
(2005) 01 JH CK 0064
In the Jharkhand High Court
Case No : LPA No. 278 of 2004

Ranchi University Grade-IV Staff Association and Another APPELLANT
Vs
State of Jharkhand and Others RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

Jharkhand State Universities Act, 2000 — Section 67

Citation : (2005) 1 BLJR 248 : (2005) 105 FLR 244 : (2005) 1 JCR 479

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : Sohail Anwar and Artaf Hussain, for the Appellant; Anoop Kumar Mehta, for the Ranchi University and S.C. II, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This appeal has been preferred by the appellants-Ranchi University Grade-IV Staff Association (in short "the Association") and another against the order dated 17th March, 2004, passed in W.P. (S) No. 1508 of 2004, whereby and whereunder the learned Single Judge has upheld the direction, issued by the Secretary, Human Resources Development (Higher Education) Department, Government of Jharkhand, Ranchi vide Letter No. 5/B1-40/2002 Edn. 268 dated, 19th February, 2004 to retire the teaching/non-teaching employees of the Universities /constituent Colleges within the State of Jharkhand, on completion of 42 years of service.

2. The questions, required to be determined in the present appeal, are :

(i) Whether an employee of the University/constituent College can be allowed to retire prior to the age of superannuation on the ground that he has completed 42 years of service? and

(ii) Whether the direction, issued by the Secretary, Human Resources

Development (Higher Education) Department, Government of Jharkhand, Ranchi. vide Letter No. 5/B1- 40/2002 Edn. 268, dated 19th February, 2004, is illegal and without Jurisdiction?

3. For determination of the issues, it is important to mention the relevant facts and to discuss the relevant Rules, Regulations etc. The teaching and non-teaching (both Class III and Class IV) employees of the Universities/constituent College within the State of Jharkhand, which was a part of the then State of Bihar, are governed by the Bihar State Universities Act, 1976 (in short "Act. 1976"), now known as Jharkhand State Universities Act, 2000 (In short "Act, 2000), after adoption of the same with certain amendment by the. successor State of Jharkhand. The 1st petitioner is an Association of Class IV staff of Ranchi University whereas the 2nd petitioner, who is also class IV employee of the Ranchi University, is a member of the said Association.

4. For the purpose of superannuation, they are guided by Section 67 of the Act, 1976 (now Act, 2000), wherein, 60 years is the age, prescribed for retirement of teaching and non-teaching employees of the University or of a College, other than a Inferior servant. For those non-teaching employees, appointed prior to commencement of the Act, 1976 (15th August, 1976), 62 years the age, prescribed for retirement. Higher Education Department of the Government of Bihar in the year, 1999 issued Letter No. 15/M1-014/99 (Part-1) 1961, Patna dated 12th November, 1999, wherein the subject was mentioned as "Matter relating to fixation of minimum and maximum age for appointment of non-teaching employees of University/constituent Colleges." It was informed that after considering all the relevant points, Government has decided (i) Like the Government employees, for appointment of non-teaching employees in Universities/constituent Colleges minimum age of 18 years and maximum age of 35 years for General Category, 37 years for Backward/Most Backward categories, 38 years for Female (General, Backward and Most Backward) category and 40 years for Scheduled Caste/Scheduled Tribe categories be fixed. It was further ordered to make necessary amendment In the Universities Act, and (ii) As 44 years should the general maximum service period, steps should be taken to get those non-teaching employees retired, who have completed 44 years of service, in public interest, after giving three months" prior notice in terms of Section 67-C (ii) of the Bihar State Universities Act. 1976 and Section 64-C (ii) of the Patna University Act, 1976.

