

(2023) 07 PAT CK 0004

In the Patna High Court

Case No : Letters Patent Appeal No. 305 Of 2023 In Civil Writ Jurisdiction Case
No. 38 Of 2022

Hareramacharya

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Citation : (2023) 07 PAT CK 0004

Hon'ble Judges : K. Vinod Chandran, CJ;Partha Sarthy, J

Bench : Division Bench

Advocate : Manan Kumar Mishra, Lakshmi Kant Sharma, Dr. K. N. Singh,
P.K.Shahi

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. The instant appeal has been preferred by the appellant against the judgment dated 11.1.2023 passed in C.W.J.C. No.38 of 2022 whereby the learned Single Judge while holding that the appellant having moved an application for withdrawal of his application for voluntary retirement, his application could not have been accepted and approved and the same was bad in law. The learned Single Judge proceeded to hold that in view of the fact that the appellant did not possess Ph.D degree, he cannot be allowed to continue after 62 years of age and is thus not entitled to any relief as prayed for.
3. The relevant facts in brief are that the appellant was appointed as the Principal of Sriswami Parankushacharya Adarsh Sanskrit Mahavidyalay, Hulasganj, District Gaya (at present District Jehanabad) ('the College' in short) on 22.2.1990. He started working in the capacity of the Principal. By his application dated 12.11.2021 addressed to the Vice Chancellor of the Central Sanskrit University, Janakpuri, New Delhi ('the University' in short), the appellant expressed his desire to retire voluntarily. As per the appellant's case, the said

application for voluntary retirement was withdrawn by his other letter dated 14.11.2021 wherein the appellant expressed his willingness to work till the age of 65 years. The Registrar-cum-In charge of the University wrote a letter dated 16.11.2021 to the Chairman of the Managing Committee forwarding the application of the appellant date 14.11.2021 for withdrawal of his application for voluntary retirement. However, the respondents continued to sit over the matter and neither any decision was taken nor communicated to him.

4. As such the petitioner filed C.W.J.C. No. 38 of 2022 in this Court for the following reliefs:

"That, the petitioner is invoking writ jurisdiction of this Hon'ble Court for issuance of appropriate writ(s), order(s), direction(s) commanding the respondent authorities to accept the withdrawal of his earlier request for voluntary retirement.

The petitioner further seeks relief that he should be allowed to function as Principal till date of his superannuation i.e. after completion of 65 years of age and any other relief/reliefs for which petitioner is found entitled too in the facts and circumstances of the case"

5. Counter affidavits were filed on behalf of the respondents in the writ application. A counter affidavit on behalf of the respondent no.7 was also filed in the appeal.

6. The case of the respondent- Managing Committee of the College was to the effect that the appellant who was the Principal of the College, of his own volition submitted his application dated 12.11.2021 to the Vice Chancellor of the University seeking voluntary retirement. The Vice Chancellor forwarded the same to the Managing Committee of the College stating that he had given his consent for accepting the appellant's request. It was further directed that the senior most teacher be appointed as Principal. As instructed, the Chairperson of the Managing Committee accepted the appellant's request for voluntary retirement on 12.11.2021, appointed respondent no.7 on the post of Principal and communicated the same to the appellant who refused to acknowledge receipt of the same. The respondent no.7 joined and took charge as Principal of the College and informed the Chairperson of the Managing Committee as also the Vice Chancellor, Central Sanskrit University.

7. The learned Single Judge by his judgment dated 11.1.2023 was pleased to dispose of the writ application. It is against this judgment that the appellant has preferred the instant appeal.

8. No appeal has been preferred by the writ-respondents.

9. Heard Mr. Manan Kumar Mishra, learned Senior counsel for the appellant, Dr. K.N. Singh, learned Senior counsel for the respondent nos. 1 to 3, 5 and 6 and Mr. P.K. Shahi, learned Senior counsel for the respondent no. 4 and 7.

10. The relevant facts in brief are that the appellant who was working as the Principal of the College since long filed an application on 12.11.2021 addressed to the Vice Chancellor of the Central Sanskrit University expressing his desire to be granted voluntary retirement. Soon thereafter on 14.11.2021 the appellant wrote another letter to the Vice Chancellor requesting withdrawal of his earlier letter praying for voluntary retirement and expressing his desire to work till the age of 65 years on the post of Principal. The letter of withdrawal of voluntary retirement dated 14.11.2021 was received by email in the university on 15.11.2021 and the same was forwarded to the In-charge as also the Managing Committee of the College for taking further action on the appellant's application seeking withdrawal of his earlier prayer for voluntary retirement. It is not in dispute that the prayer of voluntary retirement made by the appellant was approved by the Managing Committee in its meeting held on 30.11.2021 and the minutes of the said meeting dated 30.11.2021 was approved by the Managing Committee in its meeting held on 21.12.2021.

