
(2019) 02 CHH CK 0026
In the Chhattisgarh High Court
Case No : Writ Petition Service No. 6587 Of 2008

U.K. Shrivastava	Vs	APPELLANT
State Of Chhattisgarh & Others		RESPONDENT

Date of Decision : 05-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 162

Citation : (2019) 02 CHH CK 0026

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Alok Kumar Dewangan, Kishore Bhaduri, Sunita Jain

Final Decision : Disposed Off

Judgement

P. Sam Koshy, J

1. The relief sought for by the petitioner through the instant Writ Petition is that, the respondents should treat the petitioner to have worked up till the age of 62 as the age of superannuation in the College Code, 28 was stood amended from 60 to 62.

2. The facts of the case in brief is that, the petitioner was appointed as an Assistant Professor under the respondents No. 2 to 4. At the time of appointment of the petitioner, the age of superannuation under the rules governing the field was 60. As per that, the petitioner would have attained the age of superannuation on 31/08/2000.

3. The contention of the counsel for the petitioner is that, vide Annexure-P/6 dated 14/10/1998, the Higher Education Department had issued a circular to all the Government Colleges as also the Aided Government Institutions intimating the fact that the Government is in the process of considering enhancement of age of retirement from 60 to 62 and that since the legislation is in the process, the department had instructed all the establishments both the Government as well as the Non-Government aided Colleges to ensure that in between the

persons who are crossing the age of superannuation are not to be discontinued from service. That though, there was such a circular issued, but the respondents it is said had discontinued the services of the petitioner on attaining the age of superannuation on 31/08/2000.

4. The said premature retirement of the petitioner was subjected to challenge in Writ Petition No. 2560/2000 by the petitioner and a few more Professors under the respondents No.2 to 4. Pending the said Writ Petition, the petitioner since he was retired from services w.e.f. 31/08/2000, the petitioner independently filed a fresh Writ Petition i.e. Writ Petition No. 5074/2000 wherein this High Court on 30/08/2000 granted an interim protection directing the respondents to maintain status-quo so far as the services of the petitioner is concerned.

5. By virtue of the interim protection, the respondents permitted the petitioner to continue as Professor in the department and the said interim order was finally vacated on 31/08/2001 and pursuant to the interim order being vacated by this Court, the services of the petitioner stood again discontinued from 31/08/2001 itself.

6. Lateron, both the aforementioned two Writ Petitions i.e. WP No. 2560/2000 and 5074/2000 got disposed off by a common order dated 22/02/2007 holding that, since the petitioner had crossed the enhanced age of superannuation, the Writ Petitions had rendered infructuous and the dispute left was so far as the salary for the period during which he was prevented from discharging duties in the respondent-college. The High Court disposed off the Writ Petition with liberty to the petitioner to move a representation before the authorities for claiming salary during the period he was prevented to discharge his duties.

7. The contention of the counsel for the petitioner is that, the respondents No. 2 to 4 meanwhile had permitted the other similarly placed Professors to work till they have attained the age of 62 i.e. Professor V.S.Verma, Shri A.S.Kalele, Shri M.K.Hazra and Smt. N.Gupta. He further contended that, the respondents meanwhile had permitted two other Professors namely Shri R.D.Sharma and Shri S.Z.Shah also to retire on attaining the age of 62. He further submits that, during the pendency of litigation before this Court, the College Code, 28 itself stood amended w.e.f. 13/07/2001 and by virtue of the interim order on 13/07/2001, the petitioner was in employment of the respondents and since the provision stood amended, the petitioner should not have been discontinued in the year 2001, rather he should have been permitted to continue till 31/08/2002. The petitioner therefore be given all the consequential benefits for the period between 31/08/2001 to 31/08/2002.

8. Per contra, the counsel for the respondents opposing the petition submits that, Annexure-P/6 which is the basis on which the petitioner is banking upon is not one which has got the force of law under Article 162 of the Constitution of India. He further submits that, it is only a general instruction which has been issued by an officer of the department and it is not in the name of Governor. The

respondent No.2 is a private institution which was not receiving any grant in aid from the Government at that relevant point of time. Therefore the said circular of the Higher Education Department also could not have been applicable so far as the respondent No.2 is concerned. He further contended that, so far as the comparison which the petitioner has made in respect of other similarly placed Professors, those persons were also granted interim protection by the Court and therefore the interim protection incidentally got extended beyond till those persons crossing the age of 62 and thereafter their services stood discontinued on attaining the age of 62. According to the respondents, the benefits has not been extended as a policy decision to any of the Professors under the respondent No.2 at that point of time, therefore, the petitioner also cannot be granted the same. He further contended that, the relief otherwise which the petitioner is claiming is one which cannot be sustained as it would amount to claiming negative parity.

9. So far as the pleadings of the parties are concerned, it would be relevant at this juncture to take note of paragraph 11 of the reply filed by the respondents No. 2 to 4 as early as on 03/03/2010. For ready reference, it has been reproduced herein under:-

"11. Reply to para 8.6.

In reply to this para it is submitted that the Society which is running the College is not at any logger heads with the Teachers and always look forward to their betterment. It is not in dispute that the College received grant in aid from the State Government and the salary therefore is being made by the State Government. Therefore, no malafide can be attributed to the Society to follow the mandate of statute 28 with respect to the date of retirement."

10. Likewise, it would further be relevant to take note of the submissions put forth by the respondents in their reply so far as the knowledge of enhancement of age of superannuation is concerned wherein in paragraph 16, it has been held as under:-

"16. Reply to para No. 8.13 .

