
(2008) 03 JH CK 0064
In the Jharkhand High Court

Gopeshwar Gope, Ram Krishna Sahu and Govind Ram and
Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 2 JCR 587a

Hon'ble Judges : M. Karpaga Vinayagam, C.J.;D.G.R. Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Karpaga Vinayagam, C.J.—These writ petitions have been filed by the non-teaching employee of the University for the issuance of direction declaring Jharkhand State Universities (Amendment) Act (Act 05, 2005) published in the Jharkhand Gazette (Extra-ordinary) dated 25.7.2005 to be ultra vires to the Constitution of India, whereby and whereunder Section 67(a) of the Jharkhand State Universities Act, 2000 has been amended, providing age of retirement to be 62 years for the teachers of Universities and Colleges and such officers as declared equivalent to them, whereas providing 60 years for the non-teaching employees with effect from the date of notification of the Act in the official Gazette.

2. The petitioners, being non-teaching employees, have a grievance that by Amendment Act of 2005, the date of retirement of teachers of University or College has been enhanced to 62 years whereas the date of retirement of non-teaching employees has been allowed to continue to be 60 years.

3. According to the petitioners, the said Amendment Act of 2005 whereby the date of retirement of teachers has been enhanced from 60 years to 62 years whereas retirement of non-teaching employees has been allowed to continue to be 60 years is not only arbitrary, but is also mala fide action of the State Government.

4. The followings are the grounds urged on behalf of the petitioners:

(i) The Amendment Act, 2005 is not only beyond the legislative competence of the State Legislature, but is also unreasonable, as there is no justification for increasing the age of retirement of teachers alone without increasing the date of retirement of non-teaching employees, when the service conditions of non-teaching and teaching employees of the University and Colleges are uniform.

(ii) It is the settled law that when the age of superannuation of teaching staff has been raised, the State should also raise the age of superannuation of non-teaching staff at par with the teaching staff.

(iii) This act is completely arbitrary as no reasons have been assigned for making discrimination between the teaching staff and non-teaching staff when the conditions of service have been same for both since beginning.

(iv) The burden of establishing the reasonableness of a clarification or its nexus with the object of legislation is on the State. The State has completely failed to make out a case of reasonableness of the arbitrary classification and its nexus with the object to be achieved.

(v) Amendment Act of 2005 is ultra vires because no guidelines have been prescribed and unfettered powers have been vested.

5. In reply to the above grounds, the learned Advocate General would make the following contentions to substantiate his point that the Act is not ultra vires and the State is well within the powers to bring such legislation:

(A) Amendment Act of 2005 has been incorporated in the Statute Book in the light of the guidelines issued by the University Grants Commission (hereinafter as UGC).

(B) As the UGC package was being accepted by other States as a whole, it became imperative upon the State of Jharkhand to place the matter before the State Legislature for enhancement of the age of superannuation of teaching staff. Accordingly, by the Amending Act, 2005, Section 67(a) has been amended.

(C) The Jharkhand State Universities Act, 2000 is a State Act and amendments in the said Act can be made only by an Act of the Legislature. Thus, the State Legislature has the legislative competence to make necessary amendments in Jharkhand State Universities Act, 2000.

(D) The policy of the State to implement UGC package in totality is neither arbitrary, nor unreasonable. It is also not a colourable exercise of legislative power to enact such law.

(E) The Amending Act is not discriminatory and it does not suffer from any vices particularly because teachers/teaching staff and non-teaching staff belong to two different classes having different mode of appointment, different qualifications, different responsibilities etc. and they cannot be equally treated.

(F) A law can be invalidated only for contravention of constitutional limitation, but in the present case, the Amending Act, 2005 is not violative of any provision of the Constitution of India. On the other hand, the amendment is within the competence/jurisdiction of the State Legislature.

6. We have heard the learned Counsel for the parties and have also given our anxious considerations to their respective contentions. According to the learned Counsel for the petitioners, when the age of superannuation of teaching staff, the State should also raise the age of superannuation of non-teaching staff at par with the teaching staff, as already held by the Supreme Court in the case of *Osmania University v. V.S. Muthuraman and Ors.* reported in 1997 (2) PLJR 52 (SC).

