[2023] 14 S.C.R. 293 : 2023 INSC 772

DR. PRAKASAN M.P. AND OTHERS
v.
STATE OF KERALA AND ANOTHER

(Civil Appeal No. 7580 of 2012)

AUGUST 25, 2023

[HIMA KOHLI* AND RAJESH BINDAL, JJ.]

Issue for consideration:

Three Government orders (G.Os) issued enhancing the retirement age of doctors in medical category, however, were made prospective in nature. Appellants questioned the decision of the State of not incorporating a clause in the three G.O's. issued, making their operation retrospective, which would have otherwise enured to their benefit.

Kerala Service Rules – r. 60(a) or 60(c) Part-I – The Government Order dated 14.01.2010 enhanced the retirement age of Doctors in the Medical category under the Medical Education Service from 55 years to 60 years with retrospective effect from 01.05.2009 – Thereafter, three G.Os were issued including G.O. dated 09.04.2012 whereby, the retirement age of the teaching staff in Homeopathic Medical Colleges was also enhanced from 56 years to 60 years – However, all three G.Os were prospective in nature – Propriety of:

Held: The singular difference was that unlike G.O. dated 14.01.2010, the subsequent three G.Os issued by the State were made prospective, thus denying any relief to the teaching faculties in the Dental, Ayurvedic and Homeopathic streams who had superannuated in the meantime – Such a decision lies exclusively within the domain of the Executive – It is for the State to take a call as to whether the circumstances demand that a decision be taken to extend the age of superannuation in respect of a set of employees or not – It must be assumed that the State would have weighed all the pros and cons before arriving at any decision to grant extension of age – Appellants herein cannot claim a vested right to apply the extended age of retirement to them retrospectively and assume that by virtue of the enhancement in age ordered by the State at a later date, they would be entitled to all the benefits including the monetary benefits flowing from G.O.

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dated 09.04.2012, on the ground of legitimate expectation – The idea behind extension of retirement age of doctors was to take care of the emergency situation caused by shortage of doctors, which was resulting in affecting the studies or patient care – It was not merely to grant benefits to a particular class. [Paras 15, 17 and 19]

Doctrine – Doctrine of Legitimate Expectation – Service Regulations:

Held: The Doctrine of Legitimate Expectation does not have any role to play in matters that are strictly governed by the service regulations – This is an exercise that is undertaken by the State in discharge of its public duties and should not brook undue interference by the Court. [Para 19]

New Okhla Industrial Development Authority and Another vs. B.D. Singhal and Others **2021 SCC Online SC 466;** *Monnet Ispat and Energy Limited. Vs. Union of India* **(2012) 11 SCC 1:[2012] 7 SCR 644 – relied on.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No.7580 of 2012

From the Judgment and Order dated 06.08.2010 of the High Court of Kerala at Ernakulam in WA No.1338 of 2010.

Sanand Ramakrishnan, Rajeev Mishra, Madan M. Bora, A. Raghunath, Advs. for the Appellants.

Jaideep Gupta, Sr. Adv., C. K. Sasi, Adv. for the Respondents.

The Judgments of the Court were delivered by

HIMA KOHLI, J.

1. The appellants, who are members of the teaching faculty in Homeopathic Medical Colleges situated in the respondent No.1 - State of Kerala[1], are aggrieved by the judgement dated 6th August, 2010, passed by the High Court of Kerala, Ernakulam[2], concurring with the judgement dated 19th July, 2010, passed by the learned Single

1 For Short 'the State'
2 In Writ Appeal No. 1338 of 2010

Judge[3]. The relief prayed for by the appellants was for enhancing their age of retirement from 55 years to 60 years by extending the benefit of the Government Order[4] dated 14th January, 2010[5], which increased the retirement age of Doctors in the Medical category under the Medical Education Service from 55 years to 60 years with retrospective effect from 1st May, 2009. The prayer made was not granted.

THE FACTS :

2. To put the issue raised in the instant case in the correct perspective, we may first refer to the relevant facts. The State issued a Government Order[6] dated 14th January, 2010, recording *inter-alia* that there was a shortage of qualified and experienced medical faculties in several subjects in Government Medical Colleges in the State and that on account of the age of retirement of the faculty including medical doctors at 55 years, several departments were facing dearth of medical doctors which, was adversely affecting post graduate medical courses. Noting that at the National level, the retirement age of doctors in Medical Colleges was 65 years and retention of senior professors in service would help the State increase the number of post graduate seats as per the revised norms laid down by the Medical Council of India, the State ordered that :

"Government have examined the various aspects and pleased to order that the retirement age of the doctors in the Medical category under the Medical Education Service be increased to 60 years from existing 55 years. This order has retrospective effect from 1.5.2009. This order is not applicable for faculties in Dental, Nursing, Pharmacy and Non-Medical categories under Medical Education Service."

