the Act, were deemed to have become the employees of the Nigam and accepted all the terms and conditions applicable to the U.P. Jal Nigam.

9. The respondents have contested the claim of the petitioners and have relied upon the provisions of Section 89 of the Act which provides that the Jal Nigam shall be guided by such direction or guideline as may be given by the State Government in discharge of its functions. The decision of the State Government in policy matters issued under Sub-section (1) of Section 89 of the Act is final. It was argued on behalf of the respondents that it was compulsory for the U.P. Jal Nigam to consult the Public Enterprises Bureau before extending any facility to its employees as contained in the Government order dated 4.6.1997, which is appended as Annexure-CA-2 to the counter-affidavit. The further argument is the vide Annexure-CA-3 the Board of U.P. Jal Nigam on 15.1.2002, resolved that the

Government order dated 28.11.2001, is only meant for the State Government employees and till a specific direction is issued by the State Government through the Bureau of Public Enterprises, the age of retirement of the employees of the Jal Nigam cannot be automatically enhanced from 58 years to 60 years.

10. Clauses 2 and 3 of the Government order dated 28.11.2001 dealing with the age of superannuation from 58 years to 60 years is quoted below :

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jkT;k/khu ljdkjh Isodksa dh vf/ko'kZrkvk;q yksd fgrksa eas 58 o'kZ ds LFkku ij 60 o'kZ djus dks jkT;ikyegksn; ,rn}kjk Lohr djrs gSa %

1 ;g vkns'k rkRdkfyd izHkkols ykxw fd;s tk;saxs A

2 foRr gLr&iqfLrdk; [k.M&11ds ewy fu;e 56 esa ;Fkk vko';d la'kks/ku dh dk;Zokgh i`Fkd Is foRr foHkkx }kjkdh tk;xh A

3 mi;qZDr Is IEcfU/kr vko';dmicU/kksa ds ckjs esa foLr`r fn'kk funsZ'k jkT; ljdkj }kjk i`Fkd Is tkjh fd;stk;saxs A

11. The State Government again clarified by letter dated 22.1.2002, that the notification dated 28.11.2001 applies only to the employees of the State Government and not to the employees of the Corporation/Nigam, as they are not the employees of the State Government. This letter has been appended as Annexure-CA-2 to the counter-affidavit, it States :

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eq>s mi;qZDr fo'k; ijvki dk /;ku vkdf'kZr djrs gq, ;g dgus dk funsZ'k gqv k gS fd 'kklu us ;gfu.kZ; fy;k gS fd tc dHkh dksbZ lkoZtfud m|ksx vius deZpkfj;ksa dh fdlh Hkhizdkj dh ubZ lqfo/kk Lohr fd;s tkus ds iz'u ij fopkj djsa rks ,sls ekeyksa esafu.kZ; ysus Is iwoZ vfuok;Z :i Is mls lkoZtfud m|ksx O;wjks Is ijke'kZ djukvko';d gksxk A vr,o i;k tc dHkh Hkfo'; esa ,sls volj mRiUu gksa rksami;qZDrkuqlkj dk;Zokgh dh tk; A

i;k bl i= dh izkflr Is lfpoO;wjks dks voxr dj;as A

Hkonh;

g- ik ukjk;.k JhokLro

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12. It is an admitted fact that the Act came into force on 18th June, 1975 and the age of superannuation of the employees on that date, when their services were transferred to the U.P. Jal Nigam was 58 years, The services of all such employees including the petitioners stood transferred in terms of Section 37 (1) of the Act and the petitioners became employees of the U.P. Jal Nigam on the same tenure. The Act did not give assurance to the effect that the terms and conditions of their services would automatically be revised or altered by the Nigam corresponding to any change made by the State Government in respect of its employees or that any amendment amending the terms and condition of State Government employees would automatically bring change in the terms and conditions of the employees of the Jal Nigam. The office orders dated 15.1.2002 and 22.1.2002 have not revised or altered the service conditions including any change in the age of superannuation so as to bring it at par with that of the State Government employees and they would not automatically apply to the employees of the U.P. Jal Nigam.

