
(2019) 07 JH CK 0009

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 559, 560, 616 Of 2017

State Of Jharkhand And Ors

APPELLANT

Vs

Daisy Kongari And Ors

RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 07 JH CK 0009

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Prashant Pallav, Navneet Sahay, Rishikesh Giri, Madhav Prasad, A. Allam, A.K. Das, Rajesh Kumar, Nikhil Mehta

Final Decision : Dismissed/ Disposed Off

Judgement

1. Heard learned counsels for the State appellants and learned counsels for the private respondents in all these Letters Patent Appeals.
2. As common question of law arises in all these appeals, they are being heard together and are being disposed of by this common Judgment.
3. At the very outset it may be stated that in some of the appeals, interlocutory applications are pending for substitution of some of the private respondents, stating that since they have died, they be substituted with their heirs and legal representatives. Some of such applications have also been allowed, while others are still pending.
4. As these appeals have been filed after inordinate delays, there are interlocutory applications also for condonation of delays in filing the appeals, and there are interlocutory applications pending also for staying the operations of the impugned orders.
5. In one of these appeals, LPA No. 543 of 2017, there was delay of 381 days,

which has been condoned by order dated 8.1.2018, passed in I.A. No. 8394 of 2017. Yet another I.A., in same LPA, being I.A. No. 8395 of 2017 was filed for staying the operation of the impugned order, which was also allowed on the same date, and the operation, implementation and execution of the impugned order passed by the Honâ??ble Single Judge was stayed.

6. Since we are considering all these appeals together, we are treating all the I.As filed for condonation of delay and the I.As. filed for the staying the operation of the impugned order, to be governed by the same orders passed by this Court in LPA No. 543 of 2017.

7. We also do not propose to pass any order in the interlocutory applications in some of the appeals for substitution of the deceased private respondents with their legal heirs and representatives, in order to save the time, and in view of the fact that the Judgements passed by the Honâ??ble Single Judge, and the Judgement which is going to be passed in these appeals, are in the nature of Judgment in-rem, for all the superannuated teaching and non-teaching staff of the affiliated minority colleges in the State, appointed on or before 1.12.2004 and retired from service before the cut-off date, i.e., 19.12.2012. The Judgement in these appeals shall not be in the nature of the Judgement in-personem, governing any particular private respondent, and as such we are not entering into the question of substitution of the deceased private respondents at this stage.

8. There is no dispute to the fact that the writ petitioners respondents had worked as teaching and non-teaching staff in minority colleges, which were affiliated to the Universities in the State of Jharkhand, and all of them have retired prior to cut-off date, i.e., 19.12.2012. The teachers and non-teaching staffs of the minority affiliated colleges were earlier not given the pensionary benefits. As a matter of fact, prior to the year 1972, no burden of payment of salary etc., to the teaching and non-teaching staff of the affiliated colleges was shared by the State Government. Pursuant to an agreement, which was arrived at between the State Government and the bodies of the teachersâ?? association of the affiliated collages, in a meeting held on 15.12.1972, a decision was taken to share the burden of payment of their salary, by making deficit grant by the State Government, w.e.f., the year 1975-76, and the letter with respect thereto was issued by the State of Bihar, in its Education Department, on 23.02.1978. Subsequently, by a

resolution dated 5th November, 1980, a decision was also taken by the State Government in its Education Department that such teachers and non-teaching staff, of universities / constituent colleges / affiliated colleges, who have superannuated on 1 st April 1978 or thereafter, shall be entitled to the benefits of pension, gratuity and provident fund as well. This resolution of the State Government has been brought on record as Annexure-5 to the memo of appeal in LPA No. 560 of 2017. It appears that this decision was not being implemented by the State Government to the minority colleges in the State, and the matter was being persuaded by the teachers and non-teaching staffs of the minority colleges for pension, gratuity and provident fund etc., and ultimately, the State of Jharkhand came out with a resolution in its department of Human Resources Department (Higher Education), as contained in Memo No. 1470 dated 19.12.2012, making available the benefits of pension, gratuity and provident fund to the teaching and non-teaching staff of graduate level minority colleges as well. In the said resolution, it was clearly stated that those teaching and non-teaching staff, who have superannuated prior to the issuance of the resolution, shall not be entitled to the benefits, but no reason was stated in the resolution, as to why, the teaching and non-teaching staff, superannuated prior to 19.12.2012 were denied the said benefits. It appears that this resolution has been passed by the State Government during the pendency of some of the writ applications filed in this Court, while some of the writ petitioners have moved before this Court after the issuance of the said resolution.

