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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 25th OF APRIL, 2022

WRIT PETITION No. 3743 of 2022

Between:-

DR. PRAKASH KUMAR DUBEY

.....PETITIONER

***SHRI VIBUDHENDRA MISHRA, LEARNED COUNSEL FOR THE
PETITIONER***

AND

**RANI DURGAWATI UNIVERSITY THROUGH ITS
REGISTRAR SARASWATI VIHAR PACHPEDI
JABALPUR M.P. (MADHYA PRADESH)**

.....RESPONDENTS

***SHRI ANVESH SHRIVASTAVA, LEARNED COUNSEL FOR
RESPONDENT/UNIVERSITY***

*This writ petition is taken up for hearing and the Court has passed the
following:*

ORDER

Petitioner has filed this writ petition claiming that he by virtue of his appointment as Scientific Officer is entitled to continue upto the age of 65 years, which is the age of superannuation prescribed for teaching faculty of the university.

Petitioner's contention is that he was appointed as Senior Technical Assistant in the Department of Physics for Diploma Course in Electronic and Instrumentation under the Scheme of University Grant Commission vide order dated 10.7.1984 in the pay scale of Rs.550-25-750-EB-30-900 and other admissible allowances. Thereafter, the petitioner was considered for promotion to the post of Scientific Officer for which the Screening Committee was constituted by the Vice Chancellor which met on 5.11.1992 and three of the members of the Screening Committee observed that they examined the application of the petitioner and considered the application according to the rules framed by the Committee appointed by the Executive Council of the University. The Committee found that the petitioner was possessing all the qualifications and experience necessary for the

promotion to the post of Scientific Officer and, therefore, the Committee recommended the name of the petitioner for promotion as Scientific Officer. The Committee further observed that no post of Senior Technical Assistant will be vacant as it is upgraded for Dr.Dubey.

In pursuance of the said recommendation, the petitioner was given appointment as Scientific Officer vide order Annexure R/4 dated 8.2.1993 enclosed by the respondent alongwith its return. Since the petitioner is discharging the work of Scientific Officer, therefore, in terms of the provisions as contained in IX Plan Guidelines For University Science Instrumentation Centres (for short 'USICs') issued by the University Grant Commission, New Delhi in 1998 (Annexure P/5), it is provided that the age of retirement of the certain technical staff under University Science Instrumentation Centres (USICs) and their status will be the same as for the teachers of the university. The technical staff and their status is prescribed in Clause (b) which speaks that the technical staff of the USICs will consist of technical officers and technicians in the grades as specified in these guidelines. The technical officers will have the status of non-vacation academic staff and technicians will be non-teaching staff of the University. Since the petitioner is a technical officer, therefore, his status will be that of academic staff and on this ground also, the petitioner is entitled to continue upto the age of 65 years, which is the age of superannuation for the teaching staff.

Shri Vibudhendra Mishra, learned counsel for the petitioner places reliance on Clause 8 of IX Plan Guidelines For USICs dealing with technical officers reads thus:-

Technical Officers

The Technical Officers of the USIC shall be entitled to the same benefits including Provident Fund, Gratuity, Pension, Medical Benefits, Leave Travel Concession, Age of Superannuation, Superannuation Benefits, Facility To Attend Conferences etc and Periodic Revision of Pay Scales made available to the teaching staff of the university. Their pay scales shall be as follows:-

Designation	Revised Pay Scales
1.Prof/Technical Officer (III)	4500-150-5700-200-7300
2.Reader/Technical Officer (II)	3700-125-4950-150-5700
3.Lecturer/Technical Officer (I)	3700-125-4950-150-5700
(Senior Scale)	
4.Lecturer/Technical/Officer (I)	3000-100-3500-125-5000
(Senior Scale)	
5.Lecturer/Technical/Officer (I)	2200-75-2800-100-4000

Reading the aforesaid clause, it is submitted by learned counsel for the petitioner that the petitioner is to be treated as a teaching staff and, therefore, the impugned order dated 10.11.2021 directing the petitioner to superannuate on 31.3.2022 on attaining the age of 62 years is liable to be quashed.

