
(2018) 05 GAU CK 0047
In the Gauhati High Court
Case No : WP(C) 1071 of 2014

DR. ANIL KUMAR SAIKIA

APPELLANT

Vs

THE STATE OF ASSAM AND 8 ORS

RESPONDENT

Date of Decision : 04-05-2018

Acts Referred:

Dibrugarh University Teachers' Service Conditions Ordinance, 1974 — Section 4
Dibrugarh University Act, 1965 — Section 3(b)
Osmania University Act, 1959 — Section 38(1)
West Bengal Special Court Ordinance, 1949 — Section 3
West Bengal Special Courts Act, 1950 — Section 5(1)
Constitution of India, 1950 — Article 13(2), 14, 16

Citation : (2018) 05 GAU CK 0047

Hon'ble Judges : SUMAN SHYAM

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr.D.K. Mishra, learned senior counsel assisted by Mr. B. Prasad, learned counsel appearing for the writ petitioner. I have also heard Mr.

D. Saikia, learned Senior Additional Advocate General Assam assisted by Mr. K. Gogoi, learned Counsel appearing on behalf of the respondent nos.

1, 2, 3 and 7. Mr. N.C. Das, learned senior counsel has appeared for the respondent Nos. 4, 5 and 6 whereas Mr. A. Chamuah, learned Standing

Counsel, University Grants Commission (UGC) has appeared for the respondent Nos. 8 and 9.

2. The communication dated 26/09/2012 notifying the decision of the State Cabinet raising the age of superannuation of the Professors in all the

Educational Institutions in the State of Assam from 60 years to 65 years as well as the notification dated 19/12/2012 issued by the Dibrugarh

University, implementing the Cabinet decision, are under challenge in the present

writ proceeding.

3. The brief facts of the case giving rise to the filing of the present writ petition are that the writ petitioner was appointed as a Lecturer under the

Dibrugarh University in the department of Pharmaceutical Science, on 11/03/1985 and thereafter, he was promoted to the post of Reader on

19/03/2001. The petitioner was subsequently promoted to the post of Associate Professor with effect from 01/01/2011 from which post, he had retired

with effect from 31/01/2014 on attaining the age of 60 years. The grievance of the writ petitioner in this writ petition are twofold, firstly, that the

decision of the State Cabinet enhancing the age of retirement only in case of â?? Professorsâ?? to the exclusion of other grades of teachers including

the Associate Professors serving in the same institution was discriminatory and therefore, violative of Article 14 of the Constitution of India. Secondly,

having regard to the age of the petitioner recorded in the Matriculation Certificate, his date of superannuation ought to have been 28/02/2014 and not

31/01/2014.

4. By referring to the circular dated 31/12/2008 issued by the Government of India addressed to the Secretary of the University Grantsâ??

Commission (UGC), Mr. Mishra, learned senior counsel appearing for the writ petitioner submits that the Government of India had introduced a

Scheme for revision of scale of pay of the teachers in the Central Universities as well as for raising their age of superannuation after considering the

recommendations made by the UGC. By inviting the attention of this Court to Clauses 8(f) and 8(p)(v) of the notification dated 31/12/2008 the learned

senior counsel contends that the decision to enhance the retirement age of the teachers to 65 years was taken by the Government in view of the

shortage of teachers in the Universities and other teaching institutions. The learned senior counsel has therefore, argued that by the notification dated

31/12/2008 a composite scheme for revision of pay scale and also for enhancement of retirement age of the teachers to 65 years had been introduced

and since the Central Government has accepted the recommendation of the UGC in its entirety and the State of Assam has also revised the pay scale

of teachers by following the UGC recommendations, the decision to enhance the retirement age of all teachers to 65 years would also be applicable in

case of the teachers serving under the State Universities and the Colleges there

under.

5. By referring to Section 4 of the Dibrugarh University Teachers' Service Conditions Ordinance, 1974 (as amended up to 31/12/2010) Mr.

