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Court No. - 32

Case :- WRIT - A No. - 3433 of 2022

Petitioner :- Dr. Devendra Narain Mishra

Respondent :- The State Of U.P. And 3 Others

Counsel for Petitioner :- Ajay Rajendra, Bhupendra Kumar Tripathi

Counsel for Respondent :- C.S.C., Dinesh Chandra Mishra, Rijwan Ali Akhtar

Hon'ble Siddharth, J.

Rejoinder affidavit filed today is taken on record.

Heard Sri Ajay Rajendra, learned counsel for the petitioner, learned Standing Counsel, appearing on behalf of respondent no. 1, Sri Dinesh Chandra Mishra, learned counsel for the respondent nos. 2 & 3 and Sri Rijwan Ali Akhtar, learned counsel for respondent no. 4.

This writ petition has been filed praying for quashing of the order dated 06.12.2021 passed by the respondent no. 3, the Director Administration and Monitoring, Sardar Vallabhbhai Patel, University and Agriculture and Technology, Modipuram, Meerut. Further prayer has been made for directing the state government to increase the age of superannuation of the petitioner / teaching staff of the aforesaid University and alter the statutes of the University.

The facts of the petition are that the petitioner was appointed on 20.11.1992 as Assistant Professor in Govind Ballabh Pant University and Agriculture and Technology, Udham Singh Nagar and he was transferred on 05.07.1999 from Research Centre Lohaghat, District Champawat to Research Centre, Nagina, District Bijnor in Moradabad Division by the University aforesaid and he worked there upto 26.05.2019 and thereafter transferred as Professor in Sardar Vallabhbhai Patel University of Agriculture and Technology, Meerut.

By the letter dated 06.12.2021 issued by the respondent no. 3, the petitioner would be superannuated on 30.04.2022 on completion of 62 years of age and session benefit has been given to him upto 30.06.2022. Sardar Vallabh Bhai Patel University of Agriculture and Technology, Meerut has no statute of its own and has adopted the provisions of statute of Chandra Shekhar Azad Agriculture and Technology University, Kanpur wherein the age of superannuation of teachers is 62 years.

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The teaching members of Govind Ballabh Pant University, District Udham Singh Nagar filed a Writ Petition No. 52 of 2010 (S.B), Pant Teacher Association, Pant Nagar vs. Chancellor, G.B. Pant University and Another which was allowed by the judgment and order dated 08.12.2021 by the Uttarakhand High Court increasing the age of superannuation of the teaching staff from 62 to 65 years. The state government of Uttarakhand has also issued a government order in this regard.

In the counter affidavit filed on behalf of respondents, it has been stated that the petitioner has no right to get the age of superannuation enhanced from 62 years to 65 years. The government orders issued by the State government of Uttarakhand are not applicable to the State of U.P.

Learned counsel for the petitioner has submitted that item 66 of the Union List, contained in Seventh Schedule of the Constitution of India, authorises the Union of India to bring in laws for coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. In exercise of legislative power, thus conferred, the Parliament enacted the University Grants Commission Act, 1956. Section 12 of the Act makes the Commission duty bound to take all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities. Sub-clause (g) of Section 26(1) of the Act empowers the Commission to define qualifications that should ordinarily be required of any person to be appointed as teaching staff to Universities having regard to the branch of education in which he is expected to give instructions. The word "qualifications" used in sub-clause (e) of Section 26(1) of the Act encompasses age qualification. Therefore, it is well within the competence of the Commission to prescribe the minimum and maximum age. Until before 23rd March, 2007, the age of superannuation in centrally funded institution in higher and technical education was 62 years.

By the letter dated 23.03.2007 of the Government of India, Ministry of Human Resource Development, Department of Higher Education addressed to Secretary, University Grants Commission, Bahadur Shah Zafar Marg, New Delhi, the age was enhanced from 62 years to 65 years, on the terms and conditions, mentioned in the said letter. Vide letter dated 31.12.2008 the Government of India decided to revise the pay scales of teachers in Universities and Colleges. At the same time, vide clause 8 (f) of the said letter dated 31.12.2008 it was decided to reaffirm its decision dated 23rd March, 2007

