(2018) 02 CHH CK 0033

In the Chhattisgarh High Court

Case No : WPS No. 1563, 6931, of 2014

H.S.BAGHEL APPELLANT

Vs

STATE OF CHHATTISGARH AND ORS. RESPONDENT

Date of Decision : 27-02-2018

Acts Referred:
Constitution of India, 1950 — Article 213

Citation : (2018) 02 CHH CK 0033

Hon'ble Judges : MANINDRA MOHAN SHRIVASTAVA

Bench : Single Bench

Advocate : V.G.Tamaskar, Satish Gupta, Manoj Kumar Dubey

Final Decision : Allowed

Judgement

1. The aforesaid two petitions are being decided by common order as both the petitions are filed by the petitioner â?" Mr. H.S.Baghel.

2. In the first petition, i.e. in WPS No.1563/2014, the petitioner has assailed legality and validity of the notice by which he is intimated that he would be

retiring upon attaining age of superannuation of 60 years on 31/03/2014.

In the subsequent petition i.e. WPS No.6932/2016, the petitioner has sought a direction for release of his pension.

3. Brief and relevant facts necessary for adjudication of controversy involved in WPS No.1563/2014 are that the petitioner was initially appointed as

Lower Division Clerk in a private, Government aided college namely Kalyan Postâ?"Graduate College. He was promoted as Head Clerk and

confirmed vide order dated 28/10/1997. Undisputedly, the aforesaid college is a private college whose affairs are managed by a governing body

constituted under Statute No.28 (College Code) framed under M.P. / CG Vishvidyalaya Adhiniyam, 1973. It is also not in dispute that the said private college i.e. Kalyan Arts and Commerce College, Bhilainagar is affiliated to the privileges of the said university namely Pt. Ravi Shankar Shukla

Vishvavidyalaya, Raipur established under M.P. / C.G. Vishvidyalaya Adhiniyam, 1973. The age of retirement of non-teaching staff of the college has

been fixed as 60 years.

4. By an amending Ordinance in C.G. Shaskiya Sevak (Adhivarshiki-Ayu) (Sanshodhan) Ordinance, 2013 (no.2 of 2013), the age of superannuation of

all the Government employees was increased from 60 to 62 years. The said ordinance was published in the C.G. Rajpatra (Asadharan) (No.374)

dated 23/08/2013.

By the said amendment, though the age of superannuation of teaching and non-teaching staff of the Government colleges was increased from 60 to 62

years, there was no stipulation regarding enhancement of the age of retirement of non-teaching staff of private colleges which are receiving 100%

grant-in-aid from the Government. State Government issued a circular on 26/08/2013 in which it was provided that the Ordinance of 2013 would be

effective from 31/08/2013, meaning thereby that it will be applicable in respect of those Government Servants who are attaining the age of

superannuation on or after 31/08/2013. The said circular also stipulated that the Government has taken a decision that the enhancement of age of

superannuation be also made applicable in respect of the officers and servants of all the Corporation, Government institutions, Panchayats and Urban

bodies. However, as there was no specific provision with regard to application of the said circular and Ordinance, enhancing age of superannuation

from 60 to 62 years in respect of non-teaching staff of private but Government aided colleges, the impugned retirement notice dated 30/10/2013 was

served on the petitioner informing him that he would be retiring w.e.f. 31/03/2014 upon attaining the age of superannuation. The petitioner felt

aggrieved because in respect of the non-teaching staff of Government Colleges, by operation of amended provision under the ordinance, age of

superannuation was enhanced from 60 to 62 years w.e.f. 31/08/2013. The said colleges promptly sent various communications to the Government for

issuing necessary instructions with regard to enhancement of age of superannuation of non-teaching staff of the private aided colleges also but when

the Government did not issue any order, the petitioner approached this Court assailing legality and validity of notice of retirement dated 30/10/2013 and

also prayed for a direction that his age of superannuation be also declared at par with the non-teaching staff of the Government colleges and he be

allowed to continue until he attains the enhanced age of superannuation i.e. 62 years.

5. Learned counsel for the petitioner argued that the petitioner is a regular non-teaching staff of a private college which is receiving 100% grant-in-aid

from the Government. As the institution is fully aided by the Government, affiliated to the privilege of the university and in the past also, when the age

of superannuation was increased from 58 years to 60 years, it was made applicable to teaching and non-teaching staff of private and fully aided

colleges, respondents are obliged under the law to enhance the age of superannuation of the petitioner from 60 to 62 years and the discriminatory

treatment meted out to the petitioner is violative of the various Government instructions particularly, Instruction dated 08/08/2014 by which the age of

superannuation of non-teaching staff private aided colleges has also been enhanced from 60 to 62 years as per Finance Department Instruction dated

26/08/2013 (Instruction No.54/13). It was urged that conjoint reading of circular dated 26/08/2013 and 08/08/2014, upon rational construction would

mean that the age of superannuation of non-teaching staff of fully aided private colleges is not only increased from 60 to 62 years, but the same would

take effect from the date of promulgation of ordinance as specified in circular dated 26/08/2013 and not from the date, circular dated 08/08/2014 is

issued.

