
(2013) 01 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 14216 of 2012

Dr. Usha Kiran Narain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Patna University Act, 1976 — Section 2(c), 2(r), 64(a), 67(a)

Citation : (2013) 1 PLJR 817

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Advocate : Vikas Mohan, for the Appellant; Girija Shankar Pd., for the Respondent

Final Decision : Dismissed

Judgement

Samarendra Pratap Singh, J.—The petitioner was a teacher in Sociology in Government Women's College at Gulzarbagh from where she superannuated on 31.5.2012. She prays for quashing of memo no. 1204 dated 3.7.2012 issued under the signature of Deputy Director, Higher Education, Education Department, whereby in substance her representation for enhancement of the retirement age of Government Women's College, Gulzarbagh was not accepted, rather the same stood rejected in view of objections of the Finance Department. The petitioner was appointed a teacher in Sociology faculty in the year 1983 in Government Women's College, Gulzarbagh pursuant to an advertisement. She superannuated from service on 31.5.2012 on attaining the age of 60 years. She had earlier approached this court in C.W.J.C. No. 3054 of 2012 with a grievance that though the age of retirement of all teaching staffs of University has been enhanced from 62 years to 65 years, but the same benefit has not been extended to teachers of Government Women's College, Gulzarbagh and Government Women's College, Gardanibagh. The petitioner took the plea that once Government has decided to enhance the retirement age of teaching staffs of University and other Colleges, it cannot act differently while dealing with teaching staffs of Government owned

colleges. The writ application filed by the petitioner was disposed of with a direction to the Director, Higher Education to place the representation of the petitioner for enhancement of retirement age to 65 before the Grievance Redressal Committee of the department for final decision.

2. The Grievance Redressal Committee was not functioning at the relevant time and as such the matter was considered by the Higher Education Department. The H.R. Department took note of the direction of Finance Departments contained in memo no. 1204 dated 3.7.2012 that if a decision is taken to enhance the age of teaching staff of Government Women's College, it would adversely affect the entire cadre of Bihar Education Service, of which they form a small proportion.

3. The petitioner has assailed the impugned order refusing to enhance the retirement age from 60 to 65 years as applicable to the University teacher mainly on grounds enumerated hereinbelow. The petitioner states that the Government can-not adopt different yardsticks for fixing the retirement age of a teaching class e.g. one for the University teachers and the other for teaching staffs of Government Colleges. The petitioner states that the Education Department has also approved the proposal to enhance the retirement age of teachers of Government College from 60 to 65 years on 23.5.2012 (Annexure-8). A memorandum to the aforesaid effect was also prepared for putting it in Cabinet. A copy of the said memorandum of March, 2012 is contained in Annexure-9. The petitioner states that the State Government in Department of Education vide memo no. 15/D 1-02/2009-2925 dated 7.12.2011 (Annexure-4) has enhanced the retirement age of the teachers of the University from 62 to 65 years in view of Section 67(a) of the Patna University Act and Section 64(a) of Bihar State Universities Act, 1976 in light of provisions of University Grants Commission, 1956 w.e.f. 30.6.2010. The petitioner states that once the Government has agreed to grant UGC scale applicable to the University teachers, to the teachers of the Government Women's College, there should be no reason not to extend the benefit of extension of retirement age to them.

4. The petitioner next contends that the retirement age of the teaching staff of Technical Colleges namely State Polytechnic Institute under Science and Technology Department as well as retirement age of the Doctor of Bihar Medical Service too has been enhanced to 65 years. On this analogy, the petitioner submits that the impugned order of the Government refusing to enhance the retirement age of teachers of Government College is arbitrary and violative of Articles 14 and 16 of the Constitution of India. The petitioner submits that the statute contemplates only two types of Colleges, namely, affiliated Colleges and Constituent Colleges. The petitioner's College is also affiliated with Magadh University and as such will be entitled to similar benefits as the affiliated colleges. The petitioner has relied upon decision in the case of Dr. (Mrs.) Renuka Sharma Vs. The Bihar Public Service Commission and Others, .

5. The case of the State is that the teachers of Government College are Government employees and are members of the Bihar Education Service and

their service conditions are governed by separate set of rules. The retirement age is governed by provisions of Bihar Service Code. They are not University employees. It is further case of the State that the decision rendered in the case of Dr. (Mrs.) Renuka Sharma is in respect of a different issue and would not be of any aid in this case.

