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15-09-2022

AKG

Ct. 238

WPA 7984 of 2020
Dr. Kamal Bhattacharya & Anr.
Vs.
The State of West Bengal & Ors.

With

WPA 1844 of 2019
Dr. Kamal Bhattacharya & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Jayanta Mitra

...for the Petitioners

Mr. Achintya Kumar Banerjee,
Mr. Mahaboob Ahmed,
Mr. Raghunath Chakraborty

...for the University

Mr. Swapan Kr. Dutta,
Ms. Smita Das De

...for the State in WPA 7984 of 2020

Mr. Swapan Kr. Dutta,
Mr. Pradyot Kr. Das

...for the State in WPA 1844 of 2019

Mr. A. K. Gupta

...for the U.G.C.

In view of interrelated issues and facts involved, these two writ petitions are taken up for hearing together and disposed of by this common judgment and order.

The petitioners have filed WPA 1844 of 2019 claiming the benefit of a circular dated January 27, 2017, issued by the Department of Higher Education, Govt. of West Bengal.

By the said circular, the State directed that the age of retirement of full-time regular teachers and Principals, holding a substantive post and enjoying Government approved regular scale of pay, including Librarians and Graduate Laboratory Instructors (enjoying teaching

status and equivalent scale of pay) in all State-aided Universities and Government-aided colleges, who were in service on January 1, 2017, and scheduled to retire on or after January 31, 2017, should be enhanced from sixty (60) years to sixty two (62) years with immediate effect.

During the pendency of the said writ petition, petitioner no. 1 retired on December 31, 2017, and petitioner no. 2 namely, Akshay Chakraborty also retired on January 31, 2017, attaining the age of 60 years.

Thereafter by another circular dated January 24, 2019, the Department of Higher Education again enhanced the retirement age of the aforementioned employees, who were in service on January 1, 2019 and scheduled to retire on or after January 31, 2019, from sixty two (62) years to sixty five (65) years.

By filing the second writ petition WPA 7984 of 2020, the petitioners have sought benefit of the said circular also.

Petitioner no. 1 was appointed as Senior Technical Assistant and petitioner no. 2 was appointed as Junior Technical Assistant at Burdwan University. They approached the Court in the year 1989, along with some other similarly circumstanced petitioners with a prayer that they should be treated as the teaching staff of the said University. The said writ petition was disposed of by a judgment and order dated April 4, 1996, passed by a Co-ordinate Bench of this Court. The operative part of the

said judgment is quoted below :-

“The very nature of the work performed by them bring them within the definition of “teacher” and/or “teacher or the University” under sub-sections (21) and (22) of section 2 of the Burdwan University Act, 1981.

In that view of the matter, and having particular regard to the decision in Harendra Nath Bhowmick’s case and the view expressed therein by the Hon’ble Supreme Court, the writ petition must succeed and is allowed. The respondents are directed to treat the writ petitioners, and those similarly placed, as “Teachers” within the meaning of sub-sections (21) and (22) of section 2 of the Burdwan University Act, 1981, and to grant them all consequential benefits from date.

The writ application is thus disposed of.

There will be no order as to costs.

Having regard to the view taken by me, prayer for stay of this judgment is considered and refused. ”

Mr. Jayanta Mitra, learned advocate appearing for the petitioners argues that the status of the petitioners as teaching staff of the University was declared by this Court in no uncertain terms. Therefore, the petitioners were entitled to get the benefit of the circular dated January 27, 2017, at the first instance and also the benefit of the subsequent circular dated January 24, 2019, and by the cumulative effect of the two circulars, they should have retired only after attaining the age of 65 years. They satisfied the conditions of the said two

circulars dated January 27, 2017, and January 24, 2019. If the petitioners are entitled to get the benefit of the first circular, automatically they will get the benefit of the second circular as well.

