
(2012) 05 JH CK 0070
In the Jharkhand High Court
Case No : L.P.A. No. 265 of 2008

Kapildeo Prasad Singh

APPELLANT

Vs

The State of Jharkhand and others

RESPONDENT

Date of Decision : 19-05-2012

Acts Referred:

Bihar Agriculture University Act, 1987 — Section 19
Jharkhand Agricultural Universities Act, 2000 — Section 2

Citation : (2012) 3 JCR 493 : (2012) 3 JLJR 260 : (2013) LabIC 172

Hon'ble Judges : Prakash Tatia, J; Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : S.N. Pathak, Rishikesh Giri and Rakesh Kumar Roy, for the Appellant; A. Allam and Sarwan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—The writ petitioner/appellant is aggrieved by the judgment dated 15th May, 2008 passed in W.P.(S) No. 5022 of 2006 by the learned Single Judge whereby the prayer of the petitioner for quashing the order no. 3612 dated 30th August, 2006 issued by the respondent no. 5 directing the writ petitioner to superannuate from the post of Registrar on 31st August, 2006 on his attaining the age of 60 years, has been refused and the writ petition has been dismissed. The short facts of the case of the appellant are that petitioner was appointed as Assistant Professor-cum-Junior Scientist in the Department of Soil, Science & Agriculture Chemistry and accordingly he joined the post on 6th August, 1973 in Birsa Agriculture University. Thereafter he was promoted to the post of Associate Professor-cum-Senior Scientist on 6th August, 1986 and subsequently promoted to the post of University Professor on 6th August, 1994 on which post he was discharging his duties before being appointed to the post of Registrar on 11.11.2005 in the respondent-University.

2. The appellant states that pursuant to advertisement issued by the University bearing no. 1/05 inviting the application for the post of Registrar, the appellant

applied and was selected and finally appointed on 11th November, 2005. The cause of action for moving this Court in the writ petition arose on account of the issuance of office order no. 3612 dated 30th August, 2006, informing the appellant that on attaining the age of 60 years, he will superannuate from the service on 31st August, 2006. The case of the appellant before learned Single Judge was that vide amendment introduced in Rule 13.3(2) of the Birsa Agricultural University Statute pursuant to State Government Notification no. 115 dated 30th July, 2005, it was declared that the employees" of Birsa Agricultural University, Ranchi, shall retire on superannuation on attaining the age of 60 years except the teachers/scientists, who are in U.G.C./I.C.A.R Pay Scale, who will retire on attaining the age of 62 years and thereafter no further extension in service will be granted to any employee/teacher/scientist.

3. The appellant had contended before the learned Single Judge that the post of Registrar also comes within the meaning of the expression "teacher" as he was entitled to the benefit of age of superannuation on attaining the age of 62 years and as such his superannuation on attaining the age of 60 years by the impugned order dated 30th August, 2006, was illegal and arbitrary.

4. From perusal of the Bihar Agriculture Universities Act as adopted by the State of Jharkhand, pursuant to the bifurcation of the Parent Statute, it appears that the definition of "teacher" has been provided in Section 2(xxviii), which is as follows: -

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

5. On the other hand, Section 19 of the said Act defines the officers of the University, which are as follows:

(i) The Chancellor;

(ii) The Vice chancellor;

(iii) The Registrar;

(iv) The Comptroller;

(v) The Deans

(vi) The Directors and

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

6. From perusal of the averments made in the writ petition as also in the present memo of appeal and upon hearing the learned senior counsel for the appellant, it appears that the ground for assailing the impugned order on the part of the petitioner/appellant was that the definition of "teacher" contemplates the post of

