27 17-08-2023

AKG

Ct. 238

WPA 3922 of 2023
Dr. Sasanka Sekhar Debnath
Vs.
The Visva Bharati & Ors.

Mr. Anjan Bhattacharya
…for the Petitioner

Mr. Suman Basu
…for the Respondent No. 6

Mr. Victor Chatterjee
…for Visva Bharati

Mr. Rajdeep Mazumdar,
Ms. Anamika Pandey
…for Union of India

In this writ petition, a challenge has been thrown to a notice of superannuation dated February 10, 2023 issued by Visva Bharati to the petitioner. The petitioner holds the position of Chief Medical Officer at Visva Bharati. The said notice requires the petitioner to retire from service with effect from February 28, 2023 on attaining sixty years. On behalf of the petitioner, it has been submitted that the executive council of the university took a resolution on February 5, 2016, whereby the age of superannuation of non-teaching medical post at the university was enhanced from 60 years to 65 years. The petitioner further submits that following the said resolution, the university issued an office order on December 10, 2016 enhancing the age of superannuation of non-teaching medical posts at the university from 60 years to 65 years.

The university suggests that there was a audit objection with regard to enhancement of the retirement age for the non-teaching medical post. The university has referred to an observation made by the Indian Audit & Accounts Department on March 11, 2021 which reads as follows :

> **"Audit observes that the conditions of these posts were neither similarly situated as the counterpart in CHS in terms of qualifications nor in nature of function, since as per CHS rules, Medical doctors should have minimum qualifications of MBBS and Post Graduate in concerned field. However, nothing could be found in the service records of these doctors to suggest that they possessed the required Post Graduate Qualifications."**
> **It is the stand of the university that it has forwarded necessary papers for enhancing the retirement age of the non-teaching medical posts, but no approval was accorded by the Ministry. The university argues that in absence of any approval from the Ministry, the university cannot allow the petitioner to continue his service beyond the age of 60 years. The university further argued that in view of the audit report, the university withdrew the office order dated December 10, 2016 whereby the age of superannuation was enhanced by five years."**

This Court added the Union of India as a respondent in this writ petition. A report has been filed before this Court on behalf of the Senior Audit Officer/OAP – XII. The relevant part of the said report is quoted below :

> **"I say that it was never observed that all the Doctors employed under the Visva-Bharati are not**

qualified to the benefits as extended by the aforesaid Notification dated 31st May, 2016 issued by the Ministry of Personnel Public Grievances and Pensions (Department of Personnel & Training) but it was only observed that the benefit as made available to aforesaid Dr. Santosh Kumar Das and Dr. C. S. Kundu were not eligible as the supporting post graduate degree, which was condition precedent to avail benefit under the aforesaid Notification dated 31.05.2016, were not made available at the time of audit scrutiny on their respective service books and related records.
The withdrawal of the benefit extended as per resolution adopted in the meeting of the Executive Council (Karma Samity) vide Notification No. G/K-10/EC.5.11.16/11 dated 10.12.2016 by a Office Order No. Estab/E-111/0.2 dated 31.01.2023 was done by Visva-Bharati of its own and no observation of such withdrawal was ever made in the audit report.
It is pertinent to mention herein that no case in respect of Dr. Sasanka Sekhar Debnath and/or any qualification with regard to his service condition and his liability to get benefit under the aforesaid DoPT's Notification dated 31.05.2016 have been sent to this office as on date.
In view of the aforesaid factual aspects the office of the Director General of Audit (Central), Kolkata, has never observed that a doctor with post graduate degree employed under Visva-Bharati are not eligible to the benefit as extended by the Visva-Bharati vide Office Order dated 10.12.2016 and it will not be wrong to say that the withdrawal of Office Order dated 10.12.2016

> **is not as per audit scrutiny as cited in the Memo dated 31.01.2023 but it is clear that such withdrawal is in misinterpretation of the observation made in the audit scrutiny."**

The report filed by the Audit Department as quoted above makes it absolutely clear that the university has issued the office order dated January 31, 2023 on a misconception that the Audit Department objected to the enhancement of the retirement age of the petitioner.

In that view of the matter, the office order dated January 31, 2023, issued by the Registrar, Visva Bharati is set aside.

The petitioner shall be allowed to continue his service in terms of the order dated December 10, 2016 issued by the Registrar (Acting), Visva Bharati appearing at page 32 of the writ petition.

The university shall pay the arrear salary of the petitioner within a period of one month from the date of communication of this order.

Accordingly, **WPA 3922 of 2023** is disposed of.

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

(Kausik Chanda, J.)