
(2008) 05 JH CK 0008
In the Jharkhand High Court

Kapildeo Prasad Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Citation : (2008) 3 JCR 55

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The petitioner in this writ application prays for quashing the order 2612 dated 30.8.2006 issued by the respondent No. 5 whereby the petitioner has been directed to superannuate from the post of Registrar on 31.8.2006 on his attaining the age of 60 years.

2. The facts of the case stated precisely are as follows:

3. The petitioner was appointed as Assistant professor cum Junior Scientist in the department of Soil, Science and Agriculture Chemistry and accordingly he joined the post on 6.8.1973 in the Birsa Rajendra Agriculture University.

He was promoted to the post of Associate professor cum Senior Scientist on 6.8.1986 and subsequently he was promoted to the post of University Professor on 6.8.1994 and was discharging his duties accordingly.

In the years 2005 an advertisement was issued by the respondent University vide advertisement No. 1 of 2005 inviting applications for the post of Registrar. The petitioner submitted his candidature and on being found eligible, he was selected and appointed on 11.11.2005 and since then he is working as Registrar of the University.

4. The State Government vide notification No. 115 dated 30.7.2005 issued by the respondent No. 2, Introduced an amendment in Rule 13.3(2) in the Birsa Agriculture University Statute to the effect that each University Employee of the

Birsa Agriculture University, Ranchi shall retire on superannuation on attaining the age of 60 years except the teachers/scientists who are in UGC/ICAR pay scale, who will retire on superannuation at the age of 62 years and thereafter no further extension in service will be given to any employee/teacher/scientist.

5. The petitioner claims that though he is working in the post of Registrar, he is also a teacher within the meaning of the term as stated in the Statute and therefore he was entitled to the benefit of age of superannuation on attaining the age of 62 years. Yet, by the impugned office order No. F4-103/81/BAU/VC/3612 dated 30.8.2006 issued under the signature of respondent No. 5 by order of respondent No. 4, the petitioner was directed to superannuation from 31.8.2006 on his attaining the age of 60 years. The petitioner has challenged the impugned order as being illegal and arbitrary.

6. Mr. Ajay Kumar Mishra, learned Counsel for the petitioner, has advanced the following grounds in support of the contention of the petitioner.

(A) Birsa Agriculture University has adopted the Bihar Agriculture Universities Act, 1987. Section 2(xxviii) defines "teacher" and provides that "teacher" means a person appointed or recognized by a University for the purpose of imparting instruction or conducting and guiding research or extension education and includes a person who may be declared by the Statutes to be a teacher.

(B) Section 24(s) of the Act provides that the Registrar is the Secretary of the Board of Management and ex-officio, Secretary of the Academic Council and in such capacity, he needs to perform the following functions:

(i) He shall place before them such information as may be necessary for transaction of business;

(ii) He shall be responsible for due custody of the common seal of the University;

(iii) He shall keep permanent record of all courses, curricula and other information as deemed necessary;

(iv) He shall be responsible for maintaining permanent records of the academic performance of students of a University including courses taken, credits obtained, degrees awarded, prizes or other items pertaining to the other performance of the students;

(v) He shall perform such other duties as may be prescribed or required from time to time or as may be assigned by the Board of Management or the Vice Chancellor.

Under Rule 3.2.1 of the Statute, in addition to the duties specified in Section 24(5) of the Act, the Registrar is also enjoined with additional duties and functions which includes:

(i) preparation of annual report of the University for approval of the Vice-Chancellor and the Senate,

- (ii) he shall be custodian of all the records of the University;
- (iii) he shall administer the prescribed provisions for admission, registration and enrolment of students, and the continuance of their enrolment and maintenance of students' records;
- (iv) he shall be responsible for maintenance of register of all degrees/diplomas conferred by the University;
- (v) he shall be officer to sue and be sued on behalf of the University.

