
(2009) 04 JH CK 0127

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1998 of 2009

Dr. Violet Kerketta

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 73

Citation : (2009) 57 BLJR 2486

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : A. Allam, Nehala Sharmin and Shrawan Kumar, R. Krishna, S.C.-I, Sumeet Gadodia and J.J. Sanga, for the Appellant; Md. Mokhtar Khan and Faiz-ur.Rahman, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Patel, J.—If wishes are horses, beggars would have ride. The present petition has been preferred for enhancement of age of superannuation from 62 years to 65 years. In that expectation, this petition has been preferred on the last date of retirement of the present petitioner.

2. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to entertain this petition mainly for the following facts and reasons:

(i) It appears that the present petitioner is going to retire today (April 30, 2009) upon attaining the age of superannuation i.e. 62 years. As on today, the age of superannuation of petitioner under the rules, is 62 years, but, it is vehemently submitted by learned Counsel for the petitioner that there are several letters written by the Central Government, by University Grant Commission, by Ministry of Agriculture Department as stated in the various annexures that they all are requesting the State Government to increase the age of superannuation from 62 years to 65 years. Thousand of possibilities can not be equated with one truth.

Though learned Counsel for the petitioner submitted that there are every chances of enhancement of age of superannuation, the fact remains that as on today no such policy decision has been taken by the State of Jharkhand for increase in the age of superannuation from 62 years to 65 years for the post, which is held by the present petitioner.

(ii) This Court while exercising the powers under Article 226 of Constitution of India, as stated in catena of decisions by the apex Court, should not change any policy decision nor the Court can replace the existing policy by a better policy. Neither even policy decision can be altered in exercise of powers under Article 226 of Constitution of India. Policy decision is a very complex decision based upon permutation and combination of several facts. As per policy decision taken by the State of Jharkhand age of superannuation is 62 years. Petitioner expects the change in the policy by the order of the Court, which I am not inclined to grant. Several annexures are referred by the Counsel for the petitioner, very meticulously but they are nothing but the possibilities for change of policy decision. But, unless the policy is changed, nothing is helpful to the petitioner.

(iii) Learned Counsel for the petitioner relying upon Entry 66 of List I of Schedule VII of Constitution of India and submitted that letters at Annexures 3 and 4, written by Government of India and University Grants Commission respectively are binding to State Government, therefore, age of superannuation must be enhanced. This attractive contention is not accepted by this Court for a reason that looking to the administrative instructions stated in Annexures 3 and 4 are not binding to State Governments. Looking to Annexure 6, letter written by Ministry of Agriculture, dated 13th March, 2009 especially in para -1 thereof it has been mentioned that State Government may take action to adopt the above Government of India Scheme. Thus, it was not mandatory for the State Government to increase the age of superannuation. Counsel for the respondents has also relied upon Entry 25 of List III of Schedule VII of Constitution of India, but, I am keeping this issue open, as from aforesaid letter it is clear that scheme was optional for State Government.

(iv) Learned Counsel for the respondents has also submitted that the Hon''ble Supreme Court in the case of B. Bharat Kumar v. Osmania University reported in AIR 2007 SCW 3278 has held that so far as the age of superannuation is concerned, it ought to be decided by State concerned. Paras 18 and 19 of this judgment read as under:

18. For the similar reasons we do not see as to why the judgment in T.P. George's case is not applicable to the present case. A very serious argument was raised by the learned Counsel that the judgment stood overruled by Yashpal's case. We do not think so. Yashpal's case was on entirely different issue. There the controversy was relating to a legislation creating number of Universities. The question there was as to whether the State Government could create so many Universities and whether the legislation creating such Universities was a valid legislation, particularly in view of the fact that the subject of higher education

was covered under Entry 66 List I. Such is not the subject in the present case. Here is a case where there is no legislation. Even if we take the scheme to the higher pedestal of policy statement under Article 73 of the Constitution, the scheme itself suggests to be voluntary and not binding and the scheme itself gives a discretion to the State Government to accept it or not to accept it. If such is the case, we do not see the relevance of the Yashpal's case in the present matter. Once this argument fails, the reference to the other cases which we have referred to earlier also becomes unnecessary. In our considered opinion all those cases relate to the legislative powers on the subject of education on the part of the State Government and the Central Government. In the present case we do not have any such legislation for being considered. Where the scheme itself gives the discretion to the State Government and where the State Government uses that discretion to accept a part of the scheme and not the whole thereof, it would be perfectly within the powers of the State Government not to accept the suggestion made by the scheme to increase the age of superannuation.

19. Learned Counsel also argued, to a great extent, the desirability of the age of superannuation being raised to 60 to 62 as the case may be. We again reiterate that it is not for this Court to formulate a policy as to what the age of retirement should be as by doing so we would be trailing into the dangerous area of the wisdom of the Legislation. If the State Government in its discretion, which is permissible to it under the scheme, decides to restrict the age and not increase it to 60 or as the case may be 62, it was perfectly justified into doing so.

(Emphasis supplied)

(v) In the facts of the present case also as on today the age of superannuation of the petitioner is only 62 years. The State has not taken any final decision for enhancement of age of retirement for the post, as expected or wished by the present petitioner. Petitioner has also approached on the last date of his retirement. Such type of tendency ought to be deprecated. Such type of petition, ought to be given priority in hearing by Court, despite several matters on admission board and keeping aside the whole board of the Court, hearing has to be given. This creates pressure upon the Court. Such type of practice is not expected or warranted from educated petitioner. Last date of service tenure was known to petitioner, much in advance.

3. In view of the aforesaid facts and reasons, I see no reason to entertain this petition in exercise of extraordinary jurisdiction vested in this Court under Article 226 of Constitution of India. There is no substance in this petition and hence, the same is dismissed.