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pertaining to enhancement of age of superannuation from 62 to 65 years, referred to above. The said decision dated 31.12.2008, authorised extension of the proposals contained in the said decision, propounded in the form of a scheme, to universities, colleges and other higher educational institutions coming under the purview of State legislatures, provided the State Governments wished to adopt and implement the scheme, subject to the terms and conditions set forth therein. The Central Government has increased the age of superannuation of the teaching members of the Central Universities, noting the fact that there is scarcity of such members. There is specific reason given in the original decision of the Central Government dated 23.03.2007. The other reason was that the Central Government has decided to expand the capacity of such institutions for increasing access to higher education and for implementing the policy of reservation for weaker sections without affecting the number of seats in the reserved category available through general merit. Therefore the basic reason for enhancement of age was to supplement the expanding horizon of the institutions by continuing existing teachers upto 65 years. There is scarcity of teaching members in the University in question. In view of the Section 12 (j) of the Act Commission is entitled to perform such functions as may be deemed necessary by the commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the same.

Therefore, on 30.10.2010 the Commission in exercise of powers conferred by clause (e) and (g) of Section 26(1) of the University Grants Commission Act, 1956 have made Regulations 2010 known as "University Grants Commission (Minimum Qualification for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Other Measures for Maintenance of Standard in Higher Education) Regulations, 2010, and while doing so, applying the function of the Commission under clause (j) of Section 12 of the Act, the commission has deemed it necessary to enhance the age of superannuation of teaching staff of the Universities for advancing the cause of higher education in India and accordingly framed 2010 Regulations. Clause 8(f) of said Regulations 2010 deals with enhancing the age of superannuation from 62 to 65 years of teachers in order to meet out the shortage of teachers in Universities and teaching Institutions. The Regulations 2010 are statutory in nature and are enforceable. The State Government U.P. has implemented the decision dated 31.12.2008 issued by Central Government and as per clause 8(p)(v) of Regulations 2010, has already obtained 80% of the additional finance from

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Central Government for the purpose of implementing revision in the pay scales of the teachers of the Universities. While doing so the State Government did not amend statutes governing service conditions of teaching members of Universities by increasing their age of superannuation upto 65 years. It was obligatory on the part of the State Government, U.P to implement the said decision of the Central Government in toto and not in truncated manner. Pick and chose manner of implementation of decision dated 31.12.2008 by the State Government U.P is wrong, arbitrary and discriminatory violating of Article 14 and 19(1) (g) of the Constitution of India. It is the legitimate expectation of the petitioner that, the University under the control of State Government shall continue the petitioner to serve until he attain the age of 65 years.

This court finds that the Uttrakhand High Court has considered the issue in correct perspective as follows :-

"4. The object and purpose of the present writ petition is to obtain a mandamus to compel the State Government to increase the age of superannuation of teaching members of Govind Ballabh Pant University, Pant Nagar put 65 years. The question is, whether the teaching members of Govind Ballabh Pant University, Pant Nagar have a right to have their age of superannuation increase to 65 years and if so, whether they can compel the State Government or Govind Ballabh Pant University, Pant Nagar to give them such increase by obtaining a mandamus from this Court ?

"5. The learned counsel, appearing in support of the writ petition, contended that since the Regulations of 2010 are statutory in nature, they are enforceable. We do not think that ordinarily Regulations made under Clause (e) or Clause (g) of Section 26(1) of the Act, dealing with the service conditions of teaching members of Universities, are enforceable, in as much as neither Clause (e) nor Clause (g) of Section 26(1) of the Act empowers the Commission to do anything with regard to service conditions of the teaching members of the Universities. Fixation of age of superannuation is laying down one of the conditions of service. Clause (g) of Section 26(1) of the Act empowers the Commission to regulate the maintenance of standards and the coordination of work or facilities in Universities, which is not remotely connected, in the ordinary parlance, with service conditions of teaching members of Universities. Clause (e) of Section 26(1) of the Act empowers the Commission to define qualifications that should ordinarily be required of any person to be appointed to the teaching staff of Universities having regard to the branch of education in which he is expected to give instructions. The word "qualifications" used in Clause (e) of Section 26(1) of the Act encompasses age qualification. Therefore, it is well within the competence of the Commission to prescribe the minimum and the maximum age, but while there cannot be any compromise with the prescribed minimum or maximum age, there is no hard and fast rule that in between the minimum and the maximum permissible age is not compromisable.