In the light of the duties and functions performed by him as Registrar, the obvious implication is that he is associated with the academic affairs of the University which includes taking decisions on various courses of studies, curricula etc. offered by the University for imparting instructions guiding research and extension education. As such, he comes within the definition of a teacher. Learned counsel adds that the meaning of "teacher" cannot be limited or confined to actual teaching in a class room. It includes other categories also and implies a wide range of expression to include a person guiding research or extension education. Reference is made to the Full Bench judgment of the Patna High Court in the case of Kamla Kant Roy and Ors. v. State of Bihar 1985 PLJR 77.

(C) The respondent No. 2 vide letter dated 12.12.2002 had approved the UGC/ICAR pay scale to the teachers of Birsa Agriculture University pursuant to the letter dated 3.3.1999 issued by the Government of India, Ministry of Agriculture, Department of Agriculture Research and Education, New Delhi. In the light of the revision and approval of the pay scales recommended by the UGC/ICAR the petitioner's salary was also determined on the UGC scale with effect from 1.1.1996 in the revised scale of pay.

(D) Though u/s 19 of the Act, the Directors have been included in the category of officers of the University, in the above judgment of the Full Bench of the Patna High Court, it has been held that Director Research is also a teacher. Therefore, merely placing the Registrar in the list of officers u/s 19 of the Act cannot lead to the inference that the post of Registrar is actually an administrative post.

(E) The letter dated 6.11.1998 (Annexure 5) issued by the Government of India also declares that the age of superannuation at 62 years is applicable to Registrar and others who are treated at par with teachers. Similar benefits has also been extended to Assistant Librarian appointed in the UGC scale of pay.

(F) The impugned order directing the petitioner to superannuate at the age of 60 years is mala fide, on account of the fact that the petitioner had pointed out illegalities in the appointments made to various posts and also in respect of matters of building construction of the University without inviting tenders. For this reason, the Vice Chancellor, Dr. N.N. Singh, had become hostile to the petitioner and by a deliberate act of failure to place before the management various letters issued by the Government of India under which the petitioner

could be eligible for the benefits of retirement at the age of 62 years, the impugned order was caused to be issued.

7. On the other hand, the stand taken by the respondents in their counter affidavit are as follows:

(i) as defined in Section 19 of the Act, the Registrar is an "Officer".

(ii) The post of Registrar being a non teaching post, the Registrar was not declared as a teacher at any point of time;

(iii) The post of Registrar can be filled up from amongst persons of IAS Cadre or senior administrative Officers of the State Government;

(iv) The petitioner may have been a teacher prior to his appointment as Registrar, but he had quit the Teacher's profession and opted for appointment as Registrar of the University;

(v) That the Division Bench judgment of the Patna High Court in Dinesh Singh v. State of Bihar and Ors. 1988 CWJC 7337 and the Full Bench Judgment of the Patna High Court in the case of Kamla Kant Roy, (supra) are not applicable to the facts of the present case, since in both cases, the question was whether the Director of Research and Assistant Research Officer/or even Librarian and Deans of the faculties in the institute could be considered as teachers in the lights of the functions performed by him/them;

(vi) The letter (Annexure 5) of the Central Government is merely a suggestion to the UGC to enhance the retirement age of the officers including Registrars at 62 years and the same to be implemented as per the wish of the University. The University is free to make its own policy decision and refuse to accept the suggestion or recommendation of the Central Government" The UGC reference in this regard is made to the judgment of the Supreme Court in the case of B. Bharat Kumar v. Osmania University. AIR 2007 SC 3278.

8. The whole controversy in the present case revolves around the question as to whether the petitioner shall be deemed to be a Teacher within the meaning of definition 2 (xxviii) of the Act.

9. The expression "teacher" has been defined as follows:

Section 2(xxviii) : "Teacher means a person appointed or recognized by University for the purpose of imparting instructions or conducting and guiding research or extension education and includes persons who may be declared by the statute to be teachers."

10. Section 19 of the Act enumerates officers of the University and provides that the following shall be officers of the University, namely:

(i) Chancellor:

(ii) Vice chancellor;

(iii) Registrar;

(iv) Controller;

(v) Deans;

(vi) Directors; and

(vii) Such other persons/officers of the University as may be declared by the statute to be officers of the University.

