
(2015) 03 JH CK 0098

Jharkhand High Court

Case No: L.P.A. No. 215 of 2014

Krishna Choudhury

APPELLANT

Vs

State of Jharkhand and
Others

RESPONDENT

Date of Decision: March 10, 2015

Citation: (2015) 03 JH CK 0098

Hon'ble Judges: Dhirubhai Naranbhai Patel, J; Pramath Patnaik, J

Bench: Division Bench

Advocate: Indrajit Sinha, for the Appellant

Final Decision: Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.

1. This Letters Patent Appeal has been preferred by the original petitioner. The petition preferred by this appellant was for increasing the age of retirement praying therein that instead of 60 years, it should be 62 years as per the amendment in the Jharkhand State Universities Act, 2000. This amendment has been carried out in the year 2005. It further appears that this provision has been further amended in the year 2012 and instead of 62 years for teaching staffs, the age of retirement has been enhanced upto 65 years, whereas for the non-teaching staffs, the age of retirement has been maintained as 60 years.

2. Counsel for the appellant (original petitioner) vehemently submitted that the appellant was working as Assistant Librarian against the pay scale equivalent to that of the Lecturer and, therefore, her age of retirement should be 62 years. Counsel for the appellant has vehemently submitted that the pay scale of this appellant is that of the Lecturer. This aspect of the matter has not been properly appreciated by the learned Single Judge. Looking to Section 67 of the Act of 2000, which is amended in the year 2005, the date of retirement of teachers of University or the Colleges and those of officers declared equivalent to them by the statute of the University with effect from the date of notification

of the Act of 2000, in the official gazette, shall be the date on which such officer or the teaching staffs attaining the age of 62 years. This appellant, who was an Assistant Librarian in the pay scale of Lecturer, should have been continued in the services as per amended Section 67 of the Act of 2000 upto the age of 62 years and, hence, the judgment and order delivered by the learned Single Judge deserves to be set aside. Counsel for the appellant has also relied upon Section 2(am) of the Act of 2000 and submitted that "those officers declared equivalent to them". The words which are used in Section 67(a) of the Act of 2000, as per amendment in the year 2005, should be read with Section 2(am) of the Act of 2000 and as per these provisions, the pay scale of this appellant is equivalent to the pay scale of Lecturer and hence, the age of retirement should be 62 years. This aspect of the matter has not been properly appreciated by the learned Single Judge and hence, the judgment and order delivered by the learned Single Judge in a writ petition being W.P. (S) No. 988 of 2012 dated 30th April, 2014 deserves to be quashed and set aside.

3. Counsel for the State as well as the University submitted that Section 67(a) of the Act of 2000 which has been amended in the year 2005 is not applicable to this appellant for her retirement age of 62 years, because, this appellant is not teacher of the university or of the college, nor she is an officer declared equivalent to them by the statute of the university. This appellant was working as Assistant Librarian which is a post known as non-teaching employee and, therefore, her age of retirement is 60 years. This aspect of the matter has been properly appreciated by the learned Single Judge. Counsel for the respondents has also relied the definition of a "teacher" given in Section 2(v) of the Act of 2000 and submitted that the Assistant Librarian is not included in the definition of the word "teacher". It is further submitted by the counsel for the respondents that Section 2(am) of the Act of 2000 is of no help to the appellant mainly for the reason that equal pay of teaching and non-teaching staffs is not a criteria at all for their retirement age of 62 years, but, the officers declared equivalent to teachers of the University or College by the statute of the University is the sine quo non for applicability of Section 67(a) of the Act of 2000 as per amendment Act No. 5 of 2005. The post of Assistant Librarian has never been declared by the respondents-University equivalent to a teacher of the University or of the College by the statute of the University. In terms of Section 36 of the Jharkhand State Universities Act, 2000 and hence, the age of retirement of this appellant cannot be 62 years, but, she is a non-teaching employee, her age of retirement is 60 years, which she has already attained and has now retired and, therefore, no error has been committed by the learned Single Judge in dismissing the writ petition preferred by this appellant.

4. Having heard both sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the reasons and facts:--

"a) The present appellant was Assistant Librarian and was getting pay scale equivalent to that of a Lecturer. She was working with the respondents-College under Vinoba Bhave University.

b) She has attained 60 years in the year 2012.

c) In this matter, Section 67(a) of the Jharkhand State University Act, 2000 as amended in the year 2005, Section 2(v), Section 2(am), Section 36 and Section 67(a) of the Act of 2000 have been referred repeatedly.

d) Section 2(v) of the Act 2000 reads as under:--

"Section 2(v):--"Teacher" includes Principal, University Professor, College Professor, Reader, Lecturer, Demonstrator and other persons imparting instruction in department, college or institute maintained by the University."

e) Section 2(am) of the Act of 2000 reads as under:--

"Other equivalent post" means any other post, the scale of pay of which is equivalent or as may be declared so by the State Government."

f) Section 36 of the Act of 2000 reads as under:--

"36. Statutes how made.--(1) The Senate may, either on its own motion or on submission by the Syndicate, make Statutes, or amend or repeal it :

Provided that -

(a) the Senate shall not consider any statute having the effect of changing the number of post of teachers, officers and servants of the University, their pay scales or pay order; unless such a draft is recommended by the Chancellor for the considerations of the Senate;

(b) the Syndicate shall not propose any such statutes, as may affect the status, powers and constitution of any authority of the University, unless that authority has been allowed an opportunity to furnish written opinion upon the proposed changes, and the Senate shall have to consider such option expressed in writing; and

(c) in matters relating to status, powers, functions and constitution of the Academic Council, it shall be lawful for the Academic Council to initiate such Statutes and forward it to the Syndicate, which shall submit it to the Senate with such recommendations as it may like to make.