6. We, accordingly, think that the matter has to be looked at from a slightly different angle. It is to be seen that the Central Government increased the

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age of superannuation of the teaching members of the central Universities, noting the fact that there is scarcity of such members in the market. That appears to be the specific reason given in the original decision of the Government dated 23rd March, 2007. The other reason was that the Central Government has decided to expand the capacity of such institutions for increasing access to higher education and for implementing the policy of reservations for the weaker sections without affecting the number of seats in the unreserved category available through general merit. Therefore, the basic reason for enhancement was to supplement the expanding horizon of the institutions by continuing existing teachers upto 65 years. If, In this background, one looks at Section 12(j) of the Act, it would appear that in terms thereof, the Commission is entitled to perform such other functions as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the same. Apropos that, the 2010 Regulations have been made, in exercise of power conferred by Clauses (e) and (g) of Section 26(1) of the Act, and while doing so, applying the function of the Commission under Clause (j) of the Section 12 of the Act, the Commission has deemed it necessary to enhance the age of superannuation of teaching staff of the Universities for advancing the cause of higher education in India and, accordingly, has named the 2010 Regulations as "University Grants Commission (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010", giving special emphasis to Clause (g) of Section 26(1) of the Act while incorporating age qualification under Clause (e) of Section 26(1) of the Act. In the event, for the maintenance of standards in higher education, the University Grants Commission has asked the Universities to do certain things, since establishment of the Commission has been on the basis of power exercised under Item 66 of the Union List of the Constitution of India, it goes without saying that the same is binding on the State Government. The State Government has no other option but to implement such direction contained in the regulation thus made by the Commission in exercise of its statutory powers.

7. However, while making the regulation, the Commission did not ask the State Government to revise in the same line the pay scales and other service conditions, including age of superannuation applicable to central Universities, but directed that such revised scales of pay and other service conditions, including age of superannuation, in institutions maintained and funded by University Grants Commission, shall be strictly in accordance with the decision of the Central Government dated 31st December, 2008, where it has been provided that the State Government may adopt the said decision, in terms of the scheme, as has been propounded on the basis of the said decision, but as a composite package and not in truncated manner. It was, therefore, well within the competence of the State Government either to implement the said decision of the Government or not to do so. In the event the State Government deciding to implement the said decision of the Central Government, it was obligatory on the part of the State Government to implement the said decision of the Central Government in toto and not in truncated manner. While, therefore, implementing the said scheme and revising the pay scales, in the manner prescribed in the said scheme, made pursuant to the decision of the Central Government dated 31st December, 2008 and obtaining financial assistance from the Central Government / University

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Grants Commission to the extent of 80 % of the additional expenditure for meeting the expenses of the pay revision, the State Government, in law, was not entitled to ignore that part of the package under which the State Government was directed to implement the proposal of increasing the age of superannuation put 65 years which proposal was founded on the basis of basic concept that in the expanding horizon of higher education, there is a dearth of availability of the teaching members.

8. Furthermore, having had implemented the scheme and thereby revising the pay scales in accordance therewith and obtaining financial assistance from the Central Government / University Grants Commission to meet the additional burden of the pay revision, the State Government clearly held out and made a representation to the members of the teaching staff of Govind Ballabh Pant University, Pant Nagar as well as to the members of teaching staff of all other Universities of the State to the effect that it is also implementing the recommendation of increasing the age of superannuation to 65 years, which is part of the composite package for pay revision and, accordingly is estopped by conduct / representation to act contrary thereto.

9. Therefore, the conclusion would be that in the facts and circumstances of the case as highlighter above, the members of teaching staff of Govind Ballabh Pant University, Pant Nagar and other Universities of the State have acquired a right in their favour to have their age of superannuation increased to 65 years and such right can be enforced through a mandamus to be increase by this Court under Article 226 of the Constitution of India.

In view of the above facts and circumstances, it is hereby directed that the State Government will get the statutes of Sardar Vallabh Bhai Patel University of Agriculture and Technology, Modipuram, Meerut altered providing for increase of age of superannuation of the members of teaching staff in respect whereof the State Government has control. The State Government shall undertake and complete the aforesaid exercise within a period of three months. The superannuation of the petitioner shall abide by the decision taken by the State Government in this regard. The impugned order dated 06.12.2021 shall abide by the decision of the State Government and the petitioner will continue to work on his post till the appropriate decision is taken by the State Government as per direction of this Court.

The writ petition is ***allowed***.

Order Date :- 19.4.2022

Rohit