

CASE NO.:
Appeal (civil) 1701 of 2007

PETITIONER:
Chairman, U.P. Jal Nigam and Anr

RESPONDENT:
Radhey Shyam Gautam & Anr

DATE OF JUDGMENT: 30/03/2007

BENCH:
Dr. ARIJIT PASAYAT & R.V. RAVEENDRAN

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Civil) No. 18579 of 2005)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Allahabad High Court questioning correctness of the order passed by a Division Bench in the Special Appeal filed by the appellant against an interim order passed by a learned Single Judge permitting the respondent No.1 to continue in service of the appellant No.1 till attaining the age of 60 years. The case of the appellant before both learned Single Judge and the Division Bench was that the standard age of retirement of its employees is 58 years and the writ petitioner i.e. respondent No.1 was no exception. The Special Appeal was filed stating that the interim order was contrary to the view taken by a Division Bench in Harwindra Kumar v. Chief Engineer Karmik, UP Jal, Nigam, Lakhnou and Ors. [2002 (2) UPLBEC 1511]. The Division Bench dismissed the appeal.

In support of the appeal learned counsel for the appellant submitted that the interim order was contrary to the view expressed by the Division Bench which was binding on a subsequent Division Bench and in any event on all learned Single Judges.

Learned counsel for respondent No.1 on the other hand stated that the controversy as to whether the age of the retirement of employees is 58 or 60 has already been settled by this Court.

In Harwindra Kumar v. Chief Engineer Karmik & Ors. [2005 (13) SCC 300] the question raised was whether the retirement age in terms of the Uttar Pradesh Fundamental Rules was applicable to the employees of the Jal Nigam.

Various provisions of Uttar Pradesh Water Supply and Sewerage Act, 1975 (in short the 'Act') and Uttar Pradesh Jal Nigam Engineers (Public Health Branch) Service Regulations, 1978 (in short the "Regulations") need to be noted.

To appreciate the point in issue, it would be necessary to refer to the relevant provisions of Sections 15, 31(1), 37, 89 and 97 of the Act and Regulation 31 of the Regulations which read thus:

"15. Powers of the Jal Nigam.\027(1) The Nigam shall, subject to the provisions of this Act have power to do anything which may be necessary or expedient for carrying out its functions under this Act.
(2) Without prejudice to the generality of the foregoing provision, such power shall include the power\027
(i) to inspect all water supply and sewerage facilities in the State by whomsoever they are operated;
(ii) to obtain such periodic or specific information from any local body and operating agency as it may deem necessary;
(iii) to provide training for its own personnel as well as employees of the local bodies;
(iv) to prepare and carry out schemes for water supply and sewerage;
(v) to lay down the schedule of fees for all services rendered by the Nigam to the State Government, local bodies, institutions or individuals;
(vi) to enter into contract or agreement with any person, firm or institution, as the Nigam may deem necessary, for performing its functions under this Act;
(vii) to adopt its own budget annually;
(viii) to approve tariffs for water supply and sewerage services applicable to respective local areas comprised within the jurisdiction of Jal Sansthan and such local bodies as have entered into an agreement with the Nigam under Section 46;
(ix) to borrow money, issue debentures to obtain subventions and grants and manage its own funds;
(x) to disburse loans to local bodies for their water supply and sewerage schemes;
(xi) to incur expenditure and to grant loans and advances to such persons or authorities as the Nigam may deem necessary for performing the functions under this Act.

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31. Vesting and transfer of property to Nigam.\027(1) As from June 18, 1975, the date of establishment of the Nigam hereinafter in this Chapter referred to as 'the appointed date',\027

(a) all properties and assets (including waterworks, buildings, laboratories, stores, vehicles, furnitures and other furnishing) which immediately before the appointed date were vested in the State Government for the purposes of the Local Self-Government Engineering Department shall vest in and stand transferred to the Nigam; and
(b) all the rights, liabilities and obligations of the State Government whether arising out of any contract or otherwise pertaining to the said departments shall be the rights, liabilities and obligations of the Nigam.

