
(2010) 05 UK CK 0055
In the Uttarakhand High Court

Dr. Subodh Kumar Agarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 05 UK CK 0055

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—The petitioner holds the post of Head of the Department of English. He substantively holds the post of Associate Professor at the D.A.V. (Post Graduate) College, Dehradun. The college, in which the petitioner was engaged, has been affiliated to the H.N.B. Garhwal University. Earlier the said University was a State University. On 20.03.2009, the H.N.B. Garhwal University was declared as a Central University under the Central Universities Act, 2009, w.e.f. 15.01.2009. Thereupon, automatically, the D.A.V. (Post Graduate) College, Dehradun, came to be affiliated to the H.N.B. Garhwal University, in its capacity as a Central University.

2. Based on the aforesaid factual position, it is contended, that the conditions of service of employees, engaged in the H.N.B. Garhwal University, after its being declared as a Central University, should be extended to all employees of affiliated colleges, including the D.A.V. (Post Graduate) College, Dehradun. More particularly, the claim of the petitioner is, that the age of superannuation, for employees of the H.N.B. Garhwal University, which was earlier 60 years, came to be enhanced to 65 years, on the declaration of the said University as a Central University, and as such, the age of superannuation of the petitioner should also be extended to 65 years.

3. In order to seek redressal of the claim, expressed in the foregoing paragraph,

the petitioner allegedly approached various authorities from time to time. However, having failed to obtain any positive result, the petitioner was constrained to approach this Court by filing the instant writ petition.

4. The first contention advanced by the petitioner, for the extension of the age of superannuation to 65 years, is based on a communication dated 23.03.2007. The aforesaid communication is available on the record of the writ petition as Annexure III. The petitioner has placed emphatic reliance on paragraph 2 of the aforesaid communication, which was addressed by the Deputy Secretary to the Government of India in the Ministry of Human Resource Development, Department of Higher Education, to the Secretary, University Grants Commission. Relevant extract of the aforesaid communication is being reproduced hereunder:

Subject:- Enhancement in the age of superannuation from 62 to 65 years for teaching positions in centrally funded institutions in higher and technical education.

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.

(ii) Persons holding such regular teaching positions who have superannuated prior to 15.3.2007 on attaining the age of 62 years but have not attained the age of 65 years may be re-employed against vacant sanctioned teaching positions till they attain the age of 65 years, in accordance with the guidelines framed by the University Grants Commission.

(iii) All persons holding teaching positions against sanctioned posts may also be considered for re-employment beyond 65 years and up to the age of 70 years, against sanctioned vacant posts, if such posts are not filled up by regular candidates. However, such re-employments beyond the age of 65 years shall be done only after screening at the age of 65 years, under the extant guidelines of the University Grants Commission.

5. A perusal of paragraph 2 (relied upon by the petitioner) reveals, that the subject matter, which was taken up for review by the Central Government, pertained to higher and technical education institutions "under this Ministry". It is

not a matter of dispute, that the D.A.V. (Post Graduate) College, Dehradun, is not a higher or technical education institute under the Ministry of Human Resource Development (Department of Higher Education). Additionally, during the course of hearing, the petitioner, on being asked, very fairly stated that the emoluments payable to the staff of the D.A.V. (Post Graduate) College, Dehradun, are received by way of grant-in-aid from the Government of Uttarakhand. In the aforesaid view of the matter, we are satisfied, that the claim raised by the petitioner, under the aforesaid communication dated 23.03.2007, is clearly misplaced. Accordingly, we find no merit in the first contention advanced by the petitioner.

6. The second contention advanced by the petitioner is based on an Office Order issued by the Vice Chancellor of the H.N.B. Garhwal University, Srinagar, dated 27.03.2009 (Annexure VI to the writ petition). Based on the aforesaid communication, addressed by the Vice Chancellor, it is the contention of the petitioner, that even as per the aforesaid Office Order, it was imperative for the authorities to extend all conditions of service, including, raising of the age of superannuation from 60 years to 65 years, to the petitioner, and all persons similarly situated as him, who were serving in colleges affiliated to the H.N.B. Garhwal University, Srinagar.

7. We have considered the second contention advanced by the petitioner. It is, however, not possible for us to accept the same. A perusal of the Office Order dated 27.03.2009, issued by the Vice Chancellor of the H.N.B. Garhwal University, Srinagar, clearly reveals that the same is applicable "...for teachers and equivalent cadres as well as administrative posts in the University regarding payment of pay scales and enhancement of retirement age...". The Office Order, therefore, clearly demonstrates, that the same is applicable only for posts in the University. Since the petitioner is not holding any post in the H.N.B. Garhwal University, we are satisfied, that the instant Office Order dated 27.03.2009 does not extend any benefit to the petitioner, as the petitioner is an employee of the D.A.V. (Post Graduate) College, Dehradun. We accordingly find no merit even in the second contention advanced by the petitioner.

8. In order to substantiate his third contention, the petitioner has placed reliance on Section 4(f) of the Central Universities Act, 2009. Section 4(f) is being extracted hereunder:

4(f) all Colleges, Institutions, Schools or Faculties, and Departments affiliated to, or admitted to the privileges of, or maintained by, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University shall stand affiliated to, or admitted to the privileges of, or maintained by, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act.

Based on the aforesaid provision, it is the submission of the petitioner, that being

an employee on the teaching faculty of an affiliated college, under the H.N.B. Garhwal University, whilst it was a State University, the petitioner has been extended all benefits and privileges of all conditions of service, extended to the employees of the H.N.B. Garhwal University, Srinagar, when it came to be declared as a Central University w.e.f. 15.01.2009.

9. We have given our thoughtful consideration to the third contention advanced by the petitioner, based on Section 4(f) of the Central Universities Act, 2009. In our considered view, the word "respectively", used in Section 4(f), extends the same privilege(s), as were available to the D.A.V. (Post Graduate) College, Dehradun, before the H.N.B. Garhwal University, was declared as a Central University, even after the declaration of the said University as a Central University w.e.f. 15.01.2009.

10. In order to appreciate the privileges, which the D.A.V. (Post Graduate) College, Dehradun, enjoyed in relation to the H.N.B. Garhwal University, prior to its declaration as a Central University are concerned, reference has necessarily to be made to the U.P. State Universities Act, 1973, inasmuch as, the H.N.B. Garhwal University, prior to its being declared as a Central University, was regulated under the provisions of the U.P. State Universities Act, 1973. Insofar as the issue in hand (the third contention advanced by the petitioner) is concerned, Section 2(2) of the aforesaid Act, which defines the term "affiliated college", is relevant. Section 2(2) is accordingly being extracted hereunder:

2(2) "affiliated college" means an institution affiliated to the University in accordance with the provision of this Act and Statutes of that University;

The term "affiliated college" is also defined in Statute 13.01 of the First Statutes of the University of Hemwati Nandan Bahuguna, Garhwal, 1978. Statute 13.01 is being extracted hereunder:

13.01. The list of colleges affiliated to the University as on the date of the publication of these Statutes is given in Appendix "E".

Needless to mention, that in Appendix "E", the D.A.V. (Post Graduate) College, Dehradun, has been mentioned at Serial No. 1. It is, therefore, apparent, that the petitioner is employed in an affiliated college, under the University.

11. As against the aforesaid, it is essential to distinguish an "affiliated college" from a "constituent college". The term "constituent college" has been defined in Section 2(6) of the U.P. State Universities Act, 1973. Section 2(6) is being reproduced hereunder:

2(6) "constituent college" means an institution maintained by the University or by the State Government and named as such by the Statutes;

The term "constituent college" is also defined in Statute 12.01 of the First Statutes of the University of Hemwati Nandan Bahuguna, Garhwal, 1978. Statute 12.01 is being extracted hereunder:

12.01. The following shall be the constituent college of the University of Garhwal:

1. Birla College, Srinagar, Garhwal.
2. Swami Ram Tirth Degree College, Tehri.
3. Dr. B. Gopala Reddy Degree College, Pauri.

A perusal of the aforesaid statute reveals, that there are only three constituent colleges. Admittedly, the management, administration and other activities of the constituent colleges are controlled and governed by the H.N.B. Garhwal University itself. In that sense, a constituent college, under the H.N.B. Garhwal University, Srinagar, is a college, which can be treated as a part and parcel of the H.N.B. Garhwal University, Srinagar.

12. Whilst, in our considered view, the benefits of conditions of service, including the age of superannuation available to employees of the H.N.B. Garhwal University after it was declared as a Central University, can be extended to constituent colleges, which are a class apart, we are satisfied, that the same cannot be extended to affiliated colleges for a variety of reasons. Firstly, affiliated colleges are not under the control of the H.N.B. Garhwal University. Secondly, the salary and emoluments drawn by the staff of affiliated colleges, are not borne either by the H.N.B. Garhwal University or by the Government of India. Thus viewed, it is not possible for us to accept even the third contention advanced by the petitioner, for grant of parity in the age of superannuation adopted for teaching employees of the H.N.B. Garhwal University.

13. In spite of the fact that we have found no merit in the contentions advanced by the petitioner, it is necessary to notice the judgment rendered by the Supreme Court in *T.P. George and Others Vs. State of Kerala and Others*, wherein an issue, similar to the one raised by the petitioner, came up for consideration. While adjudicating upon the matter, the Apex Court observed as under:

5. We may further point out that the teachers in Universities are governed in respect of their conditions of service and the age of retirement by the separate statutes made by the Universities concerned. On the other hand the teachers in private colleges or affiliated colleges are governed in respect of their conditions of service by regulations or rules framed by the Government (separate state of statutes). In these circumstances, the two classes of Universities teachers and teachers in private colleges cannot be regarded as similar for purposes of conditions of service as to bring the case under Article 14 of the Constitution.

In view of the aforesaid declaration of law, at the hands of the Supreme Court, we are satisfied, that the benefit claimed by the petitioner, seeking parity in the age of superannuation, as is available for teaching staff of the H.N.B. Garhwal University, as also the constituent colleges thereunder, cannot be extended to the petitioner, who is an employee of the D.A.V. (Post Graduate) College, Dehradun, which is a private college receiving grant-in-aid from the State of Uttarakhand,

and is merely an affiliated college under the H.N.B. Garhwal University, Srinagar.

14. For the reasons recorded herein above, we find no merit in the instant writ petition and the same is accordingly dismissed.