Registrar also by extending meaning of the expression teacher as a person appointed or recognized by University for the purposes of imparting, instructions or conducting and guiding research or extension education and includes a person who may be declared by the Statute to be teachers. In support of the aforesaid main ground the petitioner had also relied upon the decision of the respondent no. 2 dated 12th December, 2002 whereunder, the U.G.C./ICAR pay scale was approved to the teachers of Birsa Agriculture University as per the letter dated 3rd of March, 1999 issued by the Government of India, Ministry of Agriculture, Department of Agriculture Research and Education, New Delhi. The petitioner's salary was also determined on the U.G.C. scale with effect from 1st of January, 1996 in the revised scale of pay. The appellant had also relied upon a Division Bench Judgment in the case of Dinesh Singh -vrs.- The State of Bihar & Ors. in C.W.J.C. No. 7337 of 1988 and the decision of the Full Bench of the Patna High Court in the case of Kamla Kant Roy reported in 1985 PLJR 77 and advanced his submission that the Directors and even Librarians and Dean of the faculties have been included in the category of Teachers. The appellant also relied upon the letter dated 6th November, 1998 of the Government of India, which declare the age of superannuation as 62 years as applicable to Registrars and others, who were treated at par with the teachers. The appellant had in the writ petition raised the plea of malafide, however, it appears that no one was impleaded by person as a respondent and the plea of malafide appears to be a feeble attempt for assailing the impugned order issued by the respondent no. 5 retiring the appellant on 31st August, 2006.

7. The counsel for the appellant has also drawn the attention of the Court to the terms of the advertisement no. 1/05 specifically under the head of terms and conditions of Clause 4 thereof, which is quoted as under:

(4) The selected candidates will be required to execute Bond at the time of their joining to serve the University at least for a period of two years.

8. Similarly, he has also drawn the attention of the Court to the condition prescribed in the notification of his appointment dated 11th November, 2005:

He will be required to execute a bond to serve the BAU for a period of at least 2 years from the date of his joining.

9. On the basis of the aforesaid conditions the appellant has tried to make out a case that the respondents could not have superannuated him before completion of tenure of two years as contemplated under the advertisement and his appointment letter.

10. From perusal of the aforesaid appointment letter itself indicates that the appointment is by direct recruitment on the cadre post under open advertisement bearing no. 1/05 inviting applicants for different posts including that of the Registrar. The respondents-University has seriously contested the plea of the appellant not only before the learned Single Judge but also in appeal that the post of Registrar does not come within the definition of "teacher". It has been

submitted that the grant of pay scale upon implementation of U.G.C./ICAR pay scale is a separate issue, which cannot be drawn upon to equate the post of Registrar to that of a teacher. The Jharkhand Agriculture Universities Act, clearly provides for a definition of a "teacher" as contained in Section 2(xxviii), which is quoted hereinabove as also the definition of the officers of the University as provided in Section 19 of the Act, which includes the post of Registrar. That post of Registrar by no stretch of imagination or reasoning be equated with the post of teachers as the Registrar does not perform any teaching work or imparting instructions in education and moreover has to perform administrative work, which are provided under the Act and the Statute of the University. The respondents have also seriously contested the stand of the appellant and submitted that the post of Registrar can not be equated with that of a Director, Research held to be coming under the purview of teacher and therefore the judgment of the Full Bench of the Patna High Court in the case of Kamla Kant Roy and in the case of Dinesh Singh (Supra) are also not applicable to the case of the petitioner. The Respondent-University has further submitted that University being an independent body the recommendation of the Central Government and the University Grants Commission are not binding upon it rather in the case of the Agriculture University it is the Indian Council of Agriculture Research, which is body which recommends for grant of benefit of U.G.C. Pay scale and other benefits of service.

11. Learned counsel for the respondents-University has relied upon the judgment reported in (2008) 2 J.C.R 587 (Jhr.) and (2008) 2 J.C.R. 471 in support of his stand. He has also vehemently opposed the contention that fixation of retirement age is well within the domain of the State Government and there is nothing arbitrary in it. The State is well within its powers to fix different age of retirement for teaching and non-teaching employees of the University and it is a valid classification not being discriminatory. He has vehemently opposed the contention that the instant post of Registrar is a tenure post so as to enable the appellant to continue for a minimum period of two years as contended by him and further the recommendations of the U.G.C. relating to retirement age are also not binding upon the University so as to treat the University's employee like a Registrar as a teacher for the purposes of his superannuation on attaining the age of 62 years. Learned counsel for the respondents-University has also contended that the University education being a subject under Entry 25 of the concurrent list under which the State Legislature has enacted the Birsa Agriculture Universities Act, which includes the power to lay down the conditions of service also of a University's employee.