7. On the other hand, it is the main contention of the learned Advocate General that the State Government is under obligation to implement the UGC package in its totality by enhancing the age of superannuation of the teachers, as recommended by UGC. Such enhancement of age of superannuation by the Amending Act, 2005 for the teachers alone is in consonance with the age of superannuation of teaching employees prescribed in the UGC package and as per the mandate of the Division Bench of Patna High Court in the case of *Ranjit Prasad Srivastava v. State of Bihar* reported in 1996 (1) PLJR 39, in which it is held that having regard to the various advantages which accrued to the teachers as well as the State, if the State decided to implement the UGC scheme, and took such a policy decision, it cannot be characterized as irrational, arbitrary or unreasonableness.

8. In the light of the above contentions, the question posed in this case has to be analyzed:

(I) It is well settled that it would not be appropriate for us to investigate the motives of the Legislature in passing the Amendment Act.

(II) The plenary legislative power of the State Legislature to pass laws has no limitation, except those to which the legislative power of the State is restricted to a particular subject.

(III) Though a law can be invalidated for contravention of constitutional limitations, which inhibits upon the power of State Legislature to pass laws, it cannot be declared invalid on the ground that it was enacted with improper motives.

(IV) The Courts can declare a statute unconstitutional only when it transgresses constitutional limits and not otherwise. In other words, we can only examine that whether the legislations can transgress the constitutional limits without enquiring into the propriety of exercising the legislative power.

(V) The stand of the State is that with a view to deriving the benefit of UGC package, it became necessary for the State to enhance the age of retirement of teachers in Universities from 60 to 62. With a view to getting the benefits under

the UGC scheme, the conditions laid down by the University Grants Commission and approved by the Central Government had to be fulfilled.

9. In this context, it is relevant to refer to the observations made by the Division Bench of Patna High Court in the case of *Ranjit Prasad Srivastava v. State of Bihar* reported in 1996 (1) PLJR 39. It is the case where the age of retirement is reduced from 62 to 60 years on the basis of the recommendations made by UGC. When this was the question, the following mandate has been given by the Patna High Court, which is as follows:

... Having regard to these facts it would be difficult to hold that the policy followed by the State Government in reducing the age of retirement was either irrational or unreasonable, or that it had no nexus with the object sought to be achieved. It was for the State to decide whether it would forego the benefits under the Central Scheme or whether it would comply with the requirements of the Scheme and fulfil the conditions laid down herein. That was essentially a matter of policy, because it was open to the State not to accept grants from the University Grants Commission, in which case it was not bound to comply with the conditions laid down in the Scheme formulated by the University Grants Commission. Having regard to the various advantages which accrued to the teachers as well as the State, if the State decided to implement the UGC Scheme, and took such a policy decision, it cannot be characterized as irrational, arbitrary or unreasonable. ...

10. There is no dispute in the fact that UGC has already recommended new pay scale for University Teachers alone with effect from 1.1.1996. In its recommendations, the University Grant Commission suggested the age of superannuation of the University Teachers to be 62 years. On the other hand, the University Grant Commission does not make any recommendations for revision of pay scale for non-teaching employees. It is the State Government, which, from time to time, revises the pay scale of the non-teaching employees, keeping in view the pay revision of the Government employees.

11. The question of fixation of age of superannuation for the teaching staff is a policy matter and the same is well within the domain of the Government. Accordingly, steps were taken for substitution and ultimately the State Legislature, in exercise of the legislative power, made amendment by substitution in the Act.

12. The Government of India, by its letter dated 27.7.1998, 22.9.1998 and 6.11.1998 requested the State Government to accept the recommendations of the University Grants Commission taking into consideration of the local conditions. By the said letters, the Government of India promised to meet 80% of the expenditure to be incurred on account of the implementation of the recommendation of the University Grants Commission against posts sanctioned prior to 1.1.1996 for the period 1.1.1996 to 31.3.2007. Subsequently, by another letter No. 5/B2-03/2001/356 of the Secretary to the Government, Department of

Human Resource and Development, Jharkhand, addressed to the Registrars of all the Universities in the State of Jharkhand, the State Government communicated the decision to implement UGC package accepting the age of superannuation of non-teaching staff to be 60 years. Subsequently, the State Government decided to implement the UGC package as a whole. In the UGC package, the age of superannuation of teaching staff was provided as 62 years. The UGC package was being accepted by other States as a whole and, therefore, it became imperative upon the State of Jharkhand also to place the matter before the State Legislature for enhancement of the age of retirement of teaching staff. Accordingly, by the Amending Act, 2005, Section 67(a) has been amended.

