(2015) 08 MP CK 0058

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 4610, 5708 and 6693/2010, 294, 366, 2828, 3212, 4814, 5539, 7066 and 8203/2011, 1467, 3073, 3669, 4357, 5168 and 9261/2012, 2284, 2690, 3929, 3930, 4540 and 8192/2013 and 1717 and 3846 of 2014

Dinesh Chandra Mishra and Others — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Citation : (2016) 1 MPLJ 185

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : D.K. Agarwal, for the Appellant; Sangita Pachauri, Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J—In these batch of petitions, the petitioners/teachers of private aided institutions have challenged the action of the respondents in retiring them at the age of 62 years. They have further prayed that they have a right to continue up to 65 years of age. In view of commonality of issues involved, these matters were analogously heard on the joint request and are decided by this common order.

2. Facts are taken from Writ Petition No. 5168/2012.

The petitioner is holding the post of Professor in the Department of Political Science in respondent No. 4-college. The date of birth of the petitioner is 2.8.1950 and, accordingly, he completed 62 years of age on 1.8.2012. It is urged that the petitioner since beginning is getting salary as per pay scales recommended by University Grant Commission (UGC). The said pay scale was always similar qua his counterparts working in governmental institutions. It is stated that respondent No. 4 is a non-government aided institution, which is getting grant in aid by the State Government. Initially, the benefit of fifth pay commission/UGC Scale was extended by the State Government to the petitioners. Lateron, pursuant to the order of Supreme Court, the Government has decided to pay six pay commission to the petitioners. On 16.4.2010 (Annexure P/2), the respondent No. 1 issued the direction pursuant to UGC''s letter dated 31.12.2008 to grant certain pay scales to the teachers. In addition, in clause 11 it is directed that the teachers engaged in class-room teaching shall continue up to 65 years of age. In other words, for the said teachers, the age of superannuation was enhanced up to 65 years. It is common ground that all the petitioners are engaged in class-room teaching. After issuance of order dated 16.4.2010 (Annexure P/2), the Government issued another letter dated 16.11.2010, whereby directed all aided educational institutions to submit detailed information in prescribed form regarding extension of benefit of extended age of superannuation.

3. S/Shri M.P.S. Raghuvanshi, D.K. Agarwal and Alok Sharma, learned counsel for the petitioners, submit that impugned order dated 21.4.2011 came as a bolt from blue to the petitioner. As per this order, the Commissioner, Higher Education directed that the order dated 16.4.2010 (Annexure P/2) is not applicable to the teachers of aided private institutions. Criticizing this order, it is contended by the petitioner that the basic reason for issuing the order dated 21.4.2011 was the amendment in Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmchariyon Ke Vetno Ka Sandaya) Adhiniyam, 1978, which was amended in the year 2000. As per the amended provision, the teachers were getting reduced salary. The Government intended to withdraw from his responsibility to pay salary to the teachers of aided institutions. It is contended by learned counsel for the petitioner that the said amendment was set aside by a Division Bench of this Court in Sharique Ali and Others Vs. State of Madhya Pradesh and Others, (2002) 1 MPHT 315 . This judgment was put to test by State Government in SLP (Civil Appeal No. 6362/2004 State of M.P. Vs. Dr. Sharique Ali). The Apex Court made it clear that said amendment cannot have any adverse impact on teachers, who were appointed prior to such amendment. Since all the petitioners in these matters were appointed prior to introduction of such amendment, they are protected and are entitled to get the same benefits which their counterparts were getting in government institutions. The Government cannot shirk from its responsibility to pay salary. On the strength of this foundation, it is strenuously contended that the reason assigned in the order dated 21.4.2011 is bad in law because the ground relating to amendment in the Adhiniyam is no more available qua petitioners. Hence, the said order is bad in law.

