C. Sankaranarayanan Etc vs State Of Kerala on 4 May, 1971

Equivalent citations: 1971 AIR 1997, 1971 SCR 654, AIR 1971 SUPREME COURT 1997, 1971 LAB. I. C. 1178, 1971 KER LT 422, 1971 SCD 861

Author: A.N. Grover

Bench: A.N. Grover, K.S. Hegde

PETITIONER:
C. SANKARANARAYANAN ETC.

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT04/05/1971

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
HEGDE, K.S.

CITATION:
1971 AIR 1997 1971 SCR 654
1971 SCC (2) 361

ACT:
Kerala Education Rules, 1959-Provisions of Ch. XX, Ch. XXVIIA and XXVIIB are mutually exclusive-Teacher in aided school who has exercised option under r. 2 of Ch. XIV(c) is governed by Chapter XXVIIB- Cannot claim superannuation on basis of r. 8 of Ch. XXVIIA.
Constitution of India, 1950-Rule-making power of Government under Art. 309 is not controlled by any agreement between Government and employees-Change of age of retirement from 58 to 55 does not attract Art. 311(2).

HEADNOTE:
The appellant in C.A. No. 1789/69 was a teacher in a private aided school in Kerala while the other appellants were at the relevant time teachers in government schools. The teachers associations of Government as well as aided schools submitted a memorandum to the Government making various demands, one of them being that the age of retirement of

school teachers should be raised to 60 years. On July 1966 the Government issued an order by which the age of retirement was raised from 55 to 58 years. However on May 4, 1967 another order was made by Government in supercession of the earlier orders and the age of retirement of all government employees and aided school teachers was again fixed at 55 years. On both occasions necessary amendments were effected in the Kerala Service Rules made by the Governor in exercise of the powers conferred by the proviso to Art. 309 of the Constitution, as well as in the Kerala Education Rules, 1959 framed by the Government under s. 36 of the Kerala Education Act 6 of 1949. The 1959 Rules originally contained Ch. XXVII. In February 1965 this Chapter was renumbered as Ch. XXVII-A. Another Ch. XXVII-B was added. Rule in Ch. XXVII-A appearing under the head .pension' provided that in the case of those in service of any aided school prior to 4-9-1957 the age of retirement shall be 60 years. In Ch. XXVII-B however it was laid down that the rules therein shall apply to teachers in aided schools to whom the rules in Ch. XIV(C) Kerala Education Rules applied. Rule 4 of the said Chapter further laid down that the date of compulsory retirement on superannuation applicable to teachers of Government schools shall apply to teachers of aided schools. Rule 2 of Ch. XIV (c) provided that teachers who were in service on 1-10-1964 would have an option either to continue under the Rules in Ch. XIV(B) or to come under the Rules in that Chapter i.e. XIV(C). Such option when exercised was to be deemed to be final. The appellant in C.A. No. 1789/69 exercised his option within the period limited therefore and thus came to be governed by the Rules in Chapter XIV(C). When the Government sought to retire the appellants at the age of 55 years they filed writ petitions in the High Court. The petitions were dismissed. In appeal by special leave to this Court,

HELD: (i) The division bench of the High Court was right in holding that the provisions of Ch. XXVIIA and Ch. XXVIIB were mutually exclusive. Chapter XXVIIB makes independent and separate provisions which are inconsistent with those contained in Ch. XXVIIA. As the appellant in C. A. No. 1789169 was a teacher in an aided school the age of compulsory