6. I have heard the learned counsel for the parties. The teaching staff of Government Women's College, Gulzarbagh or Government Women's College, Gardanibagh are appointed by Government and are Government employees, whereas the University teachers and other teachers of non-Government College affiliated to an University are University employees.

7. I am in agreement with submission of State Counsel that the decision in case of Dr. (Mrs.) Renuka Sharma is in respect of a different issue and in no way would be of any aid to petitioners rather would help the respondents' case.

8. In the said case, one of the issues was whether the teachers of Government College was required to pass standard examination prescribed by the University Act in order to be appointed teacher in a College affiliated to or constituent of the University. The Division Bench observed that the purpose to conduct standard examination is to bring an uniformity in the standards of teachers all throughout the country and as such the Government College would be no exception to it. The Division Bench disagreed with the view of the learned single Judge that statute contemplates three types of Colleges, namely, Affiliated College, Constituent Colleges and Government Colleges and that the statute does not require a teacher of Government College to pass any of such examinations. The LPA Bench further observed that a Government College remains a Government College and does not form part of the University and accordingly does not become a Constituent College. In order to obtain privileges of the University, a Government College too is required to apply to University for affiliation.

9. Thus merely because a Government College seeks an affiliation of an University for availing its privileges, its character does not change and the Government College remains a Government College. It's staff does not become an employee of University nor the service condition of its teaching and non-teaching staffs changes, which continue to be governed by its own set of rules, like Bihar Service Code. That Section 64(a) of Patna University Act, 1976 and Section 67(a) of the Bihar State Universities Act, 1976 state that the retirement age of a teaching employee will be the same as would be decided by the University Grants Commission in future. There is no such corresponding provision in the Bihar Service Code or any other rules framed by the Government. The retirement age of a teaching employee of a Government owned college is neither governed by University Act or University Grants Commission. It's another matter that the Government may adopt the recommendation of the U.G.C. in respect of pay scale etc.

10. The teaching staff of a Government College would fundamentally be different

from other teachers of a College or University as the former is a Government employee, where as latter category are not Government employees. A University teacher continue to be a teacher distinct from a Government employee as contained in Explanation (v) to Section 2 of the State Universities Act, 1976 and Section 2(r) of the Patna University Act, 1976 which are quoted hereinbelow:--

Explanation (v). "Teacher" includes Principal, University Professor, College Professor, Reader, Lecturer, Demonstrator and other person imparting instruction in department, college or institute maintained by the University.

2(r): "Teacher" includes Principal, University Professor, College Professor, Reader, Lecturer, Demonstrator and other person imparting instruction in any department or in any college or institute maintained by the University.

11. The service condition including retirement age of University teachers are governed by respective Universities Act, UGC Act and regulation framed thereof. On the other hand, the service condition of teachers of Government Women's College are governed by Bihar Service Code and rules framed thereof. The teachers of Government College are members of Bihar Education Service, whereas the teachers of University or its colleges are not a member of the Bihar Education Service. Thus, the teacher of Government College stands on entirely different footing than other colleges of the University. Merely because the teaching staff or non teaching staff of Government Institute is getting similar salary will not entitled them ipso facto to other benefits including retirement on attaining age of 65 years etc. Equally, the application of Article 14 is misconceived as the service condition of University teachers and Government College differs and represents two different classes.

12. A similar matter came up for consideration before a Division Bench of this court in the case of State of Bihar vs. Brajnandan Roy, L.P.A. No. 196 of 2007 Reported in 2009 (2) PLJR 827. The petitioner thereof was working as Foreman Instructor in Muzaffarpur Institute of Technology, which is a Institute of Government of Bihar. The retirement age of the petitioner being a Government employee was 58 years at the relevant time. He filed a writ application stating that as he is getting similar salary as being received by teachers of different colleges of University, as recommended by the University Grants Commission, the retirement age too be enhanced as has been done in case of such teachers. The learned single Judge allowed the writ application holding that the Government employee of a teaching institute would be entitled to enhancement of retirement age at par with a University teaching employee. The LPA Bench disagreeing with the order of learned single Judge allowed the State Government's appeal holding that Government Colleges stand on entirely on different footing than that of other colleges of the University and simply because the writ petitioner is getting salary equal to the salary of teachers in other University/Colleges itself, shall not endear him the same benefit. One may well refer to para 5 of order of L.P.A. Bench quoted below:--

5. We would, therefore, conclude that the College as defined is a part of educational institutions. There are some institutions, which in terms of Section 2(c), requires affiliation, if not a part of the University and accordingly, the logical conclusion would be that the statute contemplates two types of institutions, namely institutions, which are part of the University and those which are affiliated and as such there is no concept of a separate institution as that of a Government College. In the event, the Government College remains a Government College and does not form part of the University and accordingly, does not become a Constituent College, such a College in order to obtain privileges of the University is required to apply for and have affiliation of the University.

