

(2010) 02 DEL CK 0072

In the Delhi High Court

Case No : Writ Petition (C.) No. 5075 of 2007

Prof. Devendra Mishra

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Citation : (2010) 167 DLT 259 : (2010) 3 SLR 78

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

**Advocate : Ashwini Mata, Manu Shahalia and Manmeet Sethi, for the Appellant;
Amit Bansal, for the Respondent**

Judgement

S.N. Aggarwal, J

1. The petitioner was a Professor in the Department of Sanskrit, Department of Delhi University and he had to retire on attaining the age of superannuation at the age of 62 years on 31.01.2007. However, before attaining the age of superannuation, he had applied for his re-employment in the University as per its Rules and Regulations applicable at that time on 30.10.2006. The application for re-employment was made by him in the prescribed format accompanied by necessary attachments, containing details of his publications and the other details of his accomplishments and achievements in his career along with recommendations from the Head of the Department for his re-employment. The University vide its communication dated 12.02.2007 addressed to the Head of Department of Sanskrit with a copy thereof to the petitioner, allowed him to continue in service till the decision of the Executive Council of the University regarding his re-employment. The Ministry of Human Resource Development, Department of Higher Education, Government of India, issued a circular on 23.03.2007 which was addressed to the Secretary, University Grants Commission and enhanced the age of superannuation of the teachers of the University and the Colleges from 62 years to 65 years.

2. The above circular of Ministry of Human Resource Development was communicated by the University Grants Commission to all the State Universities including the Delhi University (Respondent No. 1 herein) in the first week of April, 2007. The respondent No. 1 University vide its notification bearing No. / Estab.(T)/2007/ dated 12.04.2007 notified to all the Departments and the Colleges affiliated to the said University that the age of superannuation of all the persons holding teaching positions on regular employment against sanctioned posts as on 15.03.2007 in any of the Centrally Funded Higher and Technical Education shall be increased from the present 62 years to 65 years.

3. The respondent No. 1 University vide its letter dated 20.06.2007 informed the Head of Department of Sanskrit that the Executive Council has not recommended the case of the petitioner for his re-employment. The above decision of the University was communicated to the petitioner by the Head of the Sanskrit Department vide letter dated 02.07.2007 received by him on 07.07.2007. Immediately on receipt of this communication by the petitioner, he filed the present writ petition on 13.07.2007 with the following prayers:

(i) Issue an appropriate writ, direction or order in the nature of certio rari quashing the decision contained in letter No. Estab.(T)/V/Skt/17625 dated 20.06.2007 issued by the respondent No. 2.

(ii) Issue an appropriate writ, direction or order in the nature of mandamus commanding the respondents to re-employ the petitioner in the Department of Sanskrit till the attainment of age of 65 years as per the Circular dated 23.03.2007, Annexure-3;

(iii) Issue any other appropriate writ, direction or order as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

4. Dr. A.K. Dubey, Registrar of respondent No. 1 University, has filed his affidavit in response to notice of this writ petition. He has taken a stand that the case of the petitioner for his re-employment was considered and rejected by the Advisory Committee on reemployment in its meeting held on 14.03.2007 in terms of the order of the Hon''ble Supreme Court dated 13.10.2003 and the relevant resolutions of the Executive Council particularly EC Resolution No. 22 dated 11.04.1981/159 dated 22.01.1991 and in consonance with the requirements of Ordinance XII Clause 3-A(2). It is further stated in the counter affidavit of the respondents that the cases of the teachers who were recommended by the Advisory Committee in its meeting held on 14.03.2007, were placed before the Executive Council on 08.06.2007 and since the petitioner's case was not recommended by the Advisory Committee in its meeting held on 14.03.2007, it was not placed before the Executive Council on 08.06.2007.

