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28-08-2023
AKG
Ct. 238

WPA 16596 of 2023
Subha Prasad Nandi Majumdar
Vs.
The State of West Bengal & Ors.

Mr. Saptansu Basu,
Mr. Anindya Halder,
Mr. Sakabda Roy

...For the Petitioner

Mr. Jaydip Kar,
Mr. N. C. Bihani,
Mrs. P. B. Bihani,
Mr. Soumya Mukherjee

...for the University

Mr. Biswabrata Basu Mallick,
Ms. Parna Roy Chowdhury

...for the State

Mr. Nirbanesh Chatterjee,
Mr. Anjan Banerjee

...for ICAR

This writ petition has been taken up for hearing on the mentioning by the petitioner only to consider the prayer '(b)' of the writ petition.

It is the grievance of the petitioner that he has been asked to retire at the age of sixty whereas as per notification dated February 24, 2021, issued by the State, his retirement age is sixty-five.

Appearing on behalf of the petitioner, Mr. Saptansu Basu, learned senior advocate submits that the petitioner was appointed as a teaching staff at Cachar College, Silchar which was subsequently converted into a Government College by a statutory notification. After serving at the said college for about sixteen years, the petitioner was selected for the post of Secretary, Faculty

Council for Post-Graduate Studies in Science at Burdwan University on November 5, 2007. The vacancy against the said post had been notified by an advertisement dated June 18, 2007. Subsequently, the petitioner was promoted to the post of Senior Secretary, Faculty Council for Post-Graduate Studies in Science with effect from January 26, 2012.

The Registrar of Burdwan University, by the impugned notice dated June 28, 2003, notified that the petitioner would retire from the service of the university on August 31, 2023 on completion of sixty years of age.

Mr. Basu submits that the State has enhanced the retirement age for the relevant post upto 65 years by a notification dated February 24, 2021. Mr. Basu submits that the petitioner was appointed to the said post after taking into account his past service as a teaching staff at Cachar College and therefore, the petitioner should be entitled to the benefit of the circular dated February 24, 2021.

Appearing on behalf of the university, Mr. Jaydip Kar, learned senior advocate, per contra, submits that the petitioner is not entitled to the benefit of the notification dated February 24, 2021. He submits that in order to come within the purview of the said notification, an employee must possess a continuous teaching background /experience of a minimum 10 years in any State aided

University or College in West Bengal. The petitioner lacks teaching experience in a State aided University or College in West Bengal. According to Mr. Kar, the past service rendered by the petitioner at Cachar College is irrelevant to the notification dated February 24, 2021, and the said service was not a criterion for the appointment of the petitioner to the post of Secretary, Faculty Council for Post-Graduate Studies in Science under the University.

Mr. Kar has drawn the attention of this Court to a notification dated June 13, 2003, issued by the Assistant Secretary of the Department of Higher Education. He submits that the State has clarified that a State aided University or College teacher, who joined the university service from the other State would not come under the purview of the notification dated February 24, 2021, since the expression “State Aided University or College” contained therein applies only to any University/College aided by the Government of West Bengal.

Mr. Kar submits that since the aforesaid clarification has been issued by the State itself, this Court in the exercise of its writ jurisdiction should not interpret the government order dated February 24, 2021, otherwise.

In support of his submission, Mr. Kar has relied upon a judgment reported at (2004) 3 SCC 682 (Ranjeet Singh Vs. Ravi Prakash). The relevant paragraph of the said judgment is quoted below:

“4. Feeling aggrieved by the judgment of

the appellate court, the respondent preferred a writ petition in the High Court of Judicature at Allahabad under Article 226 and alternatively under Article 227 of the Constitution. It was heard by a learned Single Judge of the High Court. The High Court has set aside the judgment of the appellate court and restored that of the trial court. A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the appellate court. Though not specifically stated, the phraseology employed by the High Court in its judgment goes to show that the High Court has exercised its certiorari jurisdiction for correcting the judgment of the appellate court. In *Surya Dev Rai v. Ram Chander Rai* this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in *Surya Dev Rai* [(2003) 6 SCC 675] that the jurisdiction was not available to be exercised for indulging in reappraisal or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal. The High Court has itself recorded in its judgment that — “considering the evidence on the record carefully” it was inclined not to sustain the judgment of the appellate court. On its own showing, the High Court has acted like an appellate court which was not permissible for it to do under Article 226 or Article 227 of the Constitution.”