3. Aggrieved by the exclusion of doctors/professors of Government Homeopathic Colleges from the purview of the captioned G.O. dated 14th January, 2010, the appellants filed a writ petition[7] in the High Court of Kerala praying *inter alia* for extension of the benefit

3 In Writ Petition (Civil) 13537 of 2010
4 For short 'G.O'
5 G.O.(MS) No.14/2010/H&FWD
6 G.O. (MS) No.14/2010/H&FWD
7 Writ Petition (C) No.10709 of 2010

of the said G.O. to Homeopathic Doctors working in Government Homeopathic Colleges. The said writ petition was disposed of by the High Court on 29th March, 2010 with a direction issued to the State to consider the pending representations of the appellants and pass an order within three months. Since the State did not take any decision on their representations, the appellants approached the High Court once again and filed another writ petition[3], which was dismissed by the learned Single Judge vide order dated 19th July, 2010. Noting that the State Government did not amend Rule 60 (a) or 60 (c) Part (I) of the Kerala Service Rules[8], the learned Single Judge held that the existing rule position as obtained from Rule 60(c) of the K.S. Rules, could not be ignored. It was also observed that the appellants had not challenged the G.O. dated 14th January, 2010. Instead, they approached the Court seeking parity with those covered under the said G.O., by claiming that it ought to be extended to them as well so as to enable them to continue in service beyond the normal date of retirement, which was impermissible.

4. Dissatisfied by the above judgement, the appellants filed an appeal[2] which came to be dismissed by the Division Bench of the High Court. Concurring with the view expressed by the learned Single Judge, the Division Bench observed that since extension of age for the teaching staff of Medical Colleges is a policy decision, it is not open for the High Court to issue any directions to the respondent No.1 – State to increase the retirement age of the teaching staff of Homeopathic Medical Colleges. Hence the present appeal.

THE RELEVANT RULES :

5. The conditions of service of persons employed by the State are regulated by the K.S. Rules, unless they are exempted entirely or in part as prescribed in Rule 3. Rule 60 falls under Chapter VIII of Part I of the K.S. Rules that deals with compulsorily retirement. Rule 60 (c) as it stood at the relevant point in time prescribed that :

"60 (c) The teaching staff of all Educational Institutions (including Principals of Colleges) who complete the age of 55 years during the course of an academic year shall continue in service till the

8 For short 'K.S. Rules'

last day of the month in which the academic year due, before the last day of the month in which they attain the age of 55 years. But they shall not be eligible for increment or promotion during the period of their service beyond such date. If they are on leave on the day they attain the age of 55 years and if there is no prospect of their returning to duty before the closing day of the academic year for vacation they shall be retired with effect from the last day of the month in which they attain the age of 55 years. But in cases where officers coming under this rule are under suspension on the date of superannuation or thereafter the date of superannuation or on the date of suspension whichever is later.

If, however, the day on which the teaching staff (including Principals of Colleges) attain the age of 55 years falls within the period of one month beginning with the day of re-opening of the institutions they shall cease to be on duty with effect from the date of such re-opening and they shall be granted additional leave from the date of re-opening to the last day of the month in which they attain the age of 55 years. They shall be entitled to the benefit of increment if it falls due before the actual date on which they attain the age of 55 years."

6. Rule 60 (a) which is more relevant for our discussion, reads as follows:

"**60. (a)** : Except as otherwise provided in these rules the date of compulsory retirement of an officer shall take effect from the afternoon of the last day of the month in which he attains the age of 55 years. He may be retained after this date only with the sanction of government on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances."

7. As can be gathered from the above, Rule 60 (a) of the K.S. Rules is a general provision and is not applicable to the teaching staff for whom a separate provision has been specifically incorporated, i.e., Rule 60(c) that prescribes their age of retirement and classifies them as a separate class in the matter of retirement. Rule 60 (c) prescribes that even if the teaching staff completes the age of 55 years during the course of an academic year, subject to the conditions stipulated in the said Rule, they would continue in service till the end of the academic year. Quite apparently, the object behind carving out this

exception for the teaching staff is to safeguard the interest of the students whose studies may not get adversely affected due to the superannuation of a teacher midway through an academic session.

