(2021) 04 GAU CK 0030

In the Gauhati High Court

Case No : Writ Appeal No. 251 Of 2018

Dr. Anil Kumar Saikia APPELLANT

Vs

State Of Assam And Ors RESPONDENT

Date of Decision : 01-04-2021

Acts Referred:

Osmania University Act, 1959 — Section 38(1)
Constitution Of India, 1950 — Article 14

Citation : (2021) 04 GAU CK 0030

Hon'ble Judges : Sudhanshu Dhulia, CJ;Manash Ranjan Pathak, J

Bench : Division Bench

Advocate : K.N. Choudhury, P. Borah, T.C. Chutia, N.C. Das, A. Das, A. Chamuah

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, CJ

1. Heard Mr. KN Choudhury, learned senior counsel assisted by Ms. P Borah, learned counsel for the appellant. Also heard Mr. TC Chutia, learned

Additional Senior Govt. Advocate, Assam, appearing for respondent Nos.1 to 3, Mr. NC Das, learned senior counsel assisted by Mr. A Das, learned

counsel for respondent Nos.4, 5 and 6 and Mr. A Chamuah, learned Standing Counsel, UGC, for respondent Nos.8 and 9.

2. This writ appeal has been filed by an Associate Professor of Dibrugarh University (now retired)1. The writ appellant was an Associate Professor

in Dibrugarh University, which is a State University. The petitioner was aggrieved by an order passed by the Government of Assam (which had the

approval of the State Cabinet), wherein it was decided that the age of retirement of all Professors of educational institutions including medical college

stands increased to 65 years. The grievance of the petitioner was that although the age of superannuation was being increased from 60 to 65 years but

this benefit was given only to Professors. In other words, it left out Associate Professors and Assistant Professors as in their case the retirement was

to be same, i.e. 60 years as was earlier. The case of the writ petitioner before the learned Single Judge was that by increasing the retirement age in

case of Professors from 60 to 65 years and denying this benefit to other teachers, such as Associate Professors and Assistant Professors, amounts to

a discrimination and is violative of Article 14 of the Constitution of India. Further, it was argued that this increase in the age of retirement is

subsequent to the recommendation made by the Government of India which had already increased the age of retirement of all the â??teachesâ? in

Central Universities from 60 to 65 years and had recommended that the State Universities may also follow the same and increase the retirement age

in case of all teachers. The case of the petitioner would be that the recommendation for increasing the age was for all â??teachersâ? which would

include the Associate Professors and Assistant Professors then why was it being limited to Professors alone, and it was further argued that this

exclusion has never been explained by the State.

3. The case of the State Government, on the other hand, was that the recommendation of the Central Government and the UGC was only directory

and not mandatory in nature. Moreover, the Central Government itself has specified that the State Government would be at liberty to increase the age

of Professors subject to the specific condition prevailing in the State. A conscious decision was hence taken by the State Government to only increase

the age of superannuation in case of Professor and Associate Professor and Assistant Professor were consciously left out for the following reasons;

Firstly, the State was not having enough funds which would be required to pay the salary, which would thus increase in case of all the teachers.

Secondly, this benefit has been granted only in the category of Professor as there was a shortage of Professors in any case and therefore, it was in

public interest to retain Professors for three more years.

Thirdly, if the date of superannuation of all teachers is increased, the unemployed youth will have to wait for a longer period which would cause a

heart burning and distress among the eligible but unemployed candidates looking for employment avenues in higher education.

4. The learned Single Judge was of the opinion that there was no violation of Article 14 of the Constitution of India and moreover, the learned Single

Judge was also of the opinion that the issue such as fixing of age of superannuation of an employee is a matter of public policy and it is for the

government to decide as to what should be the age of superannuation.

5. Aggrieved by order of the learned Single Judge, the present appeal has been filed.

6. We have heard the learned counsel for the parties at length. After hearing the respective counsel at length, the facts that have been emerged are

that the Government of India through Ministry of Human Resource Development passed an order on 31.12.2008 which was addressed to the

Secretary, University Grants Commission wherein the subject was â??scheme of revision of pay of teachers and equivalent cadres in universities and

colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission.â??

As regarding the age of superannuation, it was said as under;

â??(f) Age of Superannuation:

(i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant

positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years,

vide the Department of Higher Education letter No.F.No.1-19/2006-U.II dated 23.3.2007, for those involved in class room teaching in order

to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of

the age of superannuation of teachers, the Central government has already authorized the Central universities, vide Department of Higher

Education D.O. letter No.F.1-24/2006-Desk (U) dated 30.3.2007 to enhance the age of superannuation of Vice-Cancellers of Central

Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority

(Visitor in the case of Central Universities).

