

(2003) 11 DEL CK 0060
In the Delhi High Court
Case No : Civil Writ No. 6107 of 2000

Dr. K.S. Jawatkar

APPELLANT

Vs

Jawaharlal Nehru University and Others

RESPONDENT

Date of Decision : 20-11-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 19(1), 21, 226
Jawaharlal Nehru Universities Act, 1966 — Section 5(6)

Citation : (2003) 8 AD 349 : (2003) 108 DLT 607 : (2004) 3 SLJ 460

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Party in perso, for the Appellant; S.C. Dhanda, for the Respondent

Judgement

Vikramajit Sen, J.—The Petitioner has prayed that this Court should

"(a) Issue an appropriate Writ, or Order or direction, including a Writ of certiorari, to quash recommendation of the Selection Committee for appointment of respondent No. 10 to Professor A.Appadorai Chair in International Relations without interview as ultra virus the JNU Act, 1966, its Statutes and the petitioner's Fundamental Rights under Article 14, 16(1), 19(1)(g) and 21 of the Constitution of India;

(b) Issue Mandamus directing the respondent University & its Vice-Chancellor to reconstitute the Selection Committee with due regard to specialisation i.e. International Relations in accordance with relevant Statute and reasoning provided for amending the said Statute having regard to the recommendation of the Gajendragadkar Committee on Governance of Universities and Colleges;

(c) Direct the respondent University and its Vice-Chancellor to comply with Academic Council Resolution No. 5-AC (b) Dated 12.2.1993 for rotating Appadorai Chair among all (seven) Centres of the School (SIS);

(d) Quash Office Order No. 630 Dated 15.5.2000 (sic. 15.6.2000) (Annex. P-9) and direct the respondent University to continue services of the petitioner until

he attains the age of 65 years as per Academic Ordinance No. 1, Clause 6.3.;

(e) Direct the respondents 1 and 2 to produce the original file relating to interview Dated 16th August, 1995 for Professor Appadorai Chair in International Relations, including attendance sheet of candidates appeared for interview and bio-data of Selection Committee Members as well as candidates in this Hon"ble Court;

(f) pass any such further and other Orders as this Hon"ble Court may deem fit and proper on the facts and in the circumstances of the case; and

(g) Award costs to the petitioner."

2. The Petitioner was in the employment of the Respondents as an Associate Professor at the relevant time. The Respondent issued an Office Order No. 506 dated May 22, 1998 containing the Petitioner's name as well as six Professors who were to superannuate on their attaining the age of 60 years, conveying their decision that these persons were to be re-employed for a period of three years in the first instance. Ordinance 6 of the Respondent University envisages, inter alia, that the person concerned would superannuate on the end of the month in which he had attained the age of 60 years which presently stands increased to 62 years as per Circular No. Aca.I/U/2(115) dated October 23, 1998 (infra). It reads thus.

6. Age of Retirement

6.1 Subject to the provisions of Statute 30, every teacher in the service of the University shall retire from service on the afternoon of the last date of the month in which he/she attains the age of 60 years.

6.2 If the Executive Council is satisfied that such an appointment is in the interest of the University, it may on the recommendation of the Vice-Chancellor, re-employ a teacher on his superannuation against the post held by him if he is in sound health and is able to perform his duties satisfactorily, on such terms and conditions as the Executive council may specify, for a period not exceeding three years in the first instance.

6.3 Where the date of superannuation, or the expiry of the term of re-employment of a teacher falls due during the course of a semester the Executive Council may, on the recommendation of the Vice-Chancellor, allow the teacher to continue in service on re-employment basis till the end of the academic year.

Provided that such re-employment shall not be granted to a teacher beyond the date on which he attains the age of 65 years.

6.4 A re-employed teacher shall not be eligible to be appointed as Chairperson of a Centre or Dean of a School or for any other administrative assignment such as Dean of Students, Chief Proctor, Provost, etc.

In the Petitioner's case the relevant date was 31st August, 1998 and hence the Office Order No. 506 stated that the re-employment would take effect from

1.9.1998.