Mishra further contends that the ordinance envisages 5 (five) grades of teachers which include Professor, Associate Professor, Reader, Assistant

Professor and such other grades of teachers as the University may create from time to time. According to Section 3(b) of the Dibrugarh University

Act, 1965, teacher means and includes teachers appointed as per the Dibrugarh University Act against a substantive post. According to Mr. Mishra,

the various grades of teachers in the University have to be treated as a class of its own and therefore, the service benefits must be extended to all the

teachers equally, regardless of their grade or scale of pay. In support of his above arguments, Mr. Mishra has relied upon a decision of the Supreme

Court in the case of State of West Bengal Vs. Gopal Chandra Paul reported in 1995 Suppl (3) SCC 327 to contend that the teaching staff of the

educational institution has been recognized by the Supreme Court as one category for the purpose of fixation of age of superannuation of the teachers

and a similar view is required to be adopted by this court in the present case as well.

6. The learned senior counsel has also relied upon another decision of the Supreme Court in the State of West Bengal Vs. Anwar Ali Sarkar reported

in AIR 1952 SC 75 to contend that every citizen has a constitutional right to equality before the law and the State cannot discriminate the teachers

belonging to different grades by fixing a higher age of retirement only in case of the Professors merely because they are enjoying a higher scale of

pay. It is also the submission of Mr. Mishra that the Associate Professors like the writ petitioner are also experienced teachers who had achieved

distinctions in their professional fields and even under the Ordinance of 1974, there was no substantial difference in their selection criteria. In that view

of the matter, submits Mr. Mishra, there was no intelligible differentia available for the State to treat the Associate Professors differently from the

Professors for the purpose of determining their age of superannuation.

7. Mr. Mishra has also relied upon another decision of the Supreme Court rendered in the case of Osmania University Vs. Muthuranjan reported in

(1997) 10 SCC 741 to argue that dealing with an issue of similar nature, the

Supreme Court has held that the service benefits extended to the non-teaching staff as per the recommendations made by the UGC must be extended to the teaching staff of the University i.e. the Lecturers/Readers/Associate Professors and Professors unless it was impracticable. Mr. Mishra, therefore, submits that there was no justification for the State Government to extend the benefit of enhanced age of superannuation only to the professors by leaving aside the other category of teachers who belong to the same class.

8. As regards the second ground of challenge, Mr. Mishra submits that the age mentioned in the Matriculation Certificate of the writ petitioner is 17 years 01 month as on 01/03/1971. As such, his date of birth works out to 01/02/1954, in which case, the petitioner would complete 60 years only on 01/02/2014. Therefore, submits Mr. Mishra, even under the existing rules which prescribed the age of superannuation of an Associate Professor as 60 years, by applying clause 27 of the Ordinance of 1974, the writ petitioner ought to have been retired by the University on 28/02/2014 instead of 31/01/2014.

9. Mr. D. Saikia, learned senior Additional Advocate General, Assam, appearing on behalf of respondent nos. 1, 2, 3 and 7, on the other hand has questioned the maintainability of the writ petition by pointing out that the Cabinet decision dated 19/09/2012 is not under challenge in this proceeding and hence, the writ petition assailing the letter dated 26/09/2012 issued by the Commissioner and Secretary to the Government of Assam, Higher Education Department, as well as the notification dated 19/12/2012, which were merely consequential actions, would not be maintainable in the present form. The learned Additional A.G. has further contended that the State was not bound to accept the UGC recommendations and it was optional for the Government of Assam to accept the recommendations of the UGC in its entirety or in part. Since the issue of revision of pay had been de-linked from the issue of enhancement of the age of superannuation by the letter issued by the Under Secretary to the Government of India, hence, submits Mr. Saikia, there was no obligation on the part of the State to implement the UGC recommendation regarding enhancement of age in case of all categories of teachers. According to Mr. Saikia, there was acute shortage of Professors in the various educational institutions in the State of Assam

and taking cognizance of the said situation, the Cabinet took a conscious decision to enhance the age of superannuation of the Professors only, since

there was no dearth of teachers belonging to other categories.