It is the further case of the petitioner that after the judgment passed in C.O. 893 (W) of 1989 (Dr. Amal Kumar Samanta v. The State of West Bengal), the University has all along treated them as the teaching staff of the University and therefore, the benefit of the said two circulars dated January 27, 2017, and January 24, 2019, cannot be denied to them.

Mr. Swapan Kr. Datta, learned senior advocate appearing on behalf of the State opposes the prayer of the petitioner. Mr. Datta refers to the definition of the teaching staff as embodied under Section 2 (22) of The Burdwan University Act, 1981 which provides as follows:-

“Teacher of the University” means a Professor, Reader, Lecturer or any other person appointed or recognised as such by the University, either whole-time or part-time, for the purpose of imparting instruction or conducting research in the University;”

Mr. Datta places a notification dated November 29, 2012, issued by the State namely, the West Bengal University Laws (Amendment) Act, 2012. Section 4 of the said Act provides as follows :-

“4. In the Burdwan University Act, 1981,-

(1) in section 2,-

(a) for clause (21), the following clause shall

be substituted:-

‘(21) “Teacher of college” means a Professor or an Associate Professor or an Assistant Professor or a Reader holding a whole-time substantive teaching post and appointed in a permanent vacancy in a college or recognized as such by the State Government;’;

(b) for clause (22), the following clause shall be substituted :-

‘(22) “Teacher of University” means a Professor or an Associate Professor or an Assistant Professor or any other person, holding a whole-time substantive teaching post and appointed in a permanent vacancy in a University or recognized as such by the University with prior approval of the State Government;’;

By referring to the said Act, Mr. Datta argues that the said amendment has substantially contracted the definition of “Teacher of University” within the meaning of Section 2 (22) of the Burdwan University Act, 1981. The amendment has taken the petitioners out of the purview of the definition of teacher of University.

Mr. Datta further argues that the notifications dated January 27, 2017, and January 24, 2019, came into being after the said Act of 2012 was made operative. Therefore, in order to receive the benefit of the said two notifications, an employee needs to come within the

definition of “Teacher of University” under the said Act of 2012. Mr. Datta submits that the said amendment makes it clear that technical assistants are not “Teacher of University” and therefore, the petitioners cannot claim the benefit conferred under the said two notifications.

Mr. Achintya Kumar Banerjee, learned advocate appearing for the University, on the other hand, submits that in order to extend the benefit of the judgment dated April 4, 1996, a committee was set up by the University. The said committee, inter alia, decided that the senior technical assistants of the University might be designated as a ‘teacher’ and their scale of pay will be in the pay head of Rs. 15,000/- with applicable academic grade pay. With regard to the retirement age, it was decided that the retirement age would be 60 years with the provision of re-employment.

Mr. Banerjee submits that following the said decisions taken by the University, all financial benefits were given to the petitioners. They have even accepted their date of retirement as sixty years by receiving all retiral dues including pension. At this stage, the petitioners, therefore, have waived their right to contend that they would retire at the age of 65 years.

Mr. Banerjee further submits that after the West Bengal University Laws (Amendment) Act, 2012, the petitioners cannot be treated as teaching staff by giving a retrospective effect of the said amendment, which came

into being on and from November 29, 2012.

It is the further case of Mr. Banerjee that on an earlier round of litigation (MAT No. 642 of 2016 (Akshay Chakraborty Vs. State of West Bengal), contention of the petitioners that they would retire at the age of 62 years was negated. Therefore, in these writ petitions, they cannot raise the same issues again.

Mr. Banerjee further places reliance upon the decision reported at (2018) 8 SCC 129 (P. Sushila Vs. University Grant Commission). It has been suggested that the petitioners cannot claim the benefits that have been extended to the Professor, Associate Professor and Assistant Professor of the University who are qualified in terms of extant U.G.C. Regulations. Admittedly, the petitioners do not have the “NET” qualification. Therefore, the benefit that has been extended to those teaching staff cannot be extended to the petitioners.

