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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4981 of 2007

Sukhendu Chatterjee S/o Late B.B. Chatterjee, R/o 597 New Rajendra Nagar Deepak Colony, Raipur, Tahsil & District Raipur (Cg)

---- Petitioner

Versus

1. State Of Chhattisgarh Through the Secretary, Higher and Technical Education, DKS Bhawan, Raipur CG.
3. The Commissioner Higher Education Directorate Raipur Cg
4. The Vice-Chancellor Indira Kala Sangeet Vishwavidyalaya Khairagarh, District Rajnandgaon, Cg
5. The Principal Kamla Devi Sangeet Mahavidyalaya Raipur, Cg

---- Respondents

Shri Pawan Kesharwani, counsel for the petitioner/s.
Shri Satish Gupta, Govt. Advocate for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

04/10/2017

By this petition, under Article 226 of the Constitution of India, the petitioner has prayed for quashing of notice of superannuation dated 05/06/2007 by which, the petitioner's age of superannuation has been treated as 60 years and consequent retirement on 31/08/2007.

2. The petitioner has come out with a case that he was appointed as Tabla Player on 21/07/1984 in the institution of Kamla Devi Sangeet Mahavidyalaya, Raipur. According to the petitioner, the petitioner was engaged as a Tabla Player in the college of music which is a teaching post. Therefore, he was entitled to continue

in service till he attained the age of 62 years which is the date of retirement of teachers in the institution. The petitioner, however, was treated as a non-teaching staff and retired upon attaining the age of 60 years.

3. Learned counsel for the petitioner argued that the 'Sangatkar', appointed and working in college of music which is affiliated to the Indira Kala Sangeet Vishwavidyalaya, has always been treated as Teacher. This has been informed by the University to the association of Sangatkars of the Indira Kala Sangeet Vishwavidyalaya, Khairagarh vide memo dated 03/02/2007 as also the post under which, Sangatkars have been shown as teaching post. Further submission is that when the State Government revised the pay scale of teaching post, the order was passed on 23/08/2003 which included Tabla Sangatkars / Tabla Players though with different pay scale. Therefore, it is contended, not only college but the University, both have treated the petitioner as Music Teacher. Petitioner's institution received grant-in-aid from the State Government, therefore, governed by the provisions of M.P./ C.G. Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano ka Sandaya) Adhiniyam, 1978 (for short' the Act of 1978'). Under that act also, all those posts which have been recognised as teaching post will have to be treated as teachers for the purposes of the Act. Therefore, for all these reasons, the petitioner was occupying a teaching post and therefore, entitled to same age of superannuation as is prescribed for teachers. In support of his submission, reliance has been placed in the case of **P.S. Ramamohana Rao v. A.P. Agricultural University and anr., 1997 (8) SCC 350.**

4. On the other hand, learned State counsel submits that the petitioner is not a Tabla teacher but only a Tabla Player and in the absence of there being any cogent material on record that the petitioner was actually involved in teaching music as a player of Tabla instrument, he could not be treated as Teacher. It is next submitted

that the classification of posts by the University was not binding on the State Government because the classification of Tabla player as Teacher has been made by the University in respect of University teaching department only and not in respect of the colleges which are affiliated to the privileges of the University and receiving grand-in-aid from the State Government. It is next contended that the State Government has laid down its own set up of teaching and non-teaching post vide circular dated 30/11/2005 under which, the post of Tabla Sangatkar has been treated as non-teaching post. Therefore, the petitioner is not entitled to be treated as Teacher for the purposes of fixation of age of retirement and he has been rightly superannuated by the college treating him as non-teaching staff. In support of his contention, he placed reliance on the decision of the Supreme Court in the case of **T.P.George v. State of Kerala, 1992 Suppl. 3 SCC 191,** order passed by this Court on 30/01/2012 in WPS No.208/2012 and order dated 30/07/2010 passed in WPS No.2304/2005.

5. Before examining the material on record to find out whether the petitioner should be treated as Teacher or not, it has to be noted that there is no dispute with regard to the age of superannuation of teachers. Admittedly, the age of superannuation of teachers was 62 years at the relevant time. According to the petitioner, he was appointed as Tabla Player. This averment of fact was made by the petitioner in the petition and on this issue also, there was no dispute.

