

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

Constitutional Writ Jurisdiction

Present :

The Hon'ble Mr. Justice Arindam Mukherjee:

WPA 1823 of 2024

With

CAN 03 of 2025

Dr. DEBASIS DUTTA

Vs.

THE STATE OF WEST BENGAL & OTHERS.

For the Petitioners:- Mr. Bikramaditya Ghosh,
Mr. Ajay Singhal,
Mr. T.Kumai
Ms. Sunayna Prasad

For the Respondent
nos. 3 and 4 :- Dr. Navin Barik
Ms. Esha Acharya

For the State Mr. Subir Kumar Saha
Ms. Bedashruti Bose

Heard on : 05.11.2024 and 07.02.2025

Judgement on : 20.06.2025.

Arindam Mukherjee, J. :-

1. The subject matter of challenge in this writ petition, is a portion of the notification being no. 371-Edn (U)/HED-12014(21)/10/2020-UNV dated

24th February, 2021 (hereinafter referred to as ‘the said notification’) and the letter dated 18th June, 2024 issued by the University of North Bengal (hereinafter referred to as ‘the said University’) through the Joint Registrar, intimating the petitioner that he has attained the age of superannuation on and from 31st December, 2024 (hereinafter said to be as ‘the said letter’).

2. Before going into the merits of the case, the admitted facts are set out hereunder, for better appreciation of the facts and law:

- i. The petitioner joined the University as Deputy Controller of Examinations, pursuant to an appointment letter issued by the said University on 26th April, 2002. At the time, when the petitioner joined the said University, the petitioner had a continuous teaching experience between 10th December, 1996 to 7th May, 2002 aggregating to 5 years, 4 months.
- ii. The petitioner was appointed as the Controller of Examinations in the said University, in terms of an appointment letter dated 12th July, 2018.
- iii. At the time, when the petitioner was appointed as the Controller of Examinations in the said University, the appointment conditions were provided in the Advertisement no. 154/R-17 dated 6th

January, 2017 issued by the said University. This advertisement is at page 71 of the writ petition, being annexure 'P/6' thereof.

- iv. At the relevant point of time, when the petitioner was appointed as the Controller of Examinations in the said University, a memorandum was issued by the Government of West Bengal, Higher Education Department on 28th February, 2011 which was in force. This memorandum is at page 57 of the writ petition being annexure 'P/5' thereof. The Government of West Bengal, Department of Higher Education, in its University Branch, issued the said notification dated 24th February, 2021 in terms of Section 4 of the West Bengal Universities (Control of Expenditure) Act, 1976 as amended from time to time by which the age of retirement of Controller of Examinations was increased from up to 65 with effect from the date of issuance of the said notification for smooth running of academic and administrative activities. The said notification is at page 86 of the writ petition, being annexure 'P/13' thereof.
- v. The petitioner was issued the said letter dated 18th June, 2024, informing him that the petitioner will attain the age of superannuation on and from 31st December, 2014.

- vi. The petitioner challenged the said notification by filing a writ petition bearing WPA 660 of 2021. In the said writ petition, the petitioner by filing a supplementary affidavit, intended to challenge the constitutional validity of the said notification. The learned Single Bench deprecated the practice of making out of a new case by filing a supplementary affidavit and, thereafter, on the basis of the challenge contained in the writ petition, dismissed the same by an order 12th July, 2024. The said order dated 12th July, 2024 was challenged by the petitioner by filing an appeal being MAT 70 of 2024. The said appeal and the said connected application were disposed of by an order dated 13th August, 2024 by dint of which the order of the learned Single Judge was set aside primarily on the ground that the constitutional validity, legality of the said notification, being the moot question in the writ petition was not decided by the learned Single Judge. The writ petition was also dismissed with liberty to the petitioner, to file a comprehensive writ petition, agitating the selfsame cause of action in the said writ petition read with the supplementary affidavit.
- vii. In the meantime, the said notice 18th June, 2024 had been issued to the petitioner.

viii. The instant writ petition is the comprehensive writ petition wherein, the petitioner has not only challenged the constitutional validity and legality of the said notification, but, has also challenged the action on the part of the said University in not granting him extension up to 65 years, by limiting his date of superannuation to be 31st December, 2024, on attaining the age of 60 years.