8. After notice was issued in the present appeal on 16th December, 2010, some subsequent developments took place as brought out in an application moved by the appellants. In the year 2012, the respondent No.1 – State Government issued three G.O.s in a space of ten days, namely, G.O. dated 30th March, 2012, G.O. dated 7th April, 2012 and G.O. dated 9th April, 2012. In G.O. dated 30th March, 2012[9], taking note of the earlier G.O. dated 14th January, 2010 whereby, the retirement age of Doctors in the Medical category under Medical Education Service had been enhanced from 55 years to 60 years, the State ordered that the retirement age of doctors working in Government Dental Colleges and the Dental Wings in the Medical Colleges be also enhanced from the age of 55 years to 60 years, so as to avoid problems that may be faced by the research students due to retirement of experienced faculty working as Guides.

9. This was followed by issuance of G.O. dated 7th April, 2012[10] whereunder, based on similar considerations, the respondent No.1 – State Government enhanced the retirement age in respect of the staff teaching in Ayurveda Colleges from 56 years to 60 years. Next, came G.O. dated 9th April, 2012[11] whereby, the retirement age of the teaching staff in Homeopathic Medical Colleges was also enhanced from 56 years to 60 years, bringing them at par with the teaching staff of Ayurvedic Medical Education. It is noteworthy that all the three G.Os. issued by the State subsequent to issuance of the G.O. dated 14th January, 2010, were prospective in nature.

10. In view of the above successive decisions taken by the respondent No.1 – State Government, during the pendency of the present appeal, the grounds originally taken by the appellants to assail the impugned judgement and their argument that G.O. dated 14th January, 2010 was discriminatory as it treated Doctors in Medical Colleges on a better footing *vis-à-vis* Homeopathic and Ayurvedic Doctors though

9 G.O.(MS) No.105/2012/H&FWD
10 G.O.(MS) No.107/2012/H&FWD
11 G.O.(MS) No.108/2012/H&FWD

they formed a homogenous group, were no longer available. As a result, without filing an application for amending the appeal, the appellants filed an additional affidavit on 1st October, 2012, where a grievance was raised that though several representations had been made by them to the State when they were still in service, the G.O. dated 9th April, 2012 issued later on, was not given retrospective effect thereby depriving them of the benefits of enhancement of age to which they would have been legitimately entitled and in the meantime, they had retired. Inherent in this argument is the plea of legitimate expectation taken by the appellants.

THE ANALYSIS :

11. It is well-settled that the age of retirement is purely a policy matter that lies within the domain of the State Government. It is not for the courts to prescribe a different age of retirement from the one applicable to Government employees under the relevant service Rules and Regulations. Nor can the Court insist that once the State had taken a decision to issue a similar Government Order that would extend the age of retirement of the staff teaching in the Homeopathic Colleges as was issued in respect of different categories of teaching staff belonging to the Dental stream and the Ayurvedic stream, the said G.O. ought to have been made retrospective, as was done when G.O. dated 14th January, 2010 was issued by the State and given retrospective effect from 1st May, 2009. These are all matters of policy that engage the State Government. It may even elect to give the benefit of extension of age to a particular class of Government employees while denying the said benefit to others for valid considerations that may include financial implications, administrative considerations, exigencies of service, etc.

12. In a somewhat comparable case on facts that arose in **New Okhla Industrial Development Authority and Another vs. B.D. Singhal and Others**[12], the appellant - Authority (NOIDA) had resolved to recommend enhancement of the age of superannuation of its employees from 58 to 60 years. The said proposal, when sent to the State Government for prior approval, was turned down. This led to the aggrieved employees filing a writ petition before the High Court of Judicature at Allahabad which was allowed and NOIDA

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was directed to consider the matter afresh and forward its proposal to the State Government for its approval. It was left open to the State Government to consider giving effect to the increase in the age of retirement from the date when NOIDA had resolved to bear the financial burden for the increase of age or from such date as it may consider expedient. This time, the State Government acceded to the proposal received from NOIDA for enhancing the age of retirement to 60 years, but made the said decision prospective. Aggrieved by the refusal of the State Government to make the decision retrospective, the respondents amended the pending writ petition which was allowed by the High Court that struck down the provision of making the decision prospective and directed that such of the respondents who had retired from service by then, would be deemed to have worked till the extended age of retirement, with all consequential benefits. Challenging the said decision, the State of Uttar Pradesh filed a Petition for Special Leave to Appeal under Article 136 of the Constitution of India, which was allowed by this Court with the following observations :

