

A

DR. JACOB THUDIPARA

v.

THE STATE OF MADHYA PRADESH & ORS.

(Civil Appeal No.2974 of 2022)

B

APRIL 21, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Service Law – Superannuation /Retirement – Benefit of enhanced age of superannuation – Entitlement to – Appellant was teacher in a 100% government aided private educational institution – He claimed entitlement to benefits of enhanced age of superannuation of 65 years (from 62 years) at par with his counterpart teachers serving in Government Colleges and Universities – Division Bench of High Court dismissed writ appeals filed by Appellant and others, relying upon an earlier decision of Full Bench of High Court wherein it was held that teachers serving in aided private educational institutions are not entitled to get benefit of enhanced age of superannuation of 65 years – However, subsequently the said Full Court decision of the High Court was set aside by Supreme Court in Dr. R.S. Sohane case – Further, in two subsequent decisions of High Court in Writ Appeals filed by similarly situated teachers, they were held entitled for superannuation with all consequential and monetary benefits including arrears of salaries and allowances of the intervening period between 62 and 65 years of age – On appeal, held: Submission of State that on principle of ‘no work no pay’ the teachers are not entitled to any monetary benefits for the intervening period between 62 and 65 years of age, cannot be accepted – Various orders passed by the High Court in similar facts and situation required to be considered – Appellant being a similarly situated teacher cannot be singled out – Appellant entitled to benefit of enhanced age of superannuation i.e., 65 years – He is entitled to all consequential and monetary benefits including arrears of salaries and etc., as if, he would have been continued up to the age of 65 years.

Allowing the appeal, the Court

HELD:1. Considering the various orders passed by the High Court in similar facts and situation and not accepting the

H

submission on behalf of the State that on the principle of ‘no work no pay’ the teachers are not entitled to any monetary benefits for the intervening period between 62 years and 65 years of age, this Court is of the opinion that appellant shall be entitled to all consequential and monetary benefits including the arrears of salaries and allowances for the intervening period, as if he would have been retired at the age of 65 years. The appellant being similarly situated teacher cannot be singled out. Even in the case of Writ Appeal No. 378/2018 and other allied writ appeals, it was submitted by the State that on the principle of ‘no work no pay’ such teachers are not entitled to any monetary benefits. However, the High Court vide detailed judgment and order has negated such a plea and defence and has observed that as the teachers were prevented from serving up to the age of 65 years though they were entitled to, as held by this Court in the case of Dr. R.S. Sohane, they cannot be denied the monetary benefits for the intervening period. It is reported that the said judgment and order passed by the Division Bench of the High Court has been implemented by the State after the Special Leave Petition against the said judgment and order has been dismissed by this Court. [Para 4][72-A-D]

2. The appellant is entitled to the benefit of enhanced age of superannuation i.e., 65 years. He shall be entitled to all the consequential and monetary benefits including arrears of salaries and etc., as if, he would have been continued up to the age of 65 years. [Para 5][72-F]

Dr. R.S. Sohane Vs. State of M.P. & others, (2019) 16 SCC 796 – relied on.

Case Law Reference

(2019) 16 SCC 796 relied on Para 2.1
CIVIL APPELLATE JURISDICTION : Civil Appeal No.2974 of 2022.

From the Judgment and Order dated 09.05.2017 of the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Appeal No. 667 of 2016.

H

A L. C. Patne, Raghav Pandey, Mrs. Rekha Pandey, Advs. for the Appellant.

Mrs. Mrinal Gopal Elker, Ms. Pratibha Yadav, Advs. for the Respondents.

The Judgment of the Court was delivered by

B **M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.05.2017 passed by the Division Bench of the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Appeal No. 667/2016, by which the High Court has dismissed the said appeal, original writ petitioner – appellant herein has preferred the present appeal.

2. The appellant herein was serving as a teacher. The dispute arose with respect to the age of superannuation/retirement, namely, whether, the appellant-teacher is entitled to get the benefits of enhanced age of superannuation of 65 years at par with his counterpart teachers serving in Government Colleges and Universities.

2.1 The appellant was serving in 100% government aided private educational institution. At the relevant time, the Full Bench of the High Court of Madhya Pradesh in the case of Dr. S.C. Jain Vs. State of Madhya Pradesh and others (W.A. No. 950/2015) took the view that the teachers serving in the aided private educational institutions are not entitled to get the benefit of enhanced age of superannuation of 65 years. The appellant and others filed Writ Appeals before the High Court which came to be dismissed, relying upon the case of Dr. S.C. Jain (supra). However, subsequently the decision of the Full Bench of the High Court in the case of Dr. S.C. Jain (supra) has been set aside by this Court vide judgment and order dated 07.05.2019 in C.A. No. 4675-4676 of 2019 in the case of **Dr. R.S. Sohane Vs. State of M.P. & others**; (2019) 16 SCC 796, and it is held that the teachers like the appellant are entitled to get the benefit of enhanced age of superannuation of 65 years. The parties to the aforesaid appeals filed M.A. Nos. 1838-1839 of 2019 with I.A. No. 119950 of 2019 before this Court claiming the payment of outstanding salaries for the intervening period. This Court disposed of the aforesaid interlocutory application and clarified that they can approach the High Court for redressal of their grievances with regard to the payment of outstanding salaries of intervening period. As observed hereinabove, the appeal preferred by the appellant before the High Court has been dismissed by the Division Bench of the High Court relying upon the