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retirement by virtue of r. 4 of the Ch. XVIIB would be the same as that of teachers of government schools. The age of compulsory retirement for the latter class of teachers was 55 years and it followed that that would be the age of superannuation for the aforesaid appellant. Rule 2(a) of the Ch. XIV(C) expressly states that teachers who come under the provisions of Ch. XIV(C) shall retire at the age of 55. Rule 8 of Ch. XXVIIA could not be applied to the said appellant as that was a general rule and when he opted to be governed by the rules in Ch. XXVIIB and Ch. XIV(C) he was relegated to the same position as that of a teacher

of Government school even in the matter of superannuation. [658D-G]
(ii) The power of the Government under Art. 309 of the Constitution to make rules regulating the conditions of service of government employees or of teachers in the aided schools under s. 12 of Act 6 of 1959 could in no way be fettered by an alleged agreement between the government and teachers even if such an agreement was proved. [659B-C]
(iii) The rule of estoppel also could not be invoked in the circumstances of the case. There was no question of any representation having been made by the Government which was acted upon to their detriment by the appellants. [659F]
Union of India & Ors. v. M/s Indo-Afghan Agencies Ltd. [1968] 2 S.C.R. 366, distinguished.
(iv) Change in the rule relating to retirement can be validly made and it does not attract either Art. 311(2) or Art. 14 of the Constitution. [660C]
Bishun Narain Mishra v. State of Uttar Pradesh & Ors., [1965] 1 S.C.R. 693, relied on.
(v) The contention that once the age of retirement was raised to 58 it could not be reduced to 55 owing to the provisions of rr. 5 and 6 of the Kerala Service Rules was not raised before the division Bench of the High Court. The normal practice of this Court is not to allow a new point to be raised except in a case of very special nature. [660F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1789 to 1791 of 1969.

Appeals by special leave from the judgments and orders dated June 11, 1969, and July 10, 1969 of the Kerala High Court in Writ Appeals Nos. 126 of 1968 and 762 of 1969. K. T. Harindranath, Vishnu Bahadur Saharya and Yougindra Khushalani, for the appellants (in all the appeals). A. R. Somnath Iyer and M. A. Krishna Pillai, for the respondent (State of Kerala) (in all the appeals). P. C. Chandi, for the interveners (in all the appeals). The Judgment of the Court was delivered by Grover, J.-These appeals by special leave are from a judg- ment of a division bench of the Kerala High Court.-affirming the decision of a learned single judge who had dismissed the writ ,petitions of the appellants.

The appellant in C.A. 1789/69 entered service as a teacher in a private aided school on March 14, 1946. Both the appellants in C.A. 1790/69 had joined service originally as teachers in aided schools but they entered government school service on August 17, 1958 and December 13, 1948 respectively. Similarly in C.A. 1791/69 the appellant joined government service as a teacher and attained the age of 55 on July 2, 1968.

It appears that on November 22, 1965 all associations of government and private aided school teachers of which the appellants were members submitted a memorandum to the government

making various demands. One of these (No. 11) was that the age of retirement of school teachers should be raised to 60 years. On July 14, 1966 the government issued an order by which the age of retirement was raised from 55 to 58 years. Paragraph 8 of this order was in the following terms:-

> "The age of retirement of all teachers including Head Masters of aided schools will be raised to 58 with effect from 1-7-1966. This will be subject to the condition that the appointing authority may with previous approval of the Director of Public Instruction in the case of High and Training Schools require the teacher to retire after he attains the age of 55 years, on three months notice without assigning any reason. The teachers may also after attaining 55 years, voluntarily retire after giving three months notice to the appointing authority."

The order mentioned above was followed by an amendment in the relevant rules in the Kerala Education Rules framed under the Kerala Education Act, 1958 (Act 6 of 1959). On May 4, 1967 another order was issued by the government in supersession of the previous orders. By this order the age of compulsory retirement of all government employees and aided school teachers whose age of retirement on superannuation under the existing order was 58 years was lowered to 55 years. It was, however, stated that all those who had already crossed the age of 55 years or who might attain the age of 55 within a period of three months from the date of the order would retire only on the date of expiry of three months. The necessary amendments were formally made both in the Kerala Education Rules framed under the Act 6 of 1959 and the Kerala Service Rules made by the Governor in exercise of the powers conferred by the proviso to Article 309 of the Constitution. We may at this stage refer to the relevant statutory provi- sions and the Rules. Act 6 of 1959 was enacted to provide for the better Organisation and development of educational institutions in the State. Section 12(1) of the Act provides that the conditions of service of teachers in aided schools including the conditions relating to pay, pension, provident fund, insurance and age of retirement shall be such as may be prescribed by the government. Section 36 confers power on the government to make rules. The rules which have been. framed under s. 36, namely, the Kerala Education Rules 1959, hereinafter called the "Education Rules" originally contained Chapter XXVII. In February 1965 this Chapter was renumbered as XXVII-A. Another Chapter XXVII-B was added. Rule 8 in Chapter XXVII-A appearing under the head "pension" is in the following terms:-

