

23.11.2022
Item No. 8
Ct. No. 238
AKG

WPA 20100 of 2022
Dr. Amitava Bhattacharya
Versus
State of West Bengal & Ors.

Mr. Ranajit Chatterjee,
Mr. Aniruddha Mitra

...for the Petitioner

Mr. Prabir Dasgupta,
Mr. Suman Dey

...for B.C.K.V.

Mr. Swapan Kr. Datta,
Mr. Dipankar Dasgupta

...for the State

The petitioner has been serving as a Professor in Agricultural Bio-Chemistry Department at Bidhan Chandra Krishi Viswavidyalaya. The petitioner sought to retire voluntary and on 1st June, 2022, a notice for the same was given by him to the University. Thereafter again on 30th June, 2022 and 29th July, 2022, he repeated his prayer. The University, however, did not accept his prayer for voluntary retirement. Being aggrieved the petitioner has approached this Court.

Mr. Chatterjee, learned advocate appearing for the petitioner has placed reliance upon Statute 32 of the First Statute of the said University namely, Statutes relating to pension payable to Officers, Teachers and other employees of the University, which provides as follows :-

“Notwithstanding anything contained in these Statutes, a teacher on completion of the age of 50 years and 20 years of continuous

service in the University shall have the option of voluntarily retirement, the retirement benefits will be with reference to his date of voluntarily retirement.”

According to Mr. Chatterjee, the aforesaid provision makes it clear that a Professor of the University as a matter of right can retire voluntarily. He places further reliance upon a judgment passed in **W.P. 9080 (W) of 2017 (Amit Kumar Roy Vs. State of West Bengal)**, wherein a Co-ordinate Bench of this Court has read the word ‘shall’ as occurring in the said provision as mandatory.

Mr. Chatterjee further submits that due to heavy workload, the petitioner has been suffering from mental depression and fatigue. If he continues further in the service, it will affect his mental peace and physical health.

Mr. Chatterjee also submits that when the statute permits the petitioner to retire voluntarily on completion of 50 years of age and 20 years of continuous service, the University should allow the petitioner to retire voluntarily.

Mr. Chatterjee submits that since March, 2021, the petitioner has been bringing to the notice of the University regarding the shortage of teaching staff in the relevant department, but the University did not take any steps to address the issue. He argues that the petitioner

should be allowed to retire immediately without any further notice or delay since there is no mention of any notice period in the relevant provision and in this case petitioner has repeated notice expressing his desire to retire voluntarily.

Mr. Prabir Dasgupta, learned advocate appearing for the Bidhan Chandran Krishi Viswavidyalaya submits that the University acknowledges the service rendered by the petitioner as a Professor of the University, and there is nothing adverse against him. At least six students are doing their Ph.D under him. If the petitioner retires from the service at this juncture, the future of the said six students along with many other students will be jeopardised. For the academic interest of the University, the petitioner should not be permitted to retire voluntarily. Mr. Dasgupta further argues that the petitioner as a matter of right cannot retire voluntarily. An employer is always left with the discretion to allow or not to allow voluntary retirement. For the academic interest of the University or for another valid reason, the University may not allow the petitioner to retire voluntarily.

Mr. Dasgupta submits that for the future of the students particularly, those six Ph.D. students, who are doing Ph.D. under him, the petitioner should approach the University for a reasonable solution of the issue.

In support of his submission that voluntary retirement is not a matter of right, Mr. Dasgupta relies upon a judgment reported at **(2018) 17 SCC 578 (State of Uttar Pradesh v. Achal Singh)**.

The proposition of law laid down in the said judgment cannot be disputed. Like every right, the right of voluntary retirement also needs to be seen in the light of the relevant statute. The statute, which the Hon'ble Supreme Court had the occasion to consider in **Achal Singh's case**, did not provide for automatic voluntary retirement on expiry of notice period. The voluntary retirement could be refused on the ground of public interest. In the context of the aforesaid rules, the Supreme Court held that the right to retire is not absolute in case of voluntary retirement with retiral dues.

The relevant Clause 32 of the First statute of the University as quoted above starts with a non-obstante Clause to indicate that it does not leave the University with the discretion not to allow the prayer for voluntary retirement if a teacher seeks to retire voluntarily on completion of the age of 50 years and 20 years of continuous service in the University.

Though the rules do not provide for any notice period, in my view, such notice is implicit in the rules since the University cannot be taken by surprise due to sudden desire of a teacher to retire voluntarily with

retiral dues. The University needs to arrange its affairs before allowing a teacher to retire voluntarily. The University needs to be given a reasonable time for the same.

In the present case, there cannot be any denial of the fact that the petitioner since June 6, 2022, requested the authorities to permit him to retire voluntarily. However, keeping in mind the academic interest of the University as pointed out by Mr. Dasgupta, I am of the opinion that the University should permit the petitioner to allow voluntarily within a period of six months from the date of this order so that the inconvenience that may be faced by the University due to the retirement of the petitioner can be properly dealt with by recruiting proper teaching staff or otherwise.

Needless to mention that the petitioner shall be paid all his retiral dues as a consequence of his voluntary retirement.

This order, however, will not stand in the way of the petitioner to reconsider his decision to take voluntary retirement, if there is any change of his mind.

Accordingly, WPA 20100 of 2022 is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously in compliance with usual legal formalities.

(Kausik Chanda, J.)