13. The petitioners have relied upon a judgment of the Apex Court in S. P. Dubey v. Madhya Pradesh State Road Transport Corporation and Anr., 1991 Supp (1) SCC 426. In this case where the company was taken over by the State Government undertaking, i.e., State Road Transport Corporation, specific assurance was given that the service conditions of the employees of the company will not be adversely affected. The age of retirement of the employees of the transferred company was 60 years, but by Regulation 59 of the M. P. S. R. T. C. Employees Service Regulations it was reduced to 58 years. It was held in these circumstances that the assurance incorporated in the Act was binding and the retirement age of 60 years enjoyed by the transferred employees cannot be reduced to their disadvantage.

14. In the present case, the facts are otherwise. Neither the Corporation/Nigam has been taken over by the State Government nor the age of retirement of the employees as on the appointed date was changed nor any such assurance was given or can be read in Section 37 of the Act. The ratio in the case of S. P. Dubey (supra) therefore, does not help the petitioners.

15. According to the Fundamental Rule 56A of the U.P. Financial Hand Book, the age of retirement was 58 years. The employees of the U.P. Jal Nigam were retired on reaching the age of superannuation, i.e., 58 years. Clauses 2 and 3 of the Government order dated 28.11.2001, does not make any change in the rule. They specifically provide that the age of the employees working under the State Government is increased from 58 years to 60 years with immediate effect and that necessary amendment in Rule 56A of the Financial Hand Book will be made separately and necessary directions will be issued by the State Government in this regard separately.

16. The U.P. Jal Nigam has not adopted the change. The Resolution dated 4.4.1977, pertaining to the rights and duties of the employees of the Jal Nigam does not relate to the age of superannuation. Since it is provided in the Government order dated 28.11.2001, that necessary amendment in Rule 56A would be carried out in due course of time, in respect of the employees of the State Government, this will not by itself give a right to the employees of the Jal Nigam to retire at the age of 60 years. The fixation of the age of superannuation is a policy decision. In the past also, the benefits of the revised pay scales were given to the employees of the U.P. Jal Nigam much after it was allowed to the State Government employees, i.e., after about one and a half years after consultation with the Bureau of Public Enterprises. Thus, the terms and conditions applicable to the State Government employees do not automatically become applicable to the employees of the Jal Nigam as they are not the employees of State Government. The U.P. Jal Nigam is a separate legal entity distinct from the U.P. Government.

17. In pursuance of the policy decision taken by the State Government, the Board of U.P. Jal Nigam took a decision on 15.1.2002, that the notification dated

28.11.2001, is only meant for the State Government employees and till a specific direction is issued by the State Government in consultation with the Bureau of Public Enterprises, the age of retirement of the employees of the Jal Nigam cannot be enhanced from 58 years to 60 years. The averment made in paragraph 6 of the counter-affidavit have not been denied by the petitioners in their rejoinder-affidavit.

18. Then it has been argued that the petitioners have a right to continue till the age of 60 years pursuant to the Resolution dated 4.4.1977. For ready reference the resolution dated 4.4.1977 is enumerated below :

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fuxe dh nwljh cSBd ds i= la[;k221 }kjk fuxe ds vf/kdkfj;ksa ds dr ZO; ,oa vf/kdkjksa ds fo'k; esa ;g fu.kZ;fy;k x;k gS fd rRdkyhu Lok;kk 'kklu vfHk;U=.k foHkkx esa rks vf/kdkj ,oa dr ZO;vf/kdkfj;ksa@deZpkfj;ksa dksfokh; gLr&iqfLrdk; Hkkx&1 ls 6 ih-MCyw- Mh- eSuqvy] eSuqvy vkQxouZes UV vkMZj flfoy lfoZI jsxqys'ku xouZes UV losZUVI dUm DV :YI vU; eSuqvyxouZes UV ds vkns'k dks ikfjr fd, x;s gSaa vFkok le;? ij ikfjr fd, tk;saxsfuxe vf/kdkfj;ksa@deZpkfj;ksa ij;fn fuxe }kjk bl fo'k; esa dksbZ vU; vkns'k ikfjr ugha fd, tk;as rks ykxwle>s tk;saxs A

mDr vkns'k ml le; rd tc rd fuxe }kjkvius :YI vFkok jsxqyss'kUI ugha cuk, tkrs gSa rc rd ykxw ekus tk;saxs A