9. W.P. (S) No. 3280 of 2010 was allowed by the Honâ??ble Single Judge by the Judgment dated 9.9.2016, whereas the other writ applications were disposed by the Honâ??ble Single Judge, by a common Judgment dated 12.08.2016. All these writ applications have been disposed of by the Honâ??ble Single Judge holding that the cut-off date, i.e., 19.12.2012 fixed in the resolution issued by the State Government is absolutely arbitrary, and directing the respondents appellants to reconsider and take a decision afresh, in accordance with law by issuing a corrigendum, so that the notification dated 19.12.2012 is made applicable in same and similar manner with regard to teaching and non-teaching staff, who have been appointed on or before 1.12.2014 and retired prior to the issuance of notification dated 19.12.2012.

10. The impugned Judgment shows that the Hon'ble Single Judge has taken into consideration the decisions cited on behalf of the State, including the one of the Hon'ble Apex Court, in *Government of A.P. and Ors. Vrs. N. Subbarayudu and Ors.*, reported in (2008) 14 SCC 702, wherein the Hon'ble Apex Court has held that fixing of cut-off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut-off date by the executive authority, unless such order appears to be on the face of it blatantly discriminatory and arbitrary. The Hon'ble Single judge has also taken into consideration the various decisions of the Hon'ble Apex Court, including the ones in *K.J.S. Buttar Vrs. Union of India and Another*, reported in (2011) 11 SCC 429, as also in *Kallakurichi Tulus Retired Officials Association, Tamil Nadu and Ors. Vrs. State of Tamilnadu*, reported in (2013) 2 SCC 772, which decisions admittedly came after the decision in *Government of A.P.'s case (supra)*.

11. In *K.J.S. Buttar's case (supra)*, The Apex Court has cited with approval, its earlier decision in *Union of India Vs. SPS Vains*, reported in (2008) 9 SCC 125, laying down the law as follows:-

28. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in *D.S. Nakara* where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had

not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counterproductive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.

In the later decision, reported in (2013) 2 SCC 772, the law has been laid down as follows:-

33. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see *State of Kerala v. N.M. Thomas*). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legally, the test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied.

12. Taking into consideration the aforesaid decisions, the Honâ??ble Single Judge held that cut of date as fixed in this case, i.e., 19.12.2012 is arbitrary, having no rationale with the object said to be achieved, and has disposed of all the writ applications, giving the direction to the State Government as aforesaid.

13. Learned counsels for the appellant State in all these appeals have submitted that the impugned Judgments, passed by the Honâ??ble Single Judge cannot be sustained in the eyes of law, in as much as, the State Government was not making any payment to the respondents writ petitioners, who are the employees to the minority institutions. It is submitted that only by virtue of resolution dated 19.12.2012, it was decided to extend the benefit to the teaching and non-teaching staff of the minority colleges as well, imparting education up to graduate level, and accordingly, the cut-off date has been

fixed to be the date of issuance of resolution itself, which is not at all arbitrary. Learned counsel again placed reliance upon the decision in

Government of A.P.'s case (supra), in which, the Honâ??ble Apex Court has laid down the law that fixing of cut of date is within the exclusive

domain of the executive authority, keeping in view of the economic conditions, financial constraints and many other administrative and other attending

circumstances, in which, the Courts normally should not interfere. Learned counsel, accordingly, submitted that in view of the decisions laid down by

the Apex Court, the impugned Judgments passed by the Honâ??ble Single Judge cannot be sustained in the eyes of law.