5. After re-organisation of the State of Bihar and creation of the successor State of Jharkhand, the Bihar State Universities Act, 1976 continued to hold the field. Subsequently, it was adopted with certain amendment by the State of Jharkhand. In fact, minor amendment was made in the Act, 1976, whereby, in place of "Bihar", the word "Jharkhand" was substituted. The substantive provisions of Section 67, which deals with the age of superannuation of teaching and non-teaching employees of the Universities/constituent Colleges, continued to remain almost same, though Sub-clause (a) of Section 67, was amended vide Jharkhand

State Universities (Amendment) Act, 2000 (Act 6 of 2003) with effect from 6th May, 2003, relevant portion of which reads as follows :

"67. Retirement from service.-(a) Notwithstanding anything to the contrary contained in any Act, Rules or any judgment or decree of a Court, the date of retirement of teaching and non-teaching employees of the University or of a college shall be the date on which he/she attains the age of sixty years :

Provided that reappointment 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 on this behalf in accordance with the guidelines of the University grants Commission."

6. In the year, 2004, impugned Letter No. 5/B1-40/2002 Edn. 268, dated 19th February, 2004 was " issued from the Human Resources Development (Higher Education) Department, Government of Jharkhand, Ranchi, under the direction of the Head of the Department i.e. Secretary. Subject portion of the said letter refers :

"Determination of minimum age in the matter of appointment of teaching/non-teaching employees of Universities/constituent Colleges."

Giving reference to a query, made by the Registrar, Ranchi University, vide Letter No. 6137, dated 3rd June, 2003, it was informed that in Letter No. 15/M-014/99 (Part) - 1961 dated 12th November, 1999, issued from the Higher Education Department, Patna of the erstwhile State of Bihar, 18 years was the minimum age, fixed for appointment in Universities/Constituent Colleges and 44 years was the period, fixed for the maximum service. It was further informed that u/s 37 (it should be Section 67) of the Jharkhand State Universities (Amendment) Act, 2002, the age of superannuation of teaching/non-teaching employees of the Universities/ constituent Colleges, situated within the State, has been fixed as 60 years. Therefore, after due consideration, the Government has made part amendment in the aforesaid letter/circular of the Higher Education Department, Govt. of Bihar, Patna, and It has been decided that the maximum period of service of teaching/ non-teaching employees of Universities/constituent Colleges, situated within the State of Jharkhand, shall be 42 years. It was mentioned in the said letter that the decision will come into effect from the date of its issuance that means 19th February, 2004.

7. The Association and one another preferred a writ petition before this Court, being W.P. (S) No. 1508 of 2004, challenging the aforesaid Letter No. 5/B1-40/2002 Edn. 268, dated 19th February, 2004. They took a plea that the age of superannuation of teaching and non-teaching employees of the Universities/ constituent Colleges, being 60 years, as fixed u/s 67 of the Act, 1976 (Now Act, 2000), can not be altered or reduced by an executive instruction.

8. The learned Single Judge while referred to Section 67 of the Act, 1976 (now Act, 2000) and admitted that 60 years is the age of retirement, fixed for the

teaching and non-teaching employees of the Universities/constituent. Colleges, observed that according to the Indian Majority Act, a person attains majority on completion of the age of 18, years and before that he is a minor. The learned Single Judge further held that a minor is not entitled to get a regular employment either in Government Service or University Services, unless he or she attains the age of 18 years.

9. Counsel for the petitioners (appellants herein) took plea that no minimum age for employment was prescribed in the Universities Act. However, such submission was rejected by the learned Single Judge on the ground that a minor is not entitled to get employment.

10. Counsel appearing on behalf of the Ranchi University, Ranchi submitted that the impugned Letter No. 5/B1-40/ 2002 Edn. 268, dated 19th February, 2004 has been issued by the State Government and thereby the University has nothing to do with it, rather to follow the Government's guidelines.

11. Learned counsel for the State while supported the decision, taken by the respondents vide Letter 5/B1-40/2002 Edn. 268, dated 19th February, 2004, submitted that a person can not be appointed prior to 18 years of age and 60 years, having been prescribed as the age of superannuation, no employee can continue beyond 42 years of service.

12. Admittedly, no minimum age was either prescribed under the Act, 1976 nor any such minimum age has been prescribed under the Act, 2000, when Act, 1976 was adopted with amendment. Even after amendment of Act, 2002, no minimum age was prescribed under the Act, 2000/ Amended Act, 2002.