4. The petitioner has also filed written submissions as per the liberty granted by this Court. Miss Raj Soni Vs. Air Officer in Charge Administration and another, AIR 1990 SC 1305 : (1991) 61 FLR 5 : (1990) 2 JT 173 : (1990) LabIC 1161 : (1990) 1 SCALE 711 : (1990) 3 SCC 261 : (1990) 2 SCR 412 : (1990) 1 UJ 683 , to contend that once a composite scheme is introduced by UGC and it is accepted

in relation to revision of pay scales, it is not open to the respondents to deny the benefit of enhancement of age of superannuation. For this argument, heavy reliance is placed on Jagdish Prasad Sharma Vs. State of Bihar and Others, (2014) 7 AD 629 : (2013) 3 LLN 401 : (2013) 9 SCALE 459 : (2013) 8 SCC 633 : (2014) 1 SCC(L&S) 290 . It is argued that the UGC framed the scheme for revision of pay and enhancement of age on 31.12.2008. The same was implemented by State of Madhya Pradesh by issuing the order dated 16.4.2010 (Annexure P/2). This order is issued in the name of Governor of State. The UGC later on issued the statutory UGC Regulations. However, before said regulation came into being, the Government of M.P. implemented the scheme in relation to pay scale. It is submitted that the scheme being composite in nature is applicable in its entirety. Once it is accepted by the State Government, it is no more open to the State Government to accept it in bits and pieces. It has to be accepted in toto. The petitioner contended that scheme was optional in nature. Once it is accepted, the Government cannot be permitted to say that it is not accepted in relation to age of retirement. Reliance is placed on the definition of "University", mentioned in the University Grant Commission Act, 1956 (for brevity, the "UGC Act"). By relying on Union of India (UOI) Vs. Naveen Jindal and Another, AIR 2004 SC 1559 : (2004) 2 JT 1 : (2004) 1 SCALE 677 : (2004) 2 SCC 510 : (2004) 2 SCR 1038 : (2004) 2 UJ 955 : (2004) AIRSCW 705 : (2004) 1 Supreme 880 , it is submitted that executive instructions made by competent authority are not "Law", whereas the regulations issued by UGC are statutory in nature and, therefore, fall within the ambit of "Law". U.P. Raghavendra Acharya and Others Vs. State of Karnataka and Others, AIR 2006 SC 2145 : (2006) 6 JT 416 : (2006) 6 SCALE 23 : (2006) 9 SCC 630 : (2006) SCC(L&S) 1948 : (2006) AIRSCW 2676 : (2006) 5 Supreme 380 is relied upon to submit that persons similarly situated cannot be discriminated against. Centre for Public Interest Litigation Vs. Union of India (UOI), AIR 2014 SC 2140 : (2014) AIRSCW 2930 : (2014) 7 JT 474 : (2014) 2 RCR(Criminal) 822 : (2014) 6 SCALE 146 : (2014) 8 SCC 682 : (2014) 4 SCJ 468 , is also relied for the same purpose. Jaipal and Others Vs. State of Haryana and Others, AIR 1988 SC 1504 : (1988) 2 JT 528(1) : (1988) 1 SCALE 1198 : (1988) 3 SCC 354(1) : (1988) 3 SCC 354 : (1988) 1 SCR 411 Supp : (1988) 2 UJ 367 is relied to contend that principle of equal pay for equal work must be made applicable for the persons discharging similar nature of work.

5. The State Government by filing return opposed the relief. It is contended that the petitioners are only entitled to continue up to 62 years of age. It is submitted that the circular dated 16.4.2010 is applicable to the teachers of State Government and Universities. The stand of the Government is that unless and until a specific circular or order is issued in respect of extension of benefit of enhanced age up to 65 years in respect of aided private institutions, it cannot be said that the teachers of those institutions are automatically entitled to continue up to 65 years of age. The respondents have contended that the petitioner is an employee of the institution, which is not receiving the grant from UGC. The

services of petitioners are governed by M.P. Shaskiya Sevak Ardh Varshiki Ayu Seva Bharti Niyam, 1998 and, hence, the service conditions of petitioners are governed by different set of rules (page 3 of return in WP No. 7066/2011). For this reason, it is urged that the UGC pay scale cannot be made applicable to employees of aided private institutions. It is also submitted that similar controversy cropped up in relation to teachers of unaided technical institutions. The judgment of Y.P. Singh vs. State of M.P., reported in Prof. Y.P. Singh Vs. State of M.P. and Others, (2012) 1 MPHT 50 , was put to test before the Apex Court. The said judgment is set aside by the Supreme Court in Jagdish Prasad Sharma (supra). Hence, petitioners have no case. In the return filed in WP No. 5168/2012 also, the respondents have taken almost same stand.