Shri Anvesh Shrivastava, learned counsel for the respondent/University in his turn submits that the petitioner is not a teaching faculty. In Statue 31, there is no provision for appointment of teaching faculty. The petitioner is infact a non-teaching class-III post holder and this aspect has been dealt with by a Coordinate Bench of this Court in **Writ Petition No.1348/2013 (Dr.Rameshwar Rawat versus Chancellor, Rani Durgawati Vishwavidyalaya & Others)** decided on **30.10.2015**. The aforesaid order rejecting the claim of a similarly situated person, who was appointed as Senior Technical Assistant in Chemistry Department, has been affirmed by the Division Bench of this Court in Writ Appeal No.03/2016 vide order dated 2.12.2019. Being dissatisfied with the aforesaid order, the petitioner therein had preferred Petition(s) For Special Leave To Appeal (C) No(s). 6365/2020, which was dismissed by Three Judges Bench of the Supreme Court vide order dated 9.6.2020. It is submitted that this order has now attained finality and it is now settled principle of law that the Senior Technical Assistant or the Scientific Officer being a holder of Class-III post is not entitled to claim benefits, which are meant for teaching faculty of the University.

Shri Vibudhendra Mishra, learned counsel for the petitioner places reliance on the Full Bench Decision of the Patna High Court in **Kamlakant Roy & Others & Upendra Nath Mishra & Others versus State of Bihar & Others (1984)**

32 BLJR 495 (IndiaLawLib/900286) to contend that the aforesaid issue was dealt with by the Full Bench of the Patna High Court wherein the Patna High Court has taken into consideration the definition of Teacher, which is also provided in Section 4(XX) of the Madhya Pradesh Vishwavidyalaya, Adhiniyam, 1973. It is also submitted that the Teacher means a person as may be appointed for imparting instruction or conducting research with the approval of the academic Council of University or any College or Institution maintained or recognized by the University.

It is submitted by learned counsel for the petitioner that the analogous provision was dealt with by the Full Bench of Patna High Court in **Kamlakant Roy & Others & Upendra Nath Mishra & Others versus State of Bihar & Others (supra)** wherein as per Clause 25 of the Statute framed under the Indian Council of Agricultural Research, University Grant Commission and the Agricultural Universities' Pride of Place, the 'teacher' is defined to mean a person appointed or recognized by the University for the purpose of imparting instruction or conducting and guiding research or extension education and includes a person, who may be declared by the Statute to be a Teacher. He submits that the learned Single Judge of this Court in **Writ Petition No.1348/2013 (Dr.Rameshwar Rawat versus Chancellor, Rani Durgawati Vishwavidyalaya & Others)** decided on 30.10.2015 has not taken into consideration the definition of Teacher and, therefore, that judgment is *per incuriam*.

At this stage, Shri Vibudhendra Mishra, learned counsel for the petitioner takes out a judgment of the Supreme Court in **Maharashtra University Of Health Sciences & Others versus Satchikitsa Prasarak Mandal & Others (2010) 3 SCC 786** from his pocket and submits that this judgment was lost in the bunch of the papers and, therefore, he could not produce it while putting forth his submission alongwith the judgment of the Patna High Court.

During the course of the hearing, this Court asked Shri Vibudhendra Mishra to point out from record that where is the provision in the Statute providing for promotion of the Senior Technical Assistant to the post of Scientific Officer? He was also asked to place on record the rules which have been referred to in Annexure P/2 by the Screening Committee appointed by the Vice Chancellor, which met on 5.11.1992, according to which the Screening Committee found that

the petitioner was possessing all the qualifications and experiences necessary for promotion to the post of Scientific Officer. Shri Vibudhendra Mishra is also requested to place on record that the post of Scientific Officer is a promotional post in the Recruitment Rules of the University and the feeder cadre to fill such post of Scientific Officer is that of the Senior Technical Assistant. Shri Vibudhendra Mishra is also requested to show from record that he has placed lot of emphasis on IXth Plan Guidelines For University Science Instrumentation Centres but whether these guidelines were applicable retrospectively when case of the petitioner was considered by the so called Screening Committee on 5.11.1992.

