

Dr. R.S. Sohane vs The State Of Madhya Pradesh on 7 May, 2019

Equivalent citations: AIRONLINE 2019 SC 2327

Author: L. Nageswara Rao

Bench: M.R. Shah, L. Nageswara Rao

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 4675-4676 of 2019
(Arising out of SLP (C) Nos. 31968-31969 of 2017)

DR. R.S. SOHANE

.... Appellant(s)

Versus

THE STATE OF MADHYA PRADESH AND ORS.

... Respondent (s)

WITH

Civil Appeal Nos.4687-4688 of 2019
(Arising out of SLP (C) Nos.31973-31974 of 2017)

Civil Appeal Nos. 4685-4686 of 2019
(Arising out of SLP (C) Nos.31996-31997 of 2017)

Civil Appeal No. 4684 of 2019
(Arising out of SLP (C) No.31972 of 2017)

Civil Appeal No. 4683 of 2019
(Arising out of SLP (C) No.31965 of 2017)

Civil Appeal No. 4682 of 2019
(Arising out of SLP (C) No.31980 of 2017)

Civil Appeal No. 4681 of 2019
(Arising out of SLP (C) No.31971 of 2017)

Civil Appeal No. 4680 of 2019
(Arising out of SLP (C) No.31962 of 2017)

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Civil Appeal No. 4678 of 2019

(Arising out of SLP (C) No.31999 of 2017)

Date: 2019.05.08

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Reason:

Civil Appeal No. 4679 of 2019
(Arising out of SLP (C) No.32003 of 2017)

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Civil Appeal Nos.4689-4690 of 2019
(Arising out of SLP (C) Nos.4822-4823 of 2018)

Civil Appeal No. 4677 of 2019
(Arising out of SLP (C) No.32005 of 2017)

Civil Appeal No. 4766 of 2019
(Arising out of SLP (C) No.28545 of 2017)

Civil Appeal No. 4693 of 2019
(Arising out of SLP (C) No.15810 of 2018)

Civil Appeal No. 4691 of 2019
(Arising out of SLP (C) No.18106 of 2018)

Civil Appeal No. 4692 of 2019
(Arising out of SLP (C) No.18214 of 2018)

Civil Appeal No.4768 of 2019
(Arising out of SLP (C) No.12068 of 2019)
(Arising out of Diary No.41221 of 2018)

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

1. The issue that arises in the above Appeals is regarding the entitlement of Teachers working in private aided educational institutions in the State of Madhya Pradesh to the benefit of enhanced age of superannuation of 65 years. For the sake of convenience, we refer to the facts in SLP (C) Nos. 31968-31969 of 2017. The Appellant was appointed as Lecturer in Commerce (later designated as Assistant Professor) on 01.09.1979 pursuant to the recommendations of the Selection Committee constituted under the provisions of Statute No.28 (College Code 28) of the then Indore University (now Devi Ahilya Vishwavidyalay, Indore) to PMB, Gujarati College, Indore which is an affiliated College. The said College was receiving 100% grant-in-aid from the State Government.

2. On 02.09.1998, the Madhya Pradesh Shaskiya Sevak (Adhivarshiki Ayu) Second Amendment Act, 1998 amended the provisions of Madhya Pradesh Shaskiya Sevak (Adhivarshiki Ayu) Adhiniyam, 1967 enhancing the age of superannuation of the Government Teachers from 60 to 62 years. Teachers working in the private aided Colleges were also given the benefit of enhancement of the

age of superannuation from 60 to 62 years. On 01.04.2003, the Standing Committee recommended to the University Coordination Committee that it would be appropriate to keep the age of superannuation of Principals, Teachers and employees of private Colleges at par with their counterparts in Government Colleges. The said recommendations of the Standing Committee were approved by the Coordination Committee in its 72 nd meeting held on 07.01.2004.

3. A scheme for revision of pay of Teachers and equivalent cadres in Universities and Colleges was introduced on 31.12.2008 by the Ministry of Human Resources Development, Department of Higher Education, Government of India (2008 Scheme) following the revision of pay scales of the Central Government employees. The 2008 Scheme included enhancement of age of the superannuation of Teachers engaged in class room teaching from 62 to 65 years on the recommendations of the 6th Central Pay Commission. The Government of Madhya Pradesh accepted the recommendations contained in the 2008 Scheme on 16.04.2010. It was resolved that the benefit of the University Grants Commission ('UGC') pay scales including the recommendations for enhancement of the age of superannuation to 65 years shall be extended to Principals, Teachers, Librarians and Sports officers serving in Government Colleges and Universities.