"22. **Whether the age of superannuation should be enhanced is a matter of policy. If a decision has been taken to enhance the age of superannuation, the date with effect from which the enhancement should be made falls within the realm of policy.** The High Court in ordering that the decision of the State government to accept the proposal to enhance the age of superannuation must date back to 29 June 2002 has evidently lost sight of the above factual background, more specifically (i) the rejection of the original proposal on 22 September 2009; and (ii) the judgment of the Division Bench dated 17 January 2012 refusing to set aside the order rejecting the proposal on 22 September 2009 which has attained finality. But there is a more fundamental objection to the basis of the decision of the High Court. **The infirmity in the judgment lies in the fact that the High Court has trenched upon the realm of policy making and has assumed to itself, jurisdiction over a matter which lies in the domain of the executive. Whether the age of superannuation should be increased and if so, the date from which this should be effected is a matter of policy into which the High Court ought not to have entered.**

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24. **Whether the decision to increase the age of superannuation should date back to the resolution passed by NOIDA or should be made effective from the date of the approval by the State government was a matter for the State government to decide. Ultimately, in drawing every cut-off, some employees would stand on one side of the line while the others would be positioned otherwise. This element of hardship cannot be a ground for the High Court to hold that the decision was arbitrary**. When the State government originally decided to increase the age of superannuation of its own employees from fifty-eight to sixty years on 28 November 2001, it had left the public sector corporations to take a decision based on the financial impact which would result if they were to increase the age of superannuation for their own employees.

25. From time to time the authorities of the State took a decision bearing upon the exigencies of service prevailing in each organisation. ……. The State government had evidently determined that it was for each organisation to consider and determine the impact of the financial burden, and based on that the organisation was to submit a proposal for the approval of the government.

26. **The High Court's observation that the Government order on 30 September 2012 increasing the age of superannuation prospectively is arbitrary seems to be based on the premise that the respondent-employees have a vested right to the increase in the age of retirement on the passage of the resolution by NOIDA.** However, Section 19 of the Act stipulates that regulations - which would include amendments as in this case - will require the previous approval of the State Government. The employees will have a vested right to the increased age of superannuation only after the service regulations are modified upon approval of the State Government, and from such date as maybe prescribed by the Government. Para 1(ii) of the government order issued on 30 September 2012 clearly and in unambiguous terms states that the order shall come into force prospectively. **The government order can be given retrospective application only if expressly stated or inferred through necessary implication. Therefore, the respondent-employees could not have claimed a vested right that the enhancement in the age**

of retirement should be made effective from the date on which NOIDA had resolved to submit a proposal for the approval of the government."

(**Emphasis added)**

13. In the instant case, at the time of issuing G.O. dated 14th January, 2010, the reasons that had weighed with the State for enhancing the age of retirement from 55 years to 60 years have been spelt out. The recitals refer to the dearth of eligible hands in the middle level cadre for promotion, the fact that many Post Graduate Medical Courses were likely to be adversely affected due to the said reason and also the fact that retention of senior professors in service at Government Medical Colleges would help the State Government to increase the number of Post Graduate seats, in terms of the revised norms circulated by the Medical Council of India.

14. Similarly, while considering extension of the age of retirement of Doctors in the Dental faculties under the Medical Education Service, taking note of a letter addressed by the Director of Medical Education who stated that some highly qualified members of the Senior Dental faculty were due to retire and their retirement would adversely affect the research students working under them, as also hinder the conduct of some of the ongoing Post Graduate Courses in Government Dental Colleges, the State permitted enhancement of their age from 55 years to 60 years.

