

(2011) 04 KL CK 0097
In the High Court Of Kerala
Case No : R.P. No. 190 of 2011

M.M. Mathai

APPELLANT

Vs

Elizabeth Xavier and Others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Constitution of India, 1950 — Article 245, 245(1)
University Grants Commission Act, 1956 — Section 26

Citation : (2011) 2 KLJ 740

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : B. Renjith Kumar, N. Manoj Kumar and P. Parameswaran Nair S.G. of India, for the Appellant; S. Krishna Moorithy, C.G.C., for the Respondent

Final Decision : Dismissed

Judgement

Ramachandran Nair, J.—The question raised in the Review Petition and in the connected Writ Petitions is whether the petitioners who are members of the teaching staff namely, Lecturers, Assistant Professors, Professors and Principals of Government Colleges and Aided Colleges in Kerala, are entitled to get a direction from this court to the Government to extend the retirement age of teaching staff in colleges in Kerala from 55 years to 65 years in terms of UGC Regulations dated 30.6.2010 and Central Government Orders annexed thereto. Issue came up before us in a batch of Writ Appeals filed against judgments of the learned Single Judges and in the batch cases we rejected the claim for the reason that retirement age is a policy decision of the State Government and the court cannot interfere in it, much less to issue positive direction to the Government to increase the retirement age of teaching staff in colleges affiliated to Universities in Kerala. We have dismissed the Writ Appeals by taking into consideration the earlier Division Bench judgment of this court in the same subject which was followed by the learned Single Judges while rejecting the claim. The appellants who lost the Writ Appeals before us filed SLPs against our judgment before the Supreme Court and the Honourable Supreme Court

dismissed the SLPs vide common order dated 11.8.2010. However, the petitioners before the Supreme Court brought to the notice of the court UGC Regulations dated 30.6.2010 which was issued subsequent to disposal of the Writ Appeals by this court and contended that their claim should be considered based on the said Regulations of the UGC. Therefore, while dismissing the SLPs the Honourable Supreme Court observed as follows "dismissal of these SLPs will not come in the way of the petitioners seeking any remedy under the said UGC Regulation dated 30.6.2010, if available as per law". Based on this observation one of the appellants in the disposed of Writ Appeals filed the above Review Petition and in view of the filing of the Review Petition, several others filed fresh writ petitions before the Single Judges seeking same relief. Since Review Petition was pending before us, the connected writ petitions filed before the Single Judges were called by us and are heard along with the R.P. We have accordingly heard Senior counsel Smt. V.P. Seemanthini and the counsel appearing for various petitioners, separate Standing Counsel appearing for UGC and the Universities in the party array and also Special Government Pleader for the State. The issue raised by the petitioners stands squarely covered against them by a relatively new decision of the Supreme Court in a batch of cases in B. Bharat Kumar and Others Vs. Osmania University and Others, . On going through the judgment what we find is that the issue got first decided in T.P. GEORGE's case wherein this court declined to direct the Government to increase retirement age of college teachers based on UGC recommendations. The Honourable Supreme Court confirmed the judgment of this court in the decision in T.P. George and Others Vs. State of Kerala and Others, . This judgment is followed by the Supreme Court in the above referred judgment and they have categorically stated that it is absolutely within the powers of the State Government to accept the UGC scheme in part and reject the balance and the Government's decision not to increase the retirement age based on UGC recommendation will not go against any provision of the Constitution including Entry 66 of List I of VII th Schedule or Article 245 of the Constitution of India. In view of these two binding decisions of the Supreme Court, we have to only consider whether the new Regulations issued by the UGC on 30.6.2010 introduces any drastic change in law to bind the State Government, which on their refusal could be enforced through court orders.

2. Before proceeding to consider the case on merits, we have to refer to the submission of the Special Government Pleader on behalf of the State Government that the State Government continues to maintain the stand that retirement age cannot be increased based on UGC recommendation and the matter is still in the realm of policy and as of now, the Government does not want to increase the retirement age of teaching staff of colleges affiliated to Universities in Kerala alone which is presently maintained at par with the retirement age of State Government employees. Counsel appearing for the petitioners relied on unreported Single Bench judgment of the Patna High Court in CWJC No. 11348/2010, a copy of which is produced before us wherein the

