

GAHC010186802018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5952/2018

RAMAPADA BHATTACHARJEE
S/O LT. DR. T.C. BHATTACHARJEE,
R/O STATION ROAD,
P.O. DULLABCHERRA, IN THE DISTRICT OF KARIMGANJ,
ASSAM, PIN - 788736.

VERSUS

THE UNION OF INDIA AND 5 ORS.
TO BE REP. BY THE SECRETARY TO THE MINISTRY OF HUMAN RESOURCE
DEVELOPMENT, DEPARTMENT OF HIGHER EDUCATION, SHASTRI
BHAVAN, NEW DELHI-110011.

2:THE UNIVERSITY GRANTS COMMISSION

TO BE REP.BY ITS SECRETARY
BAHADUR SHAH ZAFAR MARG
NEW DELHI-110002.

3:THE NORTH EASTERN REGIONAL INSTITUTE OF TECHNOLOGY
(SHORTLY NERIST)

REP. BY ITS DIRECOR
NIRJULI
ITANAGAR
ARUNACHAL PRADESH
PIN - 791109.

4:THE CHAIRMAN

BOARD OF MANAGEMENT
NERIST

NIRJULI
ITANAGAR
ARUNACHAL PRADESH

R/O W/2
ASHIANA NAGAR
PHASE-I

PATNA 8000025.

5:THE DIRECTOR OF NERIST

NIRJULI
ITANAGAR
ARUNACHAL PRADESH
PIN - 791109.

6:THE REGISTRAR I/C OF NERIST

NIRJULI
ITANAGAR
ARUNACHAL PRADESH
PIN - 791109

Advocate for the Petitioner : MR. R P KAKOTI SR. ADV.

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 03.04.2023

Heard Mr. R.P. Kakoti, learned senior counsel, assisted by Mr. S. Sutradhar, learned counsel for the petitioner. Also heard Mr. R.K.D. Choudhury, learned A.S.G.I., appearing for respondent no.1, Mr. K. Barpuzari, learned counsel, appearing on behalf of Mr. A. Chamuah, learned counsel for respondent no. 2 and Mr. I. Chowdhury, learned senior counsel, assisted by Mr. S. Biswakarma, learned counsel for respondent nos. 3 to 6.

2. At the outset, it would be appropriate to mention that on 29.03.2023, when this matter was listed, the learned counsel for the petitioner had prayed for adjournment, which was opposed by the learned senior counsel for the respondent nos. 3 to 6 on the ground that the matter had become infructuous. However, while allowing adjournment, by order dated 29.03.2023, it was made clear that the matter would not be adjourned on the next date of listing. Today, when the matter was called, the learned senior counsel for the petitioner had produced a copy of prayer made on 30.03.2023 before the Hon'ble The Chief Justice to retain this case record in the Principal Seat and it was submitted that the Court may like to await the decision of the Hon'ble The Chief Justice as the subject matter of this was related to Itanagar Permanent Bench. In the said regard, it is seen that the said prayer was allowed by the Hon'ble The Chief Justice on 31.03.2023. Thus, there was no impediment to hear the matter.

3. In brief, the case of the petitioner is that while serving as the Registrar of the North Eastern Regional Institute of Science and Technology (hereinafter referred to as NERIST for short), he was unceremoniously superannuated on 01.05.2018, w.e.f. 30.04.2018 on attaining the age of 60 years, while as per the applicable notifications and guidelines, the age of superannuation for the post of Registrar, NERIST, which is a non-teaching post was 62 years. Therefore, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction upon the respondent authorities to recall the impugned (i) retirement order dated 01.05.2018; (ii) release order dated 01.05.2018, both issued by respondent no. 5; and (iii) impugned order dated 01.05.2018, issued by the Under Secretary to

the Government of India, Ministry of Human Resource Department, Department of Higher Studies (hereinafter referred to as MHRD for short), by which the Director, NERIST was told that the petitioner would retire at the age of 60 years.