13. There is nothing on the record to suggest that any minimum age for appointment was prescribed earlier, prior to the year, 1999. From Letter No. 15/M1-014/99 (Part-1) 1961, Patna dated 12th November, 1999 it appears that the State of Bihar for the first time decided to prescribe a minimum age of 18 years for appointment of teaching/non-teaching employees in the Universities/ constituent Colleges and thereby, ordered to make necessary amendment in the Bihar State Universities Act, 1976. Though such a decision was taken, no amendment appears to have been made in the Bihar State Universities Act, 1976, prescribing a minimum age of 18 years for appointment of teaching/non-teaching employees in the services of the Universities/constituent Colleges.

14. So far the employees, who had completed 44 years of service are concerned, by Letter No. 15/M1-014/99 (Part-1) 1961, Patna dated 12th November, 1999 no decision was taken to retire them on completion of 44 years of service. In fact, it was ordered to give three months prior notice u/s 67-C(ii) of the Bihar State Universities Act, 1976 and Section 64-C(ii) of the Patna University Act, 1976 and to get them retired in public interest. That means, it was ordered to compulsorily retire them after giving three months notice as per Section 67-C (ii) of the Act, 1976.

15. From the impugned Letter No. 5/B 1-40/2002 Edn. 268, dated 19th February, 2004, issued from the Human Resources Development (Higher Education) Department, Govt. of Jharkhand, it appears that they have misconstrued Letter No. 15/M1-014/99 (Part-1) 1961, Patna dated 12th November, 1999, issued by the Government of Bihar. Though in the aforesaid letter, retirement (superannuation) on completion of 44 years of service has not been prescribed by the Govt. of Bihar, but on wrong presumption of Govt. of Jharkhand by its letter No. 5/B1-40/2002 Edn. 268, dated 19th February, 2004 informed that 44 years of service had been prescribed by the Govt. of Bihar for retirement (superannuation) of teaching/ non-teaching employees of the Universities/ constituent Colleges. On the basis of such wrong presumption, direction was issued from the Human Resources Development (Higher Education) Department, Govt. of Jharkhand, Ranchi, to get the teaching/ non-teaching employees of Universities/ constituent Colleges, within the State of Jharkhand, retired on completion of 42 years of service, though it was noticed that 60 years of age has been prescribed u/s 67 of the Jharkhand State Universities (Amendment) Act, 2002.

While Issuing aforesaid Letter No. 5/ B1-40/2002 Edn. 268, dated 19th February, 2004, the Human Resources Development (Higher Education) Department, Govt. of Jharkhand, failed to notice the 1st part of the direction, as was given vide Letter No. 15/M1-014/99 (Part-1) 1961, Patna dated 12th November, 1999 by the Govt. of Bihar, whereby, it was ordered to make necessary amendment in the Universities Act.

16. It is a settled law that the age of superannuation can not be left to the whims of the employer. In this regard, I may refer a decision of the Supreme Court in the case of Miss Raj Soni Vs. Air Officer in Charge Administration and another, wherein the Apex Court has held that the age of superannuation can not be left to the whims of the employer to enable him to retire different employees at different ages.

17. It is also a settled law that an Act, can not be amended by either a circular or an executive instruction. In this context, I may also refer a decision of the Supreme Court in the case of M.G. Pandke and others Vs. Municipal Council, Hinganghat, Dist. Wardha and others, In the said case, the Supreme Court noticed that the age of superannuation of the teachers, working in the Municipal Schools In Vldharva Division of Maharashtra, was 60 years. The Municipal Council reduced the age of superannuation to 58, years by framing a bye-law. The Supreme Court held the same invalid.

18. Admittedly, 60 years is the age of retirement, fixed for teaching/non-teaching employees of Universities/constituent Colleges u/s 67 of the Act, 2000. The State Government has not yet made any amendment to suggest that 42 years of service has been prescribed for retirement of a teaching/non- teaching employee of a University/constituent College. The impugned Letter No. 5/B1-40/2002 Edn. 268 dated 19th February, 2004, is a mere executive instruction. It has not even

been issued "By the order of the Governor of Jharkhand. The purported amendment, as made by the impugned letter, amounts to amendment of the age of superannuation, as prescribed under the Act, by an executive instruction, which is not permissible.