13. The LPA Bench in support of its decision relied upon a decision of Hon''ble Apex Court in the case of Civil Appeal Nos. 2540-50/97 State of Bihar and Another Vs. Teachers'' Association of Govt. Engineering College and Others, . The relevant extract of the decision is produced hereinbelow:--

xxx We fail to see how in respect of teachers who are Government servants, governed by the Bihar Service Code, the age of superannuation should be different from the age of superannuation for all other Government servants governed by the Bihar Service Code. The High Court ought not to have equated the service conditions in the three State Colleges with the service conditions in a University College. Application of Article 14, in these circumstances, is misconceived, when there are valid criteria for different rating between the service conditions in the two sets of colleges. In the premises, the impugned judgment of the High Court in so far as it directs that the age of superannuation of teachers working in the three Engineering Colleges other than the Bihar College of Engineering, Patna should be brought at par with the age of superannuation of those working in the Bihar College of Engineering at Patna, is set aside. The further direction to pay arrears or give benefits flowing from the extended age of superannuation is also set aside. The appeals are allowed accordingly.

14. In order to garner support for her stand for enhancement of age, the petitioner refers to retirement age of Doctor of Bihar Medical Education Service which has been extended to 65 years. The petitioner thus sought parity on the aforesaid basis. In my view, the petitioner cannot seek parity on that score. The age of Bihar Medical Education Service was enhanced to 65 years in view of amendment made to Rule 73 to Bihar Service Code, 1952 vide Bihar Service (Amendment) Code, 2010, wherein the following provision was inserted which is quoted hereinbelow:--

Bihar Service (Amendment) Code, 2010

1. Short title and commencement--(1) This may be called Bihar Service (Amendment) Code, 2010.

(2) It shall come into force with immediate effect.

2. The following fourth proviso shall be added after the exiting proviso to sub-rule (1) of Rule 73 of Bihar Service Code:

Provided further also that the date of retirement of the Doctors of Bihar Medical Education Service, shall be the afternoon of the last day of the month in which he attains the age of 65 years. But if his date of birth is the first day of a month, then the date of retirement shall be the afternoon of the last day of the penultimate month.

15. Similarly the retirement of teachers working in Technical College namely State Polytechnic Institute and State Women Technical Institute was enhanced on recommendation of All India-Technical Education Council as per provision contained in Pay Scale Service Condition Rules, 2010 for Teachers and Non Teaching Staff Working in Technical Institute. The petitioner has placed reliance on Annexure-8 wherein the Hon''ble Minister approved the proposal to enhance the retirement age of teaching staff of Government Women''s College to 65 years in file which cannot be said to be a Government resolution. Reference and reliance has also been placed on Annexure-9, which at the best is a memorandum prepared by the Education Department, for concurrence of the Finance Department and the Cabinet. The decision to enhance age is a matter of policy and as such in absence of any statutory or enabling provision under the Bihar Service Code or any other rules governing such service condition, Cabinet approval is necessary for the purpose, which is not the case. The Finance Department has objected to enhancement of age of the teaching staff of a Government College which forms part of cadre of Bihar Education Service, which apart from being discriminatory, may stir other members to quest for similar benefits. It would be unreasonable to allow enhancement of age of some members of the Education Service while denying the same to a large section, unless a separate service condition is formulated for teaching employees of a Government Women''s College or by affecting an amendment in Service Code.

16. Thus, in the backdrop of the aforesaid discussions, no mandamus can be issued directing the State Government to enhance retirement age of the teaching staff of Government Women''s College on the ground that the Education Department, Government of Bihar has taken a decision to enhance the retirement age of the teachers of other Colleges as per memo no. 2925 dated 7.12.2011 contained in Annexure-4, unless and until the same is approved by State Cabinet or separate service conditions are formulated for teaching staff of wholly owned Government Colleges as suggested in Annexure-A of Finance Department. In the result, this writ application is dismissed with observations aforesaid.