(2016) 03 KL CK 0153

In the High Court Of Kerala

Case No : WP(C) Nos. 10257 of 2016 (F) and 11511 of 2016

J. Vijayan and Others APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Constitution of India, 1950 — Article 245, Article 246, Article 254, Article 309
University Grants Commission Act, 1956 — Section 20, Section 26

Citation : (2016) 03 KL CK 0153

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Indu Susan Jacob, Advocate, for the Appellant; Babu Varghese, Addl. Advocate General and M.A. Fayaz, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—1. Petitioners are persons, who are aggrieved with their impending retirement, which occurs at the end of the academic year. WP(C) No. 10257 of 2016 is filed by teachers, who are retiring at the age of 56, from aided affiliated Colleges, whose salaries are paid by the Government under the direct payment agreement. WP(C) No. 11511 of 2016 is filed by teachers, who are working with the University of Kerala itself, whose retirement is at the age of 60. The retirement, respectively at the age of 56 and 60, is by way of prescriptions made by the State under Article 309 of the Constitution of India. The petitioners claim that they ought to be granted extended period of service and permitted to continue till the age of 65 as per the ''UGC Regulations On Minimum Qualifications For Appointment Of Teachers And Other Academic Staff In Universities And Colleges And Measures For The Maintenance Of Standards In Higher Education 2010''(herein after for brevity ''UGC Regulations''). The UGC Regulations specifically enhanced the age of retirement from 62 to 65 for the teaching faculty, is the contention. The petitioners contend that the position has acquired further clarity in so far as by Ext. P2 judgment, a Full Bench of this Court has held that, irrespective of whether the University Acts, enacted under

Entry 25 of List III or the Statutes & Ordinances framed there under, were amended in line with the UGC Regulations or not, the Universities and affiliated Colleges of the State of Kerala are bound to comply with the UGC Regulations 2010; in view of its adoption by the State of Kerala with effect from 18.09.2010. The Full Bench of this Court had reversed an earlier decision of a Division Bench. The Division Bench held that the regulation would have force, only if the statutes are amended by the State or the University and otherwise the consequence would only be a loss of grant or punitive action by the UGC.

2. The Full Bench held so:

"17: Therefore, irrespective of whether the University Acts enacted under Entry 25 of list III or the Statutes framed thereunder are amended in line with the UGC Regulations or not, in view of its adoption by the State of Kerala with effect from 18.09.2010 as per Government Order dated 10.12.2010, the Universities and affiliated colleges in Kerala State are bound to comply with the UGC Regulations, 2010. Viewed in that manner, the natural consequence is that the principles laid down by this Court in Raveendran''s case cannot be sustained and is overruled."

3. I have heard the learned Counsel for the petitioner, the learned Standing Counsel for the UGC as also the respective Universities and the learned Additional Advocate General, on behalf of the State. The respondents rely on a decision of the Hon''ble Supreme Court reported in [Jagdish Prasad Sharma and others v. State of Bihar and others] , [2013] 8 SCC 633. The learned Counsel for the petitioner contends that the said decision supports her stand.

4. It is pointed out that there were two issues considered in the aforesaid decision; one the effect of adoption of such Regulation by the respective States and the other when no adoption of Regulations is effected. In the event of adoption of the Regulations, as is the case with the State of Kerala, the learned Counsel for the petitioner would submit that the further question decided was whether there is a composite scheme and the State Government could adopt certain provisions of the Scheme and refuse acceptance of certain other conditions. It is also pointed out that the Hon''ble Supreme Court has categorically declared that when the State Governments have taken a decision to adopt the scheme, the consequences envisaged in the Scheme would automatically follow and the State Government world not be able to take a contrary stance with respect to superannuation alone. Even going by the Supreme Court decision, it is urged that; the Kerala State having adopted the UGC Regulations has to necessarily enhance the retirement age of teaching faculty to 65; a statutory imperative as is urged by the petitioners. The statutes of the State under Entry 25 of List III, in so far as it is repugnant to the law enacted by the Union Parliament under Entry 66 of List I, would be void under Article 254 of the Constitution, is the argument. The Regulations made by the UGC, being under the UGC Act, 1956; has statutory force as has been declared by a Constitution Bench of the Supreme Court in Sukhdev Singh v. The Oil and Natural Gas Commission { , AIR 1975 SC 1331}

5. At the outset it is to be noticed that after the adoption of the scheme by the State of Kerala in the year 2010 the teachers of affiliated colleges, raising a similar contention was before this Court and then before the Hon''ble Supreme Court. Jagdish Prasad Sharma (supra) dealt with a similar contention raised with respect to superannuation as per the UGC Regulations of 2010. All the appeals filed were dismissed on the finding that a regulation framed by the UGC under the University Grants Commission Act, 1956 which relates to Entry 66 of List I of the Seventh Schedule to the Constitution of India cannot alter the terms and conditions of an enactment by a State, under Article 309 of the Constitution.