4. The learned senior counsel for the petitioner by meticulously referring to the pleadings and documents appended to the writ petition, affidavit-in-opposition filed by respondent nos. 3 to 6 and affidavit-in-reply filed by the petitioner, and has submitted as follows:-

- a. In the establishment of NERIST, the 6th and 7th Pay Commission Reports had been implemented and pursuant to such recommendation, the MHRD had issued Scheme of revision of pay scales for the post of Registrar of Deemed Universities under (i) No. 1-32/2006-U-II/U-I(ii) dated 31.12.2008, and (ii) No. 1-7/2015-U-II(2) dated 02.11.2017, by which it was provided that the age of retirement for the post of Registrar of Deemed Universities would be 62 years.
- b. In the impugned communication under F. No. 9-3/ 2018/TS.VII dated 01.05.2018 from the MHRD, it has been mentioned that "... *If AICTE norms and present norms are at variance, AICTE norms will prevail. In case AICTE norms are not available for the post of Registrar, NIT norms available for Registrar should be followed.*" Accordingly, it is submitted that AICTE norms is applicable for teaching staff and that NIT norms would apply in the case of the petitioner, which prescribed the age of superannuation to be 62 years.
- c. Referring to notification dated 31.05.2005, RTI replies received by the petitioner from (i) NERIST, (ii) University Grants Commission (UGC for short), MHRD, it is submitted that the herein before referred MHRD notification nos. 1-32/2006-U-II/U-I(ii) dated 31.12.2008, and 1-

7/2015-U-II(2) dated 02.11.2017 were holding the field prescribing 62 years as the age of superannuation.

d. Though age of 62 years for Registrar, NERIST was required to be followed by NERIST, it was not followed in the case of the petitioner, but after the petitioner was thrown out on 01.05.2018, in subsequent recruitment advertisement for the post of Registrar, NERIST, the age of superannuation for Registrar, NERIST was provided as 62 years.

e. It is falsely projected by the NERIST in their affidavit-in-opposition that NERIST was Deemed University only for the purpose of awarding degrees, but was a Centrally Funded Institution for all other purpose including fixing age of superannuation, merely on the basis of communication dated 04.09.2018, issued by a Section Officer of MHRD, which could not over-ride the MHRD guidelines as per herein before referred notifications dated 31.12.2008 and 02.11.2017.

f. The petitioner was thrown out of service on 01.05.2018, without issuing to him any advance notice before superannuation.

g. In support of his submissions, reliance is placed on the case of *Union of India & Ors. v. Narender Singh, (2005) 6 SCC 106*.

5. Considered the submissions made by the learned senior counsel for the respondent nos. 3 to 6, supported by the case of (i) *K.D. Sharma v. Steel Authority of India Ltd. & Ors., (2008) 12 SCC 481*, (ii) *Shailendra Dania & Ors. v. S.P. Dubey & Ors., (2007) 5 SCC 535*, and (iii) *N. Suresh Nathan & Anr. v. Union of India & Ors., 1992 Supp (1) SCC 584*.

6. The OM No. RT/01/2004/Vol-III (Part-2) dated 25.10.2012, by which NERIST had appointed the petitioner as Registrar contains in condition

no. 5 that the petitioner would be governed by the NERIST Rules, Govt. of India rules, as applicable *mutatis mutandis* to the employees of NERIST.

7. The respondent nos. 3 to 6 have disclosed in their affidavit-in-opposition that the Board of Management, vide its 2nd and 3rd Meeting held in 1984-85 had adopted (i) the Fundamental Rules and Subsidiary Rules; (ii) Central Civil Services (C.C. & Appeal) Rules, 1966, (iii) Central Civil Services (Conduct) Rules, 1964; (iv) Central Civil Services (Temporary Service) Rules 1965. All of these were adopted together with amendment and Government's decision thereon from time to time. Under FR 56(a), it is provided that except otherwise provided for, every Government servant would retire from service on the last day of the month in which he attains the age of 60 years. It has been demonstrated by the respondent nos. 3 to 6 that MHRD in its letter dated 18.08.2009, had referred to NERIST and provided 60 as the age of superannuation of Registrar.

8. It has also been pleaded in the affidavit-in- opposition filed by the respondent nos. 3 to 6 that the Board of Management of NERIST, in its 71st meeting held on 03.09.2011, had resolved to follow MHRD notification on Centrally Funded Technical Institutions (CFTIs for short). The communication dated 18.08.2009 by the Director, TC, MHRD, which is addressed to the Directors of all CFTIs that age of superannuation of Registrar would be 60 years.