g- vLi'V

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lfpo iz'kklu

19. A supplementary affidavit has also been filed annexing therewith a copy of the order dated 1.2.1984 by which it has been provided that the employees of the Jal Nigam would be entitled to the retirement benefits such as gratuity, family pension, etc. at par with the State Government employees. This Itself shows that the Jal Nigam has to take a decision for applying the Government decision to the employees of the Jal Nigam. This is an office order by which certain benefits have been granted by the Jal Nigam to its employees at par withthe State Government

employees. This office order is not a policy decision or an order issued under Section 89 of the U.P. Water Supply and Sewerage Act, 1975. It does not provide that the policy decision of the State Government until and unless adopted by the U.P. Jal Nigam in consultation with the Bureau of Public Enterprises, becomes binding on it. In our opinion, any change in the conditions of service of Government employees is not applicable to the U.P. Jal Nigam employees automatically. Merely because some benefits have been given by the Jal Nigam to its employees at par with the employees of the State Government, the claim of automatic application of benefit of enhanced age of superannuation at par with the State Government employees cannot be accepted on the basis of the office order and it cannot be said that the employees of the Jal Nigam are entitled to the enhancement age of superannuation applicable to the employees of the State Government.

20. This matter can also be looked from another angle. Section 8 of the Act empowers the Jal Nigam to appoint its employees on such terms and conditions as it thinks fit. The age of superannuation is one of the conditions of service of the Jal Nigam employees. A letter of the State Government dated 4.6.1997, has been brought on record by the counsel for the respondents. This letter contains guidelines that any facility to the employees of Jal Nigam would be provided in consultation with Bureau of Public Enterprises. Admittedly, the Bureau of Public Enterprises has not been consulted by the Jal Nigam to increase the age of superannuation and hence, the petitioners cannot claim parity ipso facto with the State Government employees with regard to enhancement of the age of superannuation on the basis of the Government order dated 28.11.2001. It applies only to the State Government employees and not to the employees of autonomous body/corporation. The order dated 28.11.2001, will not apply to the other employees except the State Government employees. The employees of Jal Nigam cannot claim the benefits and status of the State Government employees and are not entitled to the consequential benefit of the aforesaid policy decision enhancing the age of employees of the State Government from 58 years to 60 years.

21. The petitioners have referred to the decision in *E. Venkateswararao Naidu v. Union of India*, AIR 1973 SC 698, Reliance has been placed on paragraph 6 of the

judgment where it had been argued that when a notification enhancing the age of superannuation issued under the authority of the President is issued, it becomes binding as a rule under Article 309 of the Constitution of India irrespective of incorporation of the rules and the benefits under the notification would be available to the employees, even though formal amendments are not incorporated in the rules. It has been further emphasised that similar view has been taken by the Apex Court in the case of *Shyam Lal v. State of U.P.*, AIR 1954 SC 369. Both these cases pertain to compulsory retirement of Government servants. In the first case, the appellant E. Venkateswararao Naidu was an employee of the Central Government and a notice retiring him compulsorily was challenged by him. Similarly, the case of *Shyam Lal v. State of U.P.* (supra) also was a case of compulsory retirement, and the petitioner was a Government servant. In the instant case, the petitioners are not Government servants. They are the employees of an autonomous body. Hence the ratio of these cases does not apply to the peculiar facts and circumstances of the present case.

22. A question regarding reducing the age of retirement from 58 years to 55 years came up before a Constitutional Bench of the Hon'ble Supreme Court in the case of *K. Nagaraja and Ors. v. State of Andhra Pradesh*, AIR 1985 SC 551. The Apex Court considered the age of retirement which exists in various States of the country on the basis of data made available to it and came to the conclusion that the period in between 55 and 58 years is generally regarded in our country for fixing the age of retirement. In paragraph 28 of the judgment, the Apex Court held as follows :