(ii) Subject to availability of vacant positions and fitness, teachers shall also be re-employed on contract appointment beyond the age of

sixty five years up to the age of seventy years. Re-employment beyond the age of superannuation shall, however, be done selectively, for a

limited period of 3 years in the first instance and then for another further period of 2 years purely on the basis of merit, experience, area of

specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of

eligible teachers.

(iii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible

persons to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period, and whereas there

is no shortage in the categories of Librarians and Directors of Physical Education, the increase in the age of superannuation from the

present sixty two years shall not be available to the categories of Librarians and

Directors of Physical Education.â??

7. Although the aforesaid scheme was only applicable to the Universities and institutions which were under the Central Government, but the scheme

could also be made applicable to Universities, Colleges and other institutions under the State Government subject to their adoption. Para (p)(v) of

clause 8 of the order dated 31.12.2008 reads as under:

â??(v) This Scheme may be extended to universities, Colleges and other higher educational institutions coming under the purview of State

legislatures, provided State Governments wish to adopt and implement the Scheme subject to the following terms and conditions;â??

8. We have also been informed that in case the scheme of the Central Government is adopted by the State Government and it increases the age of

superannuation from 60 to 65 years, then the additional expenditure will be shared in the ratio of 80:20 between the Central and State Government.

Later, Government of India, Ministry of Human Resource Development passed an order in August, 2012 wherein paragraphs 2, 3, 5 and 6 state as

under:

â??2. Although this Scheme was essentially tor teachers in Central Universities, provisions of the Scheme could be made applicable by State

Governments to State Universities and Colleges coming under the purview of the State Government, provided the State Governments adopt and implement the scheme as a composite scheme, including the enhanced age of superannuation and the regulations laid down by the UGC

in this regard. The age of superannuation for teachers in Central Universities had been enhanced to 65 years vide this Ministry?s letter

No.1-19/2006-U.II dated 23.03.2007, for those involved in class room teaching.

3. Central Government had decided to provide financial assistance, for the period 1.1.2006 to 31.3.2010, to the extent of 80% as

reimbursement to those State Governments, which may opt for these revised pay scales.

The State Governments were to provide 20% of the arrears from its own resources. The assistance was subject to the condition that the

entire pay revision package, together with all conditions laid down in this regard by the UGC by way of regulations and including

enhancing the age of superannuation of teachers, would be implemented as a composite scheme by the State Governments without any

modification except to the date of implementation (on or after 1.1.2006) and any higher scales of pay winch the State Governments may

decide after taking into consideration local conditions into consideration. However, the Central assistance would be limited to the scales of

pay as approved by the Central Government under the Scheme.

4. xxxxxx

5. Bearing in mind that the question of enhancement of age of retirement is exclusively within the domain of the policy making power of the

State Governments, the issue of age of retirement has been left to the State Governments to decide at their level. The condition of

enhancement of age of superannuation to 65 years as mentioned in this Ministry?s letter dated 31.12.2008 may be treated as withdrawn for

the purpose or seeking reimbursement of central share of arrears to be paled to State University and College teachers. However, the others

conditions as mentioned in the letters cited above shall continue to apply.

6. State Governments may please note that reimbursement of 80% of central share of the additionality of payment of arrears, for the period

from 1.1.2006 to 31.3.2010, will be made by the Central Government in 2-3 installments. However, this would be by way of reimbursement

only, after the State Government has made the payment. In this connection, this

Ministry letter of even No. dated 11.05.2010 also refers

(copy enclosed).â??

9. In other words, it was never mandatory upon the State Government to increase the age of superannuation from 60 to 65 years and the earlier

orders which we have referred in the preceding paragraph are more or less advisory in nature. The subsequent decision taken by the State

Government to increase the age of superannuation from 60 to 65 years, which we have referred above, was perhaps on the recommendations of the

Central government. The only question before this Court is whether the State Government was justified in increasing the age from 60 to 65 years only

in the case of Professors or once it has taken a decision to increase the age of superannuation, it ought to have done for all teachers meaning thereby

Professors, Associate Professors as well as Assistant Professors.

10. Mr. KN Choudhury, learned senior counsel has relied upon a decision of Hon?ble Apex Court in the case of Jagdish Prasad Sharma & Ors. Vs.

State of Bihar & Ors., reported in (2013) 8 SCC 633. In the said case, the Hon?ble Apex Court had an occasion to decide the matter which is related

to the same central scheme as we are presently dealing, which was implemented by the Central government by order dated 31.12.2008. The question

before the Hon?ble Apex Court was whether the regulations framed by the University Grants Commission had a binding effect on the educational

institutions run by different States or under State enactments. It was held that there was no automatic application of such recommendation of Central

Government/UGC and there was no compulsion upon the State Government to adopt this scheme, particularly when the financial implication and

financial burden have to be borne after a certain period of time entirely by the State Government. We are afraid this ruling is of no help for the writ

appellant/petitioner.

