

(2016) 08 JH CK 0120
In the Jharkhand High Court
Case No : W.P.(S). No. 399 of 2015

Parshuram Pathak

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Jharkhand State Universities Act, 1976 — Section 67 (a)

Citation : (2017) 1 AIRJharR 159 : (2017) 2 JBCJ 169 : (2017) 1 JLJR 281

Hon'ble Judges : Mr. H.C. Mishra, J.

Bench : Single Bench

Advocate : M/s. Chaitali C. Sinha, Advocate J.C. to A.A.G, for the State; M/s. Kanti Kr. Ojha, Advocate, for the Petitioner; M/s. Indrani S. Choudhary, Advocate, for the University

Final Decision : Dismissed

Judgement

Mr. H.C. Mishra, J. - Heard learned counsel for the petitioner and the learned counsel for the State as also learned counsel for the respondent Vinoba Bhave University.

2. The petitioner is aggrieved by the letter No. 144/2015 dated 21.01.2015, issued by the Principal, Sanskrit Upshastri Mahavidyalaya, Medninagar, Palamau, whereby the petitioner has been informed that he shall be retiring from service w.e.f. 31.01.2015 upon completion of 60 years of age. In the said letter the designation of the petitioner has been shown as Lecturer in Political Science in the college, and the college has been shown as an affiliated unit of Vinoba Bhave University, Hazaribag, imparting education up to Upshastri (Intermediate) level.

3. It is stated in the writ petition that the Upshastri level Sanskrit colleges were established prior to the year 1978 as old schools in the name of Hathua Raj Sanskrit Vidyalaya and later on they were recognised as Sanskrit Colleges by the State Government and the financial liabilities of such institutions were taken over by the State Government and Kameshwar Singh Darbhanga Sanskrit University.

The petitioner was appointed as an Assistant Teacher in Sanskrit Uchatar Madhyamik Vidyalay, Medninagar, Daltonganj Palamau, on 09.03.1981 and his qualification was B.A. pass. The appointment of the petitioner was also approved by Kameshwar Singh Darbhanga Sanskrit University by the letter contained in memo No. 1611/82 dated 20.04.1982, as contained in Annexure-1 to the writ application. After the creation of the State of Jharkhand, the said institution was taken over by Vinoba Bhave University, Hazaribag, as it came within the territorial jurisdiction of the State of Jharkhand. The notification taking over the said institution in the name and style Sanskrit Upshastri Mahavidyalaya, Daltonganj, Palamau, along with other colleges was issued under memo No. 1716 dated 15.12.2003, by the Vinoba Bhave University, Hazaribag, as contained in Annexure-2 to the writ application. The said letter shows that three Sanskrit colleges were affiliated to the University, whereas other three institutes imparting education up to Upshastri level were taken over by the University.

4. The petitioner claims that since the college was taken over by the University, the petitioner shall also be governed by the Jharkhand State Universities Act, and in view of Section 67(a) of the said Act, the age of retirement of a teacher in an University is 62 years (now 65 years), which shall also be applicable to the case of the petitioner. Accordingly, the impugned letter No. 144/2015 dated 21.01.2015 issued by the Principal of the College, as contained in Annexure-8 to the writ application, informing the petitioner that he shall retire upon attaining the age of 60 years, is absolutely illegal and is fit to be quashed and it is a fit case for directing the respondent authorities to allow the petitioner to continue in service up till the retirement age of the University teachers.