10. Mr. Saikia has further argued that the question of fixing the age of superannuation of the employees is a matter which falls within the realm of

policy decision of the Government and in view of the rule making power available to the State under Entry 25 of the List III of the 7th Schedule of the

Constitution of India, the Cabinet was competent to take the decision to enhance the retirement age only in case of the Professors and the said

decision, in the facts of this case, according to Mr. Saikia, cannot be termed as discriminatory. In support of his arguments, Mr. Saikia has relied upon

the following decisions:-

(i) (2011) 6 SCC 597 (State of Himachal Pradesh and others Vs. Himachal Pradesh Nizi Vyavsayik Prishikeshan Kendra Sangh;

(ii) (2013) 8 SCC 633 (Jagdish Prasad Sharma and others Vs. State of Bihar and others.

(iii) 1992 Supp (3) SCC 191 (T.P. George and others Vs. State of Kerala and others).

(iv) (2007) 11 SCC 58 (B. Bharat Kumar and others Vs. Osmania University and others).

11. Mr. N.C. Das, learned senior counsel appearing for the Dibrugarh University has supported the case of the State by contending that the University

has merely implemented the Government instruction as communicated by the letter dated 26/09/2012 and, therefore, in the absence of any challenge to

the Cabinet decision it cannot be said that the University has acted in an unfair or illegal manner. Responding to the claim of the writ petitioner to

remain in service till 28/02/2014, Mr. Das submits that the said claim is based on an erroneous interpretation of clause 27 of the Ordinance of 1974

and hence, is liable to be rejected.

12. Mr. A. Chamuah, learned counsel appearing for the UGC has also supported the case of the State Government and has advanced arguments in

support of the averments made in the counter affidavit.

13. From the materials brought on record, it is evident that the State Cabinet took a decision on 19/09/2012 to enhance the age of superannuation of

the Professors in all the Educational Institutions including the Medical Colleges in

Assam. Pursuant to the Cabinet decision dated 19/09/2012, the Commissioner and Secretary to the Government of Assam had issued a letter dated 26/09/2012 addressed to the Vice Chancellors of the various Universities and Colleges including the Dibrugarh University, conveying the decision of the Cabinet to raise the age of superannuation of the Professors to 65 years with a request to take necessary action so as to implement the same. On receipt of the communication dated 26/09/2012, the Executive Council of the Dibrugarh University had adopted resolution no. 1 in its meeting held on 15/10/2012 rising the retirement age of the Professors of Dibrugarh University from 60 years to 65 years with effect from 15/10/2012, which decision was notified on 19/10/2012. It would be pertinent to note herein that although the communication dated 28/09/2012 and the Notification dated 19/10/2012 have been put under challenge in this writ petition, yet, the petitioner has not challenged the Cabinet decision dated 19/09/2012 despite the specific plea taken by the respondents assailing the maintainability of the writ petition on such count.

14. It has been argued by Mr. Mishra that in view of the conditions contained in the Govt. notification dated 31/12/2008, it was not open for the State to selectively implement the UGC recommendation by accepting the revised pay scale while rejecting the recommendation for enhancing the retirement age of the teachers from 60 to 65 years. But I find from the record that by the letter dated 14/08/2012 issued by the Under Secretary to the Government of India, the condition of enhancement of age of superannuation of the teachers to 65 years, as mentioned in the notification dated 31/12/2008, had been withdrawn.

15. In the counter-affidavit filed by the UGC, it has been stated that by the notification dated 31/12/2008, the Government of India had formulated a Scheme for revision of pay scale of teachers and the equivalent cadre in the Universities and Colleges as per recommendation of the 6th Pay Commission and the age of superannuation of teachers in the Central Universities and Colleges had accordingly been enhanced from 60 years to 65 years. However, the aforesaid decisions of the Government were applicable only to the Central Universities and Institutions run by the Government of India and it was for the Government of Assam to decide the age of superannuation for the teachers serving under the State Universities and the

colleges thereunder. The above stand of the UGC viewed in the light of the letter dated 14/08/2012 leaves no room for doubt that the notification dated

31/12/2008 did not make it obligatory for the State Governments to enhance the age of superannuation of the teachers serving under the State

Universities and Colleges to 65 years as a pre-condition for revising the pay scale as per the UGC norms. In other words, it was open for the

respective States to implement the UGC recommendations regarding revised pay scale and enhancement of age of retirement of the teachers serving

in the State universities and Colleges as per their choice.