In reply to this para it is submitted that the petitioner was never informed about any amendment in the statute 28 of College Code in year 2001. Whereby the age of superannuation was raised to 62 from 60. The respondent for the first time on 03/10/2006 received a letter styled certificate received from Ravishankar University whereby it was informed with respect to increase the age of superannuation. Without prejudice to the averments made hereinbefore the respondents further submits that the perusal of Annexure-P/2 submitted by petitioner do not incorporate the fact that increase of age of superannuation by amending statute 28 of College Code was given retrospective effect/operation."

11. Now, coming back to the documents enclosed along with the Writ Petition, it would be relevant at this juncture to take note of the contents of Annexure-P/6

dated 14/10/1998 wherein it has been held as under:-

"विशय:- शैक्षणिक और अशैक्षणिक संवर्ग के व्यक्तियों की अधिवाशि की आय में वृद्धि।

==00==

राज्य शासन ने असाधारण राजपत्र, दिनांक 28 मई, 1998 और 2 सितम्बर, 98 का दे दे अधिसूचनाएं जारी करते हुए शासकीय शिक्षकों की अधिवार्शिकी आयु का 60 वर्ष से 62 वर्ष आ और गैर शैक्षणिक कर्मचारियों की अधिवार्शिकी आयु का 58 वर्ष से बढ़ाकर 60 वर्ष करने का निर्णय लिया है। इस तारतम्य में अनुदान प्राप्त अशासकीय महाविद्यालयों में कार्यरत शिक्षकों आ और गैर शिक्षक संवर्ग के व्यक्तियों के लिये पृथक से अधिसूचना जारी की जायेगी। जब तक विधिवत अधिसूचना जारी नहीं की जाती आ और परिनियमों में आवश्यक संशोधन नहीं किया जाता तब तक सभी अनुदान प्राप्त अशासकीय महाविद्यालयों में कार्यरत ऐसे शिक्षकों का जे अगस्त 1998 के बाद सेवा निवृत्त होंगे आ और ऐसे गैर शिक्षक कर्मचारियों का जे 30 मई 98 के बाद सेवा निवृत्त होंगे उन्हें फिलहाल कार्यमुक्त न किया जावे। इस संबंध में आगामी आदेश की प्रतीक्षा करें। "

12. It is further relevant to take note of that the Pandit Ravishankar University finally vide its notification dated 13/07/2001 had amended the College Code, 28 in paragraph 26 enhancing the age of superannuation from 60 to 62. For ready reference, it has been reproduced herein under:-

"विश्वविद्यालय समन्वय समिति की बैठक, दिनांक 18 जून ए 2001 Vभाग-ग में लिए गए निर्णयानुसार परिनियम क्रमांक 28 के पैरा 26 में काले जकोड में निम्नलिखित प्रति स्थापित कर दिया जाय-

"A PERMANENT TEACHER SHALL BE ENTITLED TO BE IN THEIR SERVICE OF THE COLLEGE UNTIL HE COMPLETES THE AGE OF SIXTY TWO."

13. What is further necessary to be taken note of is the fact that, the petitioner continued in service by virtue of an interim order granted by this Court in WPS No. 5074/2000 up till 31/08/2001. The date on which the amendment came into force i.e. on 13/07/2001 the petitioner was already in employment (though by virtue of an interim relief by this Court).

14. Once when there is a continuity of employment in respect of the petitioner under the respondent No.2 even though by virtue of an interim order, for all practical purposes and technically it has to be presumed that the petitioner was in service when the amendment came into force and thereby the respondents ought to have honoured the said enhancement of age and should have permitted the petitioner to work till he attains the age of 62.

15. Moreover it appears that in the case of the professors namely Shri R.D.Sharma and Shri S.Z.Shah were granted extension of age of retirement without any litigation or an interim relief from any court of law and therefore the same could not have been denied to the petitioner.

16. So far as the ground of retrospectivity is concerned, it is not a case where the respondents had abruptly issued the notification Annexure-P/2, rather it is a case where the department of Higher Education, Government of Madhya Pradesh (as it then was) had already issued instructions as early as on 14/10/1998 (Annexure-P/6) itself with a copy endorsed to all the Universities under it

whereby they had intimated the clear intention of the Government for enhancing the age of superannuation for the aided as well as non-aided institution from 60 to 62. There was also a clear mandate by the Government to the authorities that till the Rules are amended, the competent authorities should not discontinue the services of the employees who were to retire on attaining the age of 60 in between.

17. Moreover, the petitioner already had an interim protection in his favour in WP No. 5074/2000 by virtue of which he continued in employment.

18. Given the aforesaid facts and circumstances of the case and also taking into consideration the pleadings of the respondents in their reply which has been reproduced in the preceding paragraphs this Court is of the opinion that, the petitioner in the instant case also was entitled to be retired from service on attaining the age of 62 i.e. 31/08/2002 instead of 31/08/2000 as has been declared by the respondents.

19. The Writ Petition to that extent deserve to be and is accordingly allowed and it is held that the action on part of the respondents in superannuating the petitioner from 31/08/2000 is bad. The petitioner has to be treated as having superannuated on attaining the age of 62 which would have occurred only on 31/08/2002.

20. Now, so far as the relief which can be granted to the petitioner is concerned, perusal of record would show that, the petitioner continued in service up till 31/08/2001 and in all probability he has also been paid salary and other allowances which he was entitled for during the said period. The only benefit which the petitioner has not got was the monetary benefits from 31/08/2001 to 31/08/2002. Admittedly the petitioner has not discharged his duties during the said period.

21. Moreover, on the petitioner's retirement, the respondents themselves have engaged other person for discharging of duties in place of the petitioner.

22. In view of the same, applying the principles of No-Work-No-Pay it is ordered that, the petitioner be treated to have retired from service at the age of 62. The petitioner however would be entitled for, all the consequential benefits post retirement that he would get treating his age of retirement to be 62.

23. The Writ Petition accordingly stands allowed in part and disposed off.