11. The stand taken by the petitioner is that though he is appointed to the post of Registrar, but the functions performed by him essentially includes taking decisions as a member of the Academic Council in the matter relating to prescribing courses of studies and determines curricula and having general control on teaching and other educational programmes within the University, besides being responsible for the maintenance of the standards of education. The essence of the arguments advanced on behalf of the petitioner is that the expression "teacher" cannot be confined to those who perform class room teaching only, but it has to be understood in a wider concept to include all such persons associated with the academic affairs of the University as has been held by the Division Bench of the Patna High Court in the case of Dinesh Singh, (supra) and the Full Bench decision in the case of Kamla Kant Roy (supra).

12. In the above mentioned cases, their Lordships of the Patna High Court have held that the expression "teacher" cannot be constricted in a narrow sense of a person who teaches in a class room to a student face to face. The word teacher has to be understood in an enlarged and expanded definition. It includes within its sweep three distinctly other categories including deemed fiction of declaration by the statute of any person as a teacher even though he may not be remotely performing any duty even remotely analogous thereto.

The above observation of their lordships in the two judgments were however made in the context of a dispute as to whether the Director Research and Assistant Research Officers/Librarians and Deans of Faculties could come under the purview of "teacher". Their lordships observed that the Director Research being directly associated or connected with the research programmes of the University, is expected to act and coordinate curricula and the research and extension education. He is enjoined with the duties to perform and coordinate research being done by students and other officers of the University. Therefore, even though the term "Director" is included in the list of officers u/s 19 of the Act, but by virtue of the duties performed by him. He should be treated as a teacher. On the same ratio, it was held that the Assistant Research Officers in an Agriculture University have rightly been equated with lecturers and categories in class III services of teachers as University teachers.

13. Whether the same ratio would apply to the petitioner also?

14. Though the petitioner has referred to the duties and functions of Registrar as

laid down in Section 24 of the Act, but the list of functions nowhere indicates that the duties of Registrar are analogous to the duties of teachers even by adopting the expanded expression of the term "teacher". Rather, the duties are essentially administrative in nature. The petitioner had laid much emphasis on the fact that being ex-officio. Secretary of the Board of Management and the Academic Council of the University, he is involved in the decision making process in matters concerning the courses of studies and curricula and extension education.

Under Section 24(1) of the Act, though the Registrar is ex-officio, Secretary of the Board of Management and of the Academic Council, his functions are limited to placing before the Board of Management and Academic Council such information as may be necessary for the transaction of the business. The other functions of the Registrar includes maintaining permanent records of curricula and other information as may be deemed necessary; maintenance of permanent records of academic purpose-S of the students of the University; preparation of annual report of the University; to be the custodian of the records as well as common seal of the University; administer the prescribed provisions for admission, registration and enrolment of students. All these functions and duties are essentially administrative in nature and by no stretch of imagination can they be associated with the functions of a teacher. The petitioner cannot equate himself with the function of Director of Research, Assistant Research Officer, Librarian, etc. who are basically involved in research work and co-ordinating training in research programmes. Mere fact that the pay scale of the petitioner as approved by the UGC is equal to the pay scale of Professor in itself, cannot be considered as a factor to equate the post of Registrar with that of a Teacher. The recommendation of the Central Government and the University Grants Commission cannot be binding upon the University. Likewise, the fact that prior to being appointed as Registrar, the petitioner was appointed as Professor and that he possessed all qualifications of a Teacher of the rank of Professor, would also be of no avail to the petitioner's claim to be equated with teachers. It was his own option to apply for the post of Registrar against the advertisement issued by the University and to accept the post of Registrar on being selected. The petitioner was evidently aware of the fact that under the provisions of the Act, the post of Registrar falls under the category of Officers and not Teacher and that the duties to be performed by Registrar are essentially in the nature of administrative functions.

15. In the light of the above discussion, I do not find any merit in this writ application.

16. This application is dismissed accordingly. Application dismissed.