Supreme Court of India
Osmania University vs V. S. Muthurangam And Ors on 8 July, 1997
Author: G N Ray
Bench: G. N. Ray, K. T. Thomas

PETITIONER:
OSMANIA UNIVERSITY

Vs.

RESPONDENT:
V. S. MUTHURANGAM AND ORS.

DATE OF JUDGMENT: 08/07/1997

BENCH:
G. N. RAY, K. T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T G. N. RAY, J.

The short question involved in these appeals is whether the age of superannuation of the non-teaching staff of the Osmania University should be raised to 60 years when the University has fixed the age of superannuation of the teaching staff of the University at 60 years. As the Osmania University authorities refused to raise the age of superannuation of the non-teaching staff to 60 years by implementing the mandate of maintaining uniformity in the conditions of service of all the salaried staff of the University under Section 38 (I) of the Osmania University Act, 1959 (hereinafter referred to as the Act), a number of non-teaching staff of the University moved Andhra Pradesh High Court by filing writ petitions claiming the age of superannuation at 60 years. Such claim was allowed by learned Single Judge and by the impugned judgment the Division Bench of the High Court has also upheld the claim of the writ petitioners that the age of superannuation of the non teaching staff of the University will also be 60 years.

The learned Solicitor General, appearing for the Osmania University, has submitted that sub-section (1) of the Act has two distinct parts. The first part provides that unless otherwise provided, every salaried officer of the University shall be appointed under a written contract and the second part of sub-section (1) of Section 38 provides that conditions of service relating to such salaried officers of

the University shall as far as possible, be uniform except in respect of salaries payable to them.

Mr. Solicitor General has contended that the University has a large number of employees both in the teaching and non teaching departments. In each of such departments, there are different cadres having different pay structure. Since the employees belong to different cadres discharging different types of duties and responsibilities, it is inherently not practicable to lay down absolutely uniform service conditions even other than pay structure for such diverse cadres of teaching and non teaching staff of the University. Keeping in view the felt need of some amount of flexibility in the service conditions of the various cadres in the teaching and non teaching establishments, in sub-section (1) of Section 38 of the Act, it has been specifically indicated that the conditions of service of the employees of the University will be uniform as far as possible. Such expression clearly indicates that although by and large service conditions of the employees will be uniform there may be occasions to have some difference in the conditions of service in order to meet different exigencies having bearing on the service conditions of the employees.

Mr. Solicitor General has also contended that age of superannuation is undoubtedly an important condition of service of an employee. Previously, both the teaching and non-teaching staff of the University had uniform age of retirement on attaining 55 years. Such age of superannuation was later on increased to 58 years when the State Government increased the age of superannuation of is employees because University, in principle, follows the conditions of service of the employees of the State Government. But in view of the recommendations of the University Grants Commission in respect of pay structure of various cadres of the teaching staff of the University e.g. Lecturers, Assistant Professor, Professor etc. and age of superannuation of such teaching staff of the University, the University had to implement such recommendations of the University Grants Commission in respect of its teaching staff. Mr. Solicitor General has submitted that the recommendations of an august body like University Grants Commission cannot be stifled and as a matter of fact all the universities having gracefully accepted such recommendations have implemented the same. It was recommended by the University Grants Commission that the normal age of superannuation of a teaching staff would be 60 years. Such recommendations of the University Grants Commission necessitated for a change of the age of superannuation of the teaching staff of the University and the University has implemented the recommendations of age of superannuation by raising the age of superannuation of its staff. For the large number of non teaching staff of the University, such raising of the age of superannuation was thought neither desirable nor practicable.