5. According to the respondents, the petitioner was not given reemployment as the Advisory Committee did not recommend his case for employment. Further case of the respondents is that the petitioner cannot claim a vested right for his

re-employment only because he was allowed to continue with the teaching after the date of his retirement on 31.01.2007 vide letter dated 12.02.2007. It is stated that the petitioner was allowed to continue with the teaching after the date of his retirement because at that time his case for his re-employment was pending consideration of the Vice- Chancellor and the Executive Council. According to the respondents, the continuance of the petitioner beyond 31.01.2007 was not a regular employment and was subject to certain conditions which were communicated to him prior to the decision of the Government of India for enhancing the age of retirement from 62 years to 65 years. The respondents have stated that the case of the petitioner was not placed before the Executive Council as the petitioner's case was not recommended for re-employment by the Advisory Committee. The respondents have prayed for the dismissal of this writ petition.

6. The petitioner has filed his rejoinder to the counter affidavit of the respondents. In his rejoinder, he has reiterated his claim for continuance in the service of the respondents beyond 31.01.2007 on the basis of Circular of Ministry of Human Resource Development, Government of India dated 23.03.2007 adopted by respondent No. 1 University vide Notification dated 12.04.2007 (page 139). The petitioner has also stated in his rejoinder that even after his alleged disengagement communicated to him vide letter of Head of Sanskrit Department dated 02.07.2007, he was continuing with the respondents on the basis of letter of respondent No. 3 dated 12.07.2007 asking him to continue with the teaching work. The petitioner has also taken a plea that his case for reemployment was not considered by the respondents in terms of circular of the Government of India dated 23.03.2007 adopted by respondent No. 1 University vide notification dated 12.04.2007. He has also pleaded bias against the Advisory Committee which allegedly considered his case for re-employment in its meeting held on 14.03.2007. He has stated that Mr. D. Prahaladachari, an expert on the Advisory Committee had personal grudge and bias against him because the petitioner was earlier appointed as the UGC nominee on the Executive Committee of the Tirupati Sanskrit University, Tirupati for a term of three years where the aforesaid expert was the Vice-Chancellor. The duty of the petitioner was to act as a watch-dog of the functioning of the University. Thereafter, the petitioner was appointed as the Convener/Chairman of the Financial Grant Committee by the UGC for Tirupati Sanskrit University, Tirupati and his duties there were to scrutinize the expenditure of the Tirupati Sanskrit University and the petitioner could not accept all the requests of the then Vice-Chancellors Mr. D. Prahaladachari and on many occasions were to differ with him and disapprove his proposals resulting in differences between them. According to the petitioner, though he was only attaching the point of view propounded by the said Mr. D. Prahaladachari, yet he took it as a personal attack on him and was harbouring grudge against him. The petitioner has stated that the appointment of such a person as an expert member on the Advisory Committee to decide about the re-employment of the petitioner had caused a serious prejudice to him inasmuch as

according to him the subject expert plays a key role in the Advisory Committee as the other members do not know the subject and therefore they go by the decision of the subject expert. The petitioner has also stated that there were certain areas in the past where the interests of the expert were in direct clash with his interest. He has submitted that as per the established norms, the intimation of the previous acquaintances ought to have been given by the expert to the respondent No. 1 University to procure a fair selection but the same according to him has not taken place in the present case. The petitioner has also narrated the facts to show that he is much more qualified than the expert member and according to him, Mr. D. Prahaladachari appointed as an expert on the Advisory Committee, was in no position to assess the merits or demerits of the petitioner for his re-employment. In any case, the petitioner has stated that since his case for re-employment has not been considered by the respondents in the light of the Circular of the Government of India dated 23.03.2007, adopted by the respondent No. 1 university vide notification dated 12.04.2007, he is entitled for deemed continuation in the service of the respondents.

7. After filing of rejoinder by the petitioner, both the parties have filed more than one additional affidavit each, which all will be considered hereinafter at appropriate places.

8. I have heard the arguments of learned Counsel for both the parties and have also gone through the written arguments filed by them. I have also carefully gone through the entire material placed on record.

