

T.P. GEORGE AND ORS. ETC. ETC.

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v.

STATE OF KERALA AND ORS.

MARCH 24, 1992

[M.H. KANIA, CJ AND S. MOHAN, J.]

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Civil Services

University Grants Commission Scheme, 1986—Clause 26—Age of superannuation of teachers—Implementation of—State Government deciding to implement the Scheme, but not accepting higher superannuation age of 60 years—Whether teachers entitled to superannuate on attaining 60 years—Different conditions of service and superannuation age for teachers of universities and private affiliated colleges—Whether discriminatory—Retirement age of 55 years for affiliated college teachers too low—Experience gained by teachers after several years of teaching—Not to be lost by early retirement age—Consideration and determination of correct age by State Government—Need for.

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Clause 26 of the University Grants Commission Scheme of 1986 framed by the Government, pursuant to the recommendations of the Malhotra Committee, provided that the age of superannuation for teachers should be 60 years. The Scheme also contemplated certain improvement in the revision of pay scales and provision of assistance in that behalf. While the Government of Kerala decided to adopt a major part of the Scheme, including the revision of scales of pay it did not accept the recommendation as to the age of superannuation. This was challenged by the affected teachers before the High Court, contending that once the State Government had accepted the Scheme, which also provided for higher age of 60 years for superannuation, all the clauses of the Scheme became applicable and they were entitled to superannuate at the age of 60 years. However, this plea was rejected by the High Court. Hence, the appeal, by special leave, before this Court. Some Writ Petitions were also filed before this Court, by the affected teachers.

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Disposing of the cases this Court,

HELD : 1.1 The High Court was right in holding that the UGC Scheme did not become applicable because of any statutory mandate

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- A** making it obligatory for the Government and the Universities to follow the same, and, therefore, the State Government had the discretion either to accept or not accept the Scheme, and in its discretion, it had decided to accept the Scheme, subject to the one condition, that, in so far as the age of superannuation was concerned, they would not accept the fixation of higher age provided in the Scheme; and that as long as the age of superannuation remained fixed at 55 years, and as long as the State Government had not accepted the UGC's recommendation to fix at 60 years, teachers could not claim as a matter of right that they were entitled to retire on attaining the age of 60 years. [313B, F-G, 314D]

- C** 1.2. It is clear from paragraph 4 of the circular dated 17th June, 1987 of the Government of India addressed to all States/UTs (Union Territories) that the adoption of the Scheme was voluntary, and the only result which might follow from the State Government not adopting the scheme might be that it may not get the benefit of the offer of reimbursement from the Government to the extent of 80 per cent of the additional expenditure involved in giving effect to the revision of pay scales as recommended by the Scheme. [314E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1680-87 and 1672-78 of 1992.

- E** From the Judgments and Orders dated 22.3.91, 13.3.91, 11.3.91, 12.3.91, 27.3.91, 14.3.91, 13.3.91, 18.3.91, 3.4.91, 19.6.91, 26.3.91, 25.3.91, 12.4.91 and 23.7.91 of the Kerala High Court in Original Petition No. 3291/1991-P, Writ Appeal Nos. 236/91, 223/91, 230/91, 306/91, 239/91, 234/91, O.P. No. 2939/91, W.A. No. 319/91 O.A. Nos. 6027/91-P, 3141/90-Y, 3335/91-V, W.A. Nos. 415, 420 and 639 of 1991.

AND

Writ Petition (C) Nos. 38/92, 1098/91 & 215/92.

- G** (Under Article 32 of the Constitution of India).

K.K. Venugopal, G. Viswanatha Iyer, V. Jayaprasad, T.G. Narayanan Nair, R.F. Nariman and E.M. S. Anam for the Appellants/Petitioners.

- H** P.S. Poti, T.T. Kunhi Kannan, Govind K. Bharathan, Sudhir Gopi, A.G. Prasad and M.M. Kashyap for the Respondents.

The following order of the Court was delivered :

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Special leave granted.

Heard learned counsel for the parties.

We are in agreement with the observations of the Division Bench of the Kerala High Court in Writ Appeal No. 223 of 1991 quoted in the impugned judgment which run as follow :

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"Though clause 26 of the Scheme provides that the age of superannuation for teachers should be 60 years, and the scheme contemplates certain improvement in the revision of pay-scales and providing for assistance in that behalf, it is not a scheme which is statutorily binding either on the State Government or the different Universities functioning under the relevant statutes in the State of Kerala. What the State Government has done by its order dated 13-3-1990 is to implement the UGC Scheme including revision of scales of pay in relation to teachers in Universities including Kerala Agricultural University, affiliated colleges, Law Colleges, Engineering Colleges and Qualified Librarians and qualified physical Education Teachers with effect from 1.1.1986, subject however to the express condition that in so far as the age of retirement is concerned, the present fixation of 55 years shall continue. The contention of the appellant is that the State Government having accepted the UGC Scheme, and as the scheme provides for a higher age of 60 years, once the State Government accepted the Scheme, all the clauses of the Scheme became applicable. It is not possible to accede to this contention. Firstly, as already stated the UGC 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 the discretion either to accept or not to accept the scheme. In its discretion it has decided to accept the Scheme, subject to the one condition, namely, in so far 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 the modified form, the teachers can only get the benefit which flows from the Scheme

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A 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 not to accept the clause relating to fixation of higher age of superannuation.

B That is a matter between the State Government on the one hand and the University Grants Commission on the other, which was provided certain benefits by the Scheme. It is for the University Grants Commission to extend the benefit of the Scheme or not to extend the benefit of the Scheme, depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the same. That is a matter entirely between the State Government on the one hand and the University Grants Commission on the other.

C Teachers of the private institution concerned are governed by the Statutes framed under the relevant statutory enactment. As long as the superannuation remains fixed at 55 years and as long as the State Government has not accepted the UGC's recommendation to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they are entitled to retire on attaining the age of 60 years."

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E We may clarify the scheme referred to UGC (University Grants Commission) Scheme of 1986 framed by the Government pursuant to the Malhotra Committee's Report. We may further point out that it is clear from paragraph 4 of the circular dated 17th June, 1987, addressed by the Ministry of Human Resources Development, Department of Education, to the Education Secretary of all States/UTs (Union territories) that the adoption of the scheme was voluntary, and the only result which might follow from the State Government not adopting the scheme might be that it may not get the benefit of the offer of reimbursement from the Government to the extent of 80 per cent of the additional expenditure involved in giving effect to the revision of pay scales as recommended by the Scheme.

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We may further point out that the teachers in Universities are governed in respect of their conditions of service and the age of retirement by the separate statutes made by the Universities concerned. On the other hand the teachers in private colleges or affiliated colleges are governed in

H respect of their conditions of service by regulations or rules framed by the

Government (separate set of statutes). In these circumstances, the two A
classes of Universities teachers and teachers in private colleges cannot be
regarded as similar for purposes of conditions of service as to bring the
case under Article 14 of the Constitution.

Although the appeals and the writ petitions, in our view, cannot B
succeed, we do feel that age of retirement fixed at 55 years in the case of
teachers of affiliated colleges is too low. It is only after a teacher acquires
several years of teaching experience that he really becomes adept at his job
and it is unfortunate if the students have to lose the benefit of his ex-
perience by reason of an unduly early age of retirement. However, it is not
for the Court to prescribe the correct age of retirement but that is a policy C
function requiring considerable expertise which can properly be done by
the State Government or the State Legislature or the Universities con-
cerned. We hope that some time in near future, the State Government will
be able to consider the question and determine the age of retirement as it
best thinks fit.

N.P.V.

Appeals and petitions disposed of.