3. The following circular has been issued thereafter-

"JAWAHARLAL NEHRU UNIVERSITY

ACADEMIC BRANCH - I

No. Aca.I/U/2(115) October 23, 1998 CIRCULAR

The Director, Ministry of Human Resource Development vide his letter No. F. 1-22/97-U. 1 dated 27.7.98 has forwarded a copy of the Government of India letter regarding Revision of pay scales of teachers in Central Universities following the revision of pay scales of Central Government employees on the recommendations of the Fifth Central Pay Commission. In terms of Para 1 (vi) of the aforesaid letter the Vice-Chancellor has approved the age of superannuation of teachers as 62 years (instead of 60 years) w.e.f. 27.7.98.

(K.K.NANGIA)

Assistant Registrar (Acad.)

All Deans of Schools----- with the request to please All Chairpersons of Centres bring the contents of

FO/DFO (IA)/DFO (Salary) this circular to the notice JNUTA of the faculty members of your School/Centres."

4. In his earlier Civil Writ Petition No. 2044/1992 the Petitioner has prayed that this Court should

"(a) Issue a Writ in the nature of MANDAMUS or any other appropriate writ, order or direction, directing respondents to release the petitioner's revised salary and allowances, including arrears with interest accrued thereon in accordance with the revised scale of pay w.e.f. 1-1-1986 as granted to Assistant Professors of the University (JNU);

(b) Issue a Writ of MANDAMUS or any other appropriate Writ, order or direction, directing respondents to promote the petitioner w.e.f. 1-1-1983 with all consequential benefits of service, including seniority;

(c) Issue an appropriate Writ, order or direction, directing respondents to give the benefits of the "Merit Promotion Scheme" (MPS) to the Petitioner;

(d) Issue an appropriate Writ or order or direction, including Writ of CERTIORARI quashing the impugned List of Faculty Members of the Jawaharlal Nehru University as on 1-10-1989 published in a document Jawaharlal Nehru University:20th Anniversary (Annexure P9);

(e) pass any such further and other Orders as it may deem fit and proper on the facts and in the circumstances hereof; and

(f) award costs to the petitioner."

Rule has been issued by the Division Bench on July 15, 1992, and in CM No. 3945/1992 it has been ordered that the Petitioner be paid salary at the revised scale of pay under the Career Advancement Scheme along with arrears of pay. The question of payment of interest was to be decided at the time of the disposal of the writ petition, which is still pending.

5. The Petitioner had previously filed Civil Writ Petition No. 3502/1995 challenging the appointment of some other person as Professor A. Appadorai Chair in International Relations, containing the following prayers.

"(a) Issue an appropriate Writ, or order or direction, including Writ of Certiorari, to quash recommendations of the Selection Committee appointed by the Jawaharlal Nehru University (JNU) dated 16th August, 1995 for appointment of respondent No. 10 without interview to Professor A. Appadorai Chair in International Relations in School of International Studies, JNU, New Delhi, as ultravires the JNU Act, its Statutes and the petitioner's Fundamental Rights under Article 14, 16, 19(1)(g) and 21 of the Constitution;

(b) Issue Mandamus directing the respondent-University and its Vice-Chancellor to reconstitute the Selection Committee with due regard to specialisation i.e. International Relations strictly in accordance with relevant Statute for Professor A. Appadorai Chair in International Relations and consider the case of the petitioner for the said post;

(c) Direct the respondents 1 and 2 to produce the original file relating to interview dated 16th August, 1995 for Professor Appadorai Chair in International Relations, including attendance sheet of candidates appeared for interview and bio-data of Selection Committee Members as well as of candidates, in this Hon"ble Court;

(d) Pass any such further and other orders as this Hon"ble Court may deem fit and proper on the facts and in the circumstances of the case; and

(e) Award costs to the petitioner."

