

(2013) 01 CHH CK 0051
In the Chhattisgarh High Court
Case No : Writ Petition 1654 of 2004

Chhattisgarh Kalyan Samiti and 2 Ohters	APPELLANT
Vs	
State of Chhattisgarh and 2 Others	RESPONDENT

Date of Decision : 01-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Ashaskiya Shikshan Sanstha Anudan Ka Pradaya Adhiniyam, 1978 — Section 10
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 32, 35, 6(6), 6(a)(i)

Citation : (2013) 1 CGBCLJ 510

Hon'ble Judges : Manindra Mohan Shrivastava, J

Bench : Division Bench

Advocate : B.P. Mishra, for the Appellant; Ratnesh Kumar Agrawal, Panel Lawyer for the State, for the Respondent

Judgement

Manindra Mohan Shrivastava, J.—Heard. The petitioner has filed this writ petition under Article 226 of the Constitution of India assailing legality and validity of order dated 30/12/03 (Annexure P/12) and order dated 11/02/04 (Annexure P/14) and has also prayed that the resolution of the governing body in its meeting convened on 12/07/92 (Annexure P/2), 27/10/92 (Annexure P/5) according approval for extension of service tenure of petitioner No. 3 for a period of two years w.e.f. 01/11/92 and further continuance till the end of academic year under para 26 of the College Code be declared as legally binding on the respondent with further direction to grant all consequential benefits of continuity, salary, other allowances and pensionary benefits.

2. This petition has been filed by petitioner No. 1, an educational institution/society registered under M.P. Society Registrikaran Adhiniyam, 1973. Petitioner No. 2 is the governing body constituted under the College Code (Statute No. 28). Petitioner No. 3 was the Principal at the relevant time for whose benefit and cause, petitioner No. 1 and 2 have joined in this petition along with petitioner No. 3.

3. Petitioner No. 3 was initially appointed in a private college run by petitioner No. 1. While the petitioner was so continuing, the college started receiving grant-in-aid from the State Government. These facts are not disputed.

4. The petitioner No. 3 was going to attain the age of superannuation on 28/10/92. At this stage, the governing body of the college held its general meeting on 12/07/92 wherein a resolution was passed to extend the tenure of the services of petitioner No. 3 for a period of two years as provided under Para 26 of the College Code (statute No. 28 framed by the affiliated University, Ravishankar Vishwavidyala, Raipur in exercise of powers u/s 35 of the M.P. Vishwavidyalaya Adhiniyam, 1973). On 27/10/92, a special meeting of the governing body was held in which, it was unanimously resolved to extend the tenure of the services of the petitioner No. 3 for a period of two years. An order was passed on 28/10/92 (Annexure P/6) by the Chairman of the governing body extending the tenure of the services of petitioner No. 3 for a period of two years to become effective from 29/10/92. It however, appears that the State Government did not approve and accept the extension which resulted in stopping grant-in-aid for providing salary to the petitioner in respect of the period subsequent to the date of his superannuation. The petitioner then filed a writ petition (W.P. No. 2411/93) before the High Court of Madhya Pradesh at Jabalpur. During the pendency of the said writ petition, the Joint Director, Department of Higher Education, Government of Madhya Pradesh passed an order on 19/05/94 (Annexure P/9) by which, treating the case of the petitioner as a special case, extension for a period of one year w.e.f. 01/11/92 to 31/10/93 was granted. The writ petition came to be finally disposed off vide order dated 23/04/02 with a direction to consider petitioner's representation for extension of his services w.e.f. 01/11/93 to 30/06/95. After the petitioner submitted representation, the respondent passed an order on 30/12/03 (Annexure P/12) rejecting petitioner's claim for payment of salary and allowances. The petitioner thereafter, served legal notice and as the grievance of the petitioner was not redressed despite notices given by him, this writ petition has been filed praying for reliefs as mentioned above.

5. Learned counsel for the petitioner argued that the petitioner's institution, being an aided private college, is governed by the provisions of college code which is a statute framed by the University i.e. Ravishankar University in exercise of powers conferred u/s 35 of the M.P. Vishwavidyalaya Adhiniyam, 1973. According to him, the provisions contained in the college code have statutory force. Clause 26 of the College code confers power and authority on the governing body to extend the services of the permanent teacher in the interest of college up to a period of two years beyond the age of 60. His submission is that the governing body had taken a decision and unanimously resolved to extend the tenure of the services of the petitioner No. 3 for a period of two years for valid reasons i.e. interest of the institution. Therefore, the respondent/authorities are obliged under the law to pay salary to the petitioner in respect of the period of extended service which includes service up to the end to the

academic session i.e. upto 30/06/95. Further submission is that the governing body had taken a decision in a properly constituted meeting with quorum provided under the law. Therefore, merely because representative of the State Government/Anudaan Ayog was not present, it would not provide any ground for the State to disapprove the action of the governing body of the college and refuse grant-in-aid for payment of salary of the petitioner for the extended period of service. Learned counsel for the petitioner also contended that in any case, once the State Government approves extension of service for a period of one year, meaning thereby that the resolution was acted upon, it could not fail back on the same ground to refuse further extension of another one year as resolved by the governing body.