In this connection, Mr. Solicitor General has referred to the meaning of "as far as possible" by referring to Stroud's Judicial Dictionary of Words and Phrases (4th Edition) Vol.4 p. 2068. It has been indicated that a duty to do a thing `if possible' means generally `if reasonably possible' in business sense. Similarly, `as far as possible' has been held to mean `as far as possible consistently with carrying of the manufacture in question'. It is contended by the learned Solicitor General that it was never intended that the terms and conditions of all the employees of the University should be absolutely same. Precisely, for the said reason, flexibility was introduced by providing the expression `as far as possible' in Section 38 (1) of the Act. Mr. Solicitor General has also submitted that since the conditions of the teaching staff of the University had to be regulated on the basis of

the recommendations of the University Grants Commission, the service conditions of the teaching staff had been framed differently. But so far as the non teaching staff of the University is concerned, all such non teaching staff have been treated uniformly. He has submitted that the fixation of different age of superannuation for the teaching and non teaching staff is not only legal and within the competence of the authorities of the University but such action is also not unreasonable or arbitrary or capricious. He has contended that teaching staff inherently hold two different types of services. Therefore, these two categories of employees are essentially unequal. Hence, by treating the unequals differently, there has been no violation of Article 14 of the Constitution. In this connection, Mr. Solicitor General has also referred to a decision of this court in State of West Bengal and others Vs. Gopal Chandra Paul and others (1995 Suppl. (3) SCC 327). In the said case, the superannuation age of 60 years which was available to the teaching staff of the Government School of the Education Department was not made available to the Inspecting Staff of the Education Department whose age of superannuation was 58 years. It has been held in the said decision that the teaching staff and the Inspecting Staff of the Education Department are distinct and independent services and even if on occasions transfers from one service to the other have been permitted, the Inspecting Staff of the Education Department holding a different service cannot claim parity with the teaching staff in the matter of age of superannuation.

Mr. Solicitor General has submitted that the High Court has not appreciated the true import of `as far as possible'. The High Court has proceeded on the footing that unless it is impossible to implement, the conditions of service of he employees for both the teaching and non teaching establishments must be made the same because of the mandate under Section 38 (1) of the Act. Mr. Solicitor General has submitted that such reading of the High Court of the expression `as far as possible' is contrary to the accepted meaning of the said expression. The University is competent to fix different age of superannuation for its employees in respect of two distinctly different categories of employees, namely, teaching staff and non teaching staff, if for good reason, the University feels that a different age of superannuation is required to be introduced for a distinctly different group of employees. Mr. Solicitor General has submitted that University on its own, did not take steps to treat the teaching staff favorably by increasing the age of superannuation of the teaching staff but such decision has to be taken in view of the recommendations of the University Grants Commission. The University has also followed the accepted policy of the University to maintain the service conditions of its employees in the non teaching department at par with the government employees of the State Government. In the aforesaid circumstances, the impugned decision of the High Court in directing that the non teaching staff of the University would also retire at the age of 60 years cannot be sustained and such judgment should, therefore, be set aside.

Mr. Subba Rao, learned counsel appearing for the private respondents who are the writ petitions before the High Court, has, however, disputed the contentions made by learned Solicitor General. Mr. Subba Rao has submitted that Section 38 of the Act clearly lays down that the conditions of service of all salaried employees of the University should be the same `as far as possible' even after noticing that the nature of duties of a large number of employees of the University in both teaching and non teaching establishments are likely to be different and the employees in both the establishments also belong to different cadres. According to Mr. Subba Rao, Section 38 (1) of the Act indicates that if not otherwise absolutely impracticable or impossible, the University must maintain