4. The University Grants Commission Regulations on Minimum Qualifications for appointment of Teachers and other Academic staff in Universities and Colleges and measures for the maintenance of Standards in Higher Education, 2010 ('Regulations') were framed by the UGC in exercise of its powers conferred by Section 26 (1) (d) (e) of the University Grants Commission Act, 1956 ('UGC Act'). The Appendix to the said Regulations contains the conditions of service of Teachers including the age of superannuation which was fixed at 65 years. The Government of Madhya Pradesh amended the provisions of Madhya Pradesh Shaskiya Sevak (Adhivarshiki Ayu) Adhiniyam, 1967 on 02.05.2011 providing the benefit of enhanced age of superannuation to the Teachers working in Government Colleges from 62 to 65 years.

5. Withdrawal of the grant-in-aid for the purpose of payment of salaries to the Teachers working in 100 % Government aided Private Institutes was the subject matter of a dispute which was resolved by this Court in Civil Appeal No.71 of 2004. By an order dated 07.01.2014, this Court directed that the 6th Pay Commission scales should be extended to the Teachers, Lecturers and non- teaching staff working in the private aided educational institutes. This Court clarified that the provisions of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ke Vetano ka Sandaya) Sanshodan Adhiniyam, 2000 by which the grant-in-aid to the Teachers serving in 100% Government aided private institutes was sought to be withdrawn, would not be applicable to those who were appointed prior to the promulgation of the said amendment. Pursuant to a direction given by this Court in Contempt Petition (Civil) No.359 of 2014, the teaching staff in the private institutes in the State of Madhya Pradesh who were working on aided posts were given the UGC pay scales as per the recommendations of the 6th Central Pay Commission at par with the Government Teachers w.e.f. 01.01.2006.

6. Aggrieved by the order dated 06.07.2016 of the Management retiring the Appellant w.e.f. 31.08.2016 on completion of 62 years without being given the benefit of continuance till 65 years, the Appellant filed a Writ Petition in the High Court of Madhya Pradesh which was dismissed. The

Petitioner filed a Writ Appeal questioning the judgment of the learned Single Judge. During the course of hearing, the Division Bench referred the following two questions for consideration by a Larger Bench of the High Court:

I. Whether in view of the provisions of Statute No.28 of the College Code as amended and brought into force w.e.f. 07.01.2004 and whether in view of the provisions of the UGC Regulations, 2010, the Teachers working in the aided private institutes are also entitled to the benefit of having their age of superannuation fixed at 65 years as is applicable in the case of Government Teachers?

II. Whether the Coordinate Bench of this Court while deciding the Writ Appeal in the case of Dr. Arun Kumar has laid down the principle correctly?

7. A Full Bench of the High Court of Madhya Pradesh answered the reference as following:

(i) That Statute 28 of the College Code has not been amended with effect from 7.1.2004 as it was a recommendation, which has not been accepted either by the Executive Council of the respective Universities or by the State Government.

(ii) The UGC Regulations, 2010 are not applicable to the State Government per se but could be adopted by the State Government. The State Government has accepted the revised pay scales in respect of members of the teaching faculty in the Government Institutes alone. Therefore, the Teachers working in aided private institutes shall not be entitled to claim that their age of superannuation shall be 65 years.

8. Writ Appeal No.343 of 2016 filed by the Appellant was disposed of in terms of the judgment of the Full Bench. The Appellant filed a petition seeking review of the judgment of the Full Bench in Writ Appeal No. 950 of 2015 and the Division Bench in Writ Appeal No.343 of 2016, which was dismissed by the High Court. The Appellant has approached this Court assailing the legality of the said judgments of the High Court.