6. In fact, the Hon''ble Supreme Court in Jagdish Prasad Sharma (supra) has specifically noticed the situation existing in Kerala, in Paragraph 68 and 72 which are extracted here under:

"68: Another anxiety which is special to certain States, such as the States of Uttar Pradesh and Kerala, has also come to light during the hearing. In both the States, the problem is one of surplusage and providing an opportunity for others to enter into service. On behalf of the State of Kerala, it had been urged that there were a large number of educated unemployed youth, who are waiting to be appointed, but by retaining teachers beyond the age of 62 years, they were being denied such opportunity. As far as the State of U.P is concerned, it is one of job expectancy, similar to that prevailing in Kerala. The State Governments of the said two States were, therefore, opposed to the adoption of the UGC Scheme, although, the same has not been made compulsorily applicable to the Universities, colleges and other institutions under the control of the State authorities.

72: As far as the States of Kerala and U.P are concerned, they have their own problems which are localised and stand on a different footing from the other States, none of whom who appear to have the same problem. Education now being a List III subject, the State Government is at liberty to frame its own laws relating to education in the State and is not, therefore, bound to accept or follow the Regulations framed by UGC. It is only natural that if they wish to adopt the Regulations framed by the Commission under Section 26 of the UGC Act, 1956, the States will have to abide by the conditions as laid down by the Commission."

7. It is an admitted position that the fact situation was similar at that time point of time also. The Hon''ble Supreme Court had declined the claim of the teachers, for continuance up to the age of 65, the age of superannuation as prescribed in the UGC Regulations. The fact situation being same even at this juncture, there cannot be any different view taken only on the basis of the Full Bench decision in W.P(C) No. 29253/2012 dated 23.02.2016 produced at Ext. P2. That does not at all alter the fact situation on which alone the law can be applied.

8. Further the focus in the Full Bench decision was on Section 26 of the UGC Act and the Regulations framed under clause (g), which deals with regulation of the ''maintenance of standards and the coordination of facilities in Universities''. The

said decision can have no application in the case of a statutory requirement of retirement at the age as specified by the State under Article 309 of the Constitution. Whether the prescription of the age of superannuation of a faculty member would affect the ''standards'' is a moot question. It could be argued both ways, since the weight of experience and the youthful presence, more in touch with the recent advances could both benefit the students; for whom the better standards are prescribed. But it is not on that alone that the issue has to be looked at. Superannuation is not to be decided in isolation and the same being an integral part of the service conditions of an employee; the employer, herein the State has to arrive at a policy, weighing the various balancing considerations and keeping in mind the other obligations, one of which is the surplus of qualified hands and the limited employment opportunities. Further the entire case is built upon the repugnancy of the legislation enacted under List III, with that under List I; which may not have any application here.

9. State of W.B. v. Kesoram Industries Ltd. [, (2004) 10 SCC 201] reiterated that the various entries in the three Lists are not powers of legislation, but only fields of legislation. The source of legislative power has to be traced to Article 245 and Article 246 of the Constitution, effects a complete separation of the power of the Union and the States. The Entries in the Lists have been held to be a simple enumeration of broad categories not allocated on a scientific or logical reasoning. Likewise the age of retirement prescribed by the State is under Article 309, to which alone can be traced the power to so prescribe the age of superannuation, which definitely is a service condition. There does not arise any question of resolution of a conflict arising between the legislation under Entry 66 of List 1 and Entry 25 of List II of the seventh schedule and the decision in Sukhdev Singh (supra) would have no application.

10. The Regulation too, examined in the context of the above interpretation brings forth a different picture, than sought to be drawn by the petitioners. Clauses 2.1.0, 2.3.1 clause (f) of paragraph 8 {Other Terms and Conditions} of Appendix I, are relevant and are extracted here under:

"2.1.0 The revised scales of pay and other service conditions including age of superannuation in central universities and other institutions maintained and/or funded by the University Grants Commission (UGC), shall be strictly in accordance with the decision of the Central Government, Ministry of Human Resources Development (Department of Education) as contained in Appendix-I.