This Petition was disposed of by the Division Bench of this Court by their judgment dated 11.11.97, inter alia, in the following terms:

"In view of the fact that the said period of appointment of respondent No. 10 has come to an end, the questions raised by the petitioner being purely academic, we do not propose to decide the same in this petition. It will be open for the petitioner, in case he will feel aggrieved at a later date against the fresh selections to (be) made by the University to challenge the same in accordance with law on all available grounds.

As of today even if we were to allow the petition no orders could be passed for the appointment of the petitioner since the only order which could be passed would be to quash the appointment of respondent No. 10 and direct the

respondent University to hold fresh selections. Thus, the question being purely academic now, we are not deciding the same in this petition with liberty reserved to the petitioner aforementioned.

The writ petition is disposed of as infructuous."

It is not in dispute that no person has been appointed to the Professor A.Appadoria Chair in International Relations.

6. During the present proceedings, the following Orders were passed on 28.5.2002.

"After hearing the parties at length, in view of the circumstances explained, it would be in the interest of justice that the petitioner, who has superannuated after attaining the age of 62 years on 31.8.2000, has not been given re-employment as has been done in the other cases after 65 years. Mr. Dhanda has contended that petitioner was sent two letters dated 11.2.2000 and 18.4.2000 and petitioner has not replied to the said letters and, Therefore, assessment could not be done by the respondent for giving re-employment.

On the other hand, petitioner has contended that reply was not sent as the respondent has re-employed the petitioner vide their office order No. 506 dated 22.3.1998. Mr. Dhanda says that the office order dated 22.5.1998 was modified by a subsequent office order dated 15.6.2000.

Without going into the rights and contentions of both the parties, I direct the respondents to consider the response of the petitioner in relation to the letters written by respondents dated 11.2.2000 and 18.4.2000 and said response will be given by the petitioner within one week. Same shall be considered by the Vice-Chancellor of the respondent at the first instance as ultimately if re-employment is given, the same has to be on the recommendation of Vice-Chancellor by the Executive Council of respondent-University. The Vice-Chancellor will dispose of the representation of the petitioner within four weeks.

The decision of the Vice-Chancellor will be filed on the record of this case before the next date of hearing.

Renotify on 18.7.2002."

(underlining added)

Pursuant to these Orders, a Committee had been constituted comprising of five persons which made the following recommendation:

"Minutes of the meeting of the Committee held on 19th September 2002 at 3.00 pm in the Office of the Vice-Chancellor to consider the case of Dr. K.S. Jawatkar of SIS in compliance with the directive of the Hon"ble Delhi High Court.

***** PRESENT:

1. Professor G.K.Chadha, Vice-Chancellor

2. Professor Balveer Arora, Rector-I
3. Professor I.N. Mukherjee, Dean, SIS
4. Professor M.S.Rajan, Professor Emeritus, JNU
5. Shri S.K. Singh, former Foreign Secretary

The document pertaining to the self-assessment report of Dr. K.S. Jawatkar along with all enclosures and material submitted by him (including his latest submissions) in support of his claim for re-employment were placed before the Committee.

The Committee studied all the material submitted to it, and had an indepth discussion on the case of re-employment. It was of the unanimous view that his record of research, publications as also the other aspects of his performance at the University did not entitle him to be recommended for re-employment under the relevant rules.

(G.K.Chadha) (Balveer Arora) (I.N. Mukherjee) (M.S. Rajan) (S.K.Singh)"

The Petitioner's allegation is that he was earlier verbally told that only three persons had attended this meeting but I cannot give credence to this statement or to the Petitioner's objection or submission that the Committee did not meet.

7. In essence the question that has to be decided is whether the Petitioner has a vested and enforceable right to be re-employed till his attaining the age of 65 years. Secondly, so far as his claim to appointment to the Professor A.Appadorai Chair in International Relations, since the Petitioner has already attained the age of 65 years, this question diminishes in significance. It also was the subject matter of Civil Writ No. 3502/1995. I have perused the Act and the Statutes of the University but find that Section 5(6) or Statute 4 or any other provision does not mandate that the Chair must be filled up continuously without any interruption. If the Respondents are of the view that no person is suitable for appointment, the Chair can be kept vacant. Furthermore no Teacher or Professor has any right to appointment to the Chair in the normal channel of promotion etc. Thirdly, it is also in issue whether the Petitioner had been re-employed with effect from 1st September, 1998, or that he continued in regular employment till he had attained the age of 62 years.