5. Learned counsel for the petitioner has submitted that the impugned letter as contained in Annexure-8 is absolutely illegal, in as much as, the petitioner was working in Sanskrit Upshastri Mahavidyalaya, which is a college within the provisions of the Jharkhand State Universities Act, and accordingly, Section 67(a) of the said Act shall apply to the petitioner also, whereby, the retirement age of the University teachers has been enhanced. Learned counsel submitted that in a similar case where the teachers of the Upshastri Sanskrit colleges were not being given the pay-scale of the University teachers, one of such teacher working in Hathwa Raj Gayanodaya Sanskrit Mahavidyalaya, Patna, filed a writ application in the Hon'ble Patna High Court in C.W.J.C. No. 11271 of 1992, (Narendra Narayan Prasad v. The State of Bihar, and others). Said writ application was allowed by order dated 27.04.1994 by a Division Bench of Patna High Court, in which the claim of the respondents that the said institution was a higher secondary school was negated by the Patna High Court and the Vice-Chancellor of the Kameshwar Singh Darbhanga University was directed to pass a fresh speaking order fixing the salary of the said teacher in the pay-scale to which he was entitled. However, a bare perusal of the said decision shows that the said Hathwa Raj Gayanodaya Sanskrit Mahavidyalaya, was upgraded to impart education up to degree level from the year 1985-1986 by the University and subsequently the approval was also granted by the State of Bihar from Session

1988-1989 and accordingly, the Division Bench of Patna High Court held that the said institution could not be said to be a higher secondary school and the said petitioner could not be paid the salary payable to a teacher of a higher secondary school.

6. It is also submitted by learned counsel for the petitioner that placing reliance on the aforesaid decision, Patna High Court, in another writ application, i.e., C.W.J.C. No. 6534 of 2009, (Secretary, Bihar State UP Sastri Sanskrit Mahavidalya/College Teachers Association Employees and another v. The State of Bihar and Ors.), quashed the notice issued by the Registrar, Kameshwar Singh Darbhanga Sanskrit University, to the teachers of Sanskrit College (Upshastri level), informing that they shall be retiring upon attaining the age of 60 years, and directed that such teachers shall be deemed to continue on post till they attained the age of 62 years, holding that the provisions of Bihar State Universities Act are applicable to these teachers also. Both these decisions of the Patna High Court have been brought on record as Annexure-5 series.

7. Placing reliance on these decisions, learned counsel for the petitioner submitted that in the State of Bihar, the Sanskrit colleges imparting education up to intermediate level (Upshastri level) were held to be governed by the Bihar State Universities Act and consequently, the retirement age of the teachers of such colleges was held to be 62 years, and the case of the petitioner is on the same footing, entitling the petitioner to the same benefit.

8. Learned counsel for the State on the other hand has opposed the prayer and has submitted that the institution of the petitioner is imparting education only up to intermediate level and accordingly, it is not a "college" within the meaning of the Jharkhand State Universities Act. Learned counsel for the State has also pointed out from the counter-affidavit filed on behalf of the State that U.G.C. pay-scale is granted to the University teachers and not to the teachers of Intermediate colleges. In this connection a resolution of the State of Jharkhand in its Department of Human Resource & Development as contained in memo No. 1188 dated 20.11.2010 has also brought on record as Annexure-A, which relates to giving the benefits of the packages of the U.G.C. to the teachers and officials of the Universities and constituent colleges. In the said resolution it is specifically stated in paragraph 12(ii) that the teachers who have been appointed for imparting education only up to intermediate level, shall not be given the benefits of U.G.C. Learned counsel has also drawn the attention of the Court towards the resolution of the State Government in its Department of Human Resource and Development, as contained in memo No. 2020 dated 24.10.2014, which has been brought on record as Annexure-D to the counter-affidavit, stating that the State Government have decided that the teachers of Sanskrit schools and Madars as shall retire upon attaining the age of 60 years. Placing reliance of these documents, learned counsel for the State submitted that the institution of the petitioner, though having the nomenclature of college, but it is actually a school imparting education up to +2 level and is not a "college" within the meaning of

the Jharkhand State Universities Act and the case of the petitioner shall not be governed by the said Act.