11. The another case relied upon by the learned senior counsel is Osmania University vs. Muthurangam & Ors., reported in (1997) 10 SCC 741. But

again the facts of this case were entirely different. Indeed in the said case, the Hon?ble Apex Court has upheld the parity in the retirement age for

teaching as well as non-teaching staff of Osmania University, inasmuch as, the decision of the Andhra Pradesh High Court, which had granted such a

parity to the non-teaching staff, was upheld by the Supreme Court but that was done as in that case, there was a specific provision contained in

Section 38(1) of Osmania University Act, 1959, which provided that conditions of service relating to salaried officers of the University shall as far as

possible be uniform, except in respect of salaries payable to them. It was that provision which governed the service conditions of the teaching as well

as the non-teaching staff of Osmania University that such a conclusion was derived at by the Hon?ble Apex Court that parity in age of superannuation

as far as possible should be granted to teaching as well as non-teaching staff. Such is, however, not the case before this Court. First and foremost

though broadly Professors, Associate Professors and Assistant Professors form a class, which is a class of teachers, but it cannot be said that an

Assistant Professor is equal to an Associate Professor or that an Associate Professor is equal to a Professor. In the present case itself where the writ

appellant was an Associate Professor in Dibrugarh University, we find that the eligibility condition and the requirement for the post of Professor is

entirely different to that of an Associate Professor and similar is the case between Associate Professor and Professor. The requirement and the

eligibility conditions for the post of Professor are as follows:-

â??(1) Professor:

A. (i) An eminent scholar with Ph.D. qualification(s) in the concerned/allied/ relevant discipline and published work of high quality, actively

engaged in research with evidence of published work with a minimum of 10 publications as books and/or research/policy papers.

(ii) A minimum of en years of teaching experience in university/college, and/or experience in research at the University/National level

institutions/industries, including experience of guiding candidates for research at doctoral level.

(iii) Contribution to educational innovation, design of new curricula and courses, and technology â?" mediated teaching learning process.

(iv) A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) as

given in tables (I to V) at page Nos.28-23.

B. An outstanding professional, with established reputation in the relevant field, who has made significant contributions to the knowledge in

the concerned/ allied/ relevant discipline, to be substantiated by credentials.â??

12. Similarly the requirement and the eligibility conditions for the post of Associate Professor are as follows:-

â??(2) Associate Professor:

i. Good academic record with a Ph.D. Degree in the concerned/allied/relevant disciplines.

ii. A Master?s Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed).

iii. A minimum of eight years of experience of teaching and/or research in an academic/research position equivalent to that of Assistant

Professor in a University, College or Accredited Research Institution/industry excluding the period of Ph.D. research with evidence of

published work and a minimum of 5 publications as books and/or research/policy papers.

iv. Contribution to educational innovation, design of new curricula and courses ,and technology â?" mediated teaching learning process

with evidence of having guided doctoral candidates and research students.

v. A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), set out

in UGC Regulation (June, 2010) in Tables I to IX of Appendix III.â??

13. Therefore, it cannot be said that an Assistant Professor or Associate Professor is equal to a Professor.

14. We have just seen these are the three different levels of posts. An Assistant Professor was earlier known as Lecturer and an Associate Professor

as Reader. A Lecturer is promoted to the post of Reader and Reader to the post of Professor. It has also been stated before this Court that another

reason for increasing the age of superannuation for the post of Professor is that there is a shortage of Professors in Universities and Institutions in any

case and this increase in age would meet a certain contingency which is peculiar to the Professor category. Indeed the State Government has not

substantiated this claim by giving a breakup or figures as to the exact number of vacancies of Professors, etc. But it is the affidavit filed by the

Principal Secretary of the Government and we have no reason to doubt the veracity of the same. In any case, there are justifiable reasons for the

State Government to have resorted to only increasing the age of superannuation for the post of Professors for reasons of resource crunch, the need for the State Government to have regular vacancies for the post of Assistant Professors and Associate Professors and at the same time in order to

meet the shortage of Professors increasing the age of superannuation only in the case of Professors. These are all justifiable reasons.

15. We are also of a considered view that by increasing the age of superannuation only in the case of Professors, there is no violation of Article 14 of

the Constitution of India, as alleged, for the simple reason that whereas equals cannot be treated as unequals, by the same logic, unequals also cannot

be treated as equals. We do not, therefore, find any reason to interfere with the finding of the learned Single Judge.

16. The writ appeal is accordingly dismissed.