This Court is sad to observe that this Court has drawn a complete blank on these aspects enumerated above. There is no material on record in the form of rules providing for promotion of Senior Technical Assistant to the post of Scientific Officer though Shri Anvesh Shrivastava, learned counsel for the respondent/University submits that reading the judgment of the Coordinate Bench of this Court in **Writ Petition No.1348/2013 (Dr.Rameshwar Rawat versus Chancellor, Rani Durgawati Vishwavidyalaya & Others)** decided on **30.10.2015** would make it clear that it was not promotion but the nomenclature of the post of Senior Technical Assistant was changed. Thus, it is apparent that there is no material on record to show that the petitioner was entitled to any promotion on the post of Scientific Officer. There is no material on record to show that the petitioner was ever engaged and appointed for the purpose of University Science Instrumentation Centres so as to take advantage of IX Plan Guidelines as contained in Annexure P/5.

The petitioner has though placed reliance on an advertisement contained in Annexure R/7 to show that Rani Durgawati Vishwavidyalaya, Jabalpur on 28.10.2005 had invited applications for the post of Technical Assistant (Physics/USICs) in the Pay Scale of Rs.6500-10500 but is not in a position to show that the aforesaid Scheme of USICs, which came in the year 1998, was considered by the University in the year 1992 when the petitioner was appointed as Scientific Officer.

The fact of the matter is that IX Plan Guidelines For University Science

Instrumentation Centres, 1998 (Annexure P/5) categorically provides that there will be procedure for selection of technicians and it also provides in Clause 7(3) that all selections must be made through proper trade test.

In the present case, the petitioner has not been able to place any material on record to show that his selection was made through proper trade test so as to place him in the same category of Technician as is envisaged in the scheme as contained in Annexure P/5. The petitioner has also placed reliance on Clause 8(2) dealing with Technical Staff but it is also of no avail to the petitioner inasmuch as it provides for the pay scales and the corresponding allowances for the technical staff appointed in the USICs and then it also provides that the Technical Officers of the USICs shall be entitled to the same benefit including the Provident Fund, Gratuity, Pension, Medical Benefits, Leave Travel Concession, Age of Superannuation, Superannuation Benefits, Facility to attend Conferences etc and the Periodic Revision of Pay Scales made available to the Teaching Staff of the University but to take advantage of such scheme, the petitioner is required to show that he was appointed as Technical Officer of USICs. In absence of any material to show that the petitioner was a Technical Officer under USICs, the reliance placed by learned counsel for the petitioner is wholly misplaced and cannot be given the seal of approval.

As far as the Full Bench Judgment of the Patna High Court in **Kamlakant Roy & Others & Upendra Nath Mishra & Others versus State of Bihar & Others (supra)** is concerned, the definition of Teacher is slightly different than what has been provided by the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. At the cost of repetition, it would be appropriate to reproduce the definition of 'Teacher' as provided under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 and that which is provided under Clause 25 of the relevant Statute, which was under consideration before the Patna High Court.

"(25) 'Teacher' means a person appointed or recognized by University for the purpose of imparting instruction or conducting and guiding researching or extension education and includes a person who may be declared by the Statutes to be a teacher."

Section 4(XX) of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 reads as under:-

"4(XX). 'Teachers of the University' means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instructions or conducting research, with the approval of the Academic Council in the University or any College or Institution maintained or recognised by the University."

Thus, on comparison of the two, it is evident that the Patna High Court in **Kamlakant Roy & Others & Upendra Nath Mishra & Others versus State of Bihar & Others (supra)** has taken a definition into consideration which categorically provides that the Teacher means a person appointed or recognized by University for the purpose of imparting instruction or conducting and guiding research or extension education and includes a person, who may be declared by the Statute to be a Teacher.

In the present case, the petitioner has not brought on record any material to show that the post of Senior Technical Assistant or that of Scientific Officer has been declared by the Statute to be a post of Teacher and, therefore, the judgment of the Full Bench of Patna High Court in **Kamlakant Roy & Others & Upendra Nath Mishra & Others versus State of Bihar & Others (supra)** on the face of it will not be of any help to the petitioner inasmuch as the facts of that case are different. In that case, the petitioners before the Patna High Court were included in the definition of Teacher by the relevant Statute as has been discussed in the impugned judgment. In the present case, since the post of Senior Technical Assistant or Scientific Officer has not been included in the Statute to mean a Teacher, no extension can be given to the definition just to accommodate the petitioner without there being any material and *dehors* the Statute.

