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J. L. Gibson v. Utah State Teachers' Retirement Board; Leroy E. Cowless; Charles H. Skidmore; Joseph Chez; Alex Jex; Milton B. Taylor; D. A. Wooton; and J. R. Smith : Brief of Plaintiff

Utah Supreme Court

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J. Lambert Gibson; Marl D. Gibson; Attorneys for Plaintiff;

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In the Supreme Court of the State of Utah

J. L. GIBSON.

Plaintiff,

vs.

UTAH STATE TEACHERS' RETIRE-
MENT BOARD, LEROY E.
COWLES, CHARLES H. SKID-
MORE, JOSEPH CHEZ, ALEX
JEX, MILTON B. TAYLOR, D.
A. WOOTTON, and J. R.
SMITH, members thereof,

Defendants.

BRIEF of PLAINTIFF

APPLICATION FOR WRIT OF MANDATE

J. LAMBERT GIBSON,
MARL D. GIBSON,

Attorneys for Plaintiff

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Defendants.

Case No.
6220

BRIEF of PLAINTIFF

STATEMENT OF FACTS

The plaintiff at all times herein mentioned has been and now is a teacher employed by the public schools of the State of Utah.

On or about the first day of November, 1923. the plaintiff became a holder of a retirement annuity contract with the Teachers' Insurance and Annuity Association of America and the University of Utah contributed one half of each monthly premium up to and including the payment made during December of 1937.

Since said payment made in December of 1937 neither the plaintiff nor the University of Utah nor any subdivision of the State of Utah has contributed any part of any premium on this contract.

In 1937 the state legislature of the State of Utah passed an act known as the Teachers' Retirement Act (Chapter 85, Laws of Utah, 1937) setting up a Utah State Teachers' Retirement System providing for the retirement of the teachers employed by the public schools of the State of Utah. Pursuant to said law plaintiff made application for membership in said system and a hearing was held by the Teachers' Retirement Board on said application. That as a result of said hearing the Teachers' Retirement Board denied his application for membership.

The plaintiff thereafter brought an action for declaratory judgment in the District Court of Salt Lake County requesting said Court to declare and determine his status in regard to said system. The District Court dismissed said petition on the grounds that it had no jurisdiction in such a hearing of said matter.

The plaintiff has tendered and still tenders to the Utah State Teachers' Retirement Board in full any and all sums necessary to pay his contributions in said system if he is a member.

THE LAW

Section 11. Membership.

With the exception of those teachers who are excluded from membership by the provisions of section 12 hereof, all teachers become members of the retirement system as follows:

(a) Every teacher who is employed in the public schools of this state on July 1, 1937, shall become a member of the retirement system on that date.

(b) Every teacher who shall become employed in the public schools of this state after July 1, 1937, shall become a member of the retirement system on the effective date of such employment.

Section 12. Teachers Excluded From Membership.

The following teachers shall be excluded from membership in the retirement system:

(a) Every teacher employed on a part-time or substitute basis who was not already a member when he entered the part-time or substitute status.

(b) Every teacher who is the holder of a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other private organization or company, in which the State of Utah, or any subdivision thereof contributes part of the premium, under

said contract; provided, however, that every such teacher, upon ceasing to be a holder of such contract and being otherwise eligible to membership in this system, shall forthwith become a member of the system.

(c) Every teacher serving as an exchange from outside the state.

(d) Every teacher who is a contributing member of a local system, subject to the provisions of section 13 hereof.

ARGUMENT

This is an action brought by the plaintiff against the defendants to force them to accept the plaintiff as a member of said system and to do for him the acts required of them by laws as provided in the Teachers' Retirement Act, Laws of Utah, 1937, Chapter 85.

The facts involved in this case are without dispute and the only question involved is a question of law, whether or not under the facts herein the plaintiff is entitled to be a member of the Utah State Teachers' Retirement System. The Teachers' Retirement Board claims that it is the sole judge and its decisions are conclusive as to whether or not any person is a member or is eligible for membership in said system and that by virtue of its alleged hearing in this matter in which it

declared the plaintiff not eligible for membership he is conclusively bound by such hearing and decision. We claim that the legislature defined and settled who were members of the retirement system and that the defendants have no right to say who is or who is not a member.

