

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Uday Kumar

MAT 1762 of 2023
CAN 1 of 2023
CAN 2 of 2023

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

with

MAT 1705 of 2023
CAN 1 of 2023

The University of Burdwan
Through the Registrar & Ors.
Versus
Subha Prasad Nandi Majumdar & Ors.

For the University of Burdwan : Mr. Sirsanya Bandopadhyay, Adv.,
Mr. Arka Kumar Nag, Adv.,
Ms. Deboleena Ghosh, Adv.

For the Respondent no. 1 : Mr. Saptansu Basu, Sr. Adv.
Mr. Anindya Halder, Adv.

For the State : Mr. Anirban Ray, Ld. GP
Mr. Biswabrata Basu Mallick, Ld. AGP
Ms. Parna Roy Choudhury, Adv.

Hearing concluded on : 11th December, 2023

Judgment on : 13th December, 2023

1. **Soumen Sen, J.:-** Both the appeals involving similar question of law and fact, are taken up together and disposed of by this common judgment.

2. The respondents in the writ petition have filed separate appeals arising out of the order dated 28th August, 2023.

3. The question involved in the writ petition is with regard to the extension of the age of retirement of the petitioner in terms of a notification dated 24th February, 2021.

4. Subha Prasad Nandi Majumdar, the writ petitioner in WPA 16596 of 2023 hereinafter referred to as the “writ petitioner” was appointed as a teaching staff at Cachar College Silchar which was subsequently converted into a Government College by a statutory notification.

5. He served the said college for about 16 years. He was selected for the post of the Secretary, Faculty Council for post-Graduate Studies in Science at Burdwan University on 5th November, 2007. He was promoted to the post of Senior Secretary, Faculty Council for Post-Graduate Studies in Science with effect from 26th January, 2012.

6. The Registrar of Burdwan University by the impugned notice dated 28th June, 2003 informed the petitioner that he would retire from the service of the University on 31st August, 2023 on completion of 60 years of age.

7. The writ petitioner challenged the impugned notice dated 28th June, 2003 on the ground that in terms of the notification dated 24th

February, 2021 the retirement age for the relevant post was enhanced to 65 years.

8. The learned Single Judge accepted the contention of the writ petitioner and allowed the writ petition. This order has been challenged by the State and the Burdwan University.

9. Mr. Arka Kumar Nag, learned Senior Counsel appearing on behalf of the University/appellant has submitted that the writ petitioner is not entitled the benefit of the notification dated 24th February, 2021 as he lacks teaching experience in a State-aided University or College in West Bengal. The past Service rendered by the writ petitioner at Cachar College is irrelevant and not covered by the notification dated 24th February, 2021. The service rendered at Cachar was not a criteria for appointment of the writ petitioner to the post of Secretary, Faculty Council for Post Graduate Studies in Science under the University.

10. Mr. Nag has referred to a notification dated 13th June, 2003 issued by the assistant Secretary of the department of Higher Education in which the State has clarified that a State-aided University or College teacher who joined the University Service from the other State would not come within the purview of the notification dated 24th February, 2021 since the expression “State-aided University or College” contained therein applies only to any University/College aided by the Government of West Bengal. This qualification has not been properly considered by the learned Single Judge while interpreting the government Order dated 24th February, 2021.

11. Mr. Biswabrata Basu Mallick, the learned Counsel appearing for the State has referred to the affidavit-in-opposition filed by the State.

Mr. Mallick has principally supported the interpretation of the expression State-aided University or College put forth by Mr. Nag.

12. Mr. Mallick has referred to paragraph 4 sub paragraphs 7, 8 and 9 of the affidavit-in-opposition to show that various States in India have different ages to superannuation of teaching staff in University and Colleges.

13. Mr. Mallick wants the court to read the expression “any State-aided University or College” mentioned in the Memorandum dated 24th February, 2021 in the light of the aforesaid fact.

14. Mr. Mallick submits that the aforesaid expression shall mean and can only mean colleges and universities in the State of West Bengal.

15. Per contra Mr. Saptansu Basu learned Senior Counsel appearing on behalf of the writ petitioner has submitted that he was appointed to the said post after taking into account his past service as a teaching staff at Cachar College and therefore the writ petitioner should be entitled to the benefit of the circular dated 24th February, 2021. It is submitted that it would be extremely unfair if his service in Cachar College is not taken into consideration in extending his age of retirement particularly having regard to the fact that for all other purposes such past service was being considered and suitable benefits have been extended to the writ petitioner.

16. Mr. Basu submits that in order to become eligible for extension of the retirement of age to 65 of the persons mentioned in the notification dated 24th February, 2021 should have “continuous teaching

background experience of minimum 10 years” in **any** State-aided University or College.

17. Mr. Basu submits that since Cachar College was a Government College and he had served the said institution for about 16 years prior to his engagement in the Burdwan University he is duly qualified for extension of his age of retirement up to 65 years.