> "8. The age of retirement on superannuation shall be 55 years.
>
> Note.-In the case of those who were in service of any aided school prior to 4-9-1957 the age of retirement on superannuation shall be 60 years subject to the condition that the service beyond 55 years shall not qualify for pension and gratuity under these rules."

In Chapter XXVII-B the following rules may be noticed:

> "1. The Rules in this Chapter shall come into force on 1-10-1964.

2. These Rules shall apply to teachers in aided schools to whom the rules in Chapter XIV(C) Kerala Education Rules apply.

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4. The date of compulsory retirement on superannuation applicable to teachers of government schools shall apply to teachers of aided schools."

Chapter XIV(C) relating to conduct rules contains two provisions which are material and which may be reproduced:

"1. The Rules in this Chapter shall apply to-

(i) Teachers of aided schools who are in service on 1-10-1964 and who opt under Rule 2 to be governed by these Rules; and

(ii) Teachers appointed after 1-10-1964;

(Provided that nothing contained in this Chapter shall apply to teachers who continue in service after attaining the age of 55 on or before 4-5-1967.)

2. Subject to the provisions of Rule 1 teachers who in service on 1-10-1964 shall be given the option either to continue under the Rules in Chapter XIV(B) or to 42-1 S.C. India/71 come under these Rules. Such option shall be exercised within a period of three months from the commencement of. these Rules, or within such further time as Government may specify in this behalf. The option once exercised shall be final. Teachers who have not exercised any option within the prescribed period shall be deemed to have opted these Rules."

It is common ground that the appellant in C.A. 1789/69 exercised the option in terms of the above rules. Thus by virtue of Rule 2 in Chapter XXVII(B) read with Rule 4 the date of his compulsory retirement on superannuation would be the same as was applicable to teachers of government schools.

We may first deal with the contentions raised on behalf of the appellant in the above appeal. It was claimed on his behalf that the provisions of Chapters XXVII-A and B were not mutually exclusive and be was entitled to the benefit of Rule 8 in Chapter XXVII-A. As he was in service of an aided school prior to September 4, 1957 his age of retirement of superannuation was to be 60 years. The approach of the division bench was that the provisions of Chanter XXVIIA and XXVIIB when read together leave no doubt that the two chapters are mutually exclusive. Chapter XXVIIB makes independent and separate provisions which are inconsistent with those contained in Chapter XXVIIA. As the appellant in C.A. 1789/69 is a teacher in an aided school the age of compulsory retirement by virtue of Rule 4 of Chapter XXVIIB would be the same as that of teachers of government schools. The age of compulsory retirement for the latter class of teachers was 55 and it followed that that would be the age of superannuation for the aforesaid appellant. Reliance was

placed also on Rule 2(a) of Chapter XIV(C) which expressly states that teachers who come under the provisions of Chapter XIV(C) shall retire at the age of 55. We fully concur with the view of the learned judges of the High Court and are unable to accede to the contention that in spite of the clear wording of the various rules to which reference has been made the appellant, who is a teacher in an aided school can get the benefit of Rule 8 of Chapter XXVIIA. That cannot possibly be applied to him as that was a general rule and when he opted to be governed by the rules contained in Chapter XXVIIB and Chapter XIV(C) he was relegated to the same position as that of a teacher of government school even in the matter of superannuation.