8. Regulation 16 of the Respondent University reads as follows:

"16. NORMS GOVERNING RE-EMPLOYMENT OF TEACHERS AFTER THE DATE OF SUPERANNUATION

Subject to the provision of Statute 30, every teacher confirmed in the service of the University shall continue in such service until he/she attains the age of 60 years.

Provided the Executive Council may on the recommendations of the Vice-Chancellor make ex-cadre appointment in respect of a teacher of the University

in sound health, who has attained the age of 60 years and is able to perform his duties satisfactorily, on such terms and conditions as the Executive Council may specify for a period of not exceeding three years in the first instance;

Provided further that no further contract or extension shall be granted to a teacher who has attained the age of 65 years.

The Executive Council resolved to approve the following procedure/norms for re-employment of faculty members;

The Vice-Chancellor shall make his recommendations to the Executive council after consulting such senior teachers of the Centre and School concerned and other senior faculty members, as he may deem necessary, provided the faculty member to be reemployed-

i) is academically active;

ii) is in sound health;

iii) will be able to perform his/her teaching and research duties satisfactorily."

9. On a plain reading what emerges is that a Teacher such as the Petitioner has the right to continue in service till he attains the age of 62 years. Thereafter, if the Vice-Chancellor recommends the teacher's ex-cadre appointment to the Executive Council of the University, he may continue as per the contract of extension until he attains the age of 65 years. The Vice-Chancellor must carry out a consultation with Senior Teachers of the Centre and School concerned and other Senior Faculty Members of the University. Re-employment would be offered only if the Teacher is academically alive, in sound health, and able to perform his teaching and research duties satisfactorily. Nothing in Regulation 16 even vaguely or obliquely appears to indicate that re-employment can be claimed or expected as of right. Where the language is unclear or dubious or capable of multiple meanings the aspects concerning interpretative methods such as beneficial legislation may get attracted. Since this is not so in the present case, I need not go into the methods of statutory interpretation. The following observations in State Bank of Bikaner and Jaipur and others Vs. Jag Mohan Lal, are significantly apposite-

"9. What do we have here in this case to distinguish those principles or not to apply those principles? In our opinion, there is none. In the scheme provided herein the respondent or any other officer of the Bank has a legitimate right to remain in service till he attains the age of superannuation. But beyond that age, he has no such right unless his Service is extended by the Bank. The further rights of parties are regulated by the proviso to Regn. 9(1). It reads:

"Provided that the competent authority may at its discretion, extend the period of service of an officer who has attained the age of fifty eight years or has completed thirty years" service as the case may be, should such extension be deemed desirable in the interest of the Bank.

10. Look at the language of proviso and the purpose underlying. The Bank may in its discretion extend the service of any officer. On what ground? For what purpose? That has been also made clear in the proviso itself. It states "should such extension be deemed desirable in the interest of the Bank". The sole purpose of giving extension of service is, Therefore, to promote the interest of the Bank and not to confer any benefit on the retiring officers. Incidentally the extension may benefit retired officials. But it is incorrect to state that it is a conferment of benefit of privilege on officers. The officers upon attaining the age of superannuation or putting the required number of years of service do not earn that benefit or privilege. The High Court has completely misunderstood the nature of right and purpose of the proviso. The proviso preserves discretion to the Bank. It is a discretion available with every employer, every management, State or otherwise. If the Bank considers that the service of an officer is desirable in the interest of the Bank, it may allow him to continue in service beyond the age of superannuation. If the Bank considers that the service of an officer is not required beyond superannuation, it is an end of the matter. It is no reflection on the officer. It carries no stigma.

