

(2004) 04 CAL CK 0039
In the Calcutta High Court
Case No : W.P.S.T. No. 624 of 2003

All Bengal State Government College Teachers" Association	APPELLANT
Vs	
West Bengal Administrative Tribunal and Others	RESPONDENT

Date of Decision : 20-04-2004

Acts Referred:

University Grants Commission Act, 1956 — Section 26

Citation : (2004) 3 CHN 258 : 108 CWN 1157

Hon'ble Judges : Jyotirmay Bhattacharya, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Benoy Bhusan Chakraborty, for the Appellant;Dipankar Dutta and Subrata Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—This application under Article 226 of the Constitution of India is directed against the judgment and order dated 7th March, 2003 as well as the order dated 31st March, 2003 both passed by the West Bengal Administrative Tribunal in O.A. No. 6925 of 1999.

2. All Bengal State Government College Teachers" Association is the petitioner before this Court.

3. For proper and effective appraisal of the challenge thrown by the writ petitioner in this application before this Court, the following relevant facts leading to the filing of this writ petition are set out hereunder:

(a) The Government of India, after taking into consideration the recommendations made by the University Grants Commission, decided to revise the pay scales of teachers in the Central Universities and Colleges thereunder in order to attract and retain talent in teaching profession.

(b) Pursuant to the said decision, the Director of Ministry of Human Resources Development (Department of Education), Government of India issued two letters

both dated 27th July, 1993 bearing the same reference No. being F.1-22/97-U.1.

(c) One of such letters being Annexure P-1 to the writ petition was addressed to the Secretary, University Grants Commission which was written on the subject of revision of pay scales of teachers in Central Universities following revision of pay scales of Central Government employees on the recommendations of 5th Central pay Commission. It was indicated in the said letter that the revision of pay scales of the teachers would be subject to various provisions of the scheme of revision of pay scales as contained in the said letter and the regulations to be framed by the UGC in this behalf. Since the dispute involved in the writ petition is only with regard to implementation of one of such terms with regard to the age of superannuation, the said term is set out hereunder:

"(vi) Age of superannuation

The age of Superannuation of university and college teachers would be 62 years and thereafter no extension in service should be given. However, it will be open to a university or college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC upto 65 years."

(d) In Clause 3 of the said letter it was mentioned that the said scheme will be applicable to the teachers in all the Central Universities and Colleges thereunder and the deemed to be Universities whose maintenance, expenditure is met by the UGC, The implementation of the revised scales will be subject to the acceptance of all the conditions mentioned in this letter as well as the Regulations to be framed by the UGC in this behalf. The Universities were advised to amend their statutes and ordinances in line with the Regulations within three months from the date of issuance of this letter.

(e) The other letter being Annexure P-2 to this petition bearing the same date and reference number was issued by the Director of the Ministry of Human Resources Development (Department of Education), Government of India to the Education Secretaries of all States/Union Territories with regard to the subject of revision of pay scales of teachers in Universities and Colleges following the revision of pay scales of Central Government employees on the recommendations of 5th Central Pay Commission. It was mentioned in the said letter that in discharging the Constitutional responsibility, the Central Government decided to continue to provide financial assistance to the State Governments who wish to adopt and implement the scheme of revision of pay scales subject to the following terms and conditions :

(i) The Central Government will provide financial assistance to the State Governments which have opted for these revised pay scales to the extent of 80% of the additional expenditure in the implementation of the revision.

(ii) The State Government will meet the remaining 20% of the expenditure from their own sources.

(iii) The financial assistance, indicated above, would be provided for the period

from 1.1.1996 to 31.3.2000.

(iv) The entire liability on account of revision of pay scales, etc., of university and college teachers; would be taken over by the State Government with effect from 1.4.2000.

(v) The central assistance would be restricted to revision of pay scales in respect of only those costs which were in existence and filled up on 1.1.1996.

(f) It was also mentioned in the said letter that the State Governments, after taking local conditions into consideration may also decide in their discretion, to introduce scales of pay different from those mentioned in the scheme, and may give effect to the revised scales of pay from January 1, 1996, or alter date. However, in case of any modification in this regard, intimation should be given to the Government of India for its approval and subject to the approval being accorded to the modifications by the Government of India. It was further mentioned therein that the payment of central assistance for implementation of the scheme was also subject to the condition that the entire scheme of revision of pay scales together with all the conditions to be laid down in this regard by the UGC by way of Regulation should be implemented by the State Government as a composite scheme without any modification except to the date of implementation and scales of pay as indicated therein.