There are no questions of fact that are involved, but only questions of law. At the time of the alleged hearing before the defendants the only question involved was one of law which could not be passed by the defendants.

Paragraph 4 of the defendants' claimed findings of fact is as follows:

"That Mr. Gibson ceased making premium payments to the Teacher's Insurance and Annuity Association of America on said policy on or about the 29th day of December, 1937, and caused the University of Utah to ceased contributing its part of the premiums to said Association on or about the 29th day of December, 1937, but retained said contract so as to claim and receive the deferred annuity provided therein on the basis of the contributions made to December 29, 1937."

This paragraph shows that there was not any question of fact to be determined. The portion of the said paragraph which states "but retained said contract so as to claim and receive the deferred annuity provided therein on the basis of the contributions made to December 29, 1937" is not only contrary to the evidence before the Board, but is a figment of the imagination and a

conclusion of law. Both sides are in agreement as to the facts, but were in dispute as to the law. That is still the case.

The Teachers' Retirement Act in *section 8* gives the board "the power and authority to hear and determine all *facts* pertaining to applications for benefits under the retirement system - - - ." It does not say that after determining the facts it has the authority to determine eligibility which would be a question of law, so as to make it a final adjudication. *Sections 4 and 8* both authorize the board to hold a hearing to determine *facts* when an *application has been made for benefits*, but do not give it authority to determine who are members. The legislature has done that for the board in *sections 11 and 12* of the act and the board acts in excess of its authority if it presumes the right to exclude any one who is eligible under the provisions of said sections.

There is no provision of the act which authorizes a hearing to determine membership.

The applicant was not making an application for benefits when he applied for membership. *He is not yet eligible for benefits*, not having retired. In making an application he was attempting to bring the matter to issue and convince the defendants that he was eligible and that it should comply with the provisions of *sections 17, 18 and 19* of the act.

The board under the terms of *section 8* has the authority to determine “matters pertaining to the *administration*” of the act and consequently could probably require an application for membership for administrative purposes. But under such administrative authority it could not hold a judicial hearing and adjudicate the plaintiff out of rights granted to him by law.

We claim that there is no question involved as to whether or not the board is a quasi judicial body because no matter what it is it has no more authority than granted to it by the act and that which is necessarily inferred therefrom, and the act does not provide for such an alleged hearing. See *U. of U. v. Ind. Com. of Utah*. 64 U. 273, 229 P. 1103.

The defendants have assumed the right in their alleged findings of fact and *conclusions of law* to construe a contract of insurance and state:

“4. That Mr. Gibson ceased making premium payments to the Teachers Insurance and Annuity Association of America on said policy on or about the 29th day of December, 1937, and caused the University of Utah to cease contributing its part of the premiums to said Association on or about the 29th day of December, 1937, but retained said contract so as to claim and receive the deferred annuity provided therein on the basis of the contributions made to December 29, 1937.”

"Conclusions

"From the foregoing Findings of Fact the Board concludes that Mr. Gibson's said contract with the Teachers Insurance and Annuity Association of America was not cancelled or wiped out by the stopping of premium payments on the date so mentioned in Finding No. 5; that notwithstanding the stopping of premium payments on the said dates, Mr. Gibson was and is entitled to the future benefits provided for in said contract; that said contract is not subject to immediate cancellation and does not cease to yield benefits to Mr. Gibson under its terms by reason of failure to pay premiums; that the benefits provided for in said contract are subject to re-establishment to their full extent in the manner specified in said contract; that the said James L. Gibson was, at the time his application for membership in the Utah Teachers' Retirement System was filed, and is now, a holder of a retirement annuity contract with the Teachers Insurance and Annuity Association of America; and that the said James L. Gibson, as a holder of a contract with the Teachers Insurance and Annuity Association of America, is excluded from membership in the Utah State Teachers' Retirement System under the provisions of Section 12 of the Teachers' Retirement Act, Chapter 85, Session Laws of Utah, 1937."