decision of Full Court in the case of Dr. S.C. Jain (supra), which has subsequently been set aside by this Court. Therefore, it is the case on behalf of the appellant that he shall be entitled to continue up to enhanced age of superannuation i.e., 65 years and shall be entitled to all the monetary benefits as if, he would have been continued up to the age of 65 years.

A

2.2 Learned counsel appearing on behalf of the appellant has heavily relied upon the subsequent decision of the Division Bench of the High Court dated 29.11.2019 passed in Writ Appeal No. 1857/2019 filed by a similarly situated teacher of a government aided private college by which the Division Bench of the High Court has condoned 1227 days of delay in filing intra-court appeal and has held him entitled for superannuation with all consequential and monetary benefits including arrears of salaries and allowances of the intervening period, by following the law laid down by this Court in the case of **Dr. R.S. Sohane** (supra).

B

C

2.3 Learned counsel appearing on behalf of the appellant has also relied upon the common judgment and order dated 07.09.2021 passed by the Division Bench of the High Court in Writ Appeal No. 378/2018 and other allied appeals, by which, after the review applications were allowed, the aforesaid writ appeals were restored to the file and the Division Bench of the High Court has directed the State to pay all the consequential and monetary benefits to all similarly situated teachers and assistant professors for the intervening period between 62 years and 65 years of age. It is submitted that all similarly situated teachers are therefore, paid all consequential and monetary benefits for the period between 62 years and 65 years of age, as if they would have been continued up to 65 years of age.

D

E

3. Mrs. Mrinal Gopal Elker, learned counsel appearing on behalf of the respondent- State, as such, is not in a position to dispute the aforesaid factual aspects. However, she has tried to distinguish the facts by submitting that when this Court passed an order earlier to pay the salaries to them after they had completed the age of 62 years, all of them were directed to be taken on duty by way of an interim order and actually they worked up to the age of 65 years. In the present case, the appellant did not work and therefore on the principle of 'no work no pay', he is not entitled to any monetary benefits for the intervening period, between 62 years and 65 years of age.

F

G

4. Having heard learned counsel appearing on behalf of the respective parties and considering the various orders passed by the High

H

- A Court, by which in similar facts and situation and not accepting the submission on behalf of the State that on the principle of ‘no work no pay’ the teachers are not entitled to any monetary benefits for the intervening period between 62 years and 65 years of age, we are of the opinion that appellant shall be entitled to all consequential and monetary benefits including the arrears of salaries and allowances for the
- B intervening period, as if he would have been retired at the age of 65 years. The appellant being similarly situated teacher cannot be singled out. Even in the case of Writ Appeal No. 378/2018 and other allied writ appeals, it was submitted by the State that on the principle of ‘no work no pay’ such teachers are not entitled to any monetary benefits. However,
- C the High Court vide detailed judgment and order has negated such a plea and defence and has observed that as the teachers were prevented from serving up to the age of 65 years though they were entitled to, as held by this Court in the case of **Dr. R.S. Sohane** (supra), they cannot be denied the monetary benefits for the intervening period. It is reported that the said judgment and order passed by the Division Bench of the
- D High Court has been implemented by the State after the Special Leave Petition against the said judgment and order has been dismissed by this Court.

5. In view of the above discussion and for the reasons stated above, the present appeal succeeds. The impugned judgment and order
- E passed by the Division Bench of the High Court in W.A. No. 667/2016 is hereby quashed and set aside, which was passed relying upon the decision of Full Bench of High Court in W.A. No. 950/2015, which has been subsequently set aside by this Court in the case of **Dr. R.S. Sohane** (supra). It is held that the appellant herein is entitled to the benefit of enhanced age of superannuation i.e., 65 years. He shall be entitled to all
- F the consequential and monetary benefits including arrears of salaries and etc., as if, he would have been continued up to the age of 65 years. The arrears etc., shall be paid to the appellant within a period of six weeks’ from today. However, considering the fact that there was a huge delay in preferring the appeal, which has been condoned by this Court,
- G the appellant shall not be entitled to any interest on the arrears for the period between 09.05.2017 till the filing of the present appeal.

6. The present appeal is accordingly allowed. In the facts and circumstances of the case, there shall be no order as to costs.