6. The petitioner's institution is a college of music affiliated to the privileges of Indira Kala Sangeet Vishwavidyalaya (State University). The college, where the petitioner was appointed as Tabla Player and working, is a college receiving grant-in-aid from the State Government. The fact that the college is an aided institution is also not in dispute. Educational institution, which are receiving grant-in-aid from the State Government are governed by the provisions of the Act of 1978. The aforesaid

Act makes provisions for regularisation, payment of salary to the teachers and other employees of non-Government educational institution both for higher education and school education. In the aforesaid Act, the teachers have been defined as below -

> "Section 2 (i) - "Teacher" means a teacher of an institution in respect of whose employment maintenance grant is paid by the State Government or the Ayog, as the case may be, to the institutions and includes any other teacher employed, with the prior approval of the authority specified by the State Government in this behalf, in fulfilment of the conditions of recognition / affiliation of an institution or of a new subject or a higher class or a new section in the existing class by the Madhya Pradesh Board of Secondary Education or any University or the Ayog, as the case may be, and shown on the pay roll of the institution against a post as being in the employment as such but does not include a teacher whose appointment is dis-approved under clause (c) of section 6;"

A perusal of the aforesaid provision would show that the teacher would mean a Teacher of an institution employed in fulfilment of the conditions of recognition / affiliation of an institution higher class or of a new subject or a higher class or a new section in the existing class by the Madhya Pradesh Board of Secondary Education or any University or Ayog, as the case may be, and shown on the payroll of the institution against a post as being in the employment as such but does not include a teacher whose appointment is dis-approved under clause (c) of Section 6. Therefore, the only definition of Teacher in the act provides for a special meaning for the purposes of the Act. Except this, there is no other definition of teacher provided under the State Act.

7. The petitioner has stated in this petition that he was engaged as a Tabla Player. What kind of duties were performed by the petitioner has not been clearly stated in the petition. It is not known whether the petitioner was actually engaged in

teaching or engaged only with the activities of Sangatkar with the Music Teacher of the educational institution. The petitioner has placed on record, a communication dated 23/08/2003 (Annexure P/3) addressed by the Government to the Additional Director, Higher Education, Raipur which provides for grant of Central Pay Scale to the teaching posts of College of Shri Ram Sangeet Mahavidyalaya, Kamla Devi Sangeet Mahavidyalaya, Raipur. That communication includes Tabla Sangatkar (Tabla Player) also in the category of teaching post. The petitioner has also placed reliance upon communication made by the affiliated University on 03/02/2007 (Annexure P/2) which shows that the post of Tabla Sangatkar (Tabla Player) has also been treated as teaching post.

8. It appears that later on, a circular has been issued providing a new set up as is evident from circular dated 30/11/2015 (Annexure R/1) in which Tabla Player has been treated as non-teaching post. From the aforesaid material, it would be clear that upto 2005, post of Tabla Player were being treated as teaching post as is evident from Annexure P/3 but thereafter, Government decided not to treat the Tabla Player as teachers. Nevertheless, the University continued to treat Tabla Player as teacher.

9. It would thus appear that different status has been accorded for Tabla Players from time to time by the Government. Whether in view of the duties and functions assigned to the Tabla Player, he should be treated as a Teacher or non-teaching staff would depend upon the nature of duties and functions actually performed by the Tabla Player. If the petitioner was engaged in teaching Tabla instrument, it would essentially be treated as teaching post but if the petitioner was only engaged in assisting other teachers in the institution, it may not be treated as teaching post. The petitioner has not come out with any material much less specific averments with regard to the duties and functions performed by him and whether he was simply

assisting the Music teacher or was actually engaged in teaching Tabla instrument to the students.

10. In the absence of the aforesaid foundational facts, this Court cannot grant any relief to the petitioner by directing that he should be treated as teacher more so when in the Government set up issued in the year 2005 much prior to the retirement of the petitioner, post of Tabla Sangatkar has been treated as non-teaching post. Therefore, no relief can be granted. The petition is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti