
(2019) 12 DEL CK 0348

In the Delhi High Court

Case No : Letters Patent Appeal No. 390, 434, 448 Of 2019

Kanchan Saini

APPELLANT

Vs

University Of Delhi & Ors

RESPONDENT

Date of Decision : 16-12-2019

Acts Referred:

Delhi University Act, 1922 — Section 2(g)

Citation : (2019) 12 DEL CK 0348

Hon'ble Judges : Vipin Sanghi, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Dr. Aurobindo Ghose, Santosh Kumar, Bibin Kurian, Ankur Chhibber, Nikunj Arora, Apoorv Kurup, Nidhi Mittal, Upama Bhattacharjee, Gaurav Varma, R.M. Tripathi

Final Decision : Dismissed

Judgement

Vipin Sanghi, J

C.M. Nos. 27272/2019 & 30170/2019

1. Exemptions allowed, subject to all just exceptions.

2. The applications stand disposed of.

C.M. Nos.27271/2019 & 30169/2019

3. By these applications, the applicants seek to place on record additional documents. Learned counsel for the respondents does not oppose these applications.

4. Accordingly, both the applications are allowed and additional documents along with these applications, are taken on record. The applications stand disposed of.

LPA Nos. 390/2019, 434/2019 & 448/2019

5. We have heard learned counsels at substantial length and proceed to dispose

of the present appeals.

6. LPA Nos.390/2019 & LPA 434/2019 are directed against the common judgment dated 26.03.2019 passed by the learned Single Judge dismissing W.P. (C.) Nos. 3679/2017 & 8597/2009. LPA No. 434/2019 has been preferred to assail the order dated 01.05.2019 passed in W.P.(C.) No. 11141/2018, whereby the learned Single Judge has followed his earlier decision dated 26.03.2019 passed in W.P.(C.) No. 3679/2017 and other connected petitions.

7. The appellants responded to the advertisement issued by the respondent University for recruitment of "Instructors" (and not teachers) in Stenography. They were selected and joined their respective posts and have been serving as Instructors in Stenography. The appellants, it appears, qualify as "teachers" as defined in the Delhi University Act, 1922, in Section 2(g). Section 2(g) reads:

"2. In this Act and in the Statutes, unless there is anything repugnant in the subject or context:

x x x x x x x x

(g) "Teachers" include Professors, Readers, Lecturers and other persons imparting instructions in the University or in any" College or Hall;".

8. The definition contained in Section 2(g) of the Delhi University Act defines the expression "teacher" for the purpose of the Act and the statutes framed thereunder. The appellants would like that the meaning of the expression "teacher", defined in Section 2(g) of the Delhi University Act, be adopted while construing the communications issued by the Government conveying its policy decision to enhance the age of superannuation of teachers.

9. The dispute raised by the appellants before the learned Single Judge in the writ petitions was in relation to their claim for enhancement of the age of retirement to 65 years. The retirement age of teachers was raised from 62 to 65 years on account of the policy decision taken by the Government of India in the Ministry of Human Resource Development.

10. Our attention has been drawn by learned counsel for the appellants to the communication dated 15.02.2019 issued by the UGC, wherein the UGC communicated that the Standing Committee on Anomaly Cases, after due examination has recommended that the post of Instructors in Stenography & Typewriting be considered "under other academic staff since they carry out the teaching assignments and other academic duties. As regards to enhancement of age of retirement etc., it would be decided in due course of time". (emphasis supplied)

11. Learned counsel for the respondents have countered the reliance placed on the communication dated 15.02.2019 by submitting that the scheme for enhancement of age of retirement of teachers from 62 to 65 years is formulated by the Government of India and, therefore, it is the communications issued by

the Government of India, which would need examination. According to learned counsel for the respondents, the decision of the Government of India to raise the retirement age does not relate to all "teachers", as generically understood. Thus, "Instructors" in Stenography cannot claim the benefit of enhanced age of superannuation, though, generically understood in the context of the Delhi University Act, they may be "teachers".

12. Our attention has been drawn to the communications issued by the Government of India in this regard which throw light on the "teachers" in respect of whom the enhancement in age was granted. In this regard, we may, firstly, take note of the communication dated 23.03.2007 issued by the Ministry of Human Resource Development addressed to the Secretary, UGC. The subject of this communication reads "Enhancement in the age of superannuation from 62 to 65 years for teaching positions in centrally funded institutions in higher and technical education" (emphasis supplied). This communication reads as follows:

"Sir,

I am directed to say that at the time of revision of pay scales of teachers in universities and colleges, following the revision of pay scales of Central Government employees on the recommendations of the Fifth Central Pay Commission, it was provided, Inter alia, in this Ministry's letter No.1-22/97-U.I dated 27th July, 1998 that "the age of superannuation of university and college teachers would be 62 years and thereafter no extension in service should be given. However, it will be open to a university or college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years".

