(2008) 06 PAT CK 0017

In the Patna High Court

Case No : CWJC No. 4823 of 2008

Prof. Dr. Ravindra Prasad and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:
University Grants Commission Act, 1956 — Section 12, 2(f), 20

Citation : (2008) 3 PLJR 476

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Manish Kumar, for the Appellant; D.P. Choudhary for the State, Mr. Shivendra Kishore for J.P. University, Mr. Anil Singh University for T.M. Bhagalpur, M/s Pushkar Narain Sethi, Riesh Kumar No. 1, Nishant Choudhary for U.G.C., for the Respondent

Final Decision : Dismissed

Judgement

Navaniti Pd. Singh, J.—In the first writ application, the petitioners are Teachers of Jai Prakash University, Chapra and in the second, they are Teachers of Tilka Manjhi Bhagalpur University, Bhagalpur. They seek a writ to the University to permit them to continue to be in service upto the age of 65 years and not to superannuate them at the age of 62 years. In other words, they want a declaration that the age of superannuation, which was hitherto 62 years, has stood extended to 65 years ostensibly in view of decision of the University Grants Commission ("UGC" for brevity). In the first writ application, UGC was, with the leave of this Court, added as a respondent. The other respondents are State of Bihar, the University, the College Principal and the Chancellor of the Universities, Bihar. All parties have appeared. The State and UGC have not filed any counter affidavit in these writ applications but both of them have filed their counter affidavits in another writ application being CWJC No. 4843 of 2008 which is for the same relief by Teachers of B.R. Ambedkar Bihar University and on the same grounds. Those counter affidavits have been brought on record by the writ petitioners themselves by way of a supplementary affidavit and the learned counsel for the State and UGC have agreed that those counter, affidavits may be taken as counter affidavits in the present proceedings as well. With the consent of all parties, these writ applications have been taken up for. hearing and disposal at the stage of admission itself. On behalf of petitioners, the contention is brief and straightforward. They contend that in view of the amended provisions of Section 67(a) of the Bihar State Universities Act, 1976 as amended by the Bihar State Universities (Amendment) Act, 2006 being Bihar Act 4 of 2006, no sooner the UGC increase the age of superannuation in respect of University staff, the same would automatically apply to all Universities without any further act to be done or action to be taken by the State Government or the Universities of Bihar. It is the correctness of this submission that has to be judged in the present case. In order to appreciate the contentions, it is first necessary to refer to certain provisions of the University Grant Commission Act, 1956 and the provisions of the Bihar State Universities Act, 1976:-

2. Definitions.-In this Act, unless the context otherwise requires,-

....

(f) "University" means University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.

12. Functions of the Commission.- It shall be the general duty of the Commission to take in consultation with Universities or other bodies concerned, all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may-

20. Directions by the Central Government.-(1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

Bihar State Universities Act, 1976:

67. Retirement from service.-"(a) Notwithstanding anything to the contrary contained in any Act, Rules, Statutes, Regulation or (Ordinance, the date of retirement of a teaching employee of the University or of a College shall be the date on which he attains the age of sixty two years. The date of retirement of a teaching employee will be the same which would be decided by the University Grant Commission in future.

The date of retirement of non-teaching employee (other than the inferior servants) shall be the date on which he attains the age of sixty two years:

Provided that the University shall, in no case, extend the period of service of any of the teaching or non-teaching employee after he attains the age of sixty two years as the case may be:

Provided further also that re-appointment of teachers after retirement may be made in appropriate cases up to the age of sixty five years in the manner laid down in the statutes made in this behalf in accordance with the guidelines of the University Grants Commission."

2. It is submitted on behalf of petitioners that referring to the definition of Universities as given u/s 2(f) of the UGC Act, the Universities of Bihar are all Universities for the purposes of the said Act. The function of UGC is, as contemplated in terms of Section 12 of the said Act and in policy matters, it is to be guided by directions given by the Central Government in terms of Section 20 thereof. It is submitted that under these provisions, the Central Government is competent to give directions in relation to age of superannuation of University Teachers and even otherwise UGC is competent to regulate the same. In furtherance to the said submission, it is submitted that recently the State Legislature realizing this wholesome power and authority of UGC, amended Section 67 of the State Act by replacing the old provisions of Section 67(a) which had fixed the age of superannuation at 60 years. While increasing, by the said amendment, the age of superannuation to 62 years, a sentence was added "the date of retirement of a teaching employee will be the same which would be decided by the University Grants Commission in future." With reference to the aforesaid provision, which was engrafted in Section 68(a) of the Bihar Act by the amendment in 2006, it was submitted that no sooner did the University Grants Commission decided to change or alter the date of superannuation of teaching staff of a University, that would automatically apply notwithstanding the age limit fixed in the "substantive part as 62 years. Meaning thereby that if at a future date that is after the amendment of 2006 if UGC were to increase the age of University teaching staff to 65 years (as is now being contended by the petitioners), their age of superannuation would stand automatically increased to 65 years notwithstanding the ceiling placed in the substantive part of Section 67(a) of the Bihar Act. In my view, no exception can be taken to the submission as made in law but it is altogether a different matter when we look to the facts.