'28. On the basis of this data, it is difficult to hold that in reducing the age of retirement from 58 to 55, the State Government or the Legislature acted arbitrarily or irrationally. There are precedents within our country itself for fixing the retirement age at 55 or for reducing it from 58 to 55. Either the one or the other of these two stages is regarded generally as acceptable, depending upon the employment policy of the Government of the day. It is not possible to lay down an inflexible rule that 58 years is a reasonable age for retirement and 55 is not. If the policy adopted for the time being by the Government or the Legislature is shown to violate recognised norms of employment planning, it would be possible to say that

the policy is irrational since, in that event, it would not bear reasonable nexus with the object which it seeks to achieve. But such is not the case here. The reports of the various commission, from which we have extracted relevant portions, show that the creation of new avenues of employment for the youth is an integral part of any policy governing the fixation of retirement age. Since the impugned policy is actuated and influenced predominately by that consideration, it cannot be struck down as arbitrary or irrational. We would only like to add that the question of age of retirement should always be examined by the Government with more than ordinary care, more than the State Government has bestowed upon in this case. The fixation of age of retirement has minute and multifarious dimensions which shape the lives of citizens. Therefore, it is vital from the point of view of their well being that the question should be considered with the greatest objectivity and decided upon the basis of empirical data furnished by scientific investigation. What is vital for the welfare of the citizens is, of necessity, vital for the survival of the State. Care must also be taken to ensure that the statistic are not perverted to serve a malevolent purpose.'²³. There is no substance in the contention of the petitioners that the amended fundamental rules will apply to them automatically as it is specifically provided in the Government order dated 28.11.2001, that necessary amendment in Rule 56A of the Financial Hand Book will be made separately and necessary directions will be issued by the State Government in this regard separately. A perusal of the Government order dated 28.11.2001, shows that the amendment in the Financial Hand Book will be made separately in respect of State Government employees whose age has been increased from 58 years to 60 years and not in respect of an employee of the Corporation/Nigam. The petitioner was not in the service of the State Government and termination of service of such employee on reaching the age of superannuation, i.e., 58 years does not amount to his removal from service within Article 311(2) of the Constitution. The reduction in the age of retirement from 58 to 55 years in the case of K. Nagaraj has also been found not to be hit by Article 14 or 16 of the Constitution. It is not arbitrary or unreasonable in the circumstances of the case. In the circumstances there can be no automatic application of the Government order dated 28.11.2001 to the employees of the Jal Nigam and the contention of the petitioners that they are entitled to enhancement in the age of superannuation, is

unjustified. Thus, the very foundation of the argument is fallacious. 24. In the case of T. P. George and Ors. v. State of Kerala and Ors., 1992 Supp (3) SCC 191, the Supreme Court held that :

'The case of the appellants was that the State Government having accepted the U.G.C. Scheme which provided for a higher age of superannuation, i.e., 60 years ; all the clauses of the scheme became applicable, once the State Government accepted the scheme.' Negativating this contention, the Apex Court held :

'It is not possible to accede to this contention. Firstly, as already stated the U.G.C. scheme does not become applicable because of any statutory mandate making it obligatory for the Government and the Universities to follow the same. Therefore, the State Government had discretion either to accept or not to accept the scheme. In its discretion it has decided to accept the scheme subject to one condition, namely, insofar as the age of superannuation is concerned, they will not accept the fixation of higher age provided in the scheme. The State Government having thus accepted the scheme in modified form, the teachers can only get the benefit, which flows, from the scheme to the extent to which it has been accepted by the State Government and the concerned universities. The appellant cannot claim that major portion of the scheme having been accepted by the Government, they have no right to accept the clause relating to fixation of higher age of superannuation.' The Supreme Court further held that:

'However, it is not for the Courts to prescribe the correct age of retirement, but that is a policy function requiring considerable expertise which can properly be done by the State Government or the State Legislature or the university concerned.' 25. In the present writ petition also, the State Government has in its discretion not made the G.O. dated 28.11.2001, applicable to employees of the Jal Nigam and they cannot get the benefit of enhanced age of superannuation, i.e., 60 years at par with State Government employees.

26. In view of the aforesaid reasons, this writ petition along with other connected writ petitions as well as all those writ petitions which are pending in this Court on the same point, i.e., claiming superannuation of the U.P. Jal Nigam employees at the age of 60 years on the basis of the G.O. dated 28.11.2001, stand dismissed.

No order as to costs.

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