11. The learned Single Judge taking note of the various judgments of the Hon'ble Supreme Court on the point of voluntary retirement, withdrawal thereof, when the same becomes effective etc., came to the conclusion that before the date of acceptance of his prayer for voluntary retirement, the appellant had already moved an application for withdrawal of his VRS application and thus the appellant's VRS application could not have been accepted and approved. The learned Single Judge came to the conclusion that the action of the respondents was bad in law and deserved to be set aside. It may be mentioned here itself that so far as this part of the judgment of the learned Single Judge is concerned, the appellant is not aggrieved by the same. Further no appeal has been preferred by the respondents.

12. Sri Manan Kumar Mishra, learned Senior counsel appearing for the appellant submitted that the Principal is a teaching staff and as per the UGC Regulation, age of superannuation of a teaching staff is 65 years. It was further submitted that no distinction has been made between teachers working in the College, in the University and others and as per the extant regulations of the UGC, which was applicable at the relevant time also, no Ph.D is required to hold the post of Principal. The appellant not having been allowed to assume his duties in the capacity of a teacher in the College on the ground of his having attained the age of 62 years is illegal and arbitrary. It was further submitted that the Principal is a teaching staff and as per UGC Regulation, the age of superannuation is 65 years and the State Government has adopted the conditions off the UGC and irrespective of qualification all teachers are continued till 65 years. The learned Single Judge had travelled beyond the prayer made in the writ application and thus the order impugned was bad in law as also on facts.

13. Dr. K.N. Singh, learned Senior counsel appearing for the Central Sanskrit University submitted that the University is the nodal agency working for the Ministry of Education, Government of India which supplies funds to such Adarsh

Mahavidyalays/Adarsh Shodh Sansthan. The revised Adarsh Scheme, 2012 is at present applicable. The application of the petitioner for voluntary retirement and letter for withdrawal of his application for voluntary retirement were both received in the office of the Registrar and forwarded to the Managing Committee to take a decision in the matter. It was submitted that the College in question is affiliated to the University and the age of retirement as per bye laws of the College is 62 years. It was finally submitted that there is no merit in the writ application and the same be dismissed. It is also submitted that he has been instructed to submit that as far as Adarsh Mahavidyalays/Adarsh Shodh Sansthan, as per the Ayush scheme of 2012, the continuance of teachers beyond 62 years, is confined to those who have the qualifications as required by the UGC.

14. Mr. P.K. Shahi, learned Senior counsel appearing for the respondent nos. 4 and 7 submitted that the petitioner who is not a Ph.D holder, even after crossing the age of 62 years was discharging his duty as a Principal. On 12.11.2021 he sent a VRS through email to the university who forwarded the same to the Managing Committee. The Managing Committee accepted the application for voluntary retirement and notified the appointment of respondent no.7 as Principal vide notification dated 12.11.2021. Accordingly, the respondent no.7 joined as Principal on 13.11.2021. It was further submitted that the College in question gets affiliation from the Central Sanskrit University and the UGC Regulations are also applicable. The Regulations clearly provide that the non-Ph.D Principal of the College shall retire at the age of 62 years. As such the appellant was rightly retired. There being no merit in the appeal, the same be dismissed.

15. Having heard learned counsels appearing for the parties the facts to be noted here is that the College in question is affiliated to the Central Sanskrit University which has the administration, financial and over all control on it. The conditions of employment in the College are as per the Adarsh Scheme, 2012. Soon after the appellant's appointment as Principal of the College in the year 2019 the Adarsh Scheme 1993 came into force and clause 7 thereof which deals with retirement, is reproduced hereinbelow for ready reference:

".....Clause 7 of Adarsh Scheme-1993 Guidelines to Management Committee of Adarsh Mahavidyalaya/Shodha Sansthan regarding conditions governing the Sanskrit services of Teaching/non-teaching staff, the following provision is given in regard of Retirement:-

7. Retirement:

The age of retirement for teaching and non-teaching staff shall be such as is applicable to corresponding staff employed in Graduate/Post Graduate degree college run by respective State Government. The retirement will take effect from the afternoon of the last day of the month in which the employee attains the age of retirement."

16. Subsequently, the scheme was revised in the year 2012 and the service

conditions of the regular employees are governed by the provisions of the revised Adarsh Scheme, 2012. Clause 62 of the revised scheme which deals with the age of the retirement of the teaching staff is reproduced hereinbelow for ready reference:-

Revised Adarsh Scheme, 2012.

62. "The age of retirement of teaching staff in Adarsh Sanskrit Mahavidyalaya and Academic staff in Adarsh Shodha Sansthan appointed following the UGC guideline and enjoying UGC Scales of pay will be as prescribed by the UGC. Those who do not fulfill the UGC qualification will retire as per provisions of the previous scheme. The age of the retirement of non-teaching staff will be as per UGC norms".

