

CASE NO.:
Appeal (civil) 5877 of 2007

PETITIONER:
Achhaibar Maurya

RESPONDENT:
State of U.P. & Ors.

DATE OF JUDGMENT: 13/12/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 20136 of 2006)

S.B. Sinha, J.

1. Leave granted.
2. Interpretation and application of the rule in regard to grant of benefit known as 'session benefit' is the question involved in this appeal which arises out of a judgment and order dated 8.9.2006 passed by a Division Bench of the Allahabad High Court in Special Appeal No.221 of 2004.
3. Appellant herein was born on 1st July, 1943. He was appointed as an Assistant Teacher on 21st July, 1975 in a primary school known as Kisan Poorva Madhyamik Vidyalay, Itally Gazna, District Jaunpur. The terms and conditions of service of a teacher indisputably is governed by the Uttar Pradesh Basic Education Act, 1972 (for short, 'the 1972 Act') and the rules framed under the State's rule making power contained in sub-section (1) of Section 19 of the Act known as Uttar Pradesh Basic Education (Teachers) Service Rules, 1981. Rule 29 of the said Rules provided for age of superannuation in the following terms :
'29.Age of superannuation.(1) Every teacher shall retire from service in the afternoon of the last day of the month in which he attains the age of 60 years :
Provided that a teacher who retires during an academic session (July 1 to June 30) shall continue to work till the end of the academic session, that is, June 30 and such period of service will be deemed as extended period of employment.'

Academic session has been defined to mean the period from 1st July to 30th June.

4. Contention of the petitioner before the High Court as well as before us is that as in terms of a notice dated 28.2.2003 issued by the Principal, Kishan Inter College, Ittailli, Gujana, Jaunpur, he was to retire from service on 1st July, 2003, and, thus, was entitled to the 'session benefit' in terms of Rule 29 of the Rules.

The said benefit having been denied to him, he filed a writ petition before the Allahabad High Court which was marked as writ petition No.21758 of 2003. The said writ petition was dismissed by a learned Single Judge. A Division Bench of the said High Court, by reason of the impugned judgment, has affirmed the same.

5. The appellant is, thus, before us.

6. Mr. S.C. Kushwaha, learned counsel appearing on behalf of the appellant, at the outset, drew our attention to a judgment and order dated 14th May, 1993 passed by a learned Single Judge of the said Court, which is reported in Khan Chandra Madhu v. Deputy Director of Education, 3rd Division, Bareilly & Ors. [(1993) 2 UPLBEC 1128], wherein a purported circular letter dated 5th June, 1987 eliminating 1st July as the cut off date for

obtaining the said benefit was declared ultra vires. The learned counsel submitted that in a situation of this nature, the date of retirement should be held to be 1st July and not 30th June.

7. The question in regard to the determination of age of superannuation of an employee is governed by the Rules. Indisputably, the terms and conditions of service of an Assistant Teacher are governed by the provisions of 1972 Act and the Rules framed under sub-section (1) of Section 19 thereof. The Rules were amended on or about 12th June, 1989. In terms of Rule 29, a teacher is to retire on the date on which he had completed 60 years on the last day of month when the person is born.

8. As the appellant was born on 1st July, 1943, he would retire on 30th June, 2003. The question as to whether he would obtain the benefit of extended period of service upto 30th June and the next year will depend upon the situation as to whether the teacher retires on or after 1st July or not.

9. In Khan Chandra Madhu (supra), the learned Judge proceeded on the basis that the academic session starts on 2nd July and ends on 30th June.

A benefit of getting an extended period of service must be conferred by a statute? The Legislature is entitled to fix a cut off date. A cut off date fixed by a statute may not be struck down unless it is held to be arbitrary. What would, therefore, be an employee's last working date would depend on the wordings of the Rules. It may seem unfortunate as some people may miss the extended period of service by a day; but therefor a valid provision may not be held to be invalid on the touchstone of Articles 14 or 16 of the Constitution of India. A statute cannot be declared unconstitutional for conferring benefit to a section of the people. We, therefore, do not agree with the view taken in Khan Chandra Madhu (supra).

10. In *S. Benerjee v. Union of India & Ors.* [1989 Supp.2 SCC 486], whereupon reliance has been placed, the fact situation obtaining was completely different. In that case, the appellant filed an application for voluntary retirement which was accepted from the forenoon of 1st January, 1986. In that view of the matter, he was found to be entitled to the benefit of paragraph 17.3 of the recommendations of the Pay Commission.

It was urged that the appellant was entitled to a hearing as the matter relating to retirement from service depended upon the statutory provisions. A person retires automatically on the day when he completes the age of superannuation. Principles of natural justice, therefore, cannot be said to have any application in a case of this nature. A person attains a specified age on the day next before the anniversary of his birthday or in other words on the day preceding that anniversary. [See *Re Shurey Savory v. Shurey* (L.R. (1918) 1 Ch.263) and *Rex v. Scoffin* (L.R. (1930) 1 KB 741)].

11. This Court in *Prabhu Dayal Sesma v. State of Rajasthan & Anr.* [AIR 1986 SC 1948] held :

"In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding the anniversary of his birthday."

12. It is interesting to note, however, that the common law rule stated in *Re Shurey Savory* (supra) in respect of anniversaries has been abrogated by virtue of the Family Law Reform Act, 1969. The effect of the change is that, in respect of anniversaries falling after 1 January, 1970, the time at which a person attains a particular age expressed in years is the commencement of relevant anniversary of the date of his birth. [See *Halsbury's Laws*, 4th Edition Reissue, Page 209]. We do not have such statute. We have, therefore, to determine the cases on the touchstone of statute operating in the field and in absence thereof by common law principle.

13. For the reasons aforementioned, we do not find any merit in this appeal. It is dismissed accordingly. However, as nobody has appeared on behalf of the Respondent-State, there shall be no order as to costs.