6. On the other hand, learned counsel for the respondents, particularly the State has submitted that though the age of superannuation of Government

Servants which included non-teaching staff of Government colleges was enhanced by carrying out amendment vide the C.G. Shaskiya Sevak

(Adhivarshiki-Ayu) (Sanshodhan) Ordinance, 2013 (no.2 of 2013), the same was not made applicable as per circular dated 26/08/2013, in relation to

non-teaching staff of private colleges who are non-Government employees. Enhanced age of superannuation was made applicable only w.e.f.

08/08/2014 under circular dated 08/08/2014. Therefore, only those non-teaching staff of private colleges who retired on or after 08/08/2014 would be

benefited by enhancing age of superannuation. In other words, it is submitted that all those non-teaching staffs of private and aided colleges who

attained the age of superannuation of 60 years prior to 08/08/2014, would not get the benefit of enhanced age of superannuation.

7. In order to resolve the aforesaid controversy, it is required to be seen whether the decision to enhance superannuation age from 60 to 62 years in

respect of non-teaching staff of private aided colleges was made applicable from 08/08/2014 or w.e.f. the same date it was made applicable in respect

of the Government Servant as provided in circular dated 26/08/2013. For this purpose, it would be expedient to extract herein below the notification

dated 23/08/2013 as published in the Gazette, circular dated 26/08/2013 as also circular dated 08/08/2014.

Circular dated 26/08/2013 reads as under :-

â??jkT; 'kklu }kjk fu.kZ; fy;k x;k gS fd jkT; 'kklu ds ,sls leLr 'kkldh; lsod ftudh vf/kokf""kZdh vk;q orZeku esa 60 o""kZ gS] esa o`f) dj 62 o""kZ dh tk;sA

rn~uqlkj NRrhlx;g v/;kns'k NRrhlx2- NRrhlxmu 'kkldh; lsodksa ij ykxw gksxk] ftudh vf/kokf""kZdh&vk;q ij lsokfuo`fRr dh frfFk] orZeku fu;eksa ds vuqlkj fnukad 31 vxLr] 2013 ;k blds i'pkr~ gSA

3- jkT; 'kklu }kjk ;g Hkh fu.kZ; fy;k x;k gS fd izns'k ds leLr fuxeksa@eaMyksa@'kkldh; fudk;ks@iapk;r rFkk uxjh; fudk;ksa ds vf/kdkfj;ksa rFkk

deZpkfj;ksa dh vf/kokf""kZdh vk;q esa Hkh bl la'kks/ku ds vuq:i o`f) dh tk,A bl gsrq lacaf/kr laLFkkvksa ds iz'kkldh; foHkkx vius v/khuLFk laLFkkvksa

gsrq mfpr funsZ'k izlkfjr djsaxsA ,slh laLFkk, vius fu;eksa@funsZ'kksa esa ;Fkk vko';d la'kks/ku gsrq mfpr dk;Zokgh rRdky lqfuf'pr djsaxsA

4- ,sls 'kkldh; lsod tks lsoko`f)@iqufuZ;qfDr@lafonk fu;qfDr ij gSa] muds ekeykssa esa ;g vkns'k ykxw ugha gksxk] D;ksafd os bl la'kks/ku ds iwoZ

fo|eku fu;eksa@funsZ'kksa ds varxZr vf/kokf""kZdh vk;q iw.kZ dj pqds gSAâ??

The ordinance as published in the official gazette reads as under :-

In exercise of powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Chhattisgarh is pleased to promulgate the

following :-

â??1. (1) This Ordinance may be called the Chhattisgarh Shaskiya Sevak (Adhivarshiki â?" Ayu) (Sanshodhan) Ordinance, 2013.

(2) It shall come into force from the 31st day of August, 2013.

2. During the period of operation of this Ordinance, the Chhattisgarh Shaskiya

Sevak (Adhivarshiki â?" Ayu) Adhiniyam, 1967 (No.29 of 1967)

(hereinafter referred to as the Principal Act), shall have the effect, subject to the amendments specified in Section 3.

3. In Rule 56 of the Fundamental Rules as substituted by Section 2 of the Principal Act, the following shall be incorporated, namely :-

(i) In sub-rule (1), the words, figures, parenthesis, hyphen and punctuation, (1-a), (1-b) and (1-c) shall be omitted.