9. The first and the foremost question that arises from the pleadings of the parties for consideration of the Court is whether the petitioner is deemed to have continued in the service of the respondents in view of the Circular of the Ministry of Human Resource Development, Government of India dated 23.03.2007 and adopted by the respondent No. 1 university vide notification dated 12.04.2007. In case, the decision on the said question goes against the petitioner, then another question that would arise for consideration will be whether the case of the petitioner for his reemployment has been considered by the respondents in accordance with the Rules applicable for such re-employment and, if not, to what relief the petitioner is entitled in this case.

10. Mr. Ashwini Mata, learned senior counsel appearing on behalf of the petitioner, had argued that in view of the Circular of Ministry of Human Resource Development dated 23.03.2007 adopted by the respondent No. 1 University vide its resolution dated 12.04.2007, the petitioner was entitled to continue in the service of the respondents till the age of 65 years because on the cut-off date of 15.03.2007 mentioned in the said Circular, the petitioner was continuing in the service of the respondents and had not been relieved from the Department on that date. The contention of Mr. Mata was that the case of the petitioner falls under Clause 2(i) and according to him, even if the case of the petitioner for his reemployment was to be considered in terms of Clause 2(ii) of the aforementioned circular, the respondents were under a legal obligation to have

considered the case of the petitioner for his reemployment on the basis of UGC guidelines formulated on 23.11.2007, applicable to those who had retired prior to 15.03.2007 but had not attained the age of 65 years. It was submitted by the learned senior counsel appearing on behalf of the petitioner that even in the absence of the Circular of Ministry of Human Resource Development dated 23.03.2007, the petitioner is still entitled for the relief claimed by him in the present petition because according to him, the case of the petitioner for his re-employment, even as per own admission of the respondents, was not considered either by the Vice-Chancellor or by the Executive Council who alone were the competent authorities under the University Statute and Ordinance to take a decision regarding re-employment of a University teacher. Mr. Mata had also contended that even if the Advisory Committee is deemed to be the competent authority to decide on the issue of re-employment of the petitioner, still according to him, the decision taken by the Advisory Committee is liable to be nullified by the Court because the Expert Member on the Advisory Committee was totally biased against the petitioner and his presence in the Advisory Committee had influenced the other members of the Committee and for that reason, the impugned communication dated 20.06.2007 addressed by respondent No. 2 to respondent No. 3 is liable to be set aside by this Court. It was further contended by the learned senior counsel appearing on behalf of the petitioner that despite communication of dis-engagement from service served upon the petitioner vide covering letter of respondent No. 3 dated 02.07.2007, the petitioner is continuing with teaching work with the respondents till date as he was asked to do that vide letter of respondent No. 3 dated 12.07.2007. It was submitted by Mr. Mata, learned senior counsel appearing on behalf of the petitioner, that the petitioner was assigned more teaching work and more Ph.D. students as compared to the only other Professor in the Department, namely, Professor Dipti Tripathi/Professor M.M. Aggarwal. Mr. Mata has placed reliance on the amendment to the Delhi University Calendar Ordinance VI-B relating to Doctor of Philosophy (Ph.D.) as approved by the Academic Council at its meeting held on 24.07.2008 and later ratified by the Executive Council on 29.07.2008 according to which there can be only 8 Ph.D. students under supervision of a Professor at any given point of time but the petitioner had 15 Ph.D. students assigned to him out of whom 4, namely, Mr. Dhananjay Mani Tripathi, Ms. Shivani Dubey, Ms. Preeti Sharma and Mr. Uma Shankar, have already been awarded their Ph.D. Degrees in 2008-09 under the supervision of the petitioner and at present, he has 11 Ph.D. students under his supervision. It was submitted that in case the petitioner had retired from service, then he could not have continued to get Ph.D. students under his supervision from the Board of Research Studies of the respondents and this, according to him, shows that the petitioner continued to work with the respondents in the same manner, as being done by him in the past.