We have a Utah Supreme Court case which shows that said alleged findings of fact and conclusions are right in the teeth of the settled law of this state and the acts of the defendants are in excess of their authority. It is:

Continental Casualty Co. v. Ind. Com. of Utah,
61 U. 16, 210 P. 127:

"The Industrial Commission, being an administrative body, is, *without authority to construe and apply a contract of insurance* to cover workmen in the employ of one not named as the insured, and therefore an award against insurer for death of an employee of the independent contractor operating mine under contract with the insured is unauthorized, though the policy described the mine at the place of employment."

Section 11 of the statute says "With the exception of those teachers who are excluded from membership by the provisions of section 12 hereof, all teachers shall become members of the retirement system - - - ."

Section 12 states:

"The following teachers shall be excluded from membership in the retirement system:

"(a) - - - -

"(b) Every teacher who is the holder of a retirement annuity contract with the Teachers Insurance and Annuity Association of America or with any other private organization or company, in which the State of Utah, or any subdivision thereof contributes parts of the premium, under said contract; provided, however, that every such teacher, upon ceasing to be the holder of such contract and being otherwise eligible to membership in this system, shall forthwith become a member of the system.

"(c) - - - -

"(d) - - - -"

In subsection (b) the clause "in which the State of Utah, or any subdivision thereof contributes part of the premium, under said contract" modifies both the preceding clauses so that the subsection means: "The following teachers shall be excluded from membership in the retirement system: (b) Every teacher who is the holder of a retirement annuity contract with the Teachers Insurance and Annuity Association of America in which the State of Utah contributes part of the premium under said contract, provided, however, - - - ,"

59 C. J. 980 says:

"Where several words are connected by a copulative conjunction they are presumed to be of the same class." Likewise in *Carbon v. Shelton*, 107 S. W. 793, 15 L. R. A. (N. S.) 509, and also all the cases in the note in 15 L. R. A. (N. S.) 509.

The word "contributes" used is in the *present* tense and not in the past. The words "is the holder" are also in the *present* tense.

The fact is admitted that neither the plaintiff nor the State of Utah, nor any subdivision thereof, has contributed any part of any premium since the latter part of December, 1937. The law provides that under such circumstances the teacher "Shall forthwith become a member of the system." The plaintiff maintains that under this section he is a member of the retirement system.

Defendants contend that the plaintiff is still the holder of a retirement annuity contract with the Teachers Insurance and Annuity Association of America and is, therefore, not eligible for membership in the Teachers' Retirement System. The Court will note in going over the contract introduced in evidence with the Teachers Insurance and Annuity Association of America that it is a *form* contract used by the association. The defendants claim that the said contract "is not subject to assignment or cancellations," and therefore, the plaintiff cannot dispossess himself of rights accrued prior to December, 1937 under the terms of said contract. Certainly the legislature in passing subsection (b) of section twelve had in mind the *terms* of said *form* contracts and contemplated that persons might do, and were entitled to do, just as the plaintiff has done here, so as to become a member of the state system. If such were not the case and not the law the statement "that every such teacher, upon ceasing to be a holder of such contract and being otherwise eligible to membership in this system, shall forthwith become a member of the system," could have no meaning whatsoever. The plaintiff has done everything that the defendants claim that it is possible for him to do or *for anyone* else to do to dispossess himself of the contract with the Teachers Insurance and Annuity Association of America and is certainly a member of the Teachers' Retirement System if the provisions in subsection (b), Section 12 means anything.

Under the defendants' contention in this case no

person who had a contract with the Teachers Insurance and Annuity Association of America could possibly "cease to be a holder of such contract" under the terms of said subsection, and, therefore, it would mean nothing.

