



GAHC010149242019

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4602/2019

NIRJAY KUMAR BRAHMA
S/O LT. UPENDRA NATH BRAHMA, PRINCIPAL GOSSAIGAON
COLLEGE, GOSSAIGAON, P.O. GOSSAIGAON, DIST.-KOKRAJHAR,
BTAD, ASSAM, PIN-783360

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM, HIGHER EDUCATION DEPTT. DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPTT. DISPUR
GUWAHATI-6

3:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE DIRECTOR OF EDUCATION
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
PIN-78336

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri G. Baishya, Advocate

Advocates for respondents : Shri K. Gogoi, SC, Higher Education Department,
Shri S. Bora, SC, BTC.

Date of hearing : 15.06.2023

Date of judgment : 15.06.2023

1. Heard Shri G. Baishya, learned counsel for the petitioner. Also heard Shri K. Gogoi, learned Standing Counsel, Higher Education Department whereas the BTC is represented by Shri S. Bora, learned Standing Counsel.

2. The petitioner is seeking the benefit of enhancement of the age of Professors which was notified by the UGC on 18.07.2018. The claim of the petitioner is also based on a Notification of the State Government dated 26.09.2012 by which the age of retirement of all Professors were enhanced to 65 years.

3. The petitioner who was in the substantive post of Associate Professor was appointed as the Principal of the Gossaigaon College vide an order dated 30.01.2012 after a selection, pursuant to which, he had joined the post on 31.01.2012. Since the College is under the BTC, the authorities of the BTC had also granted the approval to such appointment vide order dated 04.07.2012. The petitioner claims that pursuant to

a Notification dated 04.09.2018 issued by the Finance Department whereby the pay scales were revised, he was given the benefit of such revision.

4. Though the term of a Principal is for a period of 5 years, there is a provision for extension and in this case, though the tenure of the petitioner as Principal was to expire in January, 2017, his term was extended till his date of retirement which is on 31.05.2020.

5. The grievance of the petitioner is that while his date of retirement has been reckoned on his attaining the age of 60 years, he should have been given the benefit of extension of service as per the UGC Notification dated 18.07.2018 as well as the Notification of the State Government dated 26.09.2012.

6. Shri Baishya, the learned counsel for the petitioner by drawing the attention to the UGC Notification dated 18.07.2018 has submitted that College Principal and Professor (Professor's Grade) has been laid down in sub clause V under Clause 4.0 with regard to Direct Recruitment. The aforesaid provision is extracted herein below:

“V. College Principal and Professor (Professor's Grade)

A. Eligibility:

(i) Ph.D. degree

(ii) Professor/Associate Professor with a total service / experience of at least fifteen years of teaching / research in Universities, Colleges and other institutions of higher education.

(iii) A minimum of 10 research publication in peer-reviewed or UGC-listed journals.

(iv) A minimum of 110 Research Score as per Appendix II, Table 2

B. Tenure

i) A College Principal shall be appointed for a period of five years, extendable for another term of five years on the basis of performance assessment by a Committee appointed by the University, constituted as per these regulations.

ii) After the completion of his/her term as Principal, the incumbent shall join back his/ her parent organization with the designation as Professor and in the grade of the Professor."

7. By referring to the provision regarding the tenure, Shri Baishya, the learned counsel submits that it is made clear in the aforesaid notification that after completion of the term as Principal, the incumbent shall join back in the parent organization with the designation as Professor and in the Grade of Professor. He, accordingly, submits that since the retirement age of Professor has been enhanced, he should be given the benefit of such enhancement.

8. Shri Baishya, the learned counsel has also relied upon a Notification dated 24.06.2017 issued by the Gauhati University whereby the age of superannuation of the then Principal of the University Law College was extended up to the attainment of 65 years. He, accordingly, submits that the petitioner being at par, he is entitled to a similar treatment.

9. *Per contra*, Shri Gogoi, the learned Standing Counsel for the Higher Education Department has submitted that the writ petition has been instituted on misconceived notion. He submits that the interpretation based upon which the claim has been made is incorrect.

10. Referring to the UGC Notification dated 18.07.2018, he submits that the

provision regarding the position of a Principal on being reverted back on completion of the tenure is with regard to the substantive post which an incumbent was holding. He submits that the provisions makes it clear that on such completion of term, if the incumbent still has certain period of service left, he shall join back his parent organization as Professor only if the incumbent was holding the post of Professor in substantive capacity before being selected and appointed as Principal.

11. He submits that in the instant case, there is a basic difference inasmuch as, the substantive post which the petitioner was holding prior to his appointment as Principal of the College in question was Associate Professor.

12. With regard to the analogy sought to be drawn by the petitioner with the incumbent whose term was extended till 65 years in the University Law College, the learned Standing Counsel submits the apart from the fact that exercise of discretion cannot be claimed as a matter of right, the facts are distinguishable as the incumbent in the said case was holding the substantive post of Professor before his appointment as Principal and taking that into consideration, the notification was issued on 24.06.2017 by taking legal opinion.

13. Shri Gogoi, the learned Standing Counsel further submits that under similar circumstances, this Court in WP(C)/2845/2019 vide judgment and order dated 26.09.2019 had rejected a claim which was also affirmed by the Hon'ble Division Bench in WA 161/2020 vide order dated 01.11.2021.

14. The learned Standing Counsel also submits that enhancement of age is a policy decision which cannot be claimed as a matter of right and in this connection he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Dr. J. Vijayan & Ors. vs. The State of Kerala & Ors.** passed in Civil Appeal No. 5037/2022 dated

15. Shri S. Bora, the learned Standing Counsel, BTC adopts the arguments of Shri Gogoi, the learned Standing Counsel and submits that no case for interference is made out.

16. After hearing the learned counsel for the parties and on perusal of the materials on record, this Court has seen that the entire basis of the present claim is on the provision in the UGC Notification dated 18.07.2018 and also the decision of the State Government dated 26.09.2012.

17. The provision in the UGC Notification states that on completion of the term of an incumbent as Principal, he shall join back the parent organization as Professor. The decision of the State Government notifying on 26.09.2012 makes it clear that the benefit of enhancement of age to 65 years would be given to all Professors of Educational Institutions including Medical Colleges to 65 years of age.

18. The question therefore which arises for consideration is as to whether such benefit of enhancement of age would be available to all such persons who were selected as Principal and on completion of the tenure is reverted back to the substantive post. In the opinion of this Court, the enhancement of age has been confined only to professors. It is an admitted case that the substantive post which the petitioner was holding before his appointment as Principal was not of a Professor but of an Associate Professor. When the notification is clear on whom the benefit is to be accrued, extending such benefit to an incumbent who is not holding such post of Professor in the substantive capacity will not be justified at all.

19. As regards, the analogy cited by the petitioner with a situation that had arisen so



far as the University Law College, Gauhati University is concerned, the facts, as recorded above are distinguishable as the incumbent holding the post of Principal was holding the substantive post of Professor and therefore, would be entitled to the notification of the State Government dated 26.09.2012 by which the decision to enhance the age of superannuation was notified. This Court has also taken note of the views expressed by this Court in WP(C) 2845/2019 and also affirmed by the Hon'ble Division Bench in WA 161/2020 and is in humble agreement with such views.

20. Under the aforesaid facts and circumstances, this Court is of the opinion that no case for interference is made out and accordingly this writ petition is dismissed.

JUDGE

Comparing Assistant