9. It is not necessary to refer to the facts of the other cases as they are similar. Mr. L.C.Patne, learned counsel appearing for the Appellant in SLP (C) No.31968-31969 of 2017 submitted that the impugned judgments of the High Court are on the basis of an erroneous interpretation of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (hereinafter referred to as the '1973 Adhiniyam'). The powers conferred on the Coordination Committee under the 1973 Adhiniyam have not been properly appreciated by the High Court. He relied upon the Resolution dated 07.01.2004 of the Standing Committee to argue that the Teachers working in the private Colleges in aided posts have to be treated at par with their counterparts in the Government Colleges. The learned counsel found fault with the conclusion of the Full Bench of the High Court that the Resolution dated 07.01.2004 to enhance the age of superannuation of the Teachers working in the aided private Colleges was only a recommendation. He took us through the 1973 Adhiniyam to show that the Coordination Committee consists of the Chancellor, the Vice-Chancellor and the Rectors of the Universities and several Senior Officers of the Government. Referring to Section 34 of the 1973

Adhiniyam, the learned counsel submitted that the first Statutes and Ordinances were to be drawn up by the Coordination Committee. We were also shown Section 34 (4) of the 1973 Adhiniyam which deals with the powers and the functions of the Coordination Committee which includes the power to approve or reject the Statutes and Ordinances submitted by the Executive Council of the University. Apart from the other functions of the Coordination Committee, he placed reliance on Section 36 of the 1973 Adhiniyam to submit that the Coordination Committee can pass a Statute not only on the proposal of the Executive Council of the University but it can do so on its own motion. He further submitted that the recommendation of the Standing Committee on 01.04.2003 was to keep the age of superannuation of private Teachers and employees of private Colleges at par with their counterparts working in the Government Colleges which was approved by the Coordination Committee at its 72nd meeting held on 07.01.2004. He argued that the said decision of the Coordination Committee is binding on the Government as well in view of the representation of several Senior Officers of the Government in the Coordination Committee. In view of the amendment of the College Code 28, he submitted that private College Teachers working in aided posts have a right to continue in service till they attain the age of superannuation of 65 years, by being treated at par with the Teachers working in the Government Colleges.

10. Mr. Sunil Fernandes, learned Additional Advocate General appearing for the State of Madhya Pradesh, stated that the judgment of the High Court does not deserve to be disturbed as it is in accordance with law. He argued that Section 36 of the 1973 Adhiniyam has to be read in such a manner that advice of the Executive Council has to be taken by the Coordination Committee before passing a Statute even if it is done on its own motion. The acceptance of the recommendations made by the UGC is the prerogative of the State Government and the State Government accepted the payment of revised pay scales and enhancement of the age of superannuation to 65 years only in respect of the Teachers working in Government institutes, according to the learned Additional Advocate General. He stated that the Teachers working in private aided institutes are not entitled to claim continuance in service till the age of superannuation of 65 years.

11. Mr. Gopal Sankarnarayanan, learned Senior Counsel appearing for the Management of a private institute, submitted that the salary to be paid to the Teachers for working beyond 62 years till the age of attaining 65 years has to be borne by the Government of Madhya Pradesh.

12. Section 36 of the 1973 Adhiniyam empowers the Coordination Committee to prepare the First Statutes of the Universities. Power is conferred on the Coordination Committee to amend or repeal any Statute and to draft a Statute proposed by the Executive Council of the University. The Coordination Committee is competent to frame Statutes on its own motion. In case a draft is proposed by the Executive Council, the Coordination Committee may approve such a draft and pass the Statute. If the Coordination Committee is not satisfied with the draft, it can reject or return the draft to the Executive Council for reconsideration. The recommendations made by the Executive Council shall, thereafter, be considered by the Coordination Committee which has the power to either approve or reject them. The Statute shall become effective from the date specified by the Coordination Committee after its approval.

13. Statute No.28 which is the College Code governs the service conditions of teaching staff. 'College' is defined in Clause I of the College Code which includes a College receiving grant from the State Government or Madhya Pradesh Uchcha Shiksha Anudan Ayog and Non-Grantee College not receiving any aid. The College Code shall apply to all Colleges admitted to the privileges of the University except the Colleges maintained or managed by the State Government or a Municipal Corporation or the University. Clause 26 of the College Code provides that a permanent Teacher shall be entitled to be in the service of the College until he/she completes the age of 60 years. The decision of the Coordination Committee dated 07.01.2004 was implemented by an amendment of the Clause 26 of Statute No.28 (College Code) which is as under:

“It was appropriate to maintain the age of superannuation of Principals, Teachers and employees of private Colleges at par with the age of superannuation of Principals, Teachers and employees of government Colleges.”