The defendants apparently claim that the plaintiff would get something to which he is not entitled if he should be determined a member of the Teachers' Retirement System. We submit to the Court that the Teachers' Retirement System and the wording thereof take care of this in that the amount to which plaintiff would be entitled is determined by the years of prior service and the years of prior service are determined not by the number of years which he has been a teacher but by the number of years which he has been a teacher and not a holder of a retirement annuity contract with the Teachers' Insurance and Annuity Association of America in which the State of Utah contributes part of said premiums. We submit to the Court that if the plaintiff is not a member of the state system he would not receive nearly as much money in the form of a pension after his approximately 36 years of long and faithful service as would another man belonging to the said system who had spent a like time which would constitute an unfair discrimination within a class making the provisions of the statute unconstitutional.

59 C. J. 970:

"The court will, if possible, place upon the

statute a construction which will not result in injustice, oppression, hardship or inconvenience.”

Certainly the plaintiff is at least entitled to benefits for the thirty-six years' service, less the period from 1923 to 1937, both inclusive, when the state paid into the Teachers Insurance and Annuity Association of America, so as to bring his pension up to what other persons of like service would receive.

The legislature must have had within its contemplation, at the time of passing said subsection, a situation like the one now before the court and passed said provisions so that if a man with a Teachers Insurance and Annuity Association of America contract would not receive as much as he would under the terms of a state contract he could “cease to be a holder of said contract - - - and forthwith become a member of the system” by doing the only thing that the defendants claim is possible for him to do. This the plaintiff has done.

He has complied with the statute in every particular and particularly said subsection (b), and therefore, as a matter of law, he is a member of the State Teachers' Retirement System, and is entitled to have this Court declare him to be such a member and to require the defendants to acknowledge him as such.

Teachers' Retirement Acts should be construed liberally toward applicants. (*Wards v. Teachers' Retirement*

Board, 241 N. Y. S. 535; *In re Sanborn*, 159 Wash. 112, 292 P. 259.)

The plaintiff contends that the plain, clear and unambiguous meaning of the Teachers' Retirement Act is as he claims, and more especially so under a liberal construction, and that any other meaning would be strained and artificial. "Where the language of a statute is plain and unambiguous, there is no occasion for construction, even though other meanings could be found and the court cannot indulge in speculation as to the probable or possible qualification which might have been in the mind of the legislature, but that statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it because of some supposed policy of the law, or because the legislature did not use proper words to express its meaning, or the court would be assuming legislative authority." 59 C. J. 970.

If the court were to find that it be possible that the defendant's construction is correct, then the plaintiff contends that such a construction is unconstitutional and that for that reason the plaintiff's theory should prevail. "Where validity of a statute is assailed and there are two possible interpretations, one by which the statute would be unconstitutional and by the other it would be valid, the court should adopt the construction which would uphold it." 11 Am. Jur. Constitutional Law, Section 97. *Tintic Standard Mining Co. v. Utah County*, 80 U 491, 15 P (2d) 633.

“The duty of the courts so to construe a statute as to save its constitutionality when it is reasonably susceptible to two constructions includes the duty of adopting a construction that will not subject it to a succession of doubts as to its constitutionality, for it is well settled that a statute must be construed if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.” 11 *Am. Jur. Constitutional Law*, Sec. 97.

If this statute is subject to the interpretation claimed by the defendants, the plaintiff alleges that it is unconstitutional in that it violates the equal protection clause of the fourteenth amendment to the Constitution of the United States. This clause does not prevent the states from distinguishing, selecting, and classifying objects of legislation within a wide range of discretion; but a classification must be based upon some *reasonable* ground, some difference which bears a just and proper relation to the classification and not a mere arbitrary selection. (*Field v. Barber, etc., Co.*, 194 U. S. 618.) The classification must be reasonable in relation to the purposes sought to be accomplished by the statute.

In this case the general class to which the act applies is teachers. Any attempt to subdivide such a natural class and to enact different rules for each subdivision is arbitrary and unreasonable.

“The legislature cannot take what might be termed a natural class of persons, split that class

in two and then arbitrarily designate the disserved sections of the original unit as two classes and thereupon enact different rules for the government of each." 12 *Am. Jur. Constitutional Law*, Sec. 482.