16. On 08/02/2018, the respondent no.1 had filed an additional affidavit indicating the reasons which prompted the Cabinet to enhance the age of

retirement of the Professors from 60 years to 65 years. The reasons cited in paragraph 3 of the affidavit would be relevant for the purpose of this

case and are, therefore, re-produced herein below :-

Â â??(A) That in the event of enhancement of age of superannuation upto 65 years in respect of all teaching staff of Educational Institutions, there

would be huge financial burden on the state ex-chequer. The present financial position of the state does not allow such additional financial burden. As

it has already been placed on records, as per the UGC guidelines itself, the entire financial liability would be upon the state government after a certain

period of time.

(B) Further, one of the prime considerations for enhancement of retirement age in respect of professors of educational institution was acute shortage

of professors. However, in respect of other categories of teachers like associate professors there was no such shortage at all. The claim of the

petitioner is also not tenable in view of the fact that both the post of professor and associate professor are distinct and different from each other, with

different minimum qualifications. As such, the petitioner cannot claim parity with that of the professors, as a matter of right. Moreover, if the age of

superannuation in respect of all categories of teachers are enhance to 65 years, same shall lead to further unemployment in the State, more so, there

will be no direct recruitment of candidates on account of such enhancement. That apart, it will also create an atmosphere of stagnancy in the scope of

promotional avenue amongst the associate professors and assistant professors.

(C) That the deponent would also like to reiterate that after several deliberations

between the State Governments and the Central Government and after taking into consideration the views expressed by several State Education Ministers, the Government of India in the Ministry of Human Resource Development, Department of Higher Education had decided to de-link the condition of enhancement of age superannuation from the payment of central share of 80% arrears to the States. Vide letter dated 14/08/2012 addressed to all the State Chief Secretaries and Education Secretaries, the Government of India in the Ministry of Human Resource Development had affirmed that the condition of enhancement of age of superannuation to 65 years shall be treated as withdrawn (Annexure-3, page 24 of the affidavit in opposition filed by the respondent no.1).

17. The writ petitioner has not filed any rejoinder affidavit contesting the veracity of the statements made in the additional-affidavit filed on behalf of the State.

18. It is correct that Clause-3 of the Ordinance of 1974 defines teachers so as to include the Professors, Readers, Associate Professors, Lecturer, Assistant Professors but what must be noted herein is that these are distinct grades of teachers carrying different scales of pay and the Rules lay down different eligibility criteria for recruitment in each grade of teachers in the University. From a reading of the Ordinance of 1974, what can be seen is that the different grades of teachers have an assigned specific functional role in the institutional set up and, therefore, it cannot be said that all of them belong to the same category. It may be true that all Professors come within the definition of teachers as provided in Section 3(b) of the Ordinance of 1974 but it is also true that all teachers under the rules are not Professors. Therefore, there is an intelligible differentia permitting reasonable classification between the various grades of teachers and if the object behind such classification is found to be legitimate, the same would have to be held to pass the test of constitutionality on the touch stone of Article 14 of the Constitution of India.

19. In the case of Gopal Chandra Paul (Supra), relied upon by Mr. Mishra, the Supreme Court was confronted with an issue where the age of superannuation of the teaching staff was raised to 60 years to the exclusion of non-teaching staff. While rejecting the claim of parity of retirement age by the non-teaching staff, the Supreme Court has held that the teaching staff

and the inspecting staff are two distinct and independent services belonging to two streams and would never mingle at any stage.

20. Again, in the case of Osmania University (Supra), there was a provision in the form of Section 38(1) of the Osmania University Act, 1959, which provided that the condition of service relating to salaried officers of the University shall be uniform with the teaching staff of the University unless it was impracticable. In the aforesaid decision, the Supreme Court had the occasion to interpret section 38(1) of the Act and held that uniformity in the service condition of the teaching and non-teaching staff of the University is required to be maintained. In the present case, there is no such provision under the Ordinance of 1974 or the Act of 1965 similar to section 38(1) which requires uniformity to be maintained in the matter of service condition amongst all the teachers working under the University.

