

Miss Raj Soni vs Air Officer Incharge Administration & ... on 10 April, 1990

Equivalent citations: 1990 AIR 1305, 1990 SCR (2) 412, AIR 1990 SUPREME COURT 1305, 1990 (3) SCC 261, 1990 LAB. I. C. 1161, (1990) 1 CURLR 772, 1990 UJ(SC) 1 683, (1990) 61 FACLR 5, (1990) 9 SERVLR 240, (1990) 2 JT 173 (SC), (1990) 2 CURLJ(CCR) 163, (1990) 14 ATC 712, (1990) 41 DLT 136, 1990 LABLR 333, 1990 SCC (L&S) 466

Author: Kuldip Singh

Bench: Kuldip Singh, P.B. Sawant

PETITIONER:

MISS RAJ SONI

Vs.

RESPONDENT:

AIR OFFICER INCHARGE ADMINISTRATION & ANR.

DATE OF JUDGMENT 10/04/1990

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

SAWANT, P.B.

CITATION:

1990 AIR 1305	1990 SCR (2) 412
1990 SCC (3) 261	JT 1990 (2) 173
1990 SCALE (1)711	

ACT:

Delhi Education Code, 1965: S. 208/Delhi Education Act, 1973: S. 8(1)/Delhi Education Rules, 1973: Rule 110--Employee of pre-existing recognised school--Whether entitled to superannuate at 60 years--Authority under statutory obligation--Whether can defy statute on the ground that it is not covered by the definition of 'State' under Article 12 of the Constitution.

HEADNOTE:

The normal age of retirement of an employee of an aided

school prescribed under s. 208 of the Delhi Education Code, 1965 was 60 years. The proviso to s. 8(1) of the Delhi Education Act, 1973, prohibited the administrator from varying the conditions of service of an employee of an existing school at the commencement of that Act to his disadvantage- While fixing the retirement age of employees of recognised private schools at 58 years sub-rule (1) of rule 110 of the Delhi Education Rules, 1973 protected the entitlement of existing employees to higher age of retirement.

The petitioner-teacher, who had joined service before the coming into force of the Act, assailed her retirement on attaining the age of 58 years on the ground that under s. 8 of the Act read with rule 110 of the Rules she had a statutory right to continue upto the age of 60 years in terms of s. 208 of the Code and that the management had acted arbitrarily and discriminately in depriving her of two years of service and consequential benefits. For the respondents it was contended that the management of the school was neither a State nor an authority under Article 12 of the Constitution and as such no writ petition against the respondent-management was maintainable, and that the Education Code had no force of law and as such the petitioner had no enforceable right much less under Article 32 of the Constitution. Allowing the writ petition, the Court,

HELD: 1. The petitioner's claim is just. She was entitled to be ,retired at the age of 60 years. [417A, E]
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2. Prior to the coming into force of the Act and the Rules the management was following the Delhi Education Code which provided 60 years as the age of superannuation for the school teachers. The age of superannuation provided in Rule 110 of the Rules is 58 years except in the case of existing employees who were in service on April 1, 1973, the date of coming into force of the Act, and in their case the higher age of retirement to which they were entitled has been protected. The petitioner was an existing employee of the respondent management. [417E, 415D]

3. The respondent-management was under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When an authority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an "authority" under Article 12 of the Constitution of India. [416G-H]

4. The petitioner having already attained the age of 60 years the respondents are directed to pay her salary and allowances for the period of two years. The post-retirement benefits to which she is entitled be redetermined assuming her to have retired at the age of 60 years. The arrears of salary and allowances be paid to her within three months. [417F-G]

JUDGMENT :

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 7995 of 1981.

(Under Article 32 of the Constitution of India). Krishnamani and M.K.D. Namboodary for the Petitioner. N.C. Sikri and Mrs. Madhu Sikri for the Respondents. The Judgment of the Court was delivered by KULDIP SINGH, J. The petitioner retired from the post of teacher in the Air Force Central School, New Delhi (herein- after called the 'School') on her attaining the age of 58 years. The School is a society registered under the Societies Registration Act, 1960. In this petition under Article 32 of the Constitution of India she claims that under the Delhi Education Code read with the Delhi Education Act, 1973 (hereinafter called the 'Act') and the Delhi Education Rules, 1973 (hereinafter called the 'Rules') the age of superannuation for the teachers who joined service before the coming into force of the Act is 60 years and as such the management of the school acted arbitrarily in depriving her of two years of service and consequential benefits.

The petitioner was initially appointed for a period of five years. On completion of the said period in 1961 the contract was renewed for a further period of five years. Thereafter she continued in service of the school on regular basis till the impugned retirement dated October 31, 1981. The petitioner has averred that prior to coming into force of the Act the conditions of service of the teachers of the school provided 60 years as the age of superannuation. The respondents have, however, denied the same and have stated that the school management was following the practice of retiring the teachers on attaining the age of 58 years with some exceptions where extensions were given upto the age of 60 years. The management has not produced any rules, bye-laws or instructions to show that the age of superannuation of the school teachers was 58 years. With a view to provide uniformity and security of service to the teachers of recognised schools, the Delhi Administration laid down model conditions of service including age of superannuation for the teachers/employees of the said schools and published the same as a code called the Delhi Education Code. It came into force with effect from February 15, 1965. Section 208 of the Code is as under:

"Section 208. The normal age of retirement of an employee of an aided school (including the head of the School) shall be the date on which he attains the age of 60. But an employee may be retired any time between the age of 55 & 60 years on grounds of inefficiency, incompetence, or physical unfitness after he has been given a reasonable opportunity to show cause against the proposed retirement and after his representation, if any, has been duly considered."