In the act now before the Court there are two types of teachers who had annuity contracts, part of the premium of which was paid by public funds. These two groups are those having annuity contracts with the Teachers Insurance and Annuity Association of America and those who are members of "Local Systems."

The statute specifically provides in *Section 13* how members of local systems may become members of the Teachers' Retirement System. There is no reasonable basis for distinction between members of this system and teachers holding contracts with the Teachers Insurance and Annuity Association of America, except that the latter have contracts with a private organization and the former with a public organization, and such a distinction could not be termed reasonable. Any attempts to differentiate between and give different rights to these two groups of teachers can have no reasonable foundation and are clearly arbitrary.

Teachers in the University of Utah are eligible for contracts with the Teachers Insurance and Annuity Association of America and many of them attempted to provide for their old age by buying and contributing to contracts in said organization, others less diligent ignored

their opportunities and made no attempts to save money and to protect themselves.

Those who have been diligent, saved and attempted to be self-supporting and not to become a burden on the state, could not, if the defendants' interpretation is correct, ever, or in any manner, become members of the Teachers' Retirement System. Under their contracts many would get only a small annuity for the remainder of their lives, and the State would be penalizing those who in their past lives have been careful, thrifty and foresighted, and would reward those who have been careless and shortsighted by paying to them a monthly sum considerably in excess of that which those who were careful and thrifty, can ever hope to obtain.

Hence it is seen that any attempts to find a reasonable basis for the said classification must fail, and that the act if it is interpreted in the manner defendants desire must be unconstitutional.

The Supreme Court has held in the case of *Continental Casualty Co. v. Industrial Commission of Utah*, 61 U. 16, 210 P. 127, supra, that the Industrial Commission being an administrative body could not construe a contract of insurance and it would, therefore, necessarily follow in this case that the Teachers' Retirement Board could certainly not construe the Teachers Insurance and Annuity Association of America contract

and draw conclusions of law from it. It is less a judicial body than is the Industrial Commission which exercised many quasi judicial functions.

The Teachers' Retirement Act does not provide for any method of appeal or time in which an appeal could be made or taken. The lack of such provisions lends much weight to the claim of plaintiff that the Teachers' Retirement Board has no authority to determine any questions except those of fact and then only in cases in which applications for benefits have been made.

Defendants rely to a great extent on the fact that plaintiff's petition for declaratory judgment in the District Court of Salt Lake County was dismissed by the judge. Defendants seem to forget that said case was dismissed at their request on the grounds that the District Court had no jurisdiction to hear and determine such a matter. The said hearing can have no bearing upon this matter whatsoever, except to show due diligence on the part of the plaintiff. Defendants' findings of fact and conclusions of law rendered as a result of the hearing before them were not rendered or given or served on the plaintiff until immediately prior to the hearing in the District Court and at such time said decision, findings of fact and conclusions of law were apparently rendered for the sole and only purpose of enabling and assisting them to fight said case and to have some grounds to contest said case in the District Court. This

was more than a year after said decision was rendered by the Utah State Teachers' Retirement Board.

Defendants claim that plaintiff has no right to have this court determine his status as a member of said system because of laches in applying for said writs after the said hearing before the Teachers' Retirement Board. We submit, however, under the law that the plaintiff was a member of said system and as such is not required to do or cause the courts to do anything in regard to said system until he is applying for benefits which he has not yet done. We further submit that if the question of laches were well taken the plaintiff is not guilty of such due to the fact that he immediately went to the District Court of the State of Utah and attempted to get a determination of this matter and that said District Court declared itself without jurisdiction to hear the same. Furthermore, the question of laches arises only in equitable proceedings and this is a writ at law and thus laches are inapplicable and have no bearing on the matter.

The plaintiff is clearly entitled to the relief prayed for in his application for writ of mandate.

Respectfully submitted,

J. LAMBERT GIBSON,

MARL D. GIBSON,

Attorneys for Plaintiff.