

(2002) 12 PAT CK 0015

In the Patna High Court

Case No : C.W.J.C. No. 9630 and 9967 of 2002

Dr. Umesh Chandra Mishra and Others

APPELLANT

Vs

The Chancellor and Others
 Dr. Rama Nand Sinha and
Others Vs State of Bihar and Others

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Bihar State Universities Act, 1976 — Section 67

Patna University Act, 1976 — Section 64

University Grants Commission Act, 1956 — Section 14

Citation : (2003) 1 PLJR 164

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : S.N. Jha, Asim Jha, Satyendra Kr. Jha, Kripa Nand Jha, Ganesh Pd. Singh, Manish Kumar, Sanjiv Kumar and Dharendra Kumar Jha, for the Appellant; Azfar Hasan, for State, Shivendra Kishore, for Chancellor, Jayanandan Singh and M.M.P. Sinha for University, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard counsel for the parties.

2. All these three writ applications have been filed for common cause, and, therefore, they have been heard together and are being disposed of by this common order.

3. Two-fold prayers have been made on behalf of the Petitioners—firstly, for issuance of direction upon the Respondents to implement the University Grants Commission (hereinafter to be referred to as "UGC") revised package including the pay scales, issued under the notification in the year 1998 in its true sense and spirit forthwith and secondly, for issuance of a direction upon the Respondents to declare 62 years the age of retirement of University/College teachers, as per the norms of the UGC, taking into account that most of the States of India have implemented the said 62 years age of superannuation of

teachers, as per the decision of the UGC and to that extent to declare the retirement age as 60 years by the State of Bihar for University teachers as ultra vires. An ancillary prayer has also been made on behalf of the Petitioners for issuance of direction upon the Respondents to pay the salary of the Petitioners for the period 1.8.2000 to 9.12.2002 for the strike period, as per the compromise reached in between the parties.

4. Dr. S.N. Jha, learned senior counsel appearing on behalf of the Petitioners in C.W.J.C. No. 9630 of 2002 submitted that the authorities are duty bound to implement the UGC revised package including the pay scales in terms of the notification and also in terms of the direction, issued by this Court in C.W.J.C. No. 11986 of 2001. Learned Counsel further submitted that the UGC recommended 62 years age of superannuation of the teachers and the State and University Respondents, therefore, were duty bound to act upon the recommendation of the UGC. Learned Counsel further submitted that at one point of time, the recommendation of the UGC was acted upon by making 62 years age of superannuation and subsequently, the same has been reduced to 60 years, which must be held to be ultra vires. Learned Counsel has also argued the question of repugnancy in between the laws framed by the UGC and the State of Bihar and submitted that the subsequent legislation of the State of Bihar must be held to be unnecessary and uncalled for.

5. Learned Counsel appearing on behalf of the Petitioners of the other two writ applications have adopted the submissions of Dr. S.N. Jha, learned senior counsel appearing on behalf of the Petitioners in C.W.J.C. No. 9630 of 2002.

6. Learned Counsel appearing on behalf of the University and the State of Bihar precisely submitted that the questions raised in these writ applications are no more res integra and the same have been settled by the decisions of this Court, and, therefore, these writ applications are liable to be dismissed.

7. So far the first prayer of the writ Petitioners is concerned, it would appear that for implementation of the UGC revised package including the pay scales issued under the notification in the year 1998, the State Government has been directed by a judgment of this Court in the case of Prof. Dr. Amarnath Singh and Others Vs. State of Bihar and Others, to give teachers promotion as Readers/University Professors, the respective replacement scales like all other teachers and to implement the 1996 UGC scales in light of the judgment without any further delay. The subsequent notification issued by the UGC in the year 1998 necessarily be abided by the decisions rendered by this Court, as referred to above.

8. So far the second prayer of the writ Petitioners to issue a writ of mandamus directing the authorities to declare 62 years age of retirement of University/ College teachers is concerned, it would be pertinent to mention here that this question has also been set at rest by a bench of this Court in the case of Prof. Ranjit Singh Gandhi and Others Vs. The State of Bihar and Others, and this Court

held as follows:

22. Section 64 of the Patna University Act and 67 of the Bihar State Universities Act contain a provision with regard to age of retirement from service and it provides that the retiring age of a teaching employee of the University or of a college will be 60 years and its validity has also been upheld by a division Bench of this Court in the case of Ranjit Prasad Shrivastava (supra). The State Government has power to legislate with regard to education and as such it has power to provide mode of selection, appointment and retirement of a teaching staff. Unless it is held that the provision with regard to retirement from service in the said Act is covered by the law made by the Parliament, the said provisions cannot be held to be void or inoperative. The Parliament has not made any law making the provision fixing the age of retirement of the teachers. They have only made the aforesaid Act to issue direction with regard to the aforesaid matters. The U.G.C., as stated above, has power to make law with regard to aforesaid matters, but in my view, the same will not include power to determine the age of superannuation of a teacher of University who has to be appointed under the said scheme in the manner provided therein. Maintenance, co-ordination and determination of higher education even interpreted in the widest sense, in my view, does not empower the UGC to provide the age of superannuation of a teaching and non-teaching staff of the University and as such they said provision in the scheme of the UGC is beyond the legislative competence and the State is not bound to act in accordance with the provisions of the Scheme regarding determination of the age of superannuation.

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28. Thus considering the question from different angles, I am of the considered view that no direction can be given to the State Government to amend the provision of Section 64 of the Patna University Act and 67 of the Bihar State Universities Act with a view to extend or enhance the age of retirement of the Petitioners and other similarly situated persons from 60 to 62 years.

9. This Court in Prof. Ranjit Singh Gandhi and Ors. (supra) declined to issue direction to the State Government to amend the provision of Section 64 of the Patna University Act and Section 67 of the Bihar State Universities Act with a view to extend or enhance the age of retirement of the teachers and other similarly situated teachers from 60 years to 62 years holding that UGC has no legislative competence to provide the age of superannuation of the teachers and the State is not bound to act in accordance with the provisions of the scheme determining the age of superannuation of teachers as 62 years as recommendations of the UGC are recommendatory in nature and in failure to comply with the same, the consequence as provided u/s 14 of the UGC Act will follow.

10. The, ratio laid down by this Court in the case of Prof. Ranjit Singh Gandhi and Ors. (supra) stands fortified from the judgment of this Court in Ranjit Prasad

Shrivastav and Ors. v. State of Bihar and Ors. [1996 (1) PLJR 39].

11. In view of the judgments, as referred to above, no case has been made out by the writ Petitioners to issue writs, as prayed for by them nor the question of repugnancy would arise after the matter has been set at rest by the judgment of this Court, as referred to above. So far implementation of the UGC revised package including the pay scales issued under the notification in the year 1998 is concerned, necessary directions have also been issued by this Court in the case of Prof. Dr. Amarnath Singh and Ors. (supra), but the same has been challenged, by the State Government in L.P.A. No. 500 of 2002, which is still sub-judice. The first prayer of the writ Petitioners therefore shall abide by the ultimate decision of this Court in L.P.A. No. 500 of 2002.

12. So far the ancillary prayer of the writ Petitioners is concerned, the Petitioners may represent the matter for payment of their salary for the strike period, which will be considered and disposed of by the Respondent University in accordance with law.

13. For the reasons and discussions aforementioned, I do not find any merit in these writ applications.

14. These writ applications are, accordingly, dismissed.

15. No order as to costs.