(ii) In sub-rule (1), for the word â??sixtyâ?? wherever it occurs, the word â??sixty twoâ?? shall be substituted.

(iii) Sub-rule (1-a), (1-b) and (1-c) shall be omitted.â??

The circular dated 08/08/2014 reads as under -

â??jkT; 'kklu ,rn~ }kjk mPp f'k{kk foHkkx ds varxZr bafnjk dyk laxhr fo'ofo|ky;] [kSjkxiafMr laqnj yky 'kekZ (eqDr) fo'ofo|ky;] fcykliqj ,oa vuqnku izkIr v'kkldh; egkfo|ky;ksa esa dk;Zjr v'kS{kf.kd LVkQ ftudh vf/kokf""kZdh vk;q orZeku

esa 60 o""kZ gS] esa o`f) dj 62 o""kZ

djus ds laca/k esa foRr foHkkx dk ifji= dzekad 361@,Q&2013&17&00004&fo@fu@pkj@2013] fnukad 26-08-2013 (foRr funsZ'k 54@2013) dk

izko/kku ykxq fd;k tkrk gSA

2- ;g Lohd`fr foRr foHkkx ds dEI;wVj dzekad ,Q&2014&38&00277]

07-07-2014 }kjk nh x;h lgefr ds vk/kkj ij tkjh dh tk jgh gSAâ??

8. The ordinance of 2013 referred to above clearly stipulate that the same would come into effect from 31/08/2013 as provided in Clause 1 (2) thereof,

as below :-

â??1. (1) xxxxxxxxx

(2) It shall come into force from the 31st day of August, 2013.â??

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Circular dated 26/08/2013 stipulates in Clause 2 thereof that the Ordinance would be applicable from 31/08/2013 and has been further explained in the

manner that it would be applicable in respect of those Government Servants who attained the age of superannuation on or after 31/08/2013.

There was some delay in issuing directions with regard to application of the aforesaid provision of the ordinance in relation to non-teaching staff of

private aided educational institution. The circular in that regard was issued as late as on 08/08/2014 i.e. after almost 11 months of circular dated

26/08/2013. In this circular, it has been very clearly stipulated that in the matter of enhancement of age of superannuation of non-teaching staff of

Government aided private colleges, Finance Instruction no.54/2013 dated 26/08/2013 would be applicable. It is extremely relevant to notice that

circular dated 08/08/2014 does not contain any other stipulation to say that in respect of the non-teaching staff of private aided colleges, date of taking

effect of the provisions relating to enhancement of age of superannuation would be different than what has been described either under the Ordinance

or under circular dated 26/08/2013. Therefore, in such a situation, circular dated 26/08/2013 would become applicable in the same manner, it has been

made applicable in respect of the Government Servants. Clause 2 of circular dated 26/08/2013 is crystal clear wherein it has been explained that the

benefit of enhanced age of superannuation from 60 to 62 years would be available to those employees who would be retiring on or after 31/08/2013.

9. Learned counsel for the State could not point out to the Court that the Government had passed any other order to say that the benefit of enhanced

age of superannuation in respect of the non-teaching staff of private aided colleges would be effective from any date other than 31/08/2013. Further,

learned State counsel could not refer to provisions of any law in force and applicable to non-teaching staff of private aided colleges to buttress his

submission that the age of superannuation of non-teaching staff of private aided colleges would be applicable from the date other than 31/08/2013.

10. In view of the aforesaid discussion and analysis, irresistible conclusion of this Court is that in respect of non-teaching staff of private colleges

receiving 100% grant-in-aid from the Government, the enhanced age of superannuation from 60 to

62 years would take effect only from 31/08/2013 as provided in the Ordinance as also circular dated 26/08/2013 which was made applicable vide

another circular dated 08/08/2014. As the petitioner attained age of superannuation after 31/08/2013, he was certainly entitled to continue in service

until he attained the age of superannuation of 62 years.

By virtue of an interim order passed by this Court, the petitioner continued in service till he attained the age of 62 years. The petitioner, therefore, shall

be deemed to have continued in service till 31/03/2016 until he attained the age of 62 years. He would accordingly be entitled to all consequential

benefits as if he was in service till 31/03/2016.

11. The other petition i.e. WPS No.6931/2016 is an offshoot of the earlier petition and interim order passed therein. Obviously, as the matter remained

pending before this Court and the petitioner was continuing in service only by virtue of interim order, petitioner's pension could not be finalised.

However, now, it is required to be finalised / revised by treating the petitioner to be in service till 31/03/2016. The pension case of the petitioner shall

accordingly be finalised within a period of four months from today so that all retiral dues of the petitioner which are not paid to him including pension,

are released in his favour at the earliest.

12. The aforesaid two petitions are accordingly allowed in the manner and to the extent indicated as above. No order as to costs.