21. In the case of Anwar Ali Sarkar (supra) the Supreme Court was hearing an appeal filed by the State of West Bengal against a decision of the Full Bench of the High Court of Judicature at Calcutta quashing the conviction of the respondent by the Special Court established under section 3 of the West Bengal Special Court Ordinance, 1949 which was later replaced by the West Bengal Special Courts Act, 1950. The respondent had applied for setting aside the conviction and sentence on the ground that the Special Court had no jurisdiction to try the case in as much as section 5(1), under which it was sent to the court for trial, was unconstitutional and void under Art. 13(2) as it denied equal protection of law as enjoined under Art. 14 of the Constitution. It was in those fact situation that the Constitution Bench of the Supreme Court had enunciated the principle of equality embodied under Article 14 of the Constitution.

22. Having regard to the facts of this case, I am of the opinion that none of the decision cited by the learned senior counsel for the petitioner would be of any assistance to him in the facts and circumstances of this case.

23. In the case of T.P. George and Others vs State of Kerala and Others reported in 1992 Supp(3) SCC 191 relied upon by both sides, the Supreme Court had observed that the State Government had the discretion either to accept or not to accept the UGC scheme. That was also a similar situation where the State of Kerala had accepted the UGC scheme regarding revision of pay scale but did not accept the recommendation regarding raising the

age of retirement of the teachers from 55 years to 60 years as prescribed under the scheme. Rejecting the argument advanced on behalf of the

appellants that the State Government having accepted the UGC scheme, all clauses of the Scheme including the higher age of retirement became

applicable, the Supreme Court had made the following observations in paragraph 6 :-

“ 6. Although the appeals and the writ petitions, in our view, cannot succeed, we do feel that the age of fixed at 55 years in the case of teachers of

affiliated colleges is too low. It is only after a teacher acquires several years of teaching experience that he really becomes adept at his job and it is

unfortunate if the students have to lose the benefit of his experience by reason of an unduly early age of retirement. However, it is not for the court to

prescribe the correct age of retirement but that is a policy function requiring considerable expertise which can properly be done by the State

Government or the State Legislature or the Universities concerned. We hope that some time in near future, the State Government will be able to

consider the question and determine the age of retirement as it best thinks fit.”

24. In the case of Bobita Prasad Vs. State of Bihar reported in 1993 Supp. (3) SCC 268, the Supreme Court has observed that fundamental right of

equality implies that persons in like situation under like circumstances are entitled to be treated alike. In the case of State of Kerala Vs. N.N. Thomas

reported in 1976(2) SCC 310, the Constitution Bench of the Supreme Court had observed that Article 14 and 16 forbids hostile discrimination not

reasonable classification.

25. In the present case, as noted above, it is the stand of the Government that there was shortage of Professors in various educational institutions

which prompted the State to extend the tenure of serving Professors by raising their retirement age from 60 years to 65 years. Such benefit was,

however, not extended to others since according to the State, no such need was felt by the Government. There can hardly be any doubt about the fact

that issues such as fixing the age of superannuation of the employees is a matter of policy function and it is for the Government to decide as to what

should be the age of superannuation of the employees. I, therefore, find force in the submission of Mr. Saikia that such decision would fall in the realm

of policy matters and must be left to the wisdom of the State Government.

26. As noted above, the department has placed on record the reasons for fixing a higher age of retirement only in case of the professors. After going

through the affidavits filed by the State, I find that the grounds taken therein are reasonable and legitimate. Although, Mr. Mishra has made an attempt

to impress upon this Court that the reasons cited by the department are not tenable in the eye of law, yet, I am not inclined to accept such argument

firstly, because the petitioner has not filed any rejoinder affidavit contesting the statements made in the additional affidavit filed by the Principal

Secretary to the Government of Assam, Higher Education Department. Secondly, it is not for the Court to sit in appeal over the wisdom of the

department in such matters. It is no doubt desirable that the State, as model employers, comes up with a policy to have uniform conditions of service

including age of superannuation of all grades of teachers, in so far as practicable, so as to dispel any sense of discrimination amongst the teachers.