6. Shri K.N. Gupta, learned senior counsel appeared in certain cases on behalf of the aided institutions. He contended that the petitioners have no right to continue up to 65 years of age. It is the prerogative of the respective college/ employer to decide their service conditions. Heavy reliance is placed by him on the judgment of Supreme Court in the case, reported in T.P. George and Others Vs. State of Kerala and Others, (1992) 65 FLR 47 : (1992) 3 JT 88 : (1992) 1 SCALE 889 : (1992) 3 SCC 191 Supp : (1992) 2 SCR 311 : (1992) 2 UJ 31 . Interestingly, Mrs. Sangita Pachauri, learned Government counsel and Shri K.N. Gupta, learned senior counsel also relied on certain paragraphs of Jagdish Prasad Sharma (supra). They also relied on Khandesh College Education Society, Jalgaon and Another Vs. Arjun Hari Narkhede and Others, AIR 2011 SC 3226 : (2011) 131 FLR 134 : (2011) 7 JT 340 : (2011) 7 SCALE 146 : (2011) 7 SCC 172 : (2011) 2 SCC(L&S) 244 : (2011) 7 SCR 175 : (2011) AIRSCW 4426 : (2011) 5 Supreme 401 ; State of Bihar and Another Vs. Teachers'' Association of Govt. Engineering College and Others, (2000) 10 SCC 527 ; and, B. Bharat Kumar and Others Vs. Osmania University and Others, (2007) 6 SCALE 608 : (2007) 11 SCC 58 : (2008) 1 SCC(L&S) 722 : (2007) 6 SCR 168 . In this judgment, the Apex Court followed the ratio decidendi of earlier judgment rendered in T.P. George (supra).

7. No other point is pressed by learned counsel for the parties.

8. I have heard learned counsel for the parties and perused the record.

9. In the order dated 16.4.2010, it was mentioned that the State Government decided to accept the UGC recommendation and revision of pay scale for the teachers and officials working in Government institutions w.e.f. 1.1.2006. This decision was taken in accordance with UGC''s circular dated 27.2.2009. Para 11 of this circular reads as under:-

Petitioners placed heavy reliance on this paragraph. The bone of contention of petitioners is that whether or not this circular is issued in favour of present petitioners/teachers of aided private institutions, fact remains that this circular was implemented qua them in relation to grant of pay scale. The UGC Regulation on minimum qualification for appointment of teachers and any other academic staff in Universities and Colleges and measures for maintenance of standard in Higher Education, 2010 was introduced later on, i.e., 30.6.2010. However, before that the earlier scheme introduced by UGC, which contains the stipulation regarding enhancement of age of superannuation for the teachers, is accepted by State Government. Once such composite scheme is implemented, the Department cannot segregate or discriminate the teachers of aided institutions, more so, when basic reason for not doing the same is not available to the State. I find some substance in the said contention. In the order dated 21.4.2011, whereby the Commissioner opined that the order dated 16.4.2010 will not be applicable to present petitioners, it is stated that the State Government Teachers are getting pay scale as per fifth pay commission. The Government policy relating to grant and its amendment is subject matter of adjudication before Supreme Court. Hence, the employees are getting fifty per cent pay as per interim order of Supreme Court. For this reason, it is held that present petitioners are not entitled to get the benefit of enhancement of age. The relevant portion of this order reads as under:-

10. This is an admitted position between the parties that Civil Appeal No. 6362/2004 (State of Madhya Pradesh and another vs. Dr. Sharique A. Ali) is disposed of by the Supreme Court. As per the order of Supreme Court, the employees/teachers, who entered service before amendment in the Adhiniyam, are protected. The Apex Court on January 7, 2014 opined that the request for extending the Sixth Pay Commission Scale to the teacher/lecturers/employees working in private aided institutions should be accepted and granted. In para 5 of said order, the directions were also issued. Thus, it is clear that the petitioners became entitled to get benefit of Sixth Pay Commission.

11. So far rejection of petitioners'' prayer on the ground of Sanshodhan Adhiniyam is concerned, I have no hesitation to hold that this ground is unsustainable. Accordingly, such reason mentioned in the order dated 21.4.2011 (Annexure P/4) is unsustainable. The said Sanshodhan Adhiniyam was struck down by this Court in Dr. Sharique Ali (supra). The Apex Court also protected the employees, who were on rolls before such amendment. However, this is not the only legal hurdle in the way of the petitioners.