11. The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the Bank is not bound to give him extension of service. In this case, the Bank has shown to the High court that the case of respondent was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against that decision. The High Court under Art. 226 cannot review that decision.

12. It was however, argued for the respondent that the Bank falls within the concept of "State" for the purpose of enforcement of fundamental rights. The Bank, Therefore, cannot extend the service of some and reject the case of others similarly situated. The concept of Art. 14 of the constitution is relied upon. The argument in our opinion, proceeds on a wrong premise. The Bank has no obligation to extend the services of all officers even if they are found suitable in every respect. The interest of the Bank is the primary consideration for giving extension of service. With due regard to exigencies of service, the Bank in one year may give extension to all suitable retiring officers. In another year, it may give extension to some and not to all. In a subsequent year, it may not give extension to any one of the officers. The Bank may have a lot of fresh recruits in one year. The Bank may not need the services of all retired persons in another. The Bank may have lesser work load in a succeeding year. The retiring persons cannot in any year demand that "extension to all or none". If we concede that right to retiring persons, then the very purpose of giving extension in the interest of the Bank would be defeated. We are, Therefore, of opinion that there is no scope for complaining arbitrariness in the matter of giving extension of service to retiring persons".

10. A Division Bench of this Court has also opined in Prof. P.S.Verma v. Jamia

Millia Islamia University & Others 1996 III AD (DELHI) 33 that there is no legal right of a teacher for being reemployed beyond the age of superannuation even in the absence of a positive recommendation in this regard. In my view there must be very strong consideration for departing from the normal legal rule, which frowns upon the enforcement of personal service. A writ or injunction would issue only if an unequivocal and indefeasible right to employment is palpably evident. Therefore the Petitioner's claim for inevitable employment up to the age of 65 years is untenable and cannot be sustained.

11. It appears that the Petitioner has performed his duties and has received remuneration up to 31st August, 2000 on which date he stood superannuated at 62 years as per the submissions of the Respondent. The Respondents' averment is that the Petitioner was to retire originally on August 31, 1998 but the Executive Council of the University granted him re-employment for a period of three years with effect from 1.9.1998. While he was working as a re-employed Teacher, the University vide the extracted Circular dated 23rd October, 1998 enhanced the age of superannuation to 62 years. The Petitioner has drawn attention to a letter dated March 24, 1998 authored by the Vice Chancellor informing him that at the meeting of the Executive Council of the University on March 18, 1998 it had been decided to re-employ him. It is further pleaded by the University that "even though the Petitioner was not entitled to the benefit of enhancement in the age of superannuation, as he stood already retired on August 31, 1998, but the University allowed him the said benefit. At that time it was open to the Petitioner either to accept the enhancement in the age of superannuation or to continue to work as a reemployed teacher. The Petitioner chose to accept the first alternative. Consequently the Petitioner retired from service when he attained the age of 62 years. The Petitioner having availed of the said benefit, Order dated May 5, 1998 (sic. May 22, 1998) whereby he was reemployed, came to an end automatically. The Petitioner is now estopped from taking any benefit from the said order. The Office Order dated June 15, 2000, only confirmed this position. The Respondent University vide its letter dated February 11, 2000, requested all the faculty members whose cases were earlier considered by the Executive Council for reemployment, after they were to attain the age of 60 years, to send their self assessment reports, to enable the University to consider their cases for reemployment after they attain the age of 62 years. The Petitioner was reminded about the same vide a letter dated April 18, 2000. Despite the letter dated February 11, 2000 and the reminder dated April 18, 2000, petitioner did not submit his self assessment report." The Office Order No. 630 dated June 15, 2000 reads thus:

"JAWAHARLAL NEHRU UNIVERSITY

ACADEMIC BRANCH - I

No. Acad.I/U/2(65)/ June 15, 2000 OFFICE ORDER NO. 630

Ref:-Office Order No. 506 dated 22.5.98.