3. Petitioner's contention may be summarized as follows:

- a. The principal ground of challenge in this writ petition is that the said notification is bad in law, arbitrary, discriminatory and lacks constitutional validity, as it seeks to impose a fresh condition of service as such, should be declared *ultra vires*.
- b. The petitioner has also alleged that the said letter dated 13th June, 2024 is required to be set aside by granting the petitioner to continue his work as the Controller of Examinations in the said University, till he attains the age of 65 years.
- c. In support of his contention, the petitioner says that the notification which was prevalent at the time when he was appointed as the Controller of Examinations, provided that in the alternative of at least 15 years experience as a senior

Lecturer/Reader/Assistant Professor including Associate Professor, along with experience in Educational Administration in Academic Institutions like University or in an institute of higher learning of which 5 (five) years must be in an University or in an Institute of Post Graduate study, there was a condition of having comparable experience in research establishment or other institutes of higher learning. In a further alternative of having 15 years administrative experience of which 8 (eight) years shall be Deputy Registrar or equivalent post. The petitioner, admittedly, did not have 15 years experience as a Senior Lecturer, Reader, Assistant Professor or as an Associate Professor as stipulated in the said notification, but, qualified to be appointed as the Controller of Examinations under the alternative essential qualification of having comparable experience in research establishments and other institutions of higher learning, and also having the other alternative qualification of 15 years administrative experience of which 8 (eight) years of shall be Deputy Registrar or equivalent post.

- d. The petitioner having served the said University for 15 years as Deputy Controller of Examinations, qualified under the third alternative essential qualification. The petitioner says that the

essential qualification for being a Controller of Examinations cannot and could not have been altered by the said notification dated 24th Feb, 2021. The petitioner also says that in case of other posts, there has been no change in the essential qualifications and as such, the change brought in respect of the post of Controller of Examinations as to the essential qualification is discriminated. The said notification, therefor, should be declared *ultra vires* the Constitution of India.

- e. The petitioner further says that since the petitioner is entitled to the extension of age of his service from 60 years to 65 years, the said letter dated 18th June, 2024 is also based on an arbitrary, discriminatory, constitutionally invalid notification and as such, should be set aside. The petitioner should, therefor, be allowed to work till 65 years.
- f. The petitioner also says that the said notification prescribes two different ages of superannuation amongst same classes of employees. On the meaningful interpretation of the said notification, it will appear that a person holding the post of Controller of Examinations having continuous teaching background/experience of minimum 10 years, shall be allowed

to work up to the age of 65 years but, in case of those who do not possess the same, shall not be allowed such extension.

- g. The petitioner has cited two judgments, respectively reported in **2013 (7) SCC 595 (State of Uttar Pradesh Vs. Dayanand Chakrawarty & Ors.)** and **2014 (10) SCC 432 (Union of India & Ors. vs. Atul Shukla & Ors.)**. By relying on paragraph 32 and 34 of Dayanand Chakrawarty (supra) and paragraph 25 of Aatul Shukla (supra), the petitioner says that the said notification is discriminatory and should be set aside.

4. Submissions on behalf of State:

- I. It is submitted that the West Bengal Universities (Control of Expenditure) Act, 1976 (in short 'the 1976 Act') was amended by the West Bengal Universities (Control of Expenditure) (Amendment) Act, 2017 (in short 'the 2017 Act'). The Amendment Act has received the assent of the Governor and, was published in the Kolkata Gazette Extraordinary on 17th March, 2017. Section 4 of the 1976 Act was substituted by Section 3 of the Amendment Act. The amended Section 4, according to State, grants the authority to decide the retirement age of the Controller of Examinations, like the petitioner. The said notification is, therefor, has been issued in terms of a valid provision of law with the assent of the Governor and the Finance Department of the Government

of West Bengal. The said notification cannot be said to be *ultra vires* to the Constitution of India.