9. The MHRD, by its letter dated 04.09.2018, had directed the Director of NERIST, amongst others, to frame Recruitment Rules for all non-teaching posts such as Registrar and Deputy Registrar, if not framed earlier as

per latest AICTE/ Govt. of India guidelines and get the same approved by its Board of Governors/Management before initiating any recruitment process.

10. It has also been demonstrated that by letter dated 17.04.2018 by the Deputy Secretary, MHRD, the Director of NERIST was informed in connection with agenda item no. 89.03, the opinion of Joint Secretary, MHRD was that the recruitment in NERIST should be done based on AICTE norm and not UGC norm and accordingly, the NERIST was requested to make amendments to the minutes of 89th Meeting of Board of Management and circulate to all the members of the Board of Management for seeking their approval. Therefore, it is apparent that the minutes of 89th Board of Management has not been approved by the MHRD. The petitioner was appointed as the Registrar of NERIST on 25.10.2012. Therefore, he is supposed to know about non-approval of minutes of the 89th Board of Management meeting.

11. It has been submitted by the learned senior counsel for the respondent nos. 3 to 6 that although advertisement was issued on 21.09.2021 for appointment of Registrar after superannuation of the petitioner, the draft advertisement was never acted upon and till date the NERIST is functioning without a Registrar.

12. It is also noted that although the petitioner was appointed as the Registrar of NERIST on 25.10.2012, he has not been able to show that any non-teaching employee had been retained during his tenure beyond 60 years. The learned senior counsel for the respondent nos. 3 to 6, by referring to the affidavit-in-reply filed by the petitioner has demonstrated that the petitioner was

aware that the draft recruitment rules of NERIST prepared in 1997, 2002 and 2014, though sent to the MHRD, but were never been approved by the MHRD and therefore, the petitioner could not repel the stand of the respondent nos. 3 to 6 that draft recruitment rules was never acted upon.

13. Therefore, the learned senior counsel for the respondent nos.3 to 6 has successfully been able to demonstrate that the petitioner has not been able to show that NERIST had made an exception in any other case by not superannuating any non-teaching staff at the age of 60 years.

14. In this case, the petitioner was the Registrar of NERIST. He had taken causal leave from 19.04.2018 to 30.04.2018. Therefore, it was his duty to inform the Director, NERIST that he would be superannuating on 30.04.2018. Thus, it is quite possible that in absence of sharing such information, the NERIST had not given intimation to the petitioner that he would be superannuating on 30.04.2018. Nonetheless, it is shown that the NERIST had sought for clarification from MHRD and the MHRD, by its letter under F. No. 9-3/2018-TS.VII dated 01.05.2018, informed the Director, NERIST that the service of the petitioner was governed by CCS Rules and he will superannuate at the age of 60 years. Thus, on the same date, i.e. on 01.05.2018, the petitioner was superannuated w.e.f. 30.04.2018.

15. It has been pointed out by the learned senior counsel for the respondent nos. 3 to 6 that by letter dated 17.04.2018, the Director NERIST was informed by the Deputy Secretary, MHRD had clearly stated that the NERIST should follow AICTE norms for recruitment of faculty as it followed AICTE norms for sanctioned strength of staff. The specific stand of NERIST is that under AICTE norms, the age of superannuation is 60 years.

16. Resultantly, it is seen that the petitioner could not show a single instance that the NERIST did not follow FR-56(a) and allowed even one non-teaching staff to continue in service even after attaining age of 60 years. Thus, the NERIST appears to have been constantly following a policy of superannuating non-teaching staff and therefore, the Court is unable to find fault not only with the impugned decision to superannuate the petitioner but also with the decision making process.