uniformity on the service conditions of all its employees whether such employees belong to the teaching staff or non teaching staff. In the instant case, there is no impracticability in bringing uniformity in the age of superannuation of the teaching and non teaching staff of the University. There may be justification of the University to increase the age of superannuation of the teaching staff because of the recommendations of the University Grants Commission, but such change in the age of superannuation of the teaching staff can easily be effected in respect of the non teaching staff of the University, there is no room to contend that corresponding change of the age of superannuation of the employees of the non teaching staff is neither practicable nor possible. Mr. Subba Rao has submitted that a number of Universities in the State of Andhra Pradesh, age of superannuation of the non teaching staff is 60 years even though the age of superannuation of the government employees is 58 years. In this connection, Mr. Subba Rao has referred to provisions of the Andhra University Act, 1925. Under Section 35 A of the Andhra University Act, the State Government shall have power to make regulations regarding the classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the members of teaching and non teaching staff of the affiliated colleges of the University. But even though the Government has the power to regulate the conditions of service of the teaching and non teaching staff of the colleges, the government has allowed a different age of superannuation for the teaching and non teaching staff of the University and has not fixed the age of superannuation of the non teaching staff at 58 years on the footing that the age of superannuation of the government employees in the State of Andhra Pradesh is 58 years. Therefore, the plea of the University that University is obliged to fix the same age of superannuation of the non teaching staff as available to the government employees of the State Government and for the said reason the age of superannuation of the non teaching staff cannot be raised to 60 years even though the age of superannuation of the teaching staff has been raised to 60 year in order to implement the recommendations of the University Grants Commission, cannot be sustained. Mr. Subba Rao has submitted that the raising of the superannuation age of the non teaching staff to 60 years for bringing uniformity in the superannuation age of both teaching and non teaching staff of the University is neither impracticable nor unreasonable or undesirable. Therefore, no interference with the impugned order of the High Court is called for in these appeals.

After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Solicitor General and also the learned counsel appearing for the respondents, it appears to us that teaching and non teaching staff of the University are distinct and separate categories. The nature of duties to be performed by the teaching and non teaching staff of the University are also different. Therefore, apart from different scales of pay in the hierarchy of the service in both teaching and non teaching departments, it may be held that the nature of service of the two distinct and different departments namely the teaching and non teaching departments, is inherently different. Mr. Solicitor General is justified in his contention that Section 38 (1) of the Act recognizes flexibility and the expression `as far as possible' inheres in it an inbuilt flexibility. There was impelling necessity for the University to change the age of superannuation of the teaching staff in order to give effect to the recommendations of the University Grants Commission. The University, in our view, will be justified within the ambit of Section 38 (1) to introduce different conditions of service for different categories of employees if such different conditions become necessary for the exigency of the administration and if it is otherwise impracticable to bring uniformity in the

conditions of service of different categories of its employees. For the same reason, it is permissible for the University to introduce the age of superannuation differently for different categories of the employees, if introduction of such different age of superannuation can be justified on the anvil of felt need of the administration. But if uniform conditions of service for teaching and non teaching staff of the University is not otherwise impracticable, the University is under an obligation to maintain such uniformity because of the mandate of Section 38 (1) of the Act. In the instant case, we do not find that it is not at all practicable for the University to maintain the parity in the age of superannuation of both teaching and non teaching staff. There is no compulsion under the law that University is bound to maintain the same age of superannuation of its teaching and non teaching staff as is available to he employees of the State Government. Because there is no such statutory compulsion to maintain the age of superannuation of the teaching staff at par with government employees, the University has increased the age of superannuation of its teaching staff. Hence, University can easily raise the age of superannuation of the non teaching staff for teaching staff for bringing a parity in the service conditions of the salaried staff of the University by fulfilling the mandate under Section 38 (1) of the Act. The age of superannuation of the employees of some of the Universities in the State of Andhra Pradesh is different to that of the employees of the State Government of Andhra Pradesh. It has been rightly contended by Mr. Subba Rao that although the State Government itself has authority to regulate the conditions of service of the employees of the Andhra Pradesh University, the State Government has fixed he age of superannuation of the employees of the said University differently. Therefore, it cannot be contended that it is either undesirable or impracticable to bring uniformity in the age of superannuation of the teaching and non teaching staff of the Osmania University. Hence, the decision of the High Court that when the age of the teaching staff of the University has been increased to 60 years the age of superannuation of the non teaching staff should also be changed in the similar manner in order to bring parity in the service conditions of the salaried staff of the University in obedience of the mandate under Section 38 (1) of the Act, is justified. We, therefore, do not find any reason to interfere with the impugned decision of the High Court. These appeals, therefore, fail and are dismissed without any order as to costs.