- II. It is also submitted by the State that the essential qualification for the post of Controller of Examinations is neither contained in the 1976 Act or under any amendment thereto including 2017 Amendment Act. The essential conditions were fixed by issuance of Departmental memorandum/ notifications issued from time to time. The State of West Bengal is, therefor, empowered to reset the essential qualifications from time to time by issuing subsequent memorandum/notification, substituting the previous one. The action of the State in doing so, forms part of the policy decision and should not be interfered with by the Court in any manner whatsoever. The State also submits that the petitioner admittedly, does not have 10 years continuous teaching experience (background) and as such, does not qualify for the extension of service. The age of superannuation in respect of the petitioner, has been rightly assessed to be 60 years. The State, therefor, submits that the writ petition should be dismissed.

5. Submission of behalf of the University

In respect of the submissions made on behalf of the said University, a dispute was raised subsequent to conclusion of hearing, by way of filing applications. It is the case of the university that the petitioner in the

absence of the Secretary of the University, was in the helm of affairs of the said University. The petitioner, therefor, had instructed the Advocates appearing for the University to support the case of the petitioner. The records, however, reveals that the said University was instructing its Advocates through the Deputy Secretary. However, on a further opportunity been given to the said university, it is submitted on behalf of the said university that the petitioner is not entitled to the extension under the said notification, as he does not possess the essential qualifications. The said notification is a valid one and should not be held to be *ultra vires* to the Constitution or arbitrary or discriminatory or be set aside for any other reason.

6. Analysis and Conclusion.

- a) The said University was constituted under the North Bengal University Act, 1981(hereinafter referred to as ‘the said Act’) which was published in Calcutta Gazette Extraordinary on 16th September, 1981. The said Act under Section 4 (5) (b)(i) provides for the said University with the approval of the State Government settled the terms and conditions of service, teacher, librarians and non-teaching staff and rules of provident fund. Although, the terms and conditions of service of the Controller of Examinations have not been included in the provisions as aforesaid but,

the power of the State Government in deciding the terms and conditions of service of the Controller of Examinations cannot be ruled out. Neither the said Act nor the statutes and regulations framed thereunder stipulate the age of a person to hold the Office of Controller of Examinations. The service rules and regulations governing the service of Controller of Examinations, have also not been framed by the said University. It is well-settled principle of law that where the statute is silent, notification/memorandum issued by the competent authority shall be construed to be a valid and legal document to fill up the gaps or lacunae in the statutes. In the instant case, in absence of specific service rules, the conditions of service of a Controller of Examinations in the said University is governed by the provisions of the 1976 Act as amended from time to time. The memorandum dated 28th February, 2011 when the petitioner was appointed as the Controller of Examinations in the said University in 2018, was the operative memorandum governing the essential qualifications required for filling up the post of Controller of Examinations. The said memorandum has been accepted and admitted by the writ petitioner. This memorandum had to be issued as for the purpose of providing the recruitment rules for the officers in the State aided Universities which did not have specific rules providing for the essential qualifications to be possessed by a

person to be appointed as Controller of Examinations. The said memorandum, therefor, was issued to supplement the gap or lacuna in the statute. The said memorandum was, therefore, required to be read along with a statute which governs the essential qualifications for a candidate to be appointed as Controller of Examinations in State aided Universities. Admittedly, the said University is a State aided University. It is also well within the jurisdiction of the State Government to replace or modify such memorandum by issuing further memorandum or notification. The notification dated 24th February, 2021 was issued in terms of the amended provisions of the 1976 Act which as discussed hereinabove, empowered the State Government to fix the retirement age of the Controller of Examinations in State aided Universities like the said University. So, the Government was well within its jurisdiction to fix the essential qualification and the retirement age of a person holding the post of Controller of Examinations in a State aided University like the said University. The Government is also well within its jurisdiction to alter the essential qualifications and the retiral age in respect of State aided Universities. By issuing the notification dated 24th February, 2021, the Government has not deduced the retiral age of the petitioner but, has extended the same provided a candidate like the petitioner satisfied the essential qualifications. Since, the Government has the right to fix and

