

(2024) 01 CHH CK 0053

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 5882 Of 2021

Dr. R.N. Sharma (Ram Nivas Sharma)

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 16-01-2024

Acts Referred:

Indira Gandhi Krishi Vishwavidyalaya Adhinyam, 1987 — Section 2(x)

Citation : (2024) 01 CHH CK 0053

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Abhishek Sinha, Ravindra Sharma, Shubham Verma, Shashank Thakur

Final Decision : Allowed

Judgement

1. Being aggrieved with the order dated 6.8.2021 (Annexure P1), the instant petition has been moved by the Petitioner.

2. Facts of the case, in short, are that the Petitioner was appointed as an Assistant Professor/Junior Scientist by Respondent 2/University on 6.8.1988. As per the applicable statute, his appointment was on a teaching post and he imparted teaching. As per the channel of promotion, he was promoted to the post of Professor/Principal Scientist and was also posted at different places. On 15.3.2007 also, the Petitioner was holding a teaching post and was posted at Jagdalpur. The Indira Gandhi Krishi Vishwavidyalaya Service Regulations for Recruitment and Upgradation of Teachers/Equivalent Cadre and Administrative Posts, 2009 (henceforth '2009 Regulations') was brought into force with effect from 17.8.2010 and prior to that the Petitioner was appointed/promoted as Assistant Professor/Junior Scientist and after 2009 Regulations he was designated as Associate Professor/Senior Scientist on 4.7.2012. He also got promotion under the Career Advancement Scheme on 20.9.2012. On 24.3.2009 (Annexure P5), he and his colleagues, namely, Dr. Hemant Kumar Awasthi and Dr. R.U. Khan were appointed as Programme Coordinator at Krishi Vigyan Kendra

of Respondent 2/University. Both Dr. Hemant Kumar Awasthi and Dr. R.U. Khan, who were aged about 64 years at the time of filing of the instant writ petition, were working with Respondent 2/University. In the similar circumstances, Dr. Smt. Kiran Gupta, Dr. J.S. Urkurkar and Dr. C.R. Gupta, who were also appointed as Assistant Professor/Junior Scientist, have continued to work till the age of 65 years and have been retired from services after attaining the age of 65 years. Vide notification dated 23.3.2007 (Annexure P8), the Ministry of Human Resource Development, Department of Higher Education enhanced the age of superannuation from 62 years to 65 years for teaching positions on regular appointment against sanctioned posts. The Petitioner, who was appointed on a teaching position, in his entire career, remained connected with teaching position. Therefore, as per the notification dated 23.3.2007, he should have been retired on his attaining the age of 65 years. But, Respondent 2/University retired him on completion of 62 years only. In his first round of litigation, he preferred a petition, being Writ Petition (S) No.2694 of 2021, which was disposed of by this Court vide order dated 21.6.2021 directing him to make a fresh representation to Respondent 2/University. He made a representation, which has been rejected vide the impugned order dated 6.8.2021 (Annexure P1). Hence, the instant petition.

3. Learned Senior Counsel appearing for the Petitioner submitted that the post of the Petitioner was a Professor/Senior Scientist and was a teaching position on regular appointment against a sanctioned post. On 15.3.2007, i.e., the cut off date, as mentioned in the notification dated 23.3.2007 (Annexure P8), the Petitioner was working with Respondent 2/University connected with teaching position. Therefore, on this ground only, the Petitioner is entitled to get superannuation on the date of his attaining the age of 65 years.