12. It has further been submitted on the part of the University that the petitioner being conscious of the case that the age of superannuation of a Registrar is 60 years, had accepted the post of Registrar without informing the university while relinquishing the post of Professor under the same university and is therefore subject to the provisions of the Act whereunder the Registrar is required to superannuate on attaining the age of 60 years. The respondents have also

seriously contested the contention of the appellant that the post of Registrar is tenure post of two years. On this score it has been submitted on the part of the respondents that the conditions in the advertisement and the appointment letter only stipulate the usual condition that the appointee shall not be allowed to leave the job before a period of two years from the date of his appointment by executing a bond, the same does not imply that it becomes a tenure post, rather the Act of the University will obviously prevail wherein the age of superannuation of a Registrar is prescribed as 60 years and not 62 years. The respondents have therefore supported the impugned order superannuating the appellant on attaining the age of 60 years as also the impugned judgment passed by the learned Single Judge.

13. The appellant has asserted that he had joined the post of Registrar while he was at the age of 59 years and 4 months and by no stretch of imagination it could have been presumed on his part that the authority had intention to retire him at the age of 60 years and as such he has been superannuated only after serving for 8 months for the said post.

14. From perusal of the grounds in the memo of appeal as also the submission of the learned counsel for the petitioner/appellant and upon going through the impugned judgment, it is clear that the appellant has contested his case of superannuation on the grounds that (i) the post of Registrar comes within the definition of "teacher" and as such his superannuation should have been on attaining the age of 62 years (ii) the post of Registrar on which he was appointed as such was a tenure post for a minimum of two years and (iii) the action of the respondents are malafide. Even during the course of argument before this Court it has not been asserted that appellant had a legal right to continue as a Professor, which post he was earlier holding in the University before being appointed as a Registrar. It appears that although a reference has been made in the supplementary affidavit filed on the part of the writ petitioner that he should have been allowed to continue on the post of University Professor after his superannuation from the post of Registrar, but in the main body of the writ petitioner neither any prayer to that effect has been made nor any averments to that effect have been made. Moreover, as stated hereinabove the appellant neither before learned Single Judge has raised this plea nor before this Court any submission on that score has been made. It seems that the writ petitioner/appellant consciously has not pressed this point as he himself had left the post of Professor for joining on the post of Registrar under the University without seeking any permission or offering his technical resignation before joining the post of Registrar.

15. Therefore, it appears from the impugned judgment that the writ petition was decided by the learned Single Judge on the points of law and grounds raised by the writ petitioner by holding that the post of Registrar does not come within the definition of "teacher" under the Universities Act, he being in the category of officers who like any other University's employee were obliged to superannuate

on attaining the age of 60 years. Learned Single Judge has also taken into account that the post of Registrar requires performance of functions and duties which are essentially administrative in nature and by no stretch of imagination can they be associated with the functions of a teacher. The mere fact that the pay scale of the petitioner as approved by the U.G.C. 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 University. Further the learned Single Judge has also taken into account the submission of the parties that the recommendation of the Central Government and the University Grants Commission cannot be binding upon the University so far as age of retirement of the University's employee working on the post of Registrar is concerned.

16. Having perused the impugned judgment and having heard the learned counsel for the parties and after carefully going through the averments made in the memo of appeal, we do not find any infirmity in the judgment of the learned Single Judge. The ground for assailing the impugned judgment are also the same as were canvassed before the learned Single Judge and we are also of the considered opinion that the post of Registrar cannot be equated with that of a "teacher" under the provisions of the Universities Act to hold that incumbent to the post of Registrar is also required to superannuate only on attaining the age of 62 years like that of a teacher of a University nor the post of Registrar is a tenure post. In the result, this memo of appeal is without any merit and there is no infirmity in the impugned judgment passed by the learned Single Judge. It is accordingly dismissed however without any order as to costs.