9. Learned counsel for the respondent Vinoba Bhave University, Hazaribag, has also adopted the arguments of the learned counsel for the State and has reiterated that "Upshastri" is equivalent to intermediate or +2 level and such colleges are governed by Intermediate Counsel Act and to this effect a certificate has also been issued by the Vinoba Bhave University on 02.12.2008 as contained in Annexure-B to the counter-affidavit filed on behalf of the respondent University. It is pointed out by learned counsel that even in the State of Bihar, teachers in Sanskrit institutions imparting education up to Upshastri level are not treated as University teachers and even Kameshwar Singh Darbhanga Sanskrit University has issued the orders clarifying that such teachers shall be retiring upon attaining the age of 60 years. One such letter dated 11.9.2007 has been brought on record as Annexure-A to the counter affidavit filed on behalf of the respondent University. Learned counsel submitted that after the creation of the State of Jharkhand, Vinoba Bhave University has taken over the college of the petitioner only for limited purposes of conducting the examination, fixation of the syllabus etc., which works earlier were being conducted by Kameshwar Singh Darbhanga Sanskrit University and notification to that effect has been issued by the State Government in its Department of Human Resource and Development, on 27.08.2001, as contained in Annexure-C to the counter-affidavit filed on behalf of the respondent University.

10. Placing reliance on these documents, learned counsel for the respondent University has submitted that the petitioner is having the qualification only of B.A. and his appointment letter as contained in Annexure-1 to the writ application clearly shows that his appointment was approved by Kameshwar Singh Darbhanga Sanskrit University only as Assistant Teacher and never as Lecturer. It is also pointed out that this institution was never upgraded to the degree level and accordingly, the petitioner was never made a Lecturer and there is no document issued by any competent authority appointing the petitioner as a Lecturer. Indeed the petitioner could not even be appointed as a Lecturer as he is having the qualification of B.A. only and is not having the minimum qualification of a Lecturer as prescribed in the Jharkhand State Universities Act. It is submitted that in the impugned letter dated 21.01.2015 as contained in Annexure-8 to the writ application, the petitioner has been wrongly described as a Lecturer by the Principal of the school, but the petitioner has been rightly informed that he shall retire upon attaining the age of 60 years. Learned counsel has also submitted that another teacher of the same school has filed W.P.(S) No. 549 of 2010 in this Court, in which by order dated 26.04.2010 as contained in Annexure-D to the counter-affidavit filed on behalf of the respondent University, the Director, Higher Education, Human Resources Department was asked to decide the aforesaid question, and pursuant to the said direction, the order bearing No. 622 dated 20.04.2013 has been passed by the Director, Higher Education, as contained in Annexure-D/1 to the counter-affidavit, holding that

the institution of the petitioner is only an Intermediate College and education is imparted only up to intermediate level and it does not come within the definition of "college" under the Jharkhand State Universities Act. Placing reliance on these documents, learned counsel for the respondent University submitted that there is no merit in this writ application and the petitioner has rightly been superannuated upon attaining the age of 60 years.

11. Having heard learned counsels for the parties and upon going through the record, I find that the petitioner is only having the qualification of a B.A. and he was appointed only as an Assistant Teacher in the school, and his appointment as such was approved even by the Kameshwar Singh Darbhanga Sanskrit University by letter contained in Annexure-1 to the writ application. The petitioner has not brought any document on record to show that this institution was ever upgraded to Bachelor degree level and it was imparting any education up to that level. Similarly, the petitioner has not brought on record any document to show that the petitioner ever enhanced his educational qualification to the minimum qualification required for appointment of a Lecturer under the Jharkhand State Universities Act, or that the petitioner was ever appointed as a Lecturer of a college by any competent authority.