18. Mr. Basu has laid much emphasis on the expression State-aided University or College and the adverb “any” prefixed to the said expression to show that it covers any University or College if it is a State-aided University or College irrespective of its geographical location and placed the interpretation offered by the learned Single Judge in the judgment accepting such interpretation in ultimately granting relief to the writ petitioner. It is submitted that any other interpretation would be unfair and in violation of Article 14 of the Constitution of India and would create a class within a class. There is no rational basis for creating two classes of persons for the benefit. It was not even contemplated in the memorandum.

19. In order to decide the issue raised it would be convenient to refer to the definition of government-aided University or College, State Government and State-aided University defined in the West Bengal Universities (Control and Expenditure) Act, 1976 since amended in 2017. Section 2(a) of the Amended definition defines Government-aided College. It reads:

2(a). “Government-aided college” means a college receiving periodical pay packet from the State Government on account of salary and allowances of the teachers and other

academic staff including the non- teaching employees of the college”.

20. Clause 2(c) of Section 2 defines State Government. The said Section after amendment reads as follows:

“2(c). “State Government” means the Government of West Bengal in the Higher Education Science and Technology and Biotechnology Department;”

21. Clause 2(e) of Section 2 after amendment defines State-aided University in the manner following:

“2(e). “State-aided University” means a University constituted and incorporated by a State Act and receiving regular grants from the State Government;”

22. For Section 4 of the principal Act, the following Section has been substituted which refers to the retirement of teachers. The Section 4 reads:

“4. Every Full-time regular teacher, Principal and such other regular employees, who are in receipt of the State Government’s notified scale of pay and holding a substantive post in any State-aided University or Government-aided college shall retire from service on attaining such age as may be determined and notified in the official Gazette by the State Government, from time to time”.
(emphasis supplied)

23. The West Bengal Universities (Control of Expenditure Act, 1976) was amended by the West Bengal Universities (Control of Expenditure (Amendment) Act, 2017 and duly notified on 17th March, 2017.

24. Thereafter, on 24th February, 2021 the State issued the Memorandum, the interpretation of which is presently under consideration.

The said Memorandum is reproduced 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 smooth 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)

25. The learned Single Judge accepted the contention of Mr. Kar, the Senior Advocate who had argued the matter on behalf of the University that the said notification intends to extend 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 and thereafter proceeded to consider the issue in question.

26. 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.

27. The learned Single Judge was of the view that “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.

28. 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.

29. 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.”

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

31. In our view in interpreting the said expression the word “any” as mentioned in the 2nd paragraph of the notification dated 24th February,

2021 will have a restrictive meaning as it cannot travel beyond the geographical limits of the State by reason of the definition of State-aided University and Government-aided College in Section 2(e) and Section 2(a) of the West Bengal University (Controller of Expenditure) Act, 1976 since amended. The Act 1976 is only confined to the State. It is an act made by the State Legislation. The Memoranda is issued in terms of Section 4 of the amending Act.

32. The word “any” has to be construed contextually. Generally “any” is the word which excludes limitation or qualification and at times is given interpretation “as wide as possible” but its generality may be restricted by the subject matter or the context. (See. Stroud’s Judicial Dictionary of Words and Phrases, 10th Edn.)

33. In Black’s Law Dictionary it is explained thus, “word ‘any’ has a diversity of meaning and may be employed to indicate ‘all’ or ‘every’ as well as ‘some’ or ‘one’ and its meaning in a given statute depends upon the context and the subject matter of the statute”. (See ***Lucknow Development Authority v. M.K. Gupta*, 1994 (1) SCC 243; AIR 1994 SC 787, *Union of India v. A.B. Shah and Ors.*, AIR 1996 SC 3281; 1996(8) SCC 540 : *Dilip Kaushal and Anr. v. State of M.P. and Ors.* AIR 2008 MP 324 (FB)).**

34. The word ‘any’ may have one of the several meanings as indicated above but it is well settled that its interpretation would depend upon the context of each case.

35. The word “any” has to be read in conjunction and in relation to the State-aided University or college and government-aided college as

defined in Section 2(e) and 2(a) respectively. This would also be clear from the fact that different states have their different criteria for determination of retirement age and preferences given to the persons who have been in continuous teaching background experience of minimum 10 years in State Universities. The Act and Memorandum are state centric and State specific and cannot be applied to a State-aided University or College outside the State of West Bengal. This will be clear from a conjoint reading of 2(a), 2(c) and 2(e) of the 1976 Act since amended of 2020. The Government aided College in terms of Section 2(a) would mean “a college receiving aid from the State Government”. The State Government is defined in Section 2(c) to mean Government of West Bengal. Section 2(e) in defining State aided University clearly states that the University should be receiving regular grant from the State Government which means Government of West Bengal. The Memorandum cannot be construed de hors the Act. It can only supplement the Act and cannot supplant it. The Act has a territorial dimension. The benefit of the said legislation is only applicable to such teachers and/or employees who are having continuous teaching background experience of minimum 10 years in a College or University receiving the aid from the State of West Bengal.

36. Hence we are of the view that the writ petitioner is not entitled to the benefit of the notification dated 24th February, 2021.

37. Both the appeals succeed.

38. The order impugned is set aside. However, there shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)