

(2011) 09 DEL CK 0163

In the Delhi High Court

Case No : Writ Petition (C) No. 6409 of 2000

M. Padmanabhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Citation : (2011) 10 AD 50 : (2011) 183 DLT 603

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Mahfooz Nazki, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Mehta, J.—In this writ petition, Circulars/Notifications dated 12.10.2000 and 16.10.2000 retiring the Petitioner with effect from 31.10.2000 are under challenge. The relief sought is for issuance of appropriate writ, directing the Respondents not to take any action in the matter of retirement/superannuation of the Petitioner till he attains the age of 62 years.

2. As per various office orders, notifications and circulars which came to be issued by the Respondent from time to time to be noted hereinafter, it would be seen that the Petitioner was employed as Librarian and his age of superannuation in this position was 62 years whereas he was made to retire vide impugned Circulars/Notifications at the age of 60 years and consequently, the Petitioner was entitled to reliefs to be granted hereinafter.

3. The Petitioner was serving as Deputy Finance Officer with Respondent No. 3. Vide its letter dated 27.07.1998, Respondent No. 1 enhanced the age of superannuation for the Universities, Colleges teachers to 62 years. Clause (vi) of this letter/notification reads as under:

Age of Superannuation 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 UGC upto the age of 65 years.

4. In pursuance of the said notification issued by Respondent No. 1, the Respondent No. 3 i.e. the university with which the Petitioner was employed issued circular dated 8.2.1999 stating that the age of the named officers of the university to be 62 years. Subsequently vide another letter dated 6.11.1998, issued by the Respondent No. 1, the age of superannuation of the Registrars, Librarians, Physical Education Personnel, Controllers of Examinations, Finance Officers and such other university employees also treated at par with the teachers and whose age was 60 years, was also enhanced to 62 years. Clause 4 of this latter reads as under:

Age of Superannuation The age of superannuation of 62 years indicated in para 1(vi) of our letter under reference shall also be applicable to Registrars, Librarians, Physical Education Personnel, Controllers of Examinations, Finance Officers and such other university employees who are being treated at par with the teachers and whose age of superannuation was 60 years.

5. The Petitioner being Deputy Finance Officer was thus to retire at the age of 62 years as per this letter dated 6.11.1998 of the Respondent No. 1. A notification was issued on 16.2.1999 in pursuance of the aforesaid circular of 8.2.1999 regarding the age of superannuation of Public Relation Officers was also to be raised to 62 years with effect from 6.11.1998. The Respondent No. 3 sought clarification from the Respondent No. 1 vide its letter dated 26.3.1999 with regard to the age of superannuation to be 62 years regarding the officers named in the letter dated 6.11.1998.

6. Taking note of the letters dated 27.7.1998 and 6.11.1998 of Respondent No. 1, the University Grants Commissions (UGC) issued a notification containing Regulations which were to come into operation with immediate effect. The notification of UGC issued on 24.12.1998 reads as follows:

16.0.0. SUPERANNUATION and REEMPLOYMENT of TEACHERS

16.1.0 Teachers will retire at the age of 62. However, it is open to a University or a college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years.

16.2.0. Age of retirement of Registrars, Librarians, Physical Education personnel, Controllers of Examinations, Finance Officers and such other university employees who are being treated at par with the teachers and whose age of superannuation was 60 years, would be 62 years. No re-employment facility is recommended for the Registrars, Librarians and Directors of Physical Education.

7. The matter did not rest here. The Respondent No. 1 vide its letter dated 24.4.1999 again clarified by referring to its notification of 27.7.1998 and 6.11.1998 that the benefit of enhanced age of 62 years is available only to the

Group "A" officers in the university. Reading of the aforesaid notifications dated 27.7.1998, 6.11.1998 and 21.4.1999, it would be seen that the benefit of age of superannuation to be 62 years was available to the teachers and the officers of category of Group A who were treated at par with the teachers.

