

Item-
212. 21-08-2023

MAT 2131 of 2016

sg

Ct. 8

Dr. Jagatpati Tah
Versus
The State of West Bengal & Ors.

Mr. Achintya Kr. Banerjee, Adv.
Mr. Raghunath Chakraborty, Adv.
...for Burdwan University

1. The appellant is not represented.
2. We have heard Mr. Achintya Kumar Banerjee, learned Counsel appearing on behalf of the Burdwan University.
3. The appellant is a Senior Technical Assistant. He prayed for continuation of service upto the age of 62 years and all consequential benefits with regard thereto.
4. The writ petitioner before the learned Single Judge has relied upon an office order dated 31st August, 2010 giving a pay band and a grade pay of scale. It was alleged that the pay band or grade pay is not in accordance with the University Grants Commission (U.G.C.) pay band or grade pay and, therefore, the petitioner is entitled to retire at the age of 62 years as he is to be considered a Government Employee. The contention of the writ petitioner was that, if a teacher is not granted a grade pay of the UGC, he would be entitled to the age of 62 years.
5. The learned Single Judge in denying the relief had referred to the earlier writ petition in which Technical Assistant including the present appellant had filed the writ petition making similar claims. In the writ petition filed by *Akshay Kumar Chakraborty* being *W.P. No. 12123 (W) of 2015*, similar claim

was made by Akshay. The learned Single Judge on 15th March, 2016 dismissed the writ petition with the following observations:

“The petitioners before me claim that they are to be treated as teachers and that since they are receiving non-University Grants Commission (UGC) pay scale, they should be allowed to retire at the age of 62 years. Referring to the letter dated October 11, 2010 issued by the University to the Principal Secretary, it is submitted on behalf of the petitioners that the University cannot take a stand as recorded therein. The University cannot say that the scale of pay and the retirement age of the petitioners who are similarly situated were recommended before those meant for regular teachers. Reference has also been made to the decision of this Court dated April 4, 1996 rendered in Civil Order No. 893(W) of 1989, where the Court had directed the University to treat the writ petitioners therein and those similarly placed as teachers within the meaning of sub-section (21) and (22) of Section 2 of the Burdwan University Act, 1981 and to grant all consequential benefits to them.

The University authorities are represented. It is submitted on behalf of the University authorities that, the petitioners were given the status of teachers in terms of the order dated April 4, 1996 passed in Civil Order No. 893(W) of 1989. The petitioners were also given UGC pay scale. Referring the paragraph 4(j) at page 15 of the affidavit-in-opposition, it is submitted that the University has granted UGC scale of pay to the petitioners. The statement in

paragraph 9 at page 24 of the affidavit stating that pay structure of the petitioners was at par of non-UGC scale is a typographical error. It should be read as UGC scale.

I have considered the rival contentions of the parties and the materials made available on record.

The petitioners were given the status of teaches in terms of the order dated April 4, 1996 passed in Civil Order NO. 893(W) of 1989.

The University authorities have also given the UGC scale of pay to the petitioners.

A teacher in the University enjoying UGC scale of pay retires at the age of 60 years. The petitioners, therefore, will also retire at the attainment of 60 years.

It is submitted that, some of the petitioners have already attained the age of superannuation. They however, have been allowed to retain the possession of the respective accommodation made available by the University in course of their employment.

In course of hearing, it is submitted on behalf of the petitioners on instructions that, persons who have retired at the age of 60 years have already left such accommodation.

The action of the University in asking the petitioner to retire on the attainment of the age of 60 years, as impugned herein, cannot be said to be irregular.

In such circumstances, I do not find any merit in the present writ petition.”

6. The appeal filed by Akshay along with others similarly placed was dismissed with the following observation:

“It appears that attention of the learned Single Judge was drawn to paragraph 4(j) of the affidavit-in-opposition to the writ petitioner filed by the respondents, which is as under:

“4(j) Admittedly, it would appear from pages 74 to 76 of the writ petition that the petitioners have been granted UGC scale of pay of Rs.15600 – 39100 with grade pay of Rs.5400 + admissible allowances with effect from 1.1.2006 on condition that the benefits extended to them will be subject to the ratification of the State Government.”

The appellants/writ petitioners had dealt with the said paragraph 4(j) in paragraph 8 of the affidavit-in-reply filed before the learned Single Judge, which is as under:

“With reference to the statements made in paragraph 4(j) to 4(l) of the said opposition, I state that the same are matter of records.”

Therefore, the appellants before the learned Single Judge did not seriously challenge the contention of the authorities that they had been granted the UGC scale of pay at Rs.15600 to 39100 with grade pay plus admissible allowances. At this stage, the appellants cannot contend otherwise after enjoying the UGC scale of pay. Once they have accepted the UGC scale of pay, they are entitled to superannuate at the age of 60 years. Therefore, the appeal is devoid of any merit. Hence, the application for stay is dismissed. The appeal is treated as on day's list and is also dismissed.”

7. The learned Single Judge has relied upon the said decisions in

rejecting the prayer made by the present writ petitioner. There having being no change in circumstances, the only course opened to the learned Single Judge was to dismiss the writ petition.

8. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.
9. The appeal according stands dismissed. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)