6. On the other hand, learned State counsel contended that the main operative reason for not granting the approval to extend the services of the petitioner was that in the meeting of the governing body, where decision was taken to extend services of the petitioner, representative of the State was not present. Therefore, in these circumstances, the State was fully justified in refusing grant-in-aid for payment of salary to the petitioner beyond the actual date of superannuation on 31/10/12. Learned counsel for the State further contended that extension could not be claimed as of right by the petitioner where resolution of the committee itself was not legal and valid. For want of presence of nominee of the State Government, the resolution itself was invalid and could not be acted upon. Learned counsel submits that the State, taking into consideration all the facts and circumstances, as a special case to avoid hardship, granted extension to petitioner No. 3 for a period of only one year vide order dated 19/05/93 (Annexure P/9) clearly stating that it will not be treated as a precedent. Therefore, in these circumstances, the petitioner is not entitled to anything more than what has been granted to him.

7. After hearing learned counsel for the parties, perusal of pleadings and documents on record, the only issue which arises for consideration in this writ petition is whether the State had a valid, rational and legal basis for not accepting extension of services of the petitioner on the basis of resolution dated 27/10/92 passed by the governing body of the college.

8. Undeniably, the petitioner's institution is receiving grant-in-aid from the State Government, it is also affiliated to the privileges of the University i.e. Ravishankar Vishwavidyala, Raipur which is a state university constituted under the Act of 1973. Therefore, the provisions of statute No. 28, commonly known as the College Code, are applicable. The educational institutions, which are receiving grant-in-aid from the State Government, are governed by the provisions of the M.P. Ashaskiya Shikshan Sanstha (Anudan Ka Praday) Adhiniyam, 1978 (for short the Act of 1978"). Amongst others, the Act makes provisions for regular payment of salary to the teachers and other employees of non-Government institutions of higher education which are receiving grants from the M.P. Uchha Shiksha Anudan Aayog Adhiniyam, 1973. Section 6(a)(i) provides

that on and from the appointment date, no teacher shall be recruited without following procedure prescribed in this behalf. The provision is in the nature of a non-obstante clause having overriding effect over any other law for the time being in force, or any rules, by laws, statutes or regulations made therein.

9. In exercise of powers conferred u/s 10 of the Act of 1978, the rules regulating recruitment have been framed which are known as M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon ke Bharti) Niyam, 1979 (hereinafter referred to as "the rules of 1979"). In so far as recruitment on the post of teacher in the institution of higher education is concerned, Rule 10 of the aforesaid rule clearly provides that the recruitment shall be made in accordance with the provisions of the college code. Therefore, in the matter of appointment, recruitment, promotion etc. of teachers of Government aided private colleges, it is the provision of the college code which has been made applicable.

10. Neither in the Act of 1978 nor in the rules of 1979, there are specific provisions dealing with extension of service. Therefore, the provisions contained in Clause 26 of the College Code would be applicable in the matter of extension of tenure of service of a teacher of Government aided private college.

11. In para 26 of the College Code, the governing body of the college has been conferred power and authority to extend the services of a permanent teacher in the interest of the college upto a period of two years beyond the age of 60. Therefore, the power to extend the services vests in the governing body.

12. The submission of learned State counsel is that the resolution of the governing body was not in accordance with the provisions of the College Code, need to be examined in the light of the provisions contained in the College Code itself. Before examining the scheme of constitution of governing body and meeting, it is profitable to note that the College Code is a statute framed by the University in exercise of statutory powers u/s 35 of the Act of 1973. It has statutory force. This aspect was examined by the Supreme Court in the case of Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, . when it was held, thus-

8. it is not disputed on behalf of the respondents that the College Code has been made by the University in exercise of statutory power conferred by Section 32 and u/s 6(6) of the Act. it is also conceded on behalf of the respondents that the College Code is intra vires of the powers of the University contained in Section 32 read with Section 6(6) of the Act. In our opinion, the provisions of Ordinance 20, otherwise called the College Code have the force of law. it confers legal rights on the teachers of the affiliated colleges and it is not a correct proposition to say that the College Code merely regulates the legal relationship between the affiliated colleges and the University alone. We do not agree with the High Court that the provisions of the College Code constitute power of management. On the contrary we are of the view that the provisions of the College Code relating to the pay scale of teachers and their security of tenure properly fall within the

statutory power of affiliation granted to the University under the Act. It is true that Clause 7 of the Ordinance provides that all teachers of affiliated colleges shall be appointed on a written contract in the form prescribed in Schedule A, but that does not mean that teachers have merely contractual remedy against the Governing Body of the College. On the other hand, we are of the opinion that the provision of Clause 8 of the Ordinance relating to security of the tenure of teachers are part and parcel of the teachers service conditions and, as we have already pointed out, the provisions of the College Code in this regard are validly made by the University in exercise of the statutory power and have, therefore, the force and effect of law. It follows, therefore, that the College Code creates legal rights in favour of teachers of affiliated colleges and the view taken by the High Court is erroneous.