17. From perusal of the clause 62 of the Revised Adarsh Scheme, 2012, it would clearly be evident that the same provides that those who do not fulfill the UGC qualification will retire as per the previous scheme. The relevant UGC Regulations for superannuation and reemployment of teachers, which has been quoted and relied upon by the learned Single Judge, is also quoted hereinbelow for ready reference:-

"16.0.0 superannuation and re-employment of teachers

16.1.0. Teachers will retire at the age of 62. However, it is open to a University or a college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years.

16.2.0 Age of retirement of Registrars, Librarians, Physical Education personnel, Controllers of Examinations, Finance Officers and such other University employees who are being treated at par with the teachers and whose age of superannuation was 60 years, would be 62 years. No re-employment facility is recommended for the Registrars. Librarians and Directors of Physical Education.

17.0.0 Superannuation Benefits

17.1.0 The benefit in service, up to a maximum 3 years, should be provided for the teachers who have acquired Ph.D. degree at the time of entry, so that, almost all teachers get full retirement benefits which are available after 33 years of service, subject to the overall age of superannuation.

17.2.0 other conditions with respect to Superannuation Benefits may be given as per Central/State Government Rules."

18. From perusal of the Regulations of the UGC with respect to the superannuation and re-employment etc. it clearly transpires that the age of retirement of teachers is 62 years and the benefit of service of maximum of 3 years is to be provided to the teachers who have acquired Ph.D degree at the time of entry. There is thus a clear distinction in so far as teachers who have a Ph.D qualification at the time of entry into service and those who acquire such qualification when they are in service and continuing thereat. Thus in case of a

teacher who has obtained Ph.D degree, his/her service period may be extended for a further period of three years i.e. up to the age of 65 years. Presumably this takes into account the period that would have been spent in research and achieving a Doctorate and the care taken to ensure that a full pension is not denied to those who had pursued research and acquired a Doctorate degree, even prior to their entry into service. It is only a normal incidence that follows and corollary to a decision to insist for a Ph.D as an essential qualification for Professors in Universities and Colleges.

19. Learned Counsel for the appellant then produced before us a subsequent guideline issued by the UGC, which contained the following :

“(f) Age of Superannuation:

(i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years, vide the Department of Higher Education letter No. F.No.119/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education DO. letter No. F.1-24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice-Chancellors of Central Universities from sixty five to seventy years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).

(ii) Subject to availability of vacant positions and fitness, teachers shall also be reemployed on contract appointment beyond the age of sixty five years up to the age of seventy years. Re-employment beyond the age of superannuation shall, however, be done selectively, for a limited period of three years in the first instance and then for another further period of two years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.

(ii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible persons to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period, and whereas there is no shortage in the categories of Librarians and Directors of Physical Education, the increase in the age of superannuation from the present sixty two years shall not be available to the categories of Librarians and Directors of Physical Education.”

20. According to the learned Senior Counsel this would ensure the continuance of even teachers without a Ph.D till the age of 65 years; which is the date of

superannuation for all teachers, even as followed by the State Government. We are unable to countenance the argument especially noticing the distinction we pointed out herein above; of those teachers who acquired Ph.D while in service and before their entry in service. Earlier only teachers who were Ph.D holders at the time of their entry into service were permitted continuance in service upto 65 years; an additional three years to ensure that they are entitled to full pension. By the above extract all teachers who had Ph.D were entitled to be continued. While the earlier stipulation was teacher centric, the present one was student centric or education centric; to ensure better teaching facilities by experienced and qualified teachers. We also cannot accept the argument advanced based on the system followed by the State in its Universities and the Colleges under them. Here the institution is under the Central Government and regulated by the Adarsh Scheme, which clearly stipulates retirement to be under the UGC Scheme.

21. So far as the facts of the instant case are concerned, it is not in dispute that the appellant has reached the age of 62 years and it is also not in dispute that he has not obtained Ph.D degree. Thus as per the UGC Regulations, he could have continued only up to the age of 62 years and not beyond, since for Principals Ph.D is a mandatory qualification as per the UGC Regulations of 2010 & 2018. Taking into consideration the material on record, the Revised Adarsh Scheme, the provisions which governed the retirement age and qualification etc. of the employees and the relevant UGC Regulations, the learned Single Judge rightly came to the conclusion that the appellant having attained the age of 62 years would be treated to have superannuated and inspite of the finding of the Court that the action of the respondents in accepting the application of the appellant for voluntary retirement was bad in law, nevertheless no relief can be granted to the appellant. The Court finds no illegality in the order of the learned Single Judge.

22. There being no merit in the instant appeal, the same is dismissed.

I agree.