2. The matter has been reviewed by the Central Government in the light of the existing shortage in teaching positions in the centrally funded institutions in higher and technical education under this Ministry, and in the context of "Government"s decision to expand the capacities of such Institutions for increasing access to higher education and for implementing the policy of reservations for the weaker sections without affecting the number of seats in the unreserved category available through general merit. Accordingly, it has been decided that -

(i) The age of superannuation of all persons who were holding teaching positions on regular employment against sanctioned posts as on 15.3.2007 in any of the centrally funded higher and technical educations under this Ministry shall be increased from present 62 years to 65 years.

(ii) Persons holding such regular teaching positions who have superannuated prior to 15.3.2007 on attaining the age of 62 years but have not attained the age of 65 years may be re-employed against vacant sanctioned teaching positions till they attain the age of 65 years, in accordance with the guidelines framed by the University Grants Commission.

(iii) All persons holding teaching positions against sanctioned posts may also be considered for re-employment beyond 65 years and up to the age of 70 years, against sanctioned vacant posts, if such posts are not filled up by regular candidates. However, such re-employments beyond the age of 65 years shall be done only after screening at the age of 65 years, under the extant guidelines of the University Grants Commission.

3. It is further clarified that the enhancement of retirement age as mentioned above and the provision for re-employment, will apply only to persons in teaching positions against posts sanctioned in centrally funded higher and technical education institutions coming under the purview of this Ministry, in order to overcome the shortage of teachers.

4. Necessary Notification in this regard may be issued by the University Grants Commission." (emphasis supplied)

13. A further communication was issued by the Ministry of Human Resource Development on 19.04.2007 which sought to clarify the contents of the earlier communication dated 23.03.2007. The clarification was, inter alia, sought and granted on the issue: "whether the enhancement of age of superannuation from 62 years to 65 years applies to those who hold posts, equivalent to teaching positions, but are not actually engaged in teaching in the centrally funded institutions in higher and technical education under this Ministry". The clarification granted by the Government in this communication reads as follows:

"i) The enhancement of the age of superannuation from 62 years to 65 years and the provisions for re-employment as mentioned in this Ministry's letter dated 23.3.2007 referred to above have been made in order to the shortage of teacher and is applicable only to the Teachers in centrally- funded institutions in higher and technical education under the Ministry of Human Resource Development who are actually engaged in teaching classes/courses/programmes of study in such institutions.

ii) The provisions of the Ministry's letter of even number dated 23.3.2007 Mentioned above shall not be applicable to any other categories to employees in such institutions, notwithstanding the fact that the posts they hold may be considered as equivalent to teaching positions."

(emphasis supplied)

14. The Government of India issued yet another communication dated 31.12.2008 addressed to the Secretary, UGC on the subject "Scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission". We may note that this communication concerns the scheme of revision of pay of teachers and equivalent cadres in universities and colleges. However, what is of relevance is that this communication stipulated that there shall be only three designations in respect

of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professors. The appellants - who were recruited as "Instructors", fall in neither of these categories. On the aspect of age of superannuation, this communication provided as follows:

"(f) Age of Superannuation:

(i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years, vide the Department of Higher Education letter No.F.No.119/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. letter No.F.1-24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice-Chancellors of Central Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).

(ii) Subject to availability of vacant positions and fitness, teachers shall also be reemployed on contract appointment beyond the age of sixty five years up to the age of seventy years. Re-employment beyond the age of superannuation shall, however, be done selectively, for a limited period of 3 years in the first instance and then for another further period of 2 years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.

(ii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible persons to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period, and whereas there is no shortage in the categories of Librarians and Directors of Physical Education, the increase in the age of superannuation from the present sixty two years shall not be available to the categories of Librarians and Directors of Physical Education."

(emphasis supplied)

15. The applicability of the scheme contained in the communication dated 31.12.2008, inter alia, stipulated as follows:

"(p) Applicability of the Scheme:

(i) This Scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges there-under and the Institutions Deemed to be Universities whose maintenance

expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the UGC in this behalf. Universities implementing this Scheme shall be advised by the UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter.