Another point which has been strenuous urged is that the government orders which followed the memorandum submitted by the teachers were the result of an understanding which could well. be regarded, as a binding agreement or contract between the government and the teachers from which it was not open to the government to resile unilaterally. Alternatively a rule similar to that of estoppel could be invoked. The first limb of this argument was disposed of by the learned single judge by rightly pointing out that the power of the government under Art. 309 of the Constitution to make rules regulating the conditions of service of government employees or of teachers in aided schools under s. 12 of Act 6 of 1959 could in no way be fettered by any agreement even if such an agreement was proved. We have not been shown any principle or authority on which any agreement or contract could be spelt out from the document relied upon. Nor is it possible to understand how the power conferred by Art. 309 of the Constitution or by the statutory provisions could be curtailed or fettered in any manner by any alleged agreement or contract. The rule of estoppel can hardly be invoked in the circumstances of the case although support was sought from certain decisions of this Court.

In Union of India & Ors. v. M/s.Indo-Afghan Agencies Ltd., (1) this Court held that where a person had acted upon the representation made in the export promotion scheme that import licence upto the value of the goods exported would be issued and had actually exported goods his claim for an import licence for the maximum value permissible by the scheme could not be arbitrarily rejected. It was observed that the claim in that case was founded upon the equity which arose as a result of representation made on behalf of the government in the export promotion scheme and the action taken by the respondents there acting upon the representation. Even though s. 115 of the Evidence Act was not in terms applicable it was still open to the respondent who had acted on that representation to claim that the government should be bound to carry out the promise made by it though not recorded in the form of a formal contract as required by the Constitution. These principles can hardly be applied here because there is no question of any representation having been made by the government which was acted upon to their detriment by the appellants. Moreover the conditions of service could be indisputably changed in exercise of the powers contained in Article 309 of the Constitution and Act 6 of 1959. In such a situation it was not open to the appellants to invoke the principle of 'the rule of estoppel.

Our attention has also been invited, particularly on behalf of the appellants in C.As. 1790 and 1791, to exhibits P-6 and P-7. Exhibit P-6 is a copy of proceedings of the District Education Officer, Kottayam. It contains a mention of order dated March 10, 1967 in which it is stated that the age of compulsory retirement of all officers in the State had been raised to 58 as per the (1) [1968] 2 S. C.

R. 366.

government orders mentioned therein. The continuance beyond the age of 55 of these teachers was subject to suitability. A list of certain teachers was given who were allowed to continue in service till 58 years of age. Similarly exhibit P.7 is a copy of the proceedings of the District Educational Officer, Palghat, in which the names of teachers who were to continue beyond the age of 55 was given. This was apparently done after the age of superannuation had been raised to 58 with effect from July 1, 1966 vide exhibit P-4 (G.O.) dated July 14, 1966. But then, as has been noticed before, the age of retirement was again lowered to 55 years. Change in the rule relating to retirement can be validly made and it does not attract either Art. 311(2) or Art. 14 of the Constitution: see Bishun Narain Mishra v. State of Uttar Pradesh & Others(1).

Reliance has also been placed on behalf of the appellants on Rules 5 and 6 of the Kerala Service Rules. According to Rule 5 nothing in the Rules or in any Rule made thereunder shall operate to deprive any person of any right or privilege to which he is entitled by or under any law or by the terms of any contract or agreement Subsisting between such person and government on the date the Rules came into force. Section 6 says that subject to the provisions of Rule 5 nothing in the Rules or any rule made under the Rules shall operate to effect to the disadvantage of any person holding a substantive post under government to whom the Rules apply, "the conditions of service in respect of pay, leave, allowances, pension or any other matter which are applicable to him (a) on the date these rules came into force, or (b) by virtue of any order or rule made by the government unless such person gives his consent". The point sought to be made is that once the age of retirement was raised to 58 it could not be reduced to 55 owing to the provisions of these Rules. This matter was not raised before the division bench of the High Court and the normal practice of this Court is not to allow a new point to be raised except in a case of a very special nature. We find no reason or justification for entertaining this contention for the first time in this Court in the present appeals. The appeals fail and are dismissed but we leave the parties to bear their own costs.

G.C. Appeals dismissed.

(1) [1965] 1 S. C.R. 693.