This Court hopes and expects, that necessary steps would soon be initiated by the Government to implement the age of retirement of all teachers

uniformly. But until such time a decision is taken by the Government in this regard at the appropriate level, the writ court cannot fix the date of

retirement of the employees by issuing a writ of mandamus. Once it is found that there is a legitimate basis and a valid object behind the decision of

the Government which subserves the public interest, the writ court would be loath to interfere with such policy decision of the State.

27. It is also to be noted here-in that the writ petitioner has not challenged the cabinet decision. In the case of State of Himachal Pradesh (Supra), the

Supreme Court has held that without there being any question raised as regard the validity of the cabinet decision, the High Court in exercise of

powers of judicial review ought not to interfere with the same. The observations made in paragraph 18 of the said decision is quoted herein below :-

18. As rightly pointed out by Mr. Altaf Ahmed, without any arguments having been heard, without there being any question raised by any party as

to the validity of the Cabinet decision dated 18-7-2009 and without the same being in question, or any relief sought for in the writ petition, the High

Court has gone into the said decision of the Cabinet having taken place after the judgement was reserved. The decision of the Cabinet generally ought

not to be interfered with in judicial review so lightly as has been done in the present case. The quashing of the Cabinet decision without analyzing the

pros and cons in the manner seeks to restrict the State's constitutional authority and powers to frame policy especially in such vital areas like

imparting technical education is not acceptable.

28. The notifications dated 26/09/2012 and 19/12/2012 are merely consequential to the Cabinet decision dated 19/09/2012. Therefore, in the absence

of any challenge made to the cabinet decision the prayer to set aside the notifications dated 26/09/2012 and 19/12/2012, in the opinion of this court,

would not be maintainable in the eye of law.

29. Coming to the next controversy raised in this writ petition regarding the correct date of superannuation of the petitioner, it would be relevant to

mention here-in that Clause 27 of the Ordinance of 1974 deals with the date of superannuation of the teachers which provides that every teacher will

retire as per provision of the relevant Statute of the University which is on completion of 60 years. The proviso to Clause 27 reads as follows :-

“Provided that irrespective of the date of birth, the date of retirement shall be the last day of the month.”

30. In the present case, it is not in dispute that the date of birth of the writ petitioner is 01/02/1954. Therefore, having regard to his admitted date of

birth, the petitioner would evidently complete 60 years on 31/01/2014 which date coincidentally falls on the last day of the month of January, 2014. If

that be so, by operation of clause 27 of the Ordinance of 1974, the date of retirement of the petitioner would be 31/01/2014 as has been rightly held by

the University authorities.

31. It would be further pertinent to mention here-in that in order to avoid any confusion in these matters, the Government of Assam, in the Department

of Finance (Estt-A), had issued a circular dated 31/10/2012 bearing No FEG. 26/2012/29 laying down that as per explanation provided in F.R. 56 (a)

of the FR & SR, a Government servant whose date of birth falls on the 1st day of any month shall have attained the age of superannuation on the

afternoon of the last day of the preceding month and that a Govt. servant whose date of birth falls on days other than the 1st day of a month shall

attain the age of superannuation on the last day of the month. As such, even if the contention of the writ petitioner that he would complete 60 years on

01/02/2014 is taken on the face value, even then, in view of the Govt.

notification dated 31/10/2012, the petitioner would have retired from service on the afternoon of 31/01/2014. As such, viewed from that angle also, I do not find any error in the decision of the University on the issue justifying

interference with the date of superannuation of the writ petitioner as fixed by the University Authorities.

32. For the reasons stated above, none of the contentions raised by the writ petitioner merits acceptance by this Court. Consequently, the writ petition is held to be devoid of any merit and the same is accordingly dismissed. There would be no order as to costs.