4. Learned Counsel appearing for Respondent 2/University submitted that vide order dated 24.3.2009 the Petitioner was appointed as a Programme Coordinator in Krishi Vigyan Kendra and he continued to work there till his retirement, i.e., 31.5.2021. However, the name of Programme Coordinator has been changed to Senior Scientist and Head and the same is not a teaching post. As per 2009 Regulations, the posts of Krishi Vigyan Kendra(s) are non-teaching posts and services of the persons working in Krishi Vigyan Kendra(s) are not transferable to the teaching and research services. Therefore, the Petitioner has been rightly superannuated at the age of 62 years. With regard to Dr. Hemant Kumar Awasthi and Dr. R.U. Khan, it is submitted by the Learned Counsel that on 2.2.2012 Dr. Hemant Kumar Awasthi moved an application for transfer of his services to the Directorate of Extension and on the basis of his consent he was posted as an Assistant Professor in the Agriculture College, Raipur. As regards, Dr. R.U. Khan, it is submitted by the Learned Counsel that Dr. R.U. Khan could not complete his probation period successfully and, therefore, vide order dated 9.4.2013, he was reverted back to his original position, i.e., Assistant Professor. Thus, both Dr. Hemant Kumar Awasthi and Dr. R.U. Khan are working on teaching positions and, therefore, they are not superannuated on attaining the age of 62 years.

5. In counter, Learned Senior Counsel for the Petitioner submitted that in the month of October, 2007, an advertisement was issued for various posts including Programme Coordinator by Respondent 2/University and pursuant to the said advertisement, after completion of recruitment process, the Petitioner was appointed to the post of Programme Coordinator vide order dated 24.3.2009 (Annexure P5). It is submitted by the Learned Senior Counsel that at the time of advertisement as well as at the time of appointment of the Petitioner on the post of Programme Coordinator, 2009 Regulations was not in force. 2009 Regulations came into force on 17.8.2010, which is after the appointment of the Petitioner on the post of Programme Coordinator. 2009 Regulations do not have retrospective effect and, therefore, they are not applicable to the services of the Petitioner. The services of the Petitioner will be governed by the Indira Gandhi Krishi Vishwavidyalaya Adhiniyam, 1987 (henceforth '1987 Adhiniyam'). The Petitioner, being a part of the set up of Respondent 2/University, will be governed under the definition of teaching staff. Further, vide order dated 4.7.2012, from the post of Assistant Professor/Scientist (Selection Grade), the Petitioner was designated as Associate Professor/Senior Scientist and vide order dated 20.9.2012 from the post of Associate Professor/Senior Scientist he was promoted to the post of Professor/Principal Scientist. These also reflect that the Petitioner's services was continued as a teaching staff. Further referring to the circular dated 17.6.2015 (Annexure P12), it is submitted by the Learned Senior Counsel that the services of the Petitioner is still under Respondent 2/University. Therefore, the Petitioner should have been retired on attaining the age of 65 years as he was working with Respondent 2/University on a teaching position.

6. I have heard the rival contentions put-forth on behalf of the parties and perused the writ petition, the return, the rejoinder and the documents filed along with them with due care.

7. Undisputedly, vide Annexure P2 dated 6.8.1988, the Petitioner was appointed to the post of Junior Scientist Extension under Respondent 2/University. Vide the notification dated 23.3.2007 (Annexure P8), Ministry of Human Resource and Development, Department of Higher Education enhanced the age of superannuation from 62 years to 65 years for teaching positions on regular appointment against sanctioned posts. The relevant clause of the notification dated 23.3.2007 (Annexure P8) reads as under:

"2. The matter has been reviewed by the Central Government in the light of the existing shortage in teaching positions in the centrally funded institutions in higher and technical education under this Ministry, and in the context of Government's decision to expand the capacities of such Institutions for increasing access to higher education and for implementing the policy of reservations for the weaker sections without affecting the number of seats in the unreserved category available through general merit. Accordingly, it has been decided that -

(i) The age of superannuation of all persons who were holding teaching positions on regular employment against sanctioned posts as on 15.3.2007 in any of the

centrally funded higher and technical educations under this Ministry shall be increased from present 62 years to 65 years.”