(g) Subsequently, the UGC Notification, 1998 on the revision of pay scales, minimum qualifications for the appointment of teachers in the universities and colleges and other measures for maintenance of standards was issued. But no Regulation was framed by the UGC pursuant to the said Notification as yet.

(h) After taking into consideration of the said scheme regarding grant of central assistance for revision of pay scales of the teachers of the Government Colleges, the States Government, in order to attract and retain talent in the teaching profession, decided to introduce the scheme of revision of pay scales of the college teachers as recommended by the Government of India in the Government Colleges in a modified manner accordingly, the State Government, by its letter dated 5th February, 1999, intimated the Director of Public Instruction, West Bengal that the State Government had decided to introduce the revised pay scales for teachers of the Government Colleges (excluding medical, agriculture, veterinary science and engineering colleges) of the State with effect from 1.1.1996 subject to the conditions stipulated in Annexure-I to the said letter. It may be mentioned herein that the State Government did not make any provision for increasing the age of superannuation from 60 to 62 years in the said Annexure-I.

(i) In furtherance of the said decision the Governor was pleased to formulate a scheme for the teachers of the Government Colleges on the basis of the UGC guidelines by keeping parity with the Service Rules applicable to the State Government employees. Even in the said scheme no provision was made for increasing the age of superannuation of the university and the college teachers

from 60 to 62 years.

(j) Pursuant to the said communication, the Central Government released the necessary fund for implementation of the revised pay scales of the teachers of the Government Colleges of the State.

(k) The petitioner felt aggrieved by that part of the decision of the Government by which the State Government refused to increase the age of superannuation of the college teachers as per the recommendation of the UGC.

(l) Challenging the said action of the State respondents, the writ petitioner moved, an application u/s 19 the Administrative Tribunals Act before the West Bengal Administrative Tribunal. The said proceeding which was registered as Case No. O. A. 6925 of 1999 was ultimately rejected by the learned Tribunal on 7th March, 2003 by holding inter alia, that since no scheme has yet been framed by the UGC in this regard the State Government cannot be compelled to increase the age of superannuation as claimed by the writ petitioner. The learned Tribunal was further pleased to hold that the recommendation given by the UGC in the said letter dated 27th July, 1998 has no binding effect until a Regulation is framed in this regard.

(m) The said order of the learned Tribunal is under challenge before us in this writ petition.

4. The bone of contention of Mr. Chakraborty, appearing in-person on behalf of the petitioner association, is that the State Government while accepting the central grant for revision of pay scales of the teachers of the universities and colleges cannot refuse to increase the age of superannuation of the teachers which was also one of the conditions for extending such grant as indicated in the letter under reference No. F.1-22/97/UI dated 27th July, 1998.

5. Mr. Chakraborty laid much stress on the condition No. 1(vi) of the letter dated 27th July, 1998 being Annexure P-1 to the writ petition to strengthen his argument with regard to the fixation of the age of superannuation of the college teachers. According to Mr. Chakraborty, the State Government cannot accept the offer of the UGC in a modified manner. Thus, Mr. Chakraborty contends that the State Government either has to accept the offer of the UGC as a whole or not at all. But since the State Government has decided to receive the central assistance in this regard, the State Government has no option but to increase the age of superannuation of the college teachers which is one of the conditions for extending such central assistance to the State Government. According to Mr. Chakraborty, the State Government is required to increase the age of superannuation of the teachers even in the absence of the UGC Scheme as the terms of the letter dated 27th July, 1998 being Annexure P-I to this petition made it clear that the central assistance would be extended only if the State Government agrees to implement the terms of the said letter as a whole. Thus, in effect the findings of the learned Tribunal were challenged by Mr. Chakraborty on the aforesaid grounds.

6. On the contrary, Mr. Dipankar Dutta appearing on behalf of the respondents submits that Annexure P-1 has no application so far as the writ petitioner is concerned as the said letter was issued by the Government of India, Ministry of Human Resources Development (Department of Education) to the Secretary, University Grants Commission on the subject of revision of pay scales of the teachers in Central Universities following the revision of pay scales of the Central Government employees on the recommendation of the 5th Central Pay Commission. According to Mr. Dutta since the writ petitioners are not the teachers in the Central Universities, the terms and conditions contained in the said letter cannot be imposed upon the State Government. Mr. Dutta, however, submits that the terms and conditions as contained in Annexure P-2 being a letter dated 27th July, 1998 issued by the Government of India, Ministry of Human Resources Development (Department of Education) to the Education Secretaries of all States/ Union Territories is applicable to the petitioner as the said letter was issued on the subject of revision of pay scales of teachers in universities and colleges following the revision of pay scales of the Central Government employees on the recommendation of the 5th Central Pay Commission.