In partial modification of Office Order under reference and circular dated 23.10.1998 Dr. K.S. Jawatkar, Assoc.Prof. In Centre for International Politics, Organisation and Disarmament, School of International Studies will retire on attaining the age of 62 years (instead of 60 years).

Consequently Dr. K.S.Jawatkar would not be treated as reemployed as indicated in Office Order No. 506 dt.22.5.98.

This has the approval of the Competent Authority.

(K.K.NANGIA)

ASSTT.REGISTRAR (ACAD.)"

12. The Respondent's case on this issue is untenable and is an ipse dixi. No material has seen the light of day indicating that the Petitioner had accepted "the first alternative" of his superannuating at 62 years. On 1st September, 1998, the decision of the Ministry of Human Resource Development dated 27.7.98 had not been implemented and enforced. This took place only on October 23, 1998 on the issuance of the Circular reproduced herein above. Therefore on 1st September, 1998, there could not have been any question of the Petitioner continuing in service other than as a reemployed teacher. It has been contended by learned counsel for the Respondent that there was some oral understanding between the parties to the effect that the Petitioner would be governed by the H.R.D. Ministry decision dated 27.7.98. This contention is wholly incredible. If it was known to all concerned that the age of superannuation had stood increased to 62 years, in the hiatus between the 27.7.98 and 31.8.98, the earlier decision of reemployment could have been cancelled by the Respondents. This has not been done, and for obvious reasons the HRD decision was applied to teachers of the Respondent University as late as on October 23, 1998 albeit with retrospective effect relating back to 27.7.98. There is no document evidencing the Respondent's case that the Petitioner had agreed to be regulated by the Circular dated October 23, 1998. In the Office Order No. 630 dated June 15, 2000, there is no reference to any previous communications or understandings. I am of the considered opinion that the offer of reemployment, which was accepted and acted upon by the Petitioner whereby the service of the Petitioner would continue for a period of three years had come into operation and could not have been altered without the consent of the Petitioner by virtue of the Circular dated October 23, 1998. It is also not open to the Petitioner to contend otherwise viz. that he had opted to continue in regular service till his attaining the age of 62 years. In the absence of any clear evidence of an agreement or understanding having been arrived at on or after October 23, 1998, such contentions, or either complexion, would be anachronistic. The effect is that the Petitioner has a right to be considered to have been continued in service till the expiry of the period of reemployment for three years i.e. 31st August, 2001 in accordance with the then extant regimes. The Petitioner shall be entitled to all consequential benefits, which should be paid to him within two months.

13. That leaves to be considered the period when the Petitioner's reemployment had expired on his attaining 63 years or three years from his superannuation, i.e. 1st September, 2001 till his reaching the age of 65 years. The Rules applicable on the date of his superannuation in 1998 as well as in 2001 envisaged reemployment till the age of 65 years. The Petitioner was considered but the Vice Chancellor did not recommend his case. This Court ought not to review the decision of whether the Petitioner's continued service was in the "interests" of the University. I do not find any infraction of Ordinance 6 or Regulation 16. It is not for the Court to circumscribe the manner in which the Vice Chancellor is to exercise his discretion or to superintend the body of his advisors, especially where no mala fides are evident.

14. Arguments have been heard at great length because every indulgence has been granted to the Petitioner who argued in person. The plethoric case law relied upon by him has been taken into consideration together with all written submissions. If each and every argument advanced by the Petitioner is to be taken up separately, this judgment will become needlessly and excruciatingly prolix and lengthy. It may, Therefore, be deemed that every contention raised in the written argument has been considered and rejected to the extent not accepted above.

15. The conclusion is that the Petitioner has no right to be considered for appointment to the A.Appadorai Chair in International Relations. There is no legal impropriety in the Chair having been left vacant. The Petitioner also has no right to be reemployed till his having attained the age of 65 years. The Petitioner, however, shall be deemed to have continued in service, on reemployment, till 30th August, 2001 i.e. three years after his having superannuated. Salary and consequential benefits be paid to the Petitioner by the Respondent within two months.

16. The Petition stands disposed of in the above terms.