8. From a bare perusal of the above-quoted clause it is clear that the age of superannuation was enhanced from 62 years to 65 years for the persons who were holding teaching positions on regular appointment against sanctioned posts as on 15.3.2007. According to the Petitioner, on 15.3.2007, he was holding a teaching position on regular appointment against a sanctioned post. In its return, Respondent 2/University is silent whether the Petitioner was holding a teaching position on 15.3.2007 or not. The appointment order of the Petitioner dated 6.8.1988 (Annexure P2) shows that he was appointed to the post of Junior Scientist Extension. The order dated 4.12.1998 (Annexure P3) also shows that the Petitioner, being an Assistant Professor/Junior Scientist in the Department of Agriculture Extension, was granted a senior scale under the Career Advancement Scheme. The order dated 4.5.2000 placed at page 14 of the writ petition also shows that the Petitioner was promoted to the post of Assistant Professor/Scientist (Selection Grade) and was posted as an Assistant Professor in the College of Veterinary Science, Anjora, Durg. It is also seen that in the last paragraph of the order dated 4.5.2000 the Petitioner has been shown as a Teacher/Scientist. Thus, on the basis of the above referred to documents, it is quite vivid that on 15.3.2007 the Petitioner was holding a teaching position.

9. Respondent 2/University rejected the claim of the Petitioner only on the ground that vide order dated 24.3.2009 the Petitioner was appointed as a Programme Coordinator pursuant to a direct recruitment in a Krishi Vigyan Kendra and he continued to work there till his retirement on 31.5.2021. The post of Programme Coordinator was a non-teaching post and according to 2009 Regulations services of the Petitioner is also not transferable to teaching and research services and, therefore, his date of retirement shall be on his attaining the age of 62 years only not the age of 65 years.

10. At this juncture, it would be appropriate to reproduce the relevant clauses of 2009 Regulations, which read thus:

“CHAPTER – 4

CLASSIFICATION

(5) The Indira Gandhi Krishi Vishwavidyalaya Administrative posts, teachers and equivalent posts are classified as under (See SCHEDULE-1) -

- (i) Administrative posts as defined under regulations 2(h);
- (ii) Teachers of the Vishwavidyalaya as defined under section 2(x) of the Act;
- (iii) Krishi Vigyan Kendra (KVK) Services – Programme coordinator and Subject Matter Specialists of Krishi Vigyan Kendra.

Note- The term KVK services has not been defined under the Act and Statutes frame there under because when Act and Statute of IGKV was framed, the KVK

Services were not in existence. Looking to the nature and services, these services has been classified separately from the definition of Teachers as defined under section 2(x) of the Act. As per the established prevailing system which is in force in almost all the State Agricultural Universities, the extension persons working in KVK are not transferable to Teaching and Research Services. Moreover, the qualification for recruitment to the post of Subject Matter Specialist also differ as that of qualification as laid down for recruitment to the post of Assistant Professor/Scientist. Thus, the Extension person working in KVK services of IGKV are not transferable to Teaching and Research Services."

11. A bare perusal of the above-quoted clauses of Chapter-4 of 2009 Regulations shows that the post of Programme Coordinator of the KVKs are classified separately from the definition of Teachers as defined under Section 2(x) of 1987 Adhiniyam. It also shows that the services of the Extension persons working in KVKs under Indira Gandhi Krishi Vishwavidyalaya are not transferable to teaching and research services. However, the circular dated 17.6.2015 (Annexure P12) shows that the persons who were working with Krishi Vigyan Kendra(s) are the employees of the respective host institutions only. Accordingly, the Petitioner is the employee of Respondent 2/University only. Further, the Petitioner was appointed in the Krishi Vigyan Kendra pursuant to the advertisement issued in the year 2007 and was appointed as a Programme Coordinator in the KVK vide order dated 24.3.2009 (Annexure P5). At that time, 2009 Regulations was not in force. 2009 Regulations came into force on 17.8.2010, i.e., after appointment of the Petitioner on the post of Programme Coordinator. 2009 Regulations does not have any retrospective effect and, therefore, it is not applicable in the case of the services of the Petitioner. The services of the Petitioner is governed only by 1987 Adhiniyam. Since on 15.3.2007 the Petitioner was holding a teaching position and his services are governed by 1987 Adhiniyam, as provided in the notification dated 23.3.2007 the Petitioner will be retired on attaining the age of 65 years only not on attaining the age of 62 years.

12. Resultantly, the instant writ petition is allowed. Respondent 2/ University is directed to restore the services of the Petitioner, without any change, with effect from 31.5.2021 and he shall be allowed to continue his services till his attaining the age of 65 years. He shall also be paid all the consequential benefits admissible under the relevant rules and law.