7. Mr. Dutta further submits that the State Government by its letter dated 5th February, 1999 intimated the Director of Public Instruction, West Bengal, that the State Government was willing to accept the central assistance on the modified terms as indicated in the said letter.

8. Mr. Dutta further submits that the Central Government by accepting such modified terms extended the central assistance for revision of pay scales of the university and college teachers and as such the State Government cannot be compelled to increase the age of superannuation.

9. Mr. Dutta further submits that u/s 26 of the University Grants Commission Act, 1956 the UGC has no authority to make any Regulation on the subject of fixation of age of superannuation for the university and college teachers. Thus, the UGC cannot impose any condition regarding the fixation of age of the university and college teachers.

10. Mr. Dutta points out that no Regulation has yet been framed in this regard by the UGC in terms of the Annexure P-2 to this petition. Thus, Mr. Dutta supports the findings of the learned Tribunal on the aforesaid grounds and contends that the Tribunal was absolutely justified in rejecting the writ petition filed by the petitioner for the reasons as mentioned therein.

11. Mr. Dutta by relying upon an unreported decision of the Hon'ble Supreme Court passed in Civil Appeal Nos. 1680-87 with 1672-78 of 1992 (T. P. George and Ors., etc. etc. v. State of Kerala and Ors.) submits that the State Government having accepted the scheme in the modified form, the teachers can only get the benefit which flows from the scheme to the extent to which it had been accepted by the State Government. Mr. Dutta also relied upon an

unreported decision of the learned Single Judge of this Hon''ble Court delivered in the case of W. P. No. 10929(W) of 1999 (Santi Ray v. Union of India) whereby the similar claim of the petitioner therein was turned down by this Court by following the aforesaid unreported decision of the Hon''ble Supreme Court.

12. Mr. Dutta thus, relying upon the said decisions submits that it is absolutely within the domain of the State Government in fixing the age of superannuation of the university and the college teachers and such authority of the State Government even cannot be curtailed by making any Regulation in this regard by the UGC as it is not within the competence of the UGC to make , a Regulation in this regard u/s 26 of the aforesaid Act.

13. Thus, in substance Mr. Dutta supported the action of State Government in not raising the age of superannuation as claimed by the writ petitioner.

14. After hearing the petitioner-in-person and Mr. Dutta and after considering the materials on record, we fully agree with the submission made by Mr. Dutta, the learned Advocate, appearing for the respondents as we find that Annexure P-I has no application in the present case inasmuch as the members of the petitioner are not teachers of the central universities. We find that Annexure P-2 is the letter which is applicable to the writ petitioner as the members of the petitioner are teachers of the colleges of the State.

15. We also find that the State Government by its letter dated 5th February, 1999 clearly indicated the terms and conditions on which the State Government was willing to accept the central assistance for the purpose of revision of pay scales of the teachers of the Government colleges and the Central Government by accepting the said terms and conditions extended financial assistance to the State for revising the pay scales of the teachers of the Government Colleges.

16. Thus, the terms and conditions of the said letter being Annexure P-2 cannot be enforced as a whole as the central assistance was extended on the basis of the modified terms given by the State Government in its letter dated 5th February, 1999, Furthermore, we find that no Regulation has yet been framed by the UGC for increasing the age of superannuation of the university and college teachers. That apart, we also hold that fixation of the age of superannuation is within the absolute domain of the State Government which cannot be interfered with by the UGC, particularly, when Section 26 of the University Grants Commission Act, 1956 does not authorize the said Commission to make any Regulation in this regard. As such the State Government cannot be compelled to increase the age of superannuation of the college teachers as claimed by the petitioner.

17. We find that the principles laid down in the decisions viz., T. P. George and Ors. etc. etc. (supra) and Santi Ray v. Union of India (supra) relied upon by Mr. Dutta, are squarely applicable in the instant case. Thus, we hold that the State Government having accepted the scheme in the modified form, the teachers can only get the benefit which flows from the Scheme to the extent to which it had

been accepted by the State Government.

18. Hence, we find no substance in the contention of the writ petitioner. Accordingly, the State Government cannot be compelled to increase the age of superannuation of the college teachers as claimed by the writ petitioner.

19. Thus, the writ petition fails and the same stands rejected. However, there will be no order as to costs.

20. Urgent xerox certified copy, if applied for, be supplied to the parties, upon compliance with the requisite formalities.

Altamas Kabir, J.

21. I agree.