(2) If the draft of any Statutes or a portion thereof, after being presented by the Syndicate before the Senate is sent back to the Syndicate for reconsideration, and the Syndicate does not agree, after reconsideration, to the amendments suggested by the Senate, then it shall be lawful for the Senate to pass the Statutes or a portion of the Statutes in such form as it may deem appropriate, and the decision of Senate shall, subject to the provision contained in sub-section (3) and sub-section (4), be final:

(3) Where the Senate has passed the draft of any Statute it shall be submitted to the Chancellor who shall declare that he assents thereto as passed by the Senate or with such amendments as he deems proper:

Provided that the Chancellor may as soon as possible after the presentation to him of the draft of the Statute so passed for assent, return the draft together with a message requesting that the Senate shall reconsider the draft and when the draft is so returned, the Senate shall reconsider the draft accordingly and if the draft is passed again by the Senate with or without any amendment and is presented to the Chancellor for assent, the Chancellor shall declare either that he assents thereto with such amendments which he deems proper or that he withholds assent therefrom:

(4) Where any member of the Senate proposes to the Senate of the draft of any Statute, the Senate shall refer the same to the Syndicate, and it shall thereupon be the duty of the Syndicate to consider the draft and the Syndicate may either recommend to the Senate that the proposal be rejected or submit the draft to the Senate in such forms as the Syndicate may approve, and the provisions of this section shall apply in the case of any draft so submitted as they apply in the case of the draft proposed to the Senate by the Syndicate.

(5) A Statute passed by the Senate shall have no validity until it has been assented to by the Chancellor.

(6) Notwithstanding anything contained in the above clauses, if at any time when the Senate is not in session and the Chancellor is satisfied that it is necessary to frame Statutes on any subject, the Chancellor of Jharkhand shall send the draft Statutes for opinion to the Syndicate of the University and it shall be binding on the Vice-Chancellor to convene a meeting of the Syndicate for consideration of the drafts statutes within 10 days of receipt of the said draft. The Chancellor shall then give his assents to the Statutes with such amendments as may deem necessary in the light of the opinion of the Syndicate. The Statutes shall be deemed to have come into force in the University from the date of assent. Statutes framed in this manner shall be placed before the next meeting of the Senate for confirmation."

g) Section 67(a) of the Act of 2000 reads as under:--

"The date of retirement of teachers of University or College and those officers declared equivalent to them by the statute of the University, with effect from the date of notification of this Act in the official Gazette, shall be the date on which he/she attains the age of sixty two years, the date of retirement of non-teaching employee shall be the date on which he/she attains the age of the sixty years".

Provided that reappointment of teacher after retirement may be made in appropriate cases upto the age of sixty-five years in the manner laid down in the Statute made in this behalf in accordance with the guidelines of the University Grants Commission."

h) view of the aforesaid provisions, it appears that the age of retirement of the teachers of the University or College is 62 years, now by virtue of Amendment in the year 2012, it is 65 years (Annexure 7 to the Memo of Appeal).

i) It further appears that those officers, who are declared equivalent to teachers by the statute of the University under Section 36 of the Act of 2000, their age of retirement will also be 62 years. Thus, sine quo non for applicability of Section 67(a) of the Act of 2000 which has been amended in the year 2005, is declared by the Statutes of the University for the officers who are other than the teachers, is a most.

j) In the facts of the present case, the post of Assistant Librarian which was held by this appellant was never declared equivalent to the post of "Teacher" in the Statutes of the Vinoba Bhave University. Hence, the date of retirement of the present appellant cannot be 62 years as per Section 67(a) of the Act of 2000.

k) It further appears that the date of retirement of equivalent employee is 60 years of age. This appellant (original petitioner) has been rightly retired by the respondents-University at the age of 60 years.

l) Looking to the definition of word "teacher" given Section 2(v) of the Act of 2000, the post of Assistant Librarian is not included within the definition of "teacher".

m) Looking to Section 2(am) of the Act of 2000, it is also of no help to this appellant, because he might be getting the pay scale equivalent to the pay scale of post of "Lecturer" or in some cases, even higher to the pay scale of the "Lecturer", but, that is not the requirement at all for applicability of Section 67(a) of the Act of 2000, because, there is no declaration of equivalent post by the Statutes of the Vinoba Bhave University. This aspect of the matter has been properly appreciated by the learned Single Judge while dismissing the writ petition preferred by this appellant. No error has been committed by the learned Single Judge in appreciating the aforesaid provisions of the Act of 2000."

5. As a cumulative effect of the aforesaid facts and circumstances, we, hereby, uphold the decision rendered by the learned Single Judge and there is no substance in the Letters Patent Appeal which is hereby dismissed.