
(2020) 09 MP CK 0024
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 802 Of 2020

Dr. Sushant Kumar Sinha

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:

Madhya Pradesh Uchcha Nayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, — Section 2(1)

Madhya Pradesh Society Registrickaran Adhiniyam, 1973 — Section 34(4), 36

Citation : (2020) 09 MP CK 0024

Hon'ble Judges : Sanjay Yadav, J;B. K. Shrivastava, J

Bench : Division Bench

Advocate : L.C. Patne, Ashish Anand Bernard

Final Decision : Disposed Of

Judgement

Per Sanjay Yadav, J

1. This appeal under Section 2(1) of Madhya Pradesh Uchcha Nayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, is directed against an order dated 02.08.2017 passed in Writ Petition No.20088/2015.

2. In writ petition, the petitioner, Head of Department, Political Science and In-charge Principal, Navyug Arts and Commerce College, Jabalpur, 100% Govt. aided private institution, sought enhanced age of retirement of 65 years; in wake of the action of respondent-Institution, retiring him on attaining the age of 62 years, w.e.f. 30.11.2015. The enhanced age of retirement of 65 years was sought on the anvil of the Amended Order No.F-1/124/2010/38-1 dated 14.09.2012 issued by the State of Madhya Pradesh, Department of Higher Education, whereby, besides other issues, it was decided that the retirement age of staff engaged in class room teaching is increased from 62 years to 65 years w.e.f. 16.04.2010.

3. The writ petition preferred by the petitioner was, however, disposed of by

impugned order on the anvil of the decision by Full Bench of our High Court in Writ Appeal No.950/2015 (Dr. S.C. Jain vs State of M.P. and others) decided on 08.05.2017, wherein it was held that the benefit of age of superannuation at 65 years will not be applicable to the members of the teaching faculty of the private aided institutions.

4. It is pertinent to note that the verdict by the Full Bench was questioned before Hon'ble Supreme Court in Civil Appeal Nos.4675-4676 of 2019 (R.S. Sohane vs State of M.P.) and connected Civil Appeals, decided on 07.05.2019, wherein it was held :

"13. Section 36 of the 1973 Adhiniyam empowers the Coordination Committee to prepare the First Statutes of the Universities. Power is conferred on the Coordination Committee to amend or repeal any Statute and to draft a Statute proposed by the Executive Council of the University. The Coordination Committee is competent to frame Statutes on its own motion. In case a draft is proposed by the Executive Council, the Coordination Committee may approve such a draft and pass the Statute. If the Coordination Committee is not satisfied with the draft, it can reject or return the draft to the Executive Council for reconsideration. The recommendations made by the Executive Council shall, thereafter, be considered by the Coordination Committee which has the power to either approve or reject them. The Statute shall become effective from the date specified by the Coordination Committee after its approval.

14. Statute No.28 which is the College Code governs the service conditions of teaching staff. 'College' is defined in Clause I of the College Code which includes a College receiving grant from the State Government or Madhya Pradesh Uchcha Shiksha Anudan Ayog and Non-Grantee College not receiving any aid. The College Code shall apply to all Colleges admitted to the privileges of the University except the Colleges maintained or managed by the State Government or a Municipal Corporation or the University. Clause 26 of the College Code provides that a permanent Teacher shall be entitled to be in the service of the College until he/she completes the age of 60 years. The decision of the Coordination Committee dated 7. 01.2004 was implemented by an amendment of the Clause 26 of Statute No.28 (College Code) which is as under:

"It was appropriate to maintain the age of superannuation of Principals, Teachers and employees of private Colleges at par with the age of superannuation of Principals, Teachers and employees of government Colleges."

15. Section 36 of the 1973 Adhiniyam reads as:

36. Statutes How Made

(1) The first Statutes of the University shall be prepared by the Co-ordination committee.

(2) The Co-ordination Committee may, from time to time make amend or repeal any Statutes by passing a Statute in the manner hereinafter appearing.

(3) The Co-ordination committee may on receiving a proposal from the Executive Council of a University or on its own motion consider the draft of a Statute that is in the interest of either one or all the Universities;

(4) Where a draft is proposed by the Executive Council, the Co-ordination Committee may approve of such draft and pass the Statute or reject it or return it to the Executive Council for reconsideration either in whole or in part together with any amendment, which the Coordination Committee may suggest.

(5) After any draft returned under sub-section (4) has been further considered by the Executive Council together with any amendment suggested by the Coordination Committee it shall again be presented to the Co-ordination Committee with a report of the Executive Council thereon and the Co-ordination Committee may approve or reject the Statute.

(6) The Co-ordination Committee shall not take into consideration nor the Executive Council shall propose the draft of any Statutes or of any amendment of a Statute or of the repeal of any Statute:

(a) affecting the Statutes, power or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal; or

(b) affecting the conditions of admission of Colleges to privileges of the University, until the Academic Council has been given an opportunity of expressing an opinion upon the proposal and such opinion shall be forwarded by the Executive Council to the Coordination Committee along with any draft it may propose.

(7) Where the Co-ordination Committee approves the Statutes, they shall become effective from such date as the Co-ordination Committee may specify."

16. There is no manner of doubt that the Coordination Committee has the power to prepare, amend and repeal the Statutes. It can do so on its own motion or on receiving a proposal from the Executive Council of a University. The procedure to be followed in case there is a proposal from the Executive Council of the University to frame Statutes is prescribed thereunder. A plain reading of Section 36 would make it clear that the views of the Executive Council have to be obtained by the Coordination Committee only in case the proposal has emanated from the Executive Council of a University for preparing a Statute. Such procedure is not applicable when the Coordination Committee prepares a Statute on its own motion. The High Court erroneously held that the amendment made to Statute 28 of the College Code was only a recommendation which was not accepted either by the Executive Council of the respective Universities or by the State Government.