17. Moreover, the learned senior counsel for the respondent nos. 3 to 6 has successfully been able to demonstrate that as a decision favourable to the petitioner was not passed by the Chairman, NERIST, by an email dated 14.06.2018, the petitioner had made a request for depositing his pending cheques in his savings bank account and thereafter, vide letter no. EST.622/5/96.Vol.IV dated 25.06.2018 the petitioner was informed that dues towards his retirement benefits amounting to Rs.35,13,261.00 (Rupees Thirty five lakh thirteen thousand two hundred sixty one only) was deposited in his bank account, which included, CPF dues on account of employees contribution and employers contribution, and other dues including retirement gratuity and leave encashment. The petitioner had filed this writ petition on 21.08.2018, but the fact that the petitioner had claimed his retirement dues and the same was paid by NERIST was suppressed. Thus, the petitioner has not approached this Court with clean hands and therefore, applying the ratio of the case of *K.D. Sharma (supra)*, the writ petition filed by the petitioner deserves to be dismissed on account of suppression of material facts.

18. The petitioner is now a senior citizen and has been superannuated and therefore, the Court has taken a lenient view of the

suppression of material facts regarding the request made by the petitioner for payment of his retiral dues and consequent payment made before the date of filing of this writ petition and has refrained from imposing exemplary penal cost for suppressing material facts, which is also contemptuous and disentitles the petitioner to any equitable relief.

19. We also find merit in the submissions of the learned senior counsel for the respondent nos. 3 to 6 that as the petitioner had claimed continuation of his service till age of 62 years, but the petitioner had crossed the age of 62 years during the pendency of this writ petition and that this writ petition, the petitioner has not prayed for any financial relief from 01.05.2018 till he attains the age of 62 years, this writ petition has become infructuous after the petitioner had crossed the age of 62 years. In this regard, the case of *Narender Singh (supra)*, cited by the learned senior counsel for the petitioner does not help the petitioner in any manner because the facts in the said case was that the appellant therein had assailed the order of his dismissal from service before the CAT, and the Tribunal had interfered with the order of dismissal from service and the appellant was reinstated in service. The order of CAT was assailed in the High Court and on the ground that the Tribunal's order was implemented and the petitioner was reinstated, the writ petition was dismissed. In the said factual context, it was held by the Supreme Court that the challenge to the order of Tribunal was maintainable and the writ petition before the High Court had not been rendered infructuous. But in this case, the petitioner had superannuated and had received retiral dues without protest because it was paid at his own request and moreover, by now the petitioner has crossed 62 years of age without seeking any financial and/or notional benefit whatsoever and therefore, the writ petition has become infructuous.

20. The learned senior counsel for the petitioner had produced a copy of the Memorandum of Association and Rules of the Institute and by referring to the "Interpretation Clause no. 27 of the said MoA i.e. Memorandum of Association, it is submitted that in the case of any conflict, the opinion of UGC would be final. The Court finds this submission absolutely without any merit because clause 27 of MoA, which is self-explanatory, reads as follows:-

"27. Interpretation Clause – In the event of conflict of opinion with regard to interpretation of Memorandum of Association or the Rules and Bye-Laws, the opinion of UGC shall be final."

It is not the pleaded case of the petitioner that following AICTE norms, FR-56(a), CCS Rules by NERIST in so far as age of 60 for superannuation of the petitioner as Registrar was a conflict concerning interpretation of Memorandum of Association or the Rules and the Bye-Laws of the NERIST. The Court is constrained to hold that the submission in this regard was absolutely meritless, and amounts to wastage of precious time of the Court spent in addressing such a meritless submission.

21. In light of the discussions above, on merit, the petitioner has not been able to make out a case that he was entitled to be retained in service as Registrar, NERIST beyond 60 years. Resultantly, there is no merit in the grievance of the petitioner that he was unceremoniously and/or illegally superannuated and thrown out from service on 01.05.2018, w.e.f. 30.04.2018. The petitioner cannot be permitted to feign ignorance that he was not aware that the Board of Management, vide its 2nd and 3rd Meeting held in 1984-85 had adopted (i) the Fundamental Rules and Subsidiary Rules; (ii) Central Civil Services (C.C. & Appeal) Rules, 1966, (iii) Central Civil Services (Conduct) Rules,

1964; (iv) Central Civil Services (Temporary Service) Rules 1955 and therefore, the age of superannuation of Registrar would be 60 years. Therefore, the petitioner is not entitled to any relief in terms of the prayer made.

22. In view of the discussions above, this writ petition stands dismissed, leaving the parties to bear their own cost.

JUDGE

Comparing Assistant