12. Interestingly, both the parties have relied on the judgment of Supreme Court in Jagdish Prasad Sharma (supra). Before dealing with the contentions based on said judgment, it is apt to mention here that a batch of petitions were filed by teachers working in aided private technical institutions. Their claim was also to continue up to 65 years of age. This Court in Y.P. Singh (supra) allowed the said petition. This Court in para 8 gave a specific finding that the State Government has already treated the petitioners therein at par with their counterparts in Government institutions and passed the order dated 19.10.2010 for the purpose of enhancing the age of superannuation up to 65 years. In para 9 also, this Court found that the order dated 19.10.2010 shows that State Government has followed and accepted the regulation and enhanced the age of teachers from 62

to 65 years. This judgment was put to test before the Division Bench. The Division Bench in its judgment, reported in Madhav Institute of Technology and Science Gwalior and another Vs. Prof. Y.P. Singh and others, (2012) 2 MPHT 149 : (2012) 2 MPLJ 538 , affirmed the order of the writ Court. The challenge was then made before the Apex Court. It appears that a batch of SLPs/Appeals arising out of different High Courts were clubbed together and decided by the judgment of Jagdish Prasad Sharma (supra). It is seen that the judgment of this Court in Y.P. Singh was also subject matter of challenge in the batch of petitions decided by Jagdish Prasad Sharma (supra).

13. Learned counsel for the petitioners have taken pains to submit that as per the finding given in para 21 of the judgment of Jagdish Prasad Sharma (supra), it is clear that the State of Madhya Pradesh has implemented the Scheme (Central Government Notification dated 31.12.2008). Hence, heavy reliance is placed on para 79 of the judgment, which reads as under:-

"79. However, within this class of institutions there is a separate group where the State Government themselves have taken a decision to adopt the Scheme. In such cases, the consequences envisaged in the Scheme itself would automatically follow."

On the strength of this, it is contended that the petitioners are entitled to enjoy the benefit of age of retirement (65 years).

14. I am afraid, this contention cannot be accepted. No doubt, in para 21 of Jagdish Prasad Sharma (supra), the Apex Court noted that it appears that the States of West Bengal, Uttar Pradesh, Haryana, Punjab and Madhya Pradesh implemented the scheme without waiting for UGC Regulation on 30.6.2010 and said Scheme was implemented by aforesaid States long before the said date. Fact remains that despite this finding and the finding mentioned in para 79, the SLPs challenging the order of this Court in Y.P. Singh (supra) and other connected matters are allowed and the order of this Court is interfered with. These SLPs (C) are 6724, 13747 and 14676 of 2012. It is clear that the basic reason for finding of this Court in Y.P. Singh was that the State Government has accepted the Scheme. Even Regulations framed by AICTE were accepted thereby enhancing the age of teachers up to 65 years. To the extent of implementation of regulation, case of Y.P. Singh was on a better footing. In the present case, there is no material on record to show that UGC Regulation in relation to private aided institution is accepted by the State Government. In fact, there is no material even to show that scheme of UGC dated 31.12.2008 has been accepted by State Government in relation to private aided institutions. In cases of private aided technical education institutions, the Apex Court interfered with the judgment of this Court. Accordingly, I am unable to hold that for similar reasons, these petitioners can succeed. Putting it differently, in Y.P. Singh (supra), the claim was based on AICTE Scheme and Regulations whereas present claim is based on UGC Scheme and Regulation. The Apex Court set aside the judgments of this Court, which were passed on the similar contentions of the petitioners therein, which

were advanced in the present matter. Learned senior counsel appearing for the institutions also apprised that Review Petition (C) No. 614/2014, filed by Y.P. Singh, is also dismissed by Supreme Court on 27.3.2014.

15. It is clear that despite finding in paras 21 and 79 of the judgment of Jagdish Prasad Sharma (supra), the fact remains that SLPs filed by State Government against the orders passed in Y.P. Singh and other connected matters are allowed. Hence, the present petitioners, who have almost advanced similar contentions, cannot succeed. So far the contention regarding salary for the services already rendered is concerned, in my view, the petitioners deserve this benefit. In para 80 of Jagdish Prasad Sharma (supra), the Apex Court opined that "persons who have continued to work on the basis of interim orders of the Court, shall not be denied the benefit of services during the said period". Accordingly, those petitioners, who have worked because of interim order of this Court and retired, shall be entitled to get salary for the services rendered by them. This payment (if not already made) shall be made within ninety days from the date of production of this order.

16. In view of aforesaid foregoing analysis, I am unable to hold that the petitioners are entitled for a declaration that they are entitled to continue up to 65 years of age. Petitions to this extent are dismissed.

17. Registry is directed to keep true copy of this order in all the connected matters.