Single Judge has directed the State Government there to increase the retirement age of teaching staff in colleges from 62 to 65. The learned Single Judge noticed that the State Government while accepting the UGC package did not make any mention as to whether UGC scheme is accepted in total or not. Taking note of the fact that the benefits under the UGC scheme is a package of incentives including grant and the same is conditional on the State Government accepting the terms and conditions prescribed by the UGC, the learned Single Judge took the view that if the State decides not to increase the retirement age from 62 to 65, such decision of the State Government will be self-destructive in as much as the Government would not be entitled to other benefits under the UGC package and probably he may be meaning the UGC grant and the financial assistance by Central Government. The learned Single Judge clearly found that the Central Government's direction to the State Government is to accept the UGC package as a whole including the conditions for financial assistance which include increase in age of superannuation of members of the teaching faculty in colleges. The clear finding is that UGC scheme is one basket of packages and the State Government has no option to reject part of it. However, what we find from the recent judgment of the Supreme Court above referred is that it is absolutely within the powers of the State Government to accept UGC package either in part or in full and it is on this basis the State Government Orders declining to follow the recommendation of UGC for increasing retirement age was upheld by the Supreme Court. The Special Government Pleader appearing for the State submitted that the Single Bench judgment is not accepted in Bihar and appeal is pending and besides this, he pointed out that the Bihar context where there may be acute shortage of teaching staff in Higher Education is not applicable in Kerala where large number of qualified young people are waiting for appointment as teaching staff of colleges to fill up vacancies arising on account of retirements. In any case if at all UGC incentives including grants and financial aid to the Universities in Kerala are conditional and increase in retirement age of teaching staff in the colleges affiliated to Universities is a condition for entitlement, we do not think the forfeiture of financial benefits by the State Government or the Universities on account of their refusal to increase the retirement age should persuade us to direct the Government to increase the retirement age to become eligible for UGC aid and benefits. Here again, we feel it is for the State Government to consider whether they should accept conditional offer of package of incentives by UGC, and if the Government in their wisdom decide to reject such offers, it is not within our powers to interfere with it because it is essentially a policy decision which in our view, we cannot question. This court would be justified in directing the Government to increase the retirement age only if we are convinced that the UGC Regulations are mandatory and binding on the State Government and the State has no option to reject it. We, therefore, proceed to examine only this aspect of the matter.

3. In the first place, what, we notice is the UGC Regulations dated 30.6.2010 which is the sole basis of petitioners claim, is issued under clauses (e) and (g) of

sub-section (1) of Section 26 of the University Grants Commission Act, 1956. The said provisions are extracted hereunder for easy reference:

S.26. Power to make regulations:- (1) The Commission may, by notifications in the Official Gazette, make regulations consistent with this Act and the rules made thereunder:-

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is expected to give instructions;

...

(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.

...

We do not find anything in the above provisions authorising UGC to make regulations in regard to service conditions of teaching staff in the Universities including retirement age. On the other hand, UGC is authorised to prescribe the qualification required for teaching staff in Universities in the subjects concerned and they are free to make regulations for maintenance of standards of education or co-ordination of work or facilities in Universities. The UGC Act is one made by the Parliament in exercise of powers vested in it under Entry 66 of List I of the VII th Schedule to the Constitution of India, which authorises Parliament to make law on "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions". Even if the above Entry includes authority on Parliament to fix retirement age uniformly for all colleges affiliated to Universities in India, Parliament has not made any law for the country as a whole and the same is admitted even by the petitioners. Petitioners have furnished statistics to us with regard to retirement age of teaching staff in colleges and Universities in various States in India. On going through the same we notice that Kerala is the only State where the retirement age is kept as low as 55. The retirement age in other States vary from 58 to 65 and atleast in few States the age of retirement is 60. Even in Kerala while the retirement age of teaching staff in colleges affiliated to Universities is 55, the retirement age of teaching staff directly employed by Universities in their Departments is 60. The contention raised by the petitioners that after the UGC Regulation above referred issued on 30.6.2010 the retirement age of teaching staff of colleges affiliated to Universities all over India would stand increased or will have to be increased by the concerned State Governments to the uniform level of 65 years does not find acceptance in any other State, though some of the States had already increased the retirement age to 65 even before the above referred UGC Regulation came into force, but of their own. Probably some of the States may be following the UGC Regulations and may increase retirement age consistent with the same. However, Government Pleader pointed out that conditions in Kerala are unique where large number of unemployed highly

educated youth are waiting for employment and all those people could be accommodated in vacancies arising on account of retirement of teaching staff of colleges. Therefore, the Government as of now is strongly against increasing retirement age. Admittedly education is in the concurrent list under Entry 25 which states as follows:

Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

Obviously except for the entries referred to above in List I, the State is within its capacity to make legislation in regard to all matters pertaining to education including service conditions of teaching staff in colleges affiliated to Universities. So long as there is no Central legislation repugnant to the State legislation on retirement age which is covered by University statutes and service conditions of State Government employees made applicable by incorporating specific provisions to the University statutes, there is no repugnance between the State law and Central law on service conditions and retirement age of teaching faculty members of the colleges as alleged by the petitioners. We, therefore, do not find any violation of Article 245 (1) of the Constitution in the State Government refusing to increase the retirement age of college teachers in line with UGC Regulations of 30.6.2010 or the Government of India's letter annexed thereto. We have already found that the UGC does not enjoy any power under the Act to prescribe age of retirement of teaching staff in colleges affiliated to Universities. Their role is only to prescribe academic standards, qualifications required for the teaching staff, facilities required in higher education institutions etc. and whatever else they order beyond what is conferred on them under statute are only recommendatory in nature. Standing Counsel for the University Grants Commission does not canvass the position that the UGC has the authority to prescribe uniform retirement age for teaching staff of colleges affiliated to Universities. Counsel for the petitioners relied on clause 8 of Government of India letter dated 11.5.2010 (produced as Ext. P3 in W.P.(C) No. 8011/2011) which forms part of UGC Regulations of 30.6.2010 wherein it is stated as under:

Release of the Central assistance shall be considered by this Ministry in accordance with the provisions of the Scheme only after the State Government have adopted and implemented the scheme as a composite scheme, including adoption of the age of superannuation for those engaged in "inclass" teaching; and have disbursed the salary based on revised pay scales, and after scrutiny of the detailed proposal as may be received from the State Government.

We have already noticed that even when Central assistance is conditional, it is for the State Government to decide as a matter of policy which is best for the State i.e. whether to adopt the recommendation as a package in full and complete or to take the consequence for noncompliance with part of the recommendations. This is within the realm of the Government policy and it is not for this court to recommend to the Government which course it should adopt. Regulation of the

UGC and package of incentives by the Central Government are only recommendatory or advisory in nature. It is not within our powers to direct the State Government to increase the retirement age in line with the recommendation of the UGC to 65. We also notice that what persuaded the UGC to make recommendation to enhance the retirement age of members of teaching faculty is acute shortage of qualified hands in different parts of the country. However, the scenario in Kerala is different and the State is confident of replacement of retiring hands with eligible people in the waiting. In fact, when the Government felt shortage of teachers in Medical Colleges, they enhanced the retirement age of teaching faculty members in Medical Colleges in Kerala to 60. Even though petitioners have relied on several reported decisions of the Supreme Court and various High Courts on general principles and binding nature of Central legislation on States, in view of the direct decision of the Supreme Court referred above, we do not think there is any need for us to consider those decisions. We, therefore, do not find any merit in the claim made by the petitioners.

Before parting with the subject, we feel there is merit in the contention of the State Government in declining to accept UGC recommendation to increase the retirement age at a stroke from 55 to 65. If this is done, the consequence would be that most of the qualified Postgraduates and Ph.D. holders waiting for employment in teaching faculties of colleges will be out of employment in Kerala for another 10 years. In the course of these 10 years, these people will either seek some other employment or may even remain unemployed for such long period and in either case there will be substantial erosion in their quality and capacity to take up teaching profession in colleges thereafter. Further, increase in retirement age by 10 years will be a disincentive and discouragement to those waiting for joining Post-graduate courses and for Research Degrees for the fear of long term unemployment on account of want of slots for employment for 10 years. Therefore, in our view, if at all increase in retirement age is considered by the Government, it should be done in stages so that at all times there will be scope for employment to those waiting so that there will be incentive for youngsters for acquiring qualifications. The grievance highlighted by the petitioners also is realistic because at a relatively young age of 55 when they are well experienced and qualified to continue teaching, they are sent home which is a loss to the community as a whole. Probably many of the retiring members of the teaching faculty from colleges get reemployed in the large number of new generations self-financed colleges functioning in Kerala which will be otherwise short of qualified faculty members. Petitioners have also pointed out that the vacancies arising on account of retirements will not be filled up in time and the same will affect the interact of the student community. We completely agree with his contention because replacements atleast in Government colleges take long periods adversely affecting the interest of the student community. In our view, Government should engage in Government colleges and should authorise aided college managements to reemploy qualified retired college teachers on contract basis in the vacancies of retiring faculty members arising in colleges so that the

student community does not suffer for want of teachers. In the interest of the student community, we direct the Government to consider, frame guidelines and issue appropriate directions in this regard fixing conditions and terms of reemployment of retired faculty members on contract basis. In view of the above findings, the Review Petition and the Writ Petitions are dismissed but with the above direction to the Government on reemployment of retired faculty members on contract basis.