14. Section 36 of the 1973 Adhiniyam reads as:

36. Statutes How Made (1) The first Statutes of the University shall be prepared by the Co-ordination committee.

(2) The Co-ordination Committee may, from time to time make amend or repeal any Statutes by passing a Statute in the manner hereinafter appearing. (3) The Co-ordination committee may on receiving a proposal from the Executive Council of a University or on its own motion consider the draft of a Statute that is in the interest of either one or all the Universities; (4) Where a draft is proposed by the Executive Council, the Co-ordination Committee may approve of such draft and pass the Statute or reject it or return it to the Executive Council for reconsideration either in whole or in part together with any amendment, which the Coordination Committee may suggest.

(5) After any draft returned under sub-section (4) has been further considered by the Executive Council together with any amendment suggested by the Co- ordination Committee it shall again be presented to the Co-ordination Committee with a report of the Executive Council thereon and the Co-ordination Committee may approve or reject the Statute.

(6) The Co-ordination Committee shall not take into consideration nor the Executive Council shall propose the draft of any Statutes or of any amendment of a Statute or of the repeal of any Statute:

(a) Affecting the Statutes, power or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal; or

(b) affecting the conditions of admission of Colleges to privileges of the University, until the Academic Council has been given an opportunity of expressing an opinion upon the proposal and such opinion shall be forwarded by the Executive Council to the Coordination Committee along with any draft it may propose.

(7) Where the Co-ordination Committee approves the Statutes, they shall become effective from such date as the Co-ordination Committee may specify.”

15. There is no manner of doubt that the Coordination Committee has the power to prepare, amend and repeal the Statutes. It can do so on its own motion or on receiving a proposal from the Executive Council of a University. The procedure to be followed in case there is a proposal from the Executive Council of the University to frame Statutes is prescribed thereunder. A plain reading of Section 36 would make it clear that the views of the Executive Council have to be obtained by the Coordination Committee only in case the proposal has emanated from the Executive Council of a University for preparing a Statute. Such procedure is not applicable when the Coordination Committee prepares a Statute on its own motion. The High Court erroneously held that the amendment made to Statute 28 of the College Code was only a recommendation which was not accepted either by the Executive Council of the respective Universities or by the State Government.

16. Admittedly, the amendment to Statute 28 of the College Code on 07.01.2004 was not based on any proposal from the Executive Council of any University. It was made by the Coordination Committee on its own motion. The interpretation of Section 34 (4) of the 1973 Adhinyam by the High Court that the Coordination Committee can only suggest modifications of the said Statutes in force is not correct.

17. The High Court has gone wrong in observing that any proposal for amendment to a Statute made by the Coordination Committee has to be sent to the Executive Council of the University. The power to amend the Statute is conferred on the Coordination Committee and not on the Executive Council as has been understood by the High Court. A further error committed by the High Court was to hold that there is no recommendation of the Standing Committee on the basis of which a Resolution was passed on 07.01.2004. The High Court lost sight of the minutes of meeting of the Standing Committee dated 01.04.2003 by which recommendation was made to maintain the age of superannuation of Teachers working in aided private Colleges at par with those working in the Government Colleges.

18. We are not in agreement with the conclusion of the Full Bench of the High Court that the language of the Resolution dated 07.01.2004 is in the nature of a recommendation. It is clear from the facts narrated above that the matter pertaining to the age of superannuation of Teachers working in aided private Colleges was referred by the Coordination Committee to the Standing Committee.

On the basis of the recommendations of the Standing Committee, the Coordination Committee passed a Resolution on 07.01.2004 which was given effect to by an amendment to Clause 26 of the College Code. The second point answered by the Full Bench is that the UGC Regulations are not applicable to the State Government per se but are to be adopted by the State Government. The High Court was of the opinion that the Government had accepted the payment of revised pay scales only

in respect of the Teachers working in the Government Institutes. The Standing Committee and the Coordination Committee of the University is represented by the Senior Officers of the State Government and it is not for the State Government to contend that they will not extend the benefit of enhancement of the age of superannuation till 65 years to the Teachers working in the private aided institutes in spite of the provisions in the College Code.

19. For the aforementioned reasons, we set aside the judgment of the Full Bench of the High Court and the consequential judgments of the Division Bench of the High Court and direct the Government of Madhya Pradesh to pay salaries to the Teachers in aided private Colleges who are working and also those who have worked till they attained the age of superannuation of 65 years.

20. Accordingly, the Appeals are allowed.

.....J. [L. NAGESWARA RAO]J. [M.R. SHAH] New Delhi,
May 07, 2019.