8. The Executive Council of Respondent No. 3 in its meeting of 13.11.1998 had also passed the resolution regarding enhanced age of superannuation of the staff from 60 to 62 years. The same was also reiterated in its meeting dated 30.4.1999. However, subsequently, Respondent No. 2 in its meeting held on 16.8.2000 discussed the issue of age of retirement of the Assistant Registrar, Deputy Registrar, Assistant Director of Physical Education, Deputy Director of Physical Education, Assistant Librarian and Deputy Librarian in the universities and decided as under:

The Commission decided that the age of retirement of Assistant Registrar, Deputy Registrar, Assistant Director of Physical Education, Deputy Director of Physical Education, Assistant Librarian and Deputy Librarian shall be 60 years. It was further decided that if any institution has so far extended the superannuation age to 62 years in respect of any of the aforesaid category of employees - it must with immediate effect be brought down to 60 years. It was further decided that with immediate effect from now the aforesaid category of employees shall superannuate at the age of 60 years.

9. This was communicated by Respondent No. 2 to Respondent no. 3 vide letter dated 5.10.2000. In pursuance of this letter of 5.10.2000, Respondent No. 3 also vide circulars dated 12.10.2000 stated as under:

Accordingly it has been decided that the age of superannuation of Assistant Registrar, Deputy Registrar, Public Relation Officer, Jt. Registrar, Assistant Director of Physical Education, Deputy Director of Physical Education, Assistant Librarian, Deputy Librarian, Assistant Finance Officer, Deputy Finance Officer shall now be 60 years with immediate effect. Consequently, group "A" officers who may have continued beyond the age of 60 years shall also stand superannuated with immediate effect.

10. Respondent No. 3 also issued a notification in pursuance of its circular dated 12.10.2000 on 16.10.2000 retiring the Petitioner on having attained the age of 60 years on 31.10.2000. These circulars dated 12.10.2000 and the notification dated 16.10.2000 whereby the age of superannuation of Deputy Finance Officer and other officers was brought back to 60 years and consequently, the Petitioner was made to superannuate with immediate effect from 31.10.2000 on his having attained the age of 60 years are under challenge in this writ petition.

11. We have noted above that the age of superannuation of university and college teachers was raised to 62 years as per the decision of Respondent No. 1 vide its notification dated 27.7.1998. Subsequently, vide notification dated 6.11.1998 of Respondent No. 1, the age of superannuation of university officers such as Registrar, Librarian, Physical Education personnel, Controller of

Examination, Finance Officers and such other university employees who were being treated at par with teachers and whose age of superannuation was 60 years was also raised to 62 years. The University i.e. Respondent No. 3 acted upon the same and issued appropriate orders and notifications in this regard. It is noted that Mr. Jagdish Lal, a Deputy Registrar working with Respondent No. 3 was also made to retire vide letter dated 24.6.2000 at the age of 60 years by Respondent No. 3, which he challenged by way of filing a writ petition being W.P. (C) No. 4172/2000 before this Court and this Court vide its order dated 3.8.2000 stayed the operation of the impugned order.

12. In a case *S. Dildar Haider v. Jamia Milia Islamia and Another* (W.P. (C) No. 2829 of 2003 decided on 18.8.2006) decided by this Court, the Petitioner who was an Instructor challenged the decision of Jamia Milia Islamia University which made him to retire from his services at the age of 60 years. The letter dated 27.7.1998 of Respondent No. 1 and notification dated 24.12.1998 [similar to the Circular dated 8.2.1999] of Respondent No. 3 in this case and also aforesaid notification dated 24.12.1998 of Respondent No. 2 came up for consideration before this Court and this Court observed as under:

28. The first notification of UGC of 1998 prescribed that age of superannuation of teachers would be 62 years. The Regulations, notified later, by para 16.2.0 states that the age of retirement of certain non-teaching staff and Ors. treated "at par" with such teachers would be 62 years.