3. The first thing that one finds is that UGC must decide the date of retirement of teaching employees. In my view, the expression "decided" as used in Section 67(a) would mean and could only mean a conscious decision taken by the UGC in respect of the Universities. The expression "University", as defined by Section 2(f) of the UGC Act, undoubtedly covers all the Universities of Bihar constituted under the Bihar State Universities Act and would also include the Patna University constituted under its Act but that does not mean that a decision taken with reference to a specified group of Universities or teaching institutions that

would automatically apply to all Universities as defined u/s 2(f) of the UGC Act.

4. In fact, the petitioners'' reliance is on the letter dated 23rd March, 2007 issued by the Government of India in the Ministry of Human "Resources Development, Department of Higher Education to the UGC (Annexure-2 to the first writ application) by which the Central Government issued a policy directive to the UGC for enhancement of College Teachers from the present 62 years to 65 years. This, the petitioners urge, is a direction in terms of Section 20 of the UGC Act and binding on UGC as would be apparent from paragraph-4 of the said communication by which Central Government directs UGC to issue necessary notification in this regard. It is then submitted that UGC by its letter dated 4th of April, 2007, as communicated to the Registrars of all Central/Deemed Universities (Annexure-1 to the first writ application), directed the said Universities to act in accordance with the letter dated 23rd March, 2007 of the Central Government. Copy of this letter of the UGC was marked to the Registrar of the State Universities and all Secretaries of the States. It is, thus, submitted that there being a valid and binding direction by the Central Government to the UGC in terms of Section 20 with regard to increase of age of retirement to 65 years and consequently direction of UGC to the Universities to implement the Central Government''s directives, it should be deemed that so far as Teachers of Universities in Bihar are concerned, they would automatically now retire at the age of 65 years and not 62 years. In my view, having considered the matter, the submission cannot be accepted.

5. A reference to the policy directive of the Central Government dated 23rd March, 2007 (Annexure-2) would clearly show that it was not a general direction issued by the Central Government in relation to all teaching staff of all Universities. In so many words, the decision is qualified and restricted to centrally funded institutions in higher and technical education only. The reason for such restrictive implementation is also to be found in the said communication which is in order to overcome the shortage of Teachers in centrally funded higher and technical education institutions. It is not the case of the petitioners nor could it be their case that the Universities of Bihar are "centrally funded higher and technical education institutions". Thus, in my view, Annexure-2 is not such a binding direction by the Central Government in terms of Section 20 of the UGC Act in respect of all Universities. Then referring to the letter dated 4th April, 2007 (Annexure-1 to the first writ application) of UGC, it would be seen that the same is addressed only to the Registrars of Central/ Deemed Universities and not to all Universities in general. Then the letter again refers to teaching positions in centrally funded institutions in the higher and technical education which expression, to my mind and as held above, would not include the Universities of Bihar as the Universities of Bihar are not funded by the Central Government though they do receive grants from UGC. In my view, central funding of University is distinct and different from grants from UGC. Thus, even this communication of UGC, though copies of which have been marked to all the State Universities and all the State Secretaries, cannot be taken to be a decision

much less a conscious decision on part of UGC to increase the age of retirement of all Teachers in all Universities. The conscious decision of the Central Government, as adopted and echoed by the UGC, is limited and restricted to centrally funded institutions in the higher and technical education which certainly does not include the Universities in the State of Bihar.

6. In fairness to the learned counsel for the petitioners who had placed strong reliance on a recent judgment of this Court in the case of Baleshwar Ojha Ors. Vs. The State of Bihar and Others, , all that I can say is that in that case, this Court was dealing with Clause 23.3 of Appendix-A of the Statute which lays down that employees of the University shall be entitled to gratuity at the same rate as applicable to the State Government employees. This Court held that no sooner the State Government enhanced the gratuity for its employees, the same would be applicable to University staff as well. In my view, the Statute did not give any discretion to the State Government in the matter. It automatically applied the gratuity amount as fixed for State employees to University employees but that is not so in respect of Section 67(a) of the Bihar Act. Bihar Act clearly makes provision for the decision of UGC to apply and as noted above, the decision has to be a conscious decision and, as such, it could be restrictive or qualified as we have seen in the present case The decision of UGC was of not general application to all Universities but only to centrally funded institutions.

7. In my view, thus, the judgment as referred to above, has no application to the facts of the present case and is clearly distinguishable.

8. That being the factual position, there is no conscious decision of the UGC increasing the age of retirement of Teachers in the Universities of Bihar to the age of 65 years in terms to attract Section 67(a) of the Bihar Act. Thus, the relief claimed by the petitioners are misconceived in fact and not available in law. The writ petitions are consequently dismissed.