12. In the backdrop of these facts, the submission of the learned counsel for the petitioner that the Patna High Court has decided in similar case that the benefits of the Bihar State Universities Act shall be applicable to the teachers of the Sanskrit Institutions imparting education up to Upshastri level also, and they shall retire upon attaining the age of 62 years, is to be considered. The petitioner has brought on record as Annexure-5, the order dated 27.04.1994 passed by the Division Bench of Patna High Court in C.W.J.C. No. 11271 of 1992 Narendra Narayan Prasad's case, relating to a teacher of Hathwa Raj Gayanodaya Sanskrit Mahavidyalaya, Patna. The judgement itself shows that though the said college was in the category of Upshastri level, but it was upgraded up to Sashtri (Bachelor degree) level since the year 1985-1986 itself and it became an affiliated unit of Kameshwar Singh Darbhanga Sanskrit University. The petitioner in the said writ application was a teacher in history in the said college and he was having post graduate degree in history having passed M.A. examination in the year 1988. In the backdrop of these facts, it was held by the Patna High Court that since the college was upgraded to the degree level from 1985-1986 by the University, the said institution could not be said to be a higher secondary school and its teachers could not be paid the salary of a higher secondary school. This decision was however, relied upon by the Patna High Court in C.W.J.C. No. 6534 of 2009 in Secretary, Bihar State U.P. Sastri Sanskrit Mahavidalya's case. In the said writ application the order passed by the Registrar of Kameshwar Singh Darbhanga Sanskrit University on 14.09.2007 prescribing the age of superannuation of teachers working in Upshastri Colleges as 60 years at place of 62 years, was under challenge, which was quashed by the Patna High Court relying upon the decision of the Division Bench in Narendra Narayan Prasad's case in C.W.J.C. No. 11271 of 1992. The decision clearly shows that in Secretary,

Bihar State U.P. Sastri Sanskrit Mahavidalya's case, the Patna High Court failed to consider the fact that the decision of the Division Bench of the Patna High Court in Narendra Narayan Prasad's case was with respect to the teacher of a college which was imparting education up to Bachelor degree level and not up to Upshastri level only, and the said teacher was also having the qualification of being appointed as a Lecturer. In the present case, neither the petitioner is having the qualification of a Lecturer nor he was ever appointed as a Lecturer, rather he was appointed only as an Assistant Teacher having the qualification of B.A. only, and even the Institution in which the petitioner was working was never upgraded to Bachelor degree level, rather it continued to impart education up to intermediate level only. With all due respects, in my considered view, the judgment of the Division Bench of Patna High Court in Narendra Narayan Prasad's case, had no application to the facts of Secretary, Bihar State UP Sastri Sanskrit Mahavidalya's case, and as such the decision of Patna High Court in the later case cannot have a binding precedent.

13. In that view of the matter, I find and hold that the college of the petitioner is imparting education only up to intermediate level and was never upgraded to Bachelor degree level. The petitioner is not having the minimum educational qualification of being appointed as a Lecturer as provided under the Jharkhand State Universities Act, nor the petitioner was ever appointed as such. Accordingly, it cannot be held that the college of the petitioner shall be governed by the Jharkhand State Universities Act and Section 67(a) thereof shall apply also to the petitioner. The State Government has rightly decided by Resolution No. 188 dated 20.11.2010 as contained in Annexure-A to the counter-affidavit filed on behalf of the State, that institutions imparting education only up to intermediate level shall not be given the benefits of the U.G.C., and the teachers of such institutions shall not be given the said benefits. Even the Director, Higher Education, has rightly decided by order No. 622 dated 20.04.2013, as contained in Annexure-D/1 to the counter-affidavit filed on behalf of the respondent Vinoba Bhave University, that the institution of the petitioner, being only an Intermediate College, cannot be governed by the Jharkhand State Universities Act.

14. For the foregoing reasons I do not find any illegality and/or irregularity in the impugned letter No. 144/2015 dated 21.01.2015 issued by the Principal, Sanskrit Upshastri Mahavidyalaya, Medninagar, Palamau, as contained in Annexure-8 to the writ application, informing the petitioner that he shall be retiring upon attaining the age of 60 years w.e.f. 31.01.2015.

15. There is no merit in this application and the same is accordingly, dismissed.