Section 8(1) of the Act and Rule 110 of the Rules which are relevant are as under:

8(i) "the administrator may make rules regulating the minimum qualifications for recruitment and conditions of service of employees of recognised private school.

Provided that neither the salary nor the right in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such an employee."

"Rule 110--Retirement Age: (1).Except where an existing employee is entitled to have a higher age of retirement, every employee of a recognised private school, whether aided or not shall hold office until he attains the age of 58 years."

The school is not receiving any aid from the Government but it is recognised by the Delhi Administration. It is not disputed that the Act and the Rules are applicable to the teachers employed in the school and the management is legally bound to extend the protection of these provisions to them. The age of superannuation provided in Rule 110 of the Rules is 58 years except in the case of existing employees who were in service on April 1, 1973 the date of coming into force of the Act and in their case the higher age of retirement to which they were entitled has been protected. The petitioner has specifically asserted in the petition that even though the school was not an aided school it had accepted the Delhi Education Code and made it applicable to its employees. It is stated that the management of the school has been retiring the teachers at the age of 60 years in terms of Section 208 of the Code. It is also mentioned that one Mr. P.R. Menon, Head of English faculty in the school retired on December 9, 1968 on attaining the age of 60 years. She has further stated that Mr. Dhawan, Sqdrn. Leader Lal and Mr. Sharma all joined the school as teachers before the enforcement of Delhi Education Code and have retired after coming into force of the Act and the Rules. All of them retired at the age of 60 years whereas the petitioner was made to retire at the age of 58 years arbitrarily and discriminately. In the counter affidavit the Chairman, Executive Committee of the school has stated as under:

"The Delhi Administration formulated an Education Code by way of guidelines without any legal force as pronounced by Hon'ble Delhi High Court"

It is further stated:

"the management of the school was adhering the service conditions inclusive of age of retirement i.e. 58 years and the pay-scales prescribed by the Delhi Administration, from time to time under Delhi Administration Act, the past practice of serving beyond the age of 58 years had been done away rather on coming into force of the Delhi Education Act as a matter of principle but for one exception of Shri B.L. Sharma the then Vice Principal who was given extension as an administrative expediency."

Learned counsel for the petitioner has contended that prior to the coming into force of the Act and the Rules, the management was following the Delhi Education Code which provided 60 years as the age of superannuation and as such under rule 110 of the Rules the petitioner has a statutory right to continue upto the age of 60 years. Mr. N .C. Sikri, learned counsel appearing for the management, however, contends that the school is being run by a private management, there is no Government

control in the management of the school and no aid of any kind is being given to the school. According to him, the management of the school is neither State nor an authority under Article 12 of the Constitution of India and as such no writ petition against the respondent-management is maintainable. On merits he contends that Delhi Education Code has no force of law and as such the petitioner has no enforceable right much less under Article 32 of the Constitution of India. The Executive Committee which manages the school is headed by Air Force Officer Incharge Administration, Air Force Headquarters, New Delhi and consist of all high rank- ing Air Force officers of the rank of Sqdrn. Leader to Air Marshal. The said membership is in their official capacity which indicates complete control over the school by the Air Force. It is, however, not necessary to decide in this case as to whether or not the school is a State or an authority under Article 12 of the Constitution of India. The recognised private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-management is under a statutory obli- gation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When an au- thority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an "authority" under Article 12 of the Constitution of India.

It is not necessary and we do not propose to go into the question in this case as to whether the petition is main- tainable under Article 32 of the Constitution, because this petition has been pending in this Court since 1981. The petitioner's claim is just. It will, therefore, be a traves- ty of justice to send her to any other forum at this stage. In any case the petitioner seeks to enforce her statutory right under Section 8 of the Act read with Rule 110 of the Rules with a further contention that she has been discrimi- nated in the matter of superannuation so much so that other teachers similarly situated were retired at the age of 60 years whereas the petitioner has been singled out and re- tired at the age of 58 years.

The respondent-management has not produced any Rules or bye-laws either framed by the management itself or otherwise to show that there was any uniform provision for retirement of teachers at the age of 58 years. The averments of the petitioner that Section 208 of the Delhi Education Code was being followed and the teachers were superannuated at the age of 60 years have not been specifically denied. Rather these averments have been tacitly admitted. Even otherwise every institution must frame and follow a uniform rule for superannuating its employees. The age of superannuation cannot be left to the whims of the employer to enable him to retire different employees at different ages. In the absence of any regulation, Bye-laws or policy decision by the respondent-management regarding the age of superannuation, we accept the contention of the petitioner that prior to the coming into force of the Act and the Rules the management was following the Delhi Education Code which provided 60 years as the age of superannuation for the school teachers. In that view of the matter under Rule 110 of the Rules, the petitioner being an existing employee was entitled to be retired at the age of 60 years.

The writ petition is, therefore, allowed and the order of the respondents retiring the petitioner at the age of 58 years is quashed. She having already attained the age of 60 years we direct the respondents to pay the petitioner salary and allowances for the period of two years. We further direct that all the post retirement benefits to which the petitioner is entitled be redetermined assuming the peti-

tioner to have retired at the age of 60 years. The arrears of salary and allowances be paid to the petitioner within three months from today. The respondent being an educational institution we direct the parties to bear their own costs.

P.S.S
allowed.

Petition