14. On the other hand learned counsels for the respondents writ petitioners in all these appeals have opposed the prayer, submitting that there was no

illegality in the impugned Judgments passed by the Honâ??ble Single judge. It is pointed by learned counsels that the State Government had already

agreed to the extend the pensionery benefits including the benefits of gratuity and provident fund to all the teaching and non-teaching staff of the

affiliated colleges, who were to retire on 1st April 1978 or thereafter. Thus, cut-off date was already fixed by the State Government, but by issuance

of the resolution dated 19.12.2012, another cut-off date has been fixed as 19.12.2012, without giving any reason, as to why the earlier cut-off date is

not being followed by the State Government. It is pointed out by the learned counsels that no reason, whatsoever has been assigned by the State

Government for shifting the cut-off date from 1st April 1978 to 19.12.2012. Learned counsels, accordingly, submitted that there is no illegality in the

impugned Judgments passed by the Honâ??ble Single Judge.

15. Though, learned counsels for the writ petitioners respondents have also argued that these appeals have been filed very belatedly and they have

vehemently objected the prayer for condone the delay in filing the appeals, but as stated earlier, in view of the order dated 8.1.2018 passed by this

Court in LPA No. 543 of 2017, condoning the delay, we do not see any reason to defer from the said order and, accordingly, all these appeals shall be

governed by the same order.

16. Having heard learned counsels for both the sides and upon going through the record, we find that there is no dispute to the fact that earlier a cut-

off date was fixed by the State Government, extending the pensionery and other

benefits to the teaching and non-teaching staff of the affiliated colleges, who were to retire from 1st April 1978 or afterwards. There is no dispute to the fact that even the minority colleges, in which the writ petitioners were working, they were not affiliated to the Universities, rather this is an admitted fact that all the writ petitioners were teaching and non-teaching staff in the affiliated minority institutions. In the resolution dated 5.11.1980, issued by the State Government, as contained in Annexure-5, the pensionary and other benefits have been made applicable to the employees of the affiliated colleges also. No reason has been assigned before us as to why the affiliated colleges shall not include the minority affiliated colleges. Admittedly, the cut-off date fixed in the said resolution is 1.4.1978. By the resolution dated 19.12.2012, issued by the State of Jharkhand, the same pensionary and other benefits have been made applicable to the employees of the minority colleges, as applicable to the affiliated colleges, but with a rider that teaching and non-teaching staff of the minority colleges, who have superannuated prior to the issuance of the resolution would not be given the said benefits. Admittedly, no reason, whatsoever, has been assigned in this resolution for denying the benefits to the teaching and non-teaching staff, superannuating prior to 19.12.2012, or deviating from the earlier cut-off date, which was fixed as 1st April 1978 for the employees of the affiliated colleges. Indeed there is no denial of the fact that these minority colleges in question, are also affiliated to different universities in the State.

17. We accordingly, do not find any illegality in the impugned Judgments passed by the Honâ??ble Single Judge, relying upon the laws laid down by the Apex Court, in K.J.S. Buttar's case and Kallakkurichi Tuluk Retired Officials Association's case (supra), and finding that the present fixing of cut-off date was not in accordance with Articles 14 and 16 of the Constitution of India, rather it was arbitrary and not having any reasonable nexus to the object sought to be achieved. No case is made out for any interference in exercise of LPA jurisdiction, in the impugned Judgements dated 12.08.2016 and 9.9.2016 passed by Honâ??ble Single Judge, in the connected writ applications. Consequently, the interim order of stay passed on 8.1.2018, in I.A. No. 8395 of 2017, in LPA No. 543 of 2017, stands vacated.

18. There is no merit in all these appeals, which are accordingly, dismissed. All the interlocutory applications also stand disposed of.