2.3.0: The pay fixation formula for teachers shall apply for other positions in the Library and Physical Education and Sports cadres in the Central Universities and Colleges thereunder and Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC."

Appendix I - 8 f (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 D.O. 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 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities)

(iii) 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."

11. Paragraph 8 (f) (i) only speaks of enhancement of retirement age for teachers in Central Educational Institutions and the intention is only to meet the shortage of teachers, which as noticed by the Hon''ble Supreme Court in Jagdish Prasad Sharma (supra) is not an exigency, at least in the State of Kerala. The prescription for extension of period of service, including age of superannuation to Universities, colleges and other higher educational institutions coming under the State legislation, is also not mandatory as evident from the use of the word ''may'' in Clause 2.3.0. The Regulation is also subject to the instructions of the Ministry Of Human Resources Development (for brevity MHRD).

12. The Government of India, through the MHRD has brought out Circular No. .F1-7/2010/U-II dated 14.08.2012 which the learned Standing Counsel for the UGC submits is under Section 20 of the UGC Act. Relevant would be paragraph 4 and 5 of the Circular which reads as under:

"4. After taking into consideration the views expressed by several State Education Ministers during the Conference held in 2010 the Central Government has now decided to de-link the condition of enhancement of age of superannuation from the payment of Central share of 80% arrears to the States.

5. Bearing in mind that the question of enhancement of age of retirement is exclusively within the domain of the policy making power of the State Governments, the issue of age of retirement has been left to the State Governments to decide at their level. The condition of enhancement of age of superannuation to 65 years as mentioned in this Ministry''s letter dated 31.12.2008 may be treated as withdrawn, for the purpose of seeking reimbursement of central share of arrears to be paid to State University and

College teachers. However, the other conditions as mentioned in the letters cited above shall continue to apply."

13. The primacy of the Central Government even in so far as prescribing the standards of education has been laid down by the Hon''ble Supreme Court in P. Suseela v. University Grants Commission (, 2015 (8) SCC 129), paragraph 12 of which is extracted here under:

"12. It is clear that Section 26 enables the Commission to make regulations only if they are consistent with the UGC Act. This necessarily means that such regulations must conform to Section 20 of the Act and under Section 20 of the Act the Central Government is given the power to give directions on questions of policy relating to national purposes which shall guide the Commission in the discharge of its functions under the Act. It is clear, therefore, that both the directions of 12-11-2008 and 30-3-2010 are directions made pertaining to questions of policy relating to national purposes inasmuch as, being based on the Mungekar Committee Report, the Central Government felt that a common uniform nationwide test should be a minimum eligibility condition for recruitment for the appointment of Lecturer/Assistant Professors in universities/colleges/ institutions. This is for the obvious reason that M.Phil degrees or PhD degrees are granted by different universities/institutions having differing standards of excellence. It is quite possible to conceive of MPhil/PhD degrees being granted by several universities which did not have stringent standards of excellence. Considering as a matter of policy that the appointment of Lecturers/Assistant Professors in all institutions governed by the UGC Act (which are institutions all over the country), the need was felt to have in addition a national entrance test as a minimum eligibility condition being an additional qualification which has become necessary in view of wide disparities in the granting of MPhil/PhD degrees by various universities/institutions. The object sought to be achieved by these directions is clear: that all Lecturers in universities/colleges/institutions governed by the UGC Act should have a certain minimum standard of excellence before they are appointed as such. These directions are not only made in exercise of powers under Section 20 of the Act but are made to provide for coordination and determination of standards which lies at the very core of the UGC Act. It is clear, therefore, that any regulation made under Section 26 must conform to the directions issued by the Central Government under Section 20 of the Act."

14. The Circular issued by the Central Government is a decision arrived at in consultation with the States and is in deference to the powers conceded to the States to prescribe the service conditions of its employees, which also would fall within the ambit of a policy decision; un-disputedly within the exclusive domain of the respective State Governments. The policy of the State Government which is evidenced by the statutory provisions mandating retirement of the teachers of aided affiliated colleges at the age of 56 and that of the Universities retiring at the age of 60 is also undisputed and has been crystallized by the enactments

under Article 309. There is hence no case of repugnancy and the Central Government as also the UGC concedes to the position that the prescription of age of superannuation is the exclusive premise of the State Governments.

In such circumstance, the writ petitions cannot be entertained and the same would stand dismissed in limine.