I am of the view that there cannot be any justification to deny the benefit of the said two circulars dated January 27, 2017, and January 24, 2019, to the petitioners.

Indisputably, the order dated April 4, 1996, has been acted upon by the University by treating the petitioners as a teacher of the University. The petitioners, however, cannot claim parity in pay with regard to the other “Teachers of the University” as a matter of right. There are different categories of teachers under the

University who are entitled to enjoy pay scale and other benefits according to their qualifications, experiences, and status. Admittedly, the University has provided a specific pay scale to the petitioners in terms of the order dated April 4, 1996, by setting up a Committee. This does not mean that the petitioners are not entitled to the common benefits given to the category of teachers.

The committee also decided that the retirement age of the petitioners as sixty years with the provisions of re-employment. When the State itself has decided to enhance the age of the teaching staff of a University, there cannot be any reason to deprive the petitioner of the same benefit.

A bare reading of Section 4 (22) of the Act of 2012, makes it clear that Technical Assistants are not included in the definition of “Teacher of University”. At the same time, it cannot be said that the petitioners have been excluded in the notifications dated January 27, 2017, and January 24, 2019. The said notification applies to other employees also who are not included in the definition of “Teachers of University” within the meaning of Section 4 of the said amendment Act of 2012.

Therefore, the rights of the petitioners have to be read in light of the said two notifications only. The said notifications apply to “full-time regular teachers and Principals, holding a substantive post and enjoying Government approved regular scale of pay, including

Librarians and Graduate Laboratory Instructors (enjoying teaching status and equivalent scale of pay) in all State-aided Universities and Government-aided colleges.”

In my view, the petitioners being “teachers” are not excluded from the purview of the said two notifications as suggested by the State.

I also do not find any substance in the argument of the University that the petitioners have waived their right to contend that they are entitled to the benefits of retiring at the age of 65 years since they have accepted the notice of retirement indicating their age of retirement as sixty years and received all the retiral dues.

The relevant notifications have been issued in the exercise of power under Section 4 of the West Bengal Universities (Control of Expenditures) Act, 1976. Such notification may not be termed as a statute, but its statutory force cannot be ignored. Therefore, it cannot be said that the petitioners can be deprived of the benefit of the said statutory notifications simply because they retired at the age of sixty years and received all retiral dues. It has also to be appreciated that at the time of retirement, the employees tend to avoid disputes which may impede or defer their retiral dues. In such cases, the mere acceptance of retiral dues should not be treated as a waiver of their rights.

I also do not find any force in the argument of the University that the petitioners cannot raise the question

as to their dates of retirement without raising the same in MAT No.642 of 2016 (Akshay Chakraborty v. State of West Bengal) for the simple reason that the said appeal was not related to the issue of application of notifications dated January 27, 2017, and January 24, 2019, to the petitioners.

I have already indicated that the petitioners' entitlement has to be decided in the light of the aforesaid two notifications only and therefore, the submission of the University that since the petitioners are not qualified like Assistant Professor, Associate Professor or Principal, the petitioners are not "Teachers" cannot be accepted.

Petitioner no.1 retired from service on December 31, 2017, and the petitioner no. 2 had also retired on January 31, 2017 on attaining sixty years of age.

In that view of the matter, the writ petitions are allowed with a direction upon the respondents to notionally treat petitioner no. 2 to be retired on January 31, 2022, and released all his retiral dues including pension accordingly.

The respondents are further directed to reinstate petitioner no.1 in service within two weeks from date. He will be allowed to retire on December 31, 2022, attaining the age of 65 years. All his retiral dues will be cleared accordingly.

I make it clear that there will be no claim on account of arrear salaries for both the petitioners.

Petitioner no.2 will get arrear pension.

Accordingly, WPA 7984 of 2020 and WPA 1844 of 2019 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)

Later

After delivering the judgment, Mr. Banerjee, learned advocate appearing for the University prays for a stay of the order. Such prayer is considered and rejected.

(Kausik Chanda, J.)