17. Admittedly, the amendment to Statute 28 of the College Code on 07.01.2004 was not based on any proposal from the Executive Council of any University. It was made by the Coordination Committee on its own motion. The interpretation

of Section 34 (4) of the 1973 Adhiniyam by the High Court that the Coordination Committee can only suggest modifications of the said Statutes in force is not correct.

18. The High Court has gone wrong in observing that any proposal for amendment to a Statute made by the Coordination Committee has to be sent to the Executive Council of the University. The power to amend the Statute is conferred on the Coordination Committee and not on the Executive Council as has been understood by the High Court. A further error committed by the High Court was to hold that there is no recommendation of the Standing Committee on the basis of which a Resolution was passed on

7. 01.2004. The High Court lost sight of the minutes of meeting of the Standing Committee dated 1. 04.2003 by which recommendation was made to maintain the age of superannuation of Teachers working in aided private Colleges at par with those working in the Government Colleges.

19. We are not in agreement with the conclusion of the Full Bench of the High Court that the language of the Resolution dated 07.01.2004 is in the nature of a recommendation. It is clear from the facts narrated above that the matter pertaining to the age of superannuation of Teachers working in aided private Colleges was referred by the Coordination Committee to the Standing Committee. On the basis of the recommendations of the Standing Committee, the Coordination Committee passed a Resolution on 7. 01.2004 which was given effect to by an amendment to Clause 26 of the College Code. The second point answered by the Full Bench is that the UGC Regulations are not applicable to the State Government per se but are to be adopted by the State Government. The High Court was of the opinion that the Government had accepted the payment of revised pay scales only in respect of the Teachers working in the Government Institutes. The Standing Committee and the Coordination Committee of the University is represented by the Senior Officers of the State Government and it is not for the State Government to contend that they will not extend the benefit of enhancement of the age of superannuation till 65 years to the Teachers working in the private aided institutes in spite of the provisions in the College Code.

20. For the aforementioned reasons, we set aside the judgment of the Full Bench of the High Court and the consequential judgments of the Division Bench of the High Court and direct the Government of Madhya Pradesh to pay salaries to the Teachers in aided private Colleges who are working and also those who have worked till they attained the age of superannuation of 65 years."

5. It is pertinent to note that the decision in R.S. Sohane (supra) has been implemented by the State Government vide its Order No.1-23/2019/38-3 dated 26.02.2020, reproduced below for ready reference :

मध्यप्रदेश शासन

उच्च शिक्षा विभाग

मंत्रालय

// आदेश //

भोपाल, दिनांक 26.02.2020

क्रमांक एफ 1-23/2019/38-3 : माननीय उच्चतम न्यायालय नई दिल्ली द्वारा Civil Appeal No.4675 and 4676 of 2019 out of SLP(C) No.31968-31969/2017 में डॉ आर. एस. सोहाने विरुद्ध मध्यप्रदेश शासन व अन्य तथा इस याचिका से संयुक्त अन्य समतुल्य सभी याचिकाओं में पारित निर्णय दिनांक 07.05.2019 में निर्देश दिये गये हैं कि :

For the aforementioned reasons, we set aside the judgment of the Full Bench of the High Court and the consequential judgments of the Division Bench of the High Court and direct the Government of Madhya Pradesh to pay salaries to the Teachers in aided private Colleges who are working and also those who have worked till they attained the age of superannuation of 65 years.

माननीय उच्चतम न्यायालय के निर्णय के अनुपालन में राज्य शासन द्वारा निर्णय लिया गया है कि अनुदान प्राप्त अशासकीय महाविद्यालय में अनुदानित पदों पर कार्यरत शिक्षकों की अधिवार्षिकी आयु 62 वर्ष से बढ़ाकर 65 वर्ष निर्धारित की जाती है तथा ऐसे सभी पात्र शिक्षकों के वेतन का भुगतान राज्य शासन द्वारा किया जावेगा।

2/ यह स्वीकृति महालेखाकार, मध्यप्रदेश ग्वालियर को वित्त विभाग के पृष्ठांकन क्रमांक 375/2020/वित्त/नियम/चार दिनांक 26.02.2020 से पृष्ठांकित की जाती है।

मध्यप्रदेश के राज्यपाल के नाम से

तथा आदेशानुसार

6. Thus, with the decision in R.S. Sohane (supra), the issue as to the retirement age of the staff engaged in class room teaching in Govt. aided institution to be 65 years stood settled.

7. The petitioner who had bowed down to the decision by the Full Bench as on 02.08.2017, has, with the law being laid down by the Supreme Court in R.S. Sohane (supra), filed this appeal seeking setting aside of the impugned order and for the benefit which enure from the decision in R.S. Sohane (supra). It is urged, and rightly so that, with the law being settled and the petitioner being within the ambit of its applicability, as he is retired on 30.11.2015 at the age of 62 years, he has a right to claim the benefit, thereunder.

8. In view whereof, we are of the considered opinion that since the petitioner was engaged in class room teaching in grant-in-aid private institution, he is entitled to enhanced age of retirement of 65 years, with all consequential benefits, to be borne by the State of Madhya Pradesh.

9. The appeal is finally disposed of in above terms. No costs.