13. Constitution of the governing body is provided in Clause 6 of the College Code which reads that the governing body for the management of the college shall consists of member enumerated in clauses (a) to (g) of para 6(1).

14. Clause 7 of the College Code provides for quorum to be five members. Therefore, if the governing body holds its meeting and transacts its business and passes resolution with at least five members, completing quorum, it would be a decision of the governing body notwithstanding absence of other members.

15. However, the submission of the State counsel has been that in the meeting, which was organised, the State representative was not present. Though in the rejoinder, it has been stated by the petitioner that a communication was sent and request was made to the Government to depute their representative, there are no details in that regard given by the petitioners as to on which date, communication was sent nor any notice in written has been placed on record. Moreover, there is no acknowledgment of service or any documentary evidence which would warrant presumption under any law to be drawn with regard to service of notice to the Government or the nominee of the Government. Pleadings in this regard are blissfully vague. Therefore, the petitioner, in the opinion of this Court, has failed to discharge his burden of proof that any notice of meeting was issued much less served upon the Government or its nominee to participate in the meeting. True it is that five members constitute a quorum. But that presupposes that the Government or its nominee, before holding meeting, has been duly noticed of the meeting and for one reason or the other, they failed to participate in the meeting. In the absence of any proof of fact of issuance or service of notice to the Government or any representative, the meeting of the governing body itself would be illegal and that illegality cannot be wiped out merely because the quorum was complete.

16. In view of the above discussion, the reason assigned by the State Government to refuse to accept the extension of the petitioner for a period of two years under the resolution of the governing body cannot be said to be either arbitrary, unreasonable or contrary to the provisions of the College Code or the Act of 1978 or Rules made thereunder. Grant-in-aid is provided by the State

Government. Therefore, the State Government has all the authority to decide whether in any case, grant-in-aid shall be provided or not. If the State forms an opinion that decision/resolution was not in accordance with the provisions of law and particularly when such a decision was taken in the absence of the nominee of the State Government, it would constitute a valid reason for the State Government, not to accept the decision of the governing body of the college and to refuse grant-in-aid for making payment of salary for the period beyond the date of superannuation. To my mind, the decision of the respondents does not suffer from any illegality or arbitrariness so as to warrant interference by this Court.

17. This Court has taken note of the admitted fact that even if the State did not approve the resolution for the reasons stated hereinabove, yet, treating the case of the petitioner as a special case, an order was passed by the State Government on 19/05/93 (Annexure P/9) granting extension of service of the petitioner for a period of one year w.e.f. 01/11/92. Once this extension is granted to the petitioner, the effect would be that the date of superannuation of the petitioner would be extended up to 01/11/93, which falls in the midst of the session. The Proviso to Clause 26 of the College Code (statute No. 28) clearly provides that where the date of retirement of a teacher with or without extension falls due during the course of the academic session, the governing body shall allow the teacher to continue till the end of the academic year. Therefore, as a direct consequence of extension of petitioner's services for a period of one year, the date of retirement of the petitioner fell due on 31/10/93 i.e. during the course of academic session. Therefore, the petitioner was entitled under the law to continue till the end of the academic year which would definitely fall in the year 1994. In these circumstances, the State is obliged to provide grant-in-aid for payment of salary of the petitioner till the end of the academic session in the year 1994. According to learned counsel for the petitioners, the academic year is considered up to 30/06/94. If that be so, the respondents shall be obliged to provide grant-in-aid for payment of salary to the petitioner up to the period, June, 1994.

18. The salary, allowances and all other dues shall be accordingly released by the respondents in the light of observations made by this Court. In the writ petition, the petitioner has prayed for grant of retiral benefits, in this regard, learned State counsel states that the petitioner has been granted all the benefits of retirement treating the date of superannuation with extension period of one year. The retiral dues of the petitioner shall be accordingly paid on the basis of the period of service including extended period of service as per the order of the State Government. Any dues if remain unpaid on account of pendency of this petition, shall be immediately released within an outer limit of three months including salary up to the end of academic session from the date of receipt of copy of this order. The petition is accordingly partly allowed. No order as to costs.

Headlines

1. In the matter of extension of service of a teacher of a private but aided college, statute No. 28 (College Code) is applicable.
2. College Code being a statute framed in exercise of powers u/s 35 of the C.G. Vishwavidyalaya Adhiniyam has the force of law.
3. No proof of issuance and service of notice of meeting on the member of the Governing Body. Meeting illegal, even if quorum was complete.