(2000) 03 KL CK 0021

In the High Court Of Kerala

Case No : W.A. No''s. 276 and 422 of 2000

Dr. N. Gopalakrishnan — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 24-03-2000

Acts Referred:

Citation : (2000) 03 KL CK 0021

Hon'ble Judges : Arijit Pasayat, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : K.P. Satheesan, for the Appellant; C.T. Ravikumar, for Respondents 1 to 3 and S. Gopakumaran Nair, for 4th Respondent, for the Respondent

Judgement

Arijit Pasayat, C. J.

1. These appeals are directed against judgment of learned Single Judge holding that the Scheme adopted by the State Government was applicable to the Petitioners in the Original Petitions who are Professors in various private colleges and fixation of their age of retirement at par with the employees of the State Government is in order to their case. The dispute is whether Scheme adopted by University Grants Commission (in short ''U.G.C''.) is applicable so far as age of retirement is concerned. Reliance was placed on a decision of the apex Court in George v. State of Kerala 1992 (1) KLT 793 to hold so.

2. According to learned Counsel for Appellants, learned Single Judge did not notice the distinguishing features available in the present case. According to him, the decision in George''s case 1992 (1) KLT 793 supra, relates to the University Grants Commission Scheme, 1986 (hereinafter referred to as ''Scheme of 1986''). It is submitted that so far as the present case is concerned, the same is not in conformity with the Scheme contemplated by U.G.C. Strong reliance is placed on a letter of the U.G.C, addressed to the State Government, wherein it was specified as to the areas where there is scope for departure.

3. The following portion of the letter dated 24th December 1998 addressed to

the Vice Chancellor of all the Universities and Education Secretaries of all the States/Union Territories was emphasised upon:

5.0 The University Grants Commission expects that the entire scheme of revision of pay scales, together with all the conditions attached to it, would be implemented by the State Governments "as a composite scheme, without any modifications, except the date of implementation and the scales of pay as indicated in Government of India notification No. F, 1-22/97-U.I. dated 27th July 1998, 22nd September 1998 and 6th November 1998. It shall be necessary for the Universities and the management of Colleges to make the necessary changes in their statutes, ordinances, rules, regulations, etc. to incorporate the provisions of this scheme.

By way of elaboration it was stated that the only aspect where the State Government could have a role to play would be the date of implementation and the scales of pay and nothing beyond it.

4. Learned Counsel for the State referred to several portions of the Scheme introduced by State which according to him brings out the essence of the scheme and the position vis a vis the U.G.C. Scheme itself.

5. In Clause 13.1. of State''s Scheme age of retirement is dealt with and it is stated therein that retirement age will continue to be as per the existing rules in the State Government. Retirement benefits and leave Rules are also dealt with in clauses 13.2. and 14.1 respectively. The retirement benefits as per the said scheme is applicable to College/University teachers including Physical Education teachers as per the existing pension rules under the State Government and Leave Rules in Kerala Service Rules, 1959 (in short ''K.S.R.'') will be applicable to the teachers, etc. The order of the Government dated 21st December 1999, inter alia, indicated as follows:

Government of India in their letter fourth cited have informed that the Central Government have decided to continue to provide financial assistance to the State Governments who wish to adopt and implement the U.G.C. scheme 1998 including revision of pay scales to College/University teachers/Physical Education teachers/Librarians in the State subject to the following terms and conditions.

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

(b) The State Governments will meet the remaining 20 per cent of the expenditure from their own sources.

(c)The financial assistances indicated above, would be provided for the period from 1st January 1996 to 31st March 2000.

(d)The entire liability on account of revision of pay scales, etc. of University and

College teachers would be taken over by the State Governments with effect from 1st April 2000.

(e) The Central assistance would be restricted to revision of pay scales in respect of only those posts which were in existence and filled upon on 1st January 1996.

2. As per reference cited fifth, Government have decided to accept the revised University Grants Commission Scheme for revision of pay scales in principle and constituted a Committee to work out the details for implementation of scheme '' in the State. The Committee submitted its recommendations to the Government. After having examined the recommendations, Government are pleased to issue the following orders.

The extracted portions inter alia show that the entire liability on account of revision of pay scales, etc. of University and College teachers would be taken over by the State Governments with effect from 1st April 2000, and the financial assistance indicated would be provided for the period from 1st January 1996 to 31st March 2000. Power of the State Government to modify the age of retirement, etc. has been questioned by placing reliance on the decision of the appex Court in The State of Maharashtra and Others Vs. Association of Maharashtra Education Services Class II Officers and Others, and Osmania University Teachers'' Association Vs. State of Andhra Pradesh and Another, . In the The State of Maharashtra and Others Vs. Association of Maharashtra Education Services Class II Officers and Others, the apex Court observed that when the report of the commission was accepted by the Central Government and under a proposal to the Government of Maharashtra, the Central Government undertook to bear 80 per cent of the expenditure incurred by the University or the Colleges for implementing the Scheme for five years, the State Government cannot put a precondition in the matter of higher scale of pay after having accepted the proposal given to it. In that context it was observed that the State Government having revived on stated terms and conditions the 80 per cent contribution from the Government of India for implementing the Scheme it was not right on its part to depart from the rudiments of that scheme and to devise a new mechanism entailing the imposition of fresh conditions as a pre-requisite to eligibility for the higher pay scale. The factual position is entirely different here and the said decision has no application to the facts of the present case. So far as Osmania University Teachers'' Association Vs. State of Andhra Pradesh and Another, is concerned, the question was whether the Commissionerate Act of 1986 which was drawn by and large in the same terms as the University Grants Commission Act, 1986 (in short ''the U.G.C. Act'') was enacted within legislative competence. That question has no relevance in the present dispute.

6. The U.G.C. Scheme does not become applicable because of any statutory mandate making it obligatory for the Government, and the University to follow the same. Therefore the State Government has a discretion either to accept or not to accept the Scheme. Where the State Government in its discretion decides to accept the Scheme subject to a condition, namely in so far as the age of

superannuation is concerned, they are free not to accept the other stipulations like fixation of higher pay provided in the Scheme. When the State Government accepts the Scheme in the modified form the teachers can only get benefits which flows from the Scheme to the extent to which it has been accepted by the State Government and concerned Universities. A similar view expressed by a Division Bench of this Court in Writ Appeal No. 223 of 1991 was affirmed by the apex Court in George''s case 1992 (1) KLT 793 (supra)

Above being the position, the writ appeals are without merit and accordingly they are dismissed.