19. So far as minimum age for appointment to the teaching/non- teaching posts of Universities/constituent Colleges is concerned, it has already been mentioned that no amendment has been made either in the Act, 1976 or Act, 2000, prescribing such minimum age. There is no executive instruction issued, prescribing such minimum age for appointment. In Letter No. 15/M1-014/99 (Part-1) 1961, Patna dated 12th November, 1999, as was issued from the Govt. of Bihar, no minimum age was prescribed but it was ordered to amend the Universities Act, and thereby to fix a minimum age of 18 years for appointment in the services of the Universities/constituent Colleges. By 1st paragraph of the impugned Letter No. 5/B1-40/2002 Edn. 268, dated 19th February, 2004 also no minimum age for appointment in the services of the Universities/constituent Colleges has been prescribed by the Govt. of Jharkhand. It merely refers the letter of the Government of Bihar, as was issued on 12th November, 1999, wherein, it was initially decided to prescribe a minimum age of 18 years for appointment.

20. So far as the Indian Majority Act, 1875, as referred by the learned Single Judge, is concerned, there is no prohibition, made therein, for appointment of a minor in the services of State, Civil Body, Govt. Institutions, Public/Private Sector Undertakings or in any other Organisation. The said Act, mainly relates to marriage, dower, divorce, adoption etc. The prohibition of child labour came into effect for the first time on 23rd December, 1986 when "Child Labour (Prohibition & Regulation) Act, 1986" was enacted. The definition of "child", as give under Clause (ii) of Section 2 of the Child Labour (Prohibition & Regulation) Act, 1986, means a person, who has not completed his 14th year of age. Section 3 of the said Act, prohibits employment of children in certain occupations and processes. No bar has been made therein for appointment of those, who have completed more than 14 years of age.

21. Even if It is presumed that some provision of either Indian Majority Act, 1875 or Child Labour (Prohibition & Regulation) Act, 1986 has been violated, penal actions are there to be taken against the erring persons or the initial appointment can be held to be irregular. But it has no nexus with the age of retirement/date of retirement.

22. So far as retirement is concerned, a person is guided by the relevant provisions of the Act/Rule/Regulation/Byelaw/ Guideline, as the case may be.

23. In the case of teaching/non-teaching employees of the Universities/ constituent colleges, even if a person was appointed while he was a minor and thereby any provision of the Indian Majority Act 1875 and Child Labour (Prohibition Regulation) Act, 1986 was violated, for that the employee can not be

punished by reducing the age of his/her superannuation nor a notional age of superannuation can be fixed, treating the employee major as on the date of his/her initial appointment. Even in such cases, the retirement will be dependent on the age of superannuation or the period of service renders, as prescribed under the law Le. Act/Rule/ Regulation/Guideline etc.

24. In the case of teaching/non-teaching employees of the Universities/ Constituent Colleges, 60 years being the age of superannuation, fixed u/s 67 of the Act. 2000 and there being no alternative period of service, prescribed for the purpose of superannuation, the employees have a right to continue up to the age of superannuation Le. 60 years.

25. For the reasons aforesaid, I hold Letter No. 5/B1-40/2002 Edn. 268 dated 19th February, 2004, so far it relates to superannuation of teaching/non-teaching employees of Universities/constituent Colleges on completion of 42 years of service, as illegal, being against the statutory provisions of Section 67 of the Act, 2000 and the same is, accordingly, set aside.

26. In the result, those teaching/ non-teaching employees of the Universities/ constituent College, who have been forced to retire prior to attaining the age of superannuation Le. 60 years on the basis of Letter No. 5/B 1-40/2002 Edn. 268, dated 19th February, 2004, stand re-instated with all consequential benefits, such as, arrears of salary etc. and they will be deemed to be continuing In service or to have continued in service up to the age of 60 years.

27. The order dated 17th March. 2004, passed by the learned Single Judge in W.P. (S) No. 1508 of 2004 is set aside and the appeal is hereby allowed. However, there shall be no order as to costs.

Narendra Nath Tiwari, J.

28. I agree.