(ii) This Scheme does not extend to the cadres of Registrar, Finance Officer and Controller of Examinations for which a separate Scheme is being issued separately.

(iii) This Scheme does not extend to the Accompanists, Coaches, Tutors and Demonstrators. Pay and Grade Pay of the said categories of employees shall be fixed in the appropriate Pay Bands relative to their existing Pay in each university/ institution corresponding to such fixation in respect of Central Government employees as approved by the Central Government on the basis of the recommendations of 6th Central Pay Commission.

(iv) This Scheme does not extend to the posts of professionals like System Analysts, Senior Analysts, Research Officers etc. who shall be treated at par with similarly qualified personnel in research/ scientific organizations of the Central Government."

16. The communication dated 23.03.2007 shows that the decision to raise the age of superannuation from 62 years to 65 years in respect of university and college teachers was taken, inter alia, in the context of Government of India's decision to expand the capacity of centrally funded institutions in higher and technical education under the Ministry of HRD, for increasing the access to higher education. The vocational training in the subject of Stenography is not a subject of "higher education". The communication dated 23.03.2007, by itself, really left no manner of doubt in respect of which teachers serving in universities and college, the said scheme was applicable. In any event, the further communication dated 19.04.2007 further clarified the position by stating that the said decision to raise the age of superannuation from 62 years to 65 years of teachers had been made with a view to deal with the shortage of teachers in centrally funded institutions in higher and technical education under the Ministry of HRD "who are actually engaged in teaching classes/ courses/ programmes of study in such institutions". It went on to exclude other categories of employees "notwithstanding the fact that the posts they hold may be considered as equivalent to teaching posts". "Instructors" in stenography can certainly not be described as "engaged in teaching classes/ courses/ programmes of study in such situations", since a course in Stenography cannot be categorized as a course of study in higher and technical education institution. Consciously, the Government of India excluded other categories of employees, notwithstanding the fact that the posts that they hold may be considered as equivalent to teaching positions, such as, "Instructors" in Stenography. The further communication issued by the Government dated 31.12.2008 is in tune with the

earlier two communications taken note of hereinabove. Even this communication clarifies that the age of superannuation was not raised in respect of Librarians and Directors of Physical Education, thereby excluding those who may be holding posts considered as equivalent to teaching positions, but not undertaking class-room teaching in respect of the subject of higher learning, in the centrally funded institutions for higher learning and technical education. The clause relating to "applicability of the scheme" contained in the communication dated 31.12.2008 shows that the Government consciously granted revision of pay even to Librarians and Directors of Physical Education, as granted to teachers engaged in class-room teaching in respect of subjects of higher learning and technical education, even though the age of superannuation of Librarians and Directors of Physical Education was not raised from 62 years to 65 years. Thus, the aspect of age enhancement for superannuation, and pay revision were treated separately.

17. From the above scheme, what emerges is that the enhancement in the age of superannuation was granted in respect of teachers who undertake class-room teaching in subjects in which the university grants under-graduate and post-graduate degrees. Stenography may be one of the subjects taught in the prescribed curriculum of a particular under-graduate or post-graduate course. However, by itself, it is not a subject of study in which the university grants a degree - undergraduate, or post graduate. It is a vocational training subject and the clear purport of the aforesaid communications issued by the Government of India, is to limit the extension of the superannuation age of teachers, who could alone be Assistant Professors, Associate Professors and Professors, to 65 years. The expression "teacher" used by the Central Government in its aforesaid communication - in respect of whom the age of superannuation has been raised to 65 years, cannot be understood as a "teacher", as defined in the Delhi University Act or generically understood.

18. As noticed above, the expression "teacher" as defined in the Delhi University Act is for the purpose of the said Act, whereas, the Government of India formulates its policies not within the four corners of the language used, and expressions defined in the Delhi University Act or, for that matter, in any other enactment, whereby any other university or institution may be constituted. Eventually, it is for the Government of India to provide the budget and meet the fund requirements in respect of teachers serving in centrally funded institutions of higher learning and technical education, whose age of retirement is enhanced from 62 to 65 years. Therefore, while examining the issue - whether the age of superannuation of "Instructors" in Stenography also stands increased to 65 years, or not, one has to look to the meaning ascribed to the word "teacher" by the Government of India, and not the generally understood meaning of the term "teacher", or to the meaning ascribed to the term "teacher" in the Delhi University Act.

19. Thus, we find no reason to interfere with the impugned judgment.

20. The appeals are, accordingly, dismissed.