15. When it came to the third G.O. dated 7th April, 2012, the recitals therein refer to the report of the Director of Ayurveda Medical College who pointed out dearth of qualified teaching staff in higher categories and the adverse remarks made by the Central Council of India Medicine, which had proceeded to reduce the number of BAMS seats from the sanctioned strength of 70 to 50 in the Government Ayurveda College, Thiruvananthapuram, and had refused to grant permission for Postgraduate courses in different specialities. Keeping this scenario in mind, the State decided to enhance the retirement age of the teaching faculty in Ayurveda Colleges from 56 years to 60 years. Lastly, came G.O. dated 9th April, 2012 wherein, taking note of the representation received from the Principal of the Government Homeopathic College, Thiruvannathapuram, similar benefit was extended to the teaching

staff in Homeopathic Colleges. The singular difference was that unlike G.O. dated 14th January, 2010, the subsequent three G.Os issued by the State were made prospective, thus denying any relief to the teaching faculties in the Dental, Ayurvedic and Homeopathic streams who had superannuated in the meantime. In this background, the appellants filed the additional affidavit questioning the decision of the State of not incorporating a clause in the three G.O's. issued later on, making their operation retrospective, which would have otherwise enured to their benefit.

16. Had the matter stood as it was on the date when the impugned judgement came to be passed, perhaps the appellants could have advanced an argument that the action of the State must be expected to be fair and reasonable and in line with the guarantees extended under Article 14 of the Constitution of India and that there was no rationale in treating them differently when Doctors/Professors from all streams teaching in Medical Colleges in the State formed a homogenous class and are governed by the same set of Service Rules and Regulations. But after the respondent No.1 – State Government issued three successive G.Os extending the age of retirement of the members of the Dental Faculties, Ayurvedic Faculties and Homeopathic Faculties from 55 years to 60 years, the insistence on the part of the appellants that these G.Os ought to be given retrospective effect, even though there was no clause to that effect inserted therein, cannot be countenanced.

17. Such a decision lies exclusively within the domain of the Executive. It is for the State to take a call as to whether the circumstances demand that a decision be taken to extend the age of superannuation in respect of a set of employees or not. It must be assumed that the State would have weighed all the pros and cons before arriving at any decision to grant extension of age. As for the aspect of retrospectivity of such a decision, let us not forget, whatever may be the cut-off date fixed by the State Government, some employees would always be left out in the cold. But that alone would not make the decision bad; nor would it be a ground for the Court to tread into matters of policy that are best left for the State Government to decide. The appellants

herein cannot claim a vested right to apply the extended age of retirement to them retrospectively and assume that by virtue of the enhancement in age ordered by the State at a later date, they would be entitled to all the benefits including the monetary benefits flowing from G.O. dated 9th April, 2012, on the ground of legitimate expectation.

18. Pertinently, similar pleas as taken by the respondents-employees herein were raised in the case of **NOIDA** (supra) where the employees had sought to invoke the principles of promissory estoppel and legitimate expectation for increasing the age of superannuation retrospectively and were shot down as inapplicable. For taking this view, reliance was placed on **Monnet Ispat and Energy Limited. Vs. Union of India**[13] wherein this Court had opined that if a communication issued was a proposal or a mere recommendation, the principle of promissory estoppel will not apply for the simple reason that for invoking the said principle, there must be a promise and based on the said promise, the party concerned ought to have acted to its prejudice. In the **NOIDA** case (supra), this Court had outrightly turned down the argument advanced by the respondent–employees therein that the Doctrine of Legitimate Expectation would come into play. It was held that the said doctrine cannot have a place when enhancement of the age of superannuation is "a public function" that is governed by the provisions of the Statute and the relevant service regulations. The position is the same in the present case.

19. No doubt, the appellants were the first to raise the battle cry when they filed not one, but two writ petitions in the High Court for extending them the benefit of G.O. dated 14th January, 2010. But it is a matter of record that there was no positive order granted in their favour throughout. Even in the present proceedings, no interim order was passed in favour of the appellants who have superannuated in the meantime. The clock cannot be put back for them by reading retrospectivity in the G.O. dated 09th April,

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2012, when the State elected not to insert any such clause and evidently intended to apply it with prospective effect. The idea behind extension of retirement age of doctors was to take care of the emergency situation caused by shortage of doctors, which was resulting in affecting the studies or patient care. It was not merely to grant benefits to a particular class. The Doctrine of Legitimate Expectation does not have any role to play in matters that are strictly governed by the service regulations. This is an exercise that is undertaken by the State in discharge of its public duties and should not brook undue interference by the Court.

20. In view of the aforesaid discussion, the impugned judgment is upheld. It is deemed appropriate to dismiss the present appeal as meritless while leaving the parties to bear their own expenses. Ordered accordingly.

Headnotes prepared by: Ankit Gyan *Result of the Case:* Appeal dismissed.