alter the essential qualifications from time to time, it cannot be said that the alteration of educational qualification by the notification dated 24th February, 2021 is without jurisdiction. The Government is also free to set the essential qualifications necessary for extending the retiral age of a Controller of Examinations like the petitioner. The notification dated 24th February 2021, provides that a person having a continuous teaching background/experience of minimum 10 years in any state aided University or college, shall be entitled to continue up to the age of 65 by enhancing the retirement age. The essential qualifications in the memorandum dated 28th February, 2011 was fixed by the Higher Education Department, in its University Branch of the Government of West Bengal. The notification dated 24th February, 2021 has been issued by the same department. Since, the State Government is within its power, authority and jurisdiction to alter conditions set in one memorandum by issuance of a subsequent memorandum of the notification, the modification as to the essential qualifications made through the notification 24th February, 2021 cannot also be faulted or said to be an invalid one to the extent it alters the essential qualifications set out in the memorandum dated 28th February, 2011. Admittedly, the petitioner does not satisfy the essential qualifications under the

notification dated 24th February, 2021 and as such, is not entitled to enhancement of retirement age as per the said notification.

- b)** Since, I have already held that the State Government is well within its jurisdiction to alter the essential qualifications specified in the memorandum dated 28th February, 2011, by issuance of a subsequent notification which in the instant case is dated 24th February, 2021 and the said notification having been issued complying the provisions of the 1976 Act as amended by the 2017 Amendment Act, I am unable to hold that the said notifications dated 24th February, 2021 is *ultra vires* to the Constitution or arbitrary.
- c)** So far as the argument advanced by the writ petitioner that the State respondents are trying to create a class within the class is concerned, I am also not able to accept the correctness of such submission. The normal age of retirement of the writ petitioner is 60 years. Any Controller of Examinations, in any state aided University like the petitioner is, therefor, entitled to work for 60 years. The Government had set a standard by altering removing the alternative qualifications provided in the memorandum dated 28th February, 2011 for giving the benefit of enhancement of the retiral age, this has been done for the purpose of smooth administration. To avail the enhancement, a person has to satisfy the criteria under the notification dated 24th February, 2021.

Those persons who held the qualifications specified in the notification dated 24th February, 2021, therefor, became entitled to the enhancement of the retiral age and those who did not possess such qualification remain entitled to work up to the age of 60 years. This cannot be construed to the creation of class within a class.

- d) There is no dispute as to the ratio laid down in the judgments cited by the petitioner as referred to hereinabove but, such ratio is not applicable in the facts of the instant case.
- e) The fixation of the retiral age or its enhancement is within the policy decision of the executive. The judicial intervention in respect of the policy decisions is very limited as the same amounts to transgressing into the jurisdiction of the executive. The policy matters are fixed after detailed discussion and application of mind and the Court does not also have the expertise to go into the same. In this instant case, i do not find any reason to interfere with the notification dated 24th February, 2021 to hold that the petitioner is entitled to the enhancement of retiral age.
- f) In the light of the discussion as aforesaid, the writ petition fails and is accordingly, dismissed.
- g) Since the petitioner has been allowed to work up to the age of 60 years which ended on 31st December, 2024, the petitioner is also not entitled to any notional benefit for the period post-31st December, 2024. Since his

age of superannuation is upheld to be 60 years on the writ petition being dismissed. As a consequence of the findings as hereinabove, this Court declines to interfere with the letter dated 18th June, 2024 by which the petitioner's age of superannuation had been fixed at 60 years without allowing him to work till 65 years. The dismissal of this writ petition will not disentitle the petitioner from receiving his regular retiral benefits for rendering his service up to 31st December, 2024. The University and the State Government is directed to pay the petitioner all his retiral benefits which has fallen due or accrued up to 31st December, 2024 as expeditiously as possible, but not beyond 8 weeks from date, if not already paid, failing which the petitioner shall be entitled to claim interest at applicable rate with effect from 1st January, 2025.

As the main writ petition is dismissed, all pending applications, stand disposed of without any further order.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance with the requisite formalities.

(Arindam Mukherjee, J.)