As far as the judgment of the Supreme Court in **Maharashtra University Of Health Sciences & Others versus Satchikitsa Prasarak Mandal & Others (supra)** is concerned, it is totally on a different footing. The facts of that case were that one of the respondents was serving the College for about three and half years when she was suddenly informed on 6.8.2005 that the College Authority accepted her resignation. She was shocked as she had never resigned and had

several liabilities to take care of. She had no other source of income.

Section 53 of the Maharashtra University of Health Sciences Act, 1998 provides for a Committee to be known as Grievance Committee to deal with the grievances of Teachers, the other employees of the University, Colleges, Institutions and Recognized Institutions to hear and settle grievances as far as may be practicable within six months but the stand of the appellant/University was that the petitioner being not an Approved Teacher will not fall within the definition of Teacher as defined in Section 2(35), which only deals with full time approved Demonstrators, Tutors, Assistant Lecturers, Lecturers, Readers, Associate Professors, Professors and other persons teaching or giving instruction on full time basis in affiliated Colleges or Approved Institution in the University.

The Supreme Court while dealing with the aforesaid definition as provided in Section 2(35) of the the Maharashtra University of Health Sciences Act, 1998 has held that the petitioner, one was though not an approved teacher, will still be a Teacher within the meaning of Section 2(35) of the Maharashtra University of Health Sciences Act, 1998 so as to raise his/her grievance before the Grievance Committee as provided under Section 53 of the Maharashtra University of Health Sciences Act, 1998 applying the principle of "*ejusdem generis*" but in the present case, the facts are totally different. The ratio of judgment of **Maharashtra University Of Health Sciences & Others versus Satchikitsa Prasarak Mandal & Others (supra)** is not applicable to the facts and circumstances of the present case. It is evident that Section 2(35) of the Maharashtra University of Health Sciences Act, 1998 after providing for full time approved Demonstrators, Tutors, Assistant Lecturers, Lecturers, Readers, Associate Professors, Professors and other persons teaching or giving instruction on full time basis in affiliated Colleges has embraced other teaching or giving instructions to the people to be included within the ambit of a Teacher. The Supreme Court in **Maharashtra University Of Health Sciences & Others versus Satchikitsa Prasarak Mandal & Others (supra)** has held that the petitioner is amenable to the Grievance Committee and, therefore, the judgment of **Maharashtra University Of Health Sciences & Others versus Satchikitsa Prasarak Mandal & Others (supra)** is also not applicable to the facts and circumstances of the present

case.

This brings us to the moot question that whether the petitioner, who is an appointee on a Class-III post and admittedly, who was never appointed under the Scheme of University Science Instrumentation Centre, 1998 can take advantage of the enhanced age of superannuation without inclusion of the post of Senior Technical Assistant/Scientific Officer in the definition of 'Teacher' as is provided in Section 4(XX) of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. In the definition of 'Teacher' provided under Section 4(XX) of the Madhya Pradesh Vishwavidyalaya, Adhiniyam, 1973, it is evident that the Teacher of the University means the Professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction or conducting research with the approval of the Academic Council of the University.

The meeting of the Screening Committee makes a mention of the rules framed by the Executive Council though the petitioner has not produced those rules but there is no mention of the approval of the Academic Council of the University to include the posts of Senior Technical Assistant or Scientific Officer in the cadre of Teacher or to equate them with the Teacher as defined in Section 4(XX) of the Madhya Pradesh Vishwavidyalaya, Adhiniyam, 1973.

In view of the aforesaid discussion and keeping in mind the pronouncement of law as laid down by a Coordinate Bench of this Court in **Writ Petition No.1348/2013 (Dr.Rameshwar Rawat versus Chancellor, Rani Durgawati Vishwavidyalaya & Others) decided on 30.10.2015** as upheld by the Division Bench of this Court, I am of the opinion that the petitioner, being not a Teacher within the meaning of Section 4(XX) of the Madhya Pradesh Vishwavidyalaya, Adhiniyam, 1973 or a Technical Officer under University Science Instrumentation Centres (USICs), is not entitled to claim the age of superannuation meant for a Teacher.

Accordingly, this writ petition deserves to and is hereby dismissed.

(VIVEK AGARWAL)
JUDGE