The letter of 6.11.1998 by which UGC clarified the age of retirement of instructors, stated that Registrar, Controllers of examination, Finance Officers and "such other university employees who are being treated at par with the teachers and whose age of superannuation was 60 years" would henceforth superannuated on attaining 62 years.

29. It is apparent, therefore, that some distinction was sought to be made initially between teaching and non-teaching staff, as seen from the two circulars/ letters dated 27.7.1998 and 6.11.1998. These were later treated in a somewhat different fashion, by the Notification of UGC issued on 24.12.1998. Para 16.1.0 admittedly talks of teachers. Para 16.2.0 mandates that Registrars, Librarians, Physical Educational Personnel, Controllers of Examination, Finance Officers and "such other University employees who are being treated at par with the teachers and whose age of superannuation was 60 years, would be 62 years". This, latter provision indisputably applies to non-teaching personnel, such as Registrars, Librarians, Finance Officers, etc. They do not perform any teaching activity, and their job content is purely non-academic. Yet, their age of retirement was at par with teachers, and, therefore, enhanced to 62 years.

13. In the aforesaid case of *S. Dildar Haider* (supra) reliance was also placed upon the decision of the Supreme Court reported in *Osmania University Vs. V.S. Muthurangam and others*, wherein the Supreme Court observed as under:

...that in regard to parity between teaching and non-teaching staff in respect of

age of superannuation, though the two categories could not be equated, yet, having regard to the statutory mandate to grant parity "as far as possible" the University ought to prescribe the same age of retirement, in the absence of any statutory prohibition. In this case too, the notification which prescribed the age of 62 years, stipulated, by para 16.2.0 that other University employees, with superannuation age of 60 years (like teachers) and treated "at par" with them "in that regard" must also receive the benefit of enhanced age of retirement. The object of naming a few posts (Registrars, Librarians, etc) and extending coverage of the benefit, "others". Therefore was to be expensive the other necessarily had to be like teachers, (or Registrars/Librarians but could never be intended to be only teachers. If the intendment was not to grant benefit of enhanced age of retirement to employees who were at par with teacher - in that respect, like Instructor, the Jamia has not clarified as to who would fall within its sweep. Besides, the reference to "others" has to be given meaning and content - as indeed would be case if it is held to cover instructors; any other interpretation would render the latter part of para 16.2.0 a surplus-age.

14. In view of above discussion, it is also noted that the Respondent No. 2 in its meeting held on 16.8.2000 discussed the issue of age of retirement of the officers named therein and decided the age of superannuation of those officers to be 60 years instead of 62 years as already decided. It is noticed that the Deputy Finance Officer does not find mention in the said decision which was conveyed to Respondent No. 3 vide its letter dated 5.10.2000. If that is so, then according to the decision taken by Respondent No. 2 also the age of superannuation of Deputy Finance Officer i.e. the Petitioner herein which was raised to 62 years by virtue of notifications dated 27.7.1998 and 6.11.1998 of Respondent No. 1 followed by letters dated 8.2.1999 and 16.2.1999 of Respondent No. 3 continued to be 62 years and was not affected by the subsequent decision.

15. In view of foregoing discussion, we find that the impugned circular dated 12.10.2000 and notification dated 16.10.2000 whereby the age superannuation of Petitioner was reduced to 60 years and he was made to superannuate at the age of 60 years are illegal and are liable to be quashed. Consequently, these are quashed. We also find that the Petitioner was entitled to enhanced age of superannuation of 62 years. The Respondent No. 3 is directed to treat the Petitioner as having continued in his service till he attained the age of 62 years. It shall pay the salary to the Petitioner for the said period of two years, after adjusting the amount of pension, if any disbursed. Consequently, the benefit such as enhanced gratuity, provident fund and higher pension shall also be refixed and the differential amount shall be paid to the Petitioner within 12 weeks from today.

16. The writ petition is allowed in terms of above order.