

(2002) 06 JH CK 0023

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 4036 and 4771 of 2001

Sri Chandra Bhushan Jha and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Citation : (2002) 06 JH CK 0023

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.K. Habib, for the Appellant; Shamim Akhtar, SC II and Arbind Kr. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In these writ applications petitioners seek issuance of writ in the nature of mandamus commanding the respondents to extend the period of service of the petitioners and all the teaching employees of the University and College till attaining the age of 62 years and for implementation of notification issued by the University Grant Commission and the direction issued by the Central Government and further for a writ of certiorari.

2. Petitioners are the teachers in different colleges of the University in the State of Jharkhand. It is contended that on 27.7.1998, the Central Government issued two letters to the Education Secretary of all the States to implement the recommendation of University Grant Commission and also suggested that the age of superannuation of University teachers should be 62 years.

3. The grievance of the petitioners is that the universities have not implemented the aforementioned letters and extended the age of superannuation of the University/College teachers. In the counter-affidavit filed by the University Grant Commission, it is stated inter alia that petitioner and many others have been superannuated from their respective services after attaining the age of 60 years in terms of Section 67 of the Bihar State University Act, 1976, which Act has also

been adopted by the State of Jharkhand. It is further stated that the implementation of the new UGC scheme is under consideration by the Government of Jharkhand. As such University is not able to consider the prayer of the petitioner. The State of Jharkhand in their counter affidavit have stated that the Government of India, Department of Education by the aforesaid letters simply requested the State Government to consider the question of implementing the revised pay scale of the University teachers with such modification. The Government of Jharkhand constituted a High Power Committee under the Chairmanship of the Chief Secretary of the State to make proper recommendation regarding implementation of the scheme of the revised pay scale of the University teachers except the age of superannuation.

4. Admittedly, under Bihar State University Act, the age of superannuation of a teacher of University/College is 60 years. The Central Government appears to have simply requested the State Government to consider the implementation of the scheme. It is also undisputed fact that the University is fully dependent on the fund released by the State Government in the matter of payment of salary to the teaching and non-teaching staff of the University/Colleges. The matter relating to implementation of UGC scheme is a policy decision which has to be taken by the State Government only.

5. Recently, similar question came for consideration before a Division Bench of the Patna High Court in the case of Prof. Ranjit Singh Gandhi and Others Vs. The State of Bihar and Others, and it was observed that :--

"Even if it is assumed for the sake of argument that the UGC has power to issue a direction or to make a scheme even with regard to age of retirement of a teaching or non-teaching staff of university or of a college by treating the same for the maintenance of standard the question is as to what would happen in case of non-observance of the said scheme by the State Government and Universities. A similar question came for consideration the case of University of Delhi (supra). In that case, the UGC framed a regulation known as the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and institutions affiliated to it) Regulation, 1991, Notified on 19th September, 1991. The aforesaid regulation provided inter alia for eligibility or entrance test for appointment to the post of Lecturer. Aggrieved candidate who was respondent before the Supreme Court had applied for the post of Lecturer in Commerce but was not called for interview. Thereafter he filed a writ application before the Delhi High Court ascertaining that the advertisement did not lay down that candidates should have passed the test prescribed by the said regulations and that candidates who had not passed the said test would not be called for interview. The Delhi University contested the claim of the petitioner that the regulations were beyond the legislative competence of the UGC. The Delhi High Court negatived the claim of the University by holding that the regulations are valid and mandatory. The same was challenged before the Apex Court by the University. Clause 2 of the said regulations contained a provision

relating to qualification and provided that no person shall be appointed to a teaching post in the University or in any of institutions as mentioned there if he does not fulfil the requirements as to the qualifications for the appropriate subject as provided in the Schedule I. Schedule I with regard to appointments of Lecturer inter alia, provided that the candidates for appointment to the post of Lecturer should have clear the eligibility test conducted by UGC or similar test accorded by the UGC apart from fulfilling the other qualifications. Clause 3 provided consequences of failure of Universities to comply with the recommendations of the commission as per provisions of Section 14 of the Act. The Apex Court held that the provisions of clause 2 with regard to qualifications which are recommendatory in character, it will be open to the University to comply with the aforesaid direction. It will be open for the University, in specific cases, to seek the prior approval of the UGC regarding relaxation of the requirement. It would also be open to the University not to comply with the provisions of clause 2, in which case the consequences u/s 14 of the Act shall follow."

6. Taking into consideration the ratio decided by the Division Bench, I am of the opinion that the relief sought for by the petitioners cannot be granted by this Court. This writ applications are accordingly dismissed.