Mr. Biswabrata Basu Mallick, learned advocate

appearing for the State has referred to the affidavit in opposition filed by the State. He has placed paragraph 4 (7), (8) & (9) of the said affidavit to suggest that various States in India have different ages of superannuation for teaching staff in Universities and Colleges. A careful perusal of the memorandum dated February 24, 2021, reveals that the expression “State aided University or College” shall mean Colleges and Universities in the State of West Bengal only.

The issue involved in this writ petition no doubt, hinges on the interpretation of the Memorandum dated February 24, 2021 issued by the State. The said memorandum is quoted below :

“Consequent upon enhancement of the retirement age of the State-aided University teachers and Govt./Govt. aided College teachers up to 65 years, the matter regarding enhancement of the retirement age of the State-aided University Registrars, Controller of Examinations, Inspector of Colleges and Dean of Student’s Welfare, Deputy Registrar, Deputy Controller of Examinations, Deputy Inspector of Colleges and Secretary, Council of PG & UG Studies and College Council of the State aided Universities with teaching background / experience in any State-aided University or College, was under consideration of the State Govt. from sometime past.

After careful consideration of the matter, Governor is pleased to enhance the retirement age of the Registrar, Controller of Examinations, Inspector of Colleges and Dean of Student’s Welfare, Deputy Registrar, Deputy Controller of Examinations, Deputy Inspector of Colleges and Secretary, Council of PG & UG Studies and College

Council of the State aided Universities having continuous teaching background / experience of minimum 10 years in any State-aided University or College, up to Sixty five (65) years with effect from the date of issuance of this notification, for sooth running of the academic activities, in terms of Section 4 of the West Bengal Universities (Control of expenditure) Act. 1976 as amended from time to time.

This Order is issued in concurrence with the Finance Department, vide their U.O. No. Group P1/2020-2021/0363 dated 11.02.2021 and approval of the Cabinet vide their U.O. No. CAB (D) – 1841, dated 22.02.2021.”

(emphasis supplied)

A bare perusal of the notification date February 24, 2021, makes it clear that the said notification applies to the Secretary, Council of Post Graduate and Under Graduate Service studies.

I accept the contention of Mr. Kar, the said notification intends to extend of the age of superannuation of certain employees, who have had 10 years of teaching experience, yet have transitioned from teaching posts to administrative roles under a University or College.

The only issue that requires to be decided is whether the service rendered by the petitioner as a teaching staff at Cachar College in Assam should be considered for the benefit conferred under the said memorandum dated February 24, 2021.

In my view, the memorandum dated February 24, 2021, makes no distinction between a teacher with ten

years of teaching experience in a State aided University or College located either outside West Bengal or within West Bengal.

The word “any” as employed in the second paragraph of the notification dated February 24, 2021 is wide enough to encompass aided universities and colleges beyond the geographical confines of West Bengal within the scope of the said notification.

The scope of the notification dated February 24, 2021 cannot be unduly constricted by adding the words “in West Bengal” after the phrase “in any State aided University or College.”

Such supplementation would cause a violence to the said memorandum resulting in an unintended classification.

Given the contextual specifics of this case, the judgment relied upon by Mr. Kar is of no relevance. A Court of law is not bound by an erroneous interpretation given by a government official concerning a memorandum issued by the State.

In that view of the matter, a notification dated June 28, 2023, issued by the Registrar of Burdwan University cannot be sustained and the same is set aside. The prayer ‘B’ of this petition stands allowed. It is declared that the petitioner should retire on attaining 65 years of age. To consider the other prayers, let the writ petition be listed

after two weeks under the same heading.

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.)