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37. Transfer of employees to Nigam.\027(1) Save as otherwise provided in this section every person, who was employed in the Local Self-Government Engineering Department of the State Government shall on and from the appointed date become employee of the Nigam and shall hold his office or service therein by the same tenure, at the same remuneration and upon same other terms and conditions, and with the same rights and privileges as to

pension, gratuity and other matters as he would have held the same on the appointed date if this Act had not come into force, and shall continue to do so until his employment in the Nigam is terminated or until his remuneration or other terms and conditions of services are revised or altered by the Nigam under or in pursuance of any law or in accordance with any provision which for the time being governs his service:

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89. Directions to the Nigam on questions of policy.\027

(I) In the discharge of its functions, the Nigam shall be guided by such directions on questions of policy as may be given to it by the State Government.

(2) If any question arises whether any matter is or is not a matter as respects which the State Government may issue a direction under sub section (1), the decision of the State Government shall be final.

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97. Regulations.\027(1) The Nigam and a Jal Sansthan may, with the previous approval of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Nigam or a Jal Sansthan.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely -
(a)\027(b) * *

(c) the salaries and allowances and other conditions of service of employees of the Nigam or a Jal Sansthan other than employees employed on contract basis;"
Regulation 31

"31. Besides the provision made under these Regulations, the pay and allowances, pension, leave, imposition of penalty and other terms and conditions of service shall be governed by such rules, regulations and orders which are equally applicable to other serving government servants concerned functioning in the State."

From the aforesaid provisions, it would be clear that the appointed date for the purposes of the Act was 18-6-1975 when the Nigam was established and under Section 37 of the Act, conditions of service of the appellant-petitioners who were employed in the Local Self-Government Engineering Department of the Government of Uttar Pradesh before the appointed date, were continued to remain the same as they were before the appointed date unless and until the same are altered by the Nigam under the provisions of the Act. Section 97 confers power upon the Nigam with the previous approval of the State Government to frame regulations in relation to service conditions of employees of the Nigam and, acting thereunder, the Regulations were framed by the Nigam in the year 1978, Regulation 31 whereof provides that service conditions of the employees of the Nigam shall be governed by such rules, regulations and orders which are applicable to other serving government servants functioning in the State of Uttar Pradesh. Thus, from a bare reading of Section 37 and Regulation 31, it would be clear that the service conditions of the employees of the Nigam would be the same as are applicable to the employees of the State Government under the rules, regulations and orders applicable to such government servants so long as the same are not altered by the Nigam in accordance with the provisions of the Act. If the regulations have not been framed, the Nigam had

residuary power under Section 15(1) of the Act whereby under general power it could change the service conditions and the same could remain operative so long as regulations were not framed but in the present case, regulations were already framed in the year 1978 specifically providing in Regulation 31 that the conditions of service of the employees of the Nigam shall be governed by the rules, regulations and orders governing the conditions of service of government servants which would not only mean then in existence but any amendment made therein as neither in Section 37 nor in Regulation 31, has it been mentioned that the Rules then in existence shall only apply. After the amendment made in Rule 56(a) of the Rules by the State Government and thereby enhancing the age of superannuation of government servants from 58 years to 60 years, the same would equally apply to the employees of the Nigam and in case the State Government as well as the Nigam intended that the same would not be applicable, the only option with it was to make suitable amendment in Regulation 31 of the Regulations after taking previous approval of the State Government and by simply issuing direction by the State Government purporting to act under Section 89 of the Act and a thereupon taking administrative decision by the Nigam under Section 15 of the Act in relation to the age of the employees would not tantamount to amending Regulation 31 of the Regulations.

In Harwindra Kumar's case (supra) the Division Bench decision on which the appellant places reliance was challenged. Orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the Civil Appeals and the petitioners of the writ petitions would superannuate upon completion of the age of 58 years were set aside and it was directed that in case the employees have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs. They would be entitled to payment of salary for the remaining period up to the age of 60 years which was to be paid to them within a period of three months from the date of receipt of copy of this Court's order by the Nigam. It appears that the High Court placed reliance on the decision in Harwindra Kumar's case (supra). Additionally, in Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr. (JT 2006(10) SC 500) the decision was reiterated in the following terms:

"The benefits shall only be confined to above mentioned persons who have filed writ petitions before their retirement or they have obtained interim order before their retirement. The appeals filed against these persons by the Nigam shall fail and the same are dismissed. Rest of the appeals are allowed and orders passed by the High Court are set aside. There would be no order as to costs."

In view of what has been stated above the inevitable conclusion is that the appeal is sans merit, deserves dismissal, which we direct.