13. It is mainly contended by the counsel for the petitioners that when the conditions of service both for teaching staff and non-teaching staff have been same since beginning and while the age of superannuation of teaching staff has been raised, the State should raise the age of superannuation of non-teaching staff also at par with the teaching staff, as held by the Supreme Court in the case of *Osmania University v. V.S. Muthuraman and Ors.* reported in 1997 (2) PLJR 52 (SC). On the strength of this decision, it is strenuously contended that the age of superannuation for both must be uniform, when conditions of service of teaching staff and non-teaching staff are the same.

On going through *Osmania University* (supra) case, we are of the view that the ratio decided by the Supreme Court therein would not apply to this case. The relevant observations of this case is as follows:

...If uniform conditions of service for teaching and non-teaching staff of the University is not otherwise impracticable, the university is under an obligation to maintain such uniformity because of the mandate of Section 38(1) of the Act....

So the ratio decided is that when uniform conditions of service for teaching and non-teaching staff is practicable, then the University is under obligation to maintain uniformity in respect of age of superannuation. But this is not the case here.

14. As pointed out by the Advocate General, the conditions of service of the University teachers are quite different from that of non-teaching staff. The minimum qualification for appointment of University Teachers is Post Graduation with having passed eligibility test like JET/SLET/NET (the candidates having Ph.D. degree are exempted from eligibility test). Obviously the candidates preferring for teaching job in Universities need to study for a comparatively long period than other non-teaching employees who usually are appointed on the basis of matric or graduation degree. So, it is proper to fix higher age of retirement for teachers than other non-teaching employees.

15. The amending Act is not discriminatory and it does not suffer from any vices particularly because teachers/teaching staff and non-teaching staff belong to two different classes having different mode of appointment, different qualifications, different responsibilities etc, and they cannot be equally treated. Therefore, the

uniform conditions of service in both the groups are not practicable. Such an amendment under challenge cannot be said to be discriminatory.

16. According to the Advocate General, as the conditions of service of teaching staff have to be regulated on the basis of the recommendations of the UGC, the service conditions of the teaching staff have to be framed differently. So far as non-teaching staff of the University are concerned, all such non-teaching staff have been treated uniformly. Therefore, fixation of different age of superannuation for the teaching staff and non-teaching staff is not only legal, but is also within the legislative competence to make necessary amendments in Jharkhand State Universities Act, 2000 and such action is neither unreasonable, nor arbitrary. The teaching and non-teaching staff invariably hold two different types of service. Therefore, this categorizes that the service conditions of the two groups are unequal.

17. The teaching staff and non-teaching staff are distinct and separate teaching staff are also different. So the conditions of service of the two distinct and separate categories, namely, teaching and non-teaching staff, are also different.

18. In this context, the relevant observations made by the Supreme Court in the case of *Tejinder Singh and Another Vs. Bharat Petroleum Corpn. Ltd. and Another*, , being relevant, are quoted below:

4. This Court in *Workman v. Bharat Petroleum Corporation Ltd.* directed the retirement age of the clerical staff of the Refinery Division of respondent 1 to be fixed at 60 years. Petitioners have contended that the disparity in the age of retirement between two groups of employees gives rise to discriminatory treatment. This stand is not tenable for more than one reason. Clerical staff and officers of the management staff belong to separate classifications and no argument is necessary in support of it. Petitioners have not contended and perhaps could legitimately contend, that the two classes of officers stand at par. In the *Workmen* case itself, this Court did not extend the benefit of superannuation at the age of 60 years to all clerical staff but limited the same to that category of employees working in the Refinery Division, Bombay. Clarification on the basis of reasonable differentia is a well known basis and we are of the view that the petitioners are not entitled in the fact of the case to seek support from Article 14 of their claim.

19. Therefore, the University will be Justified to introduce different conditions of service for two different categories of employees. If it is otherwise impracticable to bring uniformity for the different categories of employees, it is permissible for the University to introduce the age of superannuation differently for different categories of employees.

20. Nothing has been pointed out by the counsel for the petitioners as to uniformity of the conditions of service of teaching staff and non-teaching staff. Therefore, *Osmania University (supra)* case will be of no help to the petitioners.

21. In the aforesaid circumstances and in view of the discussions made above, we find no merit in these writ petitions which are accordingly dismissed. However, there is no order as to costs.

D.G.R. Patnaik, J.

22. I agree.