11. Per contra, Mr. Amit Bansal, learned Counsel appearing on behalf of the respondents, has referred to and relied upon a Division Bench judgment of this

Court in Dr. V.K. Aggarwal v. University of Delhi and Ors.{LPA No. 1973/2005 Decided on 29.11.2005} and on the strength of this judgment, he had argued that the decision taken by the respondents not to grant reemployment should not be interfered with by this Court as according to him, the decision of the respondents in this regard was final and cannot be challenged. He has also placed reliance on another Single Bench judgment of this Court in Dr. Madhu Rathour v. Vice-Chancellor, DU reported as 113 (2004) DLT 571. In the said case, this Court had examined the procedure followed by the respondents for re-employment of teachers and upon such examination, it was held that the Court should not sit in judgment over the recommendations of the Selection Committee and the administrative decisions on re-employment taken by the University unless the process is found to be vitiated by mala fides or arbitrariness.

12. Mr. Bansal, learned Counsel appearing on behalf of the respondents had argued that the case of the petitioner for his reemployment was considered by the Advisory Committee in accordance with the procedure applicable prior to issuance of circular by the Ministry of Human Resource Development dated 23.03.2007 and, therefore, according to him, no fault can be found with the said decision. He had submitted that the meeting of the Advisory Committee on re-employment, had taken place on 14.03.2007 whereas the Circular enhancing the age from 62 years to 65 years was issued thereafter on 23.03.2007. Mr. Bansal had contended that the petitioner, by no means, can be deemed to be in the regular employment of the respondents after he had retired on reaching the age of superannuation of 62 years on 31.01.2007 as, according to him, his continuance with the respondents vide letter dated 12.02.2007 was subject to the decision of the competent authority on the issue of his re-employment. Mr. Bansal had also submitted that the allegation of bias made by the petitioner against the expert cannot be looked into by the Court because the said plea was taken by him, for the first time, in the rejoinder and not in the main petition.

13. According to Mr. Bansal, the case of the petitioner for his re-employment is covered by Clause 2(ii) and not Clause 2(i) of the Circular of Ministry of Human Resource Development dated 23.03.2007. It was submitted by him that since the case of the petitioner for his re-employment was rejected by the Advisory Committee, his case was not required to be put for any further consideration either before the Vice-Chancellor or before the Executive Council. It was further submitted by the learned Counsel appearing on behalf of the respondents that since the case of the petitioner for his re-employment has been rejected by the respondents, the petitioner cannot claim re-appointment as a matter of right. Further argument of Mr. Bansal was that after the date of retirement on 31.01.2007, the petitioner was employed only as a guest faculty and not as a regular teacher and he had placed reliance on the list of co-operative teachers annexed as Attachment-5 to his written submissions dated 21.01.2010. His contention was that the appointment of the petitioner as guest lecturer does not entitle him to benefit of deemed re-employment and according to him, the Court at best can direct payment admissible to the guest lecturers under the Rules.

14. I have given my anxious consideration to the above rival arguments advanced by the learned Counsel for both the parties in the light of material available on record. To appreciate their rival arguments, it will be necessary to refer to some of the important documents, which both sides have admitted either in their pleadings or in the course of their arguments.

15. Admittedly, the retirement age of University teachers was 62 years prior to issuance of Circular dated 23.03.2007 by the Ministry of Human Resource Development by which the age of superannuation of University teachers was enhanced from 62 years to 65 years. Clause 2 of the said Circular is relevant and is extracted below:

Clause 2:

(i) The age of superannuation of all persons who were holding teaching positions on regular employment against sanctioned posts as on 15.03.2007 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 15.03.2007 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.

16. The above policy decision of Government of India for enhancement of retirement age of University teachers was adopted by respondent No. 1 University vide its notification dated 12.04.2007, which is extracted below:

Age of superannuation of all persons who were holding teaching positions on regular employment against sanctioned posts as on 15.03.2007 in any of the centrally funded higher and technical education institution shall be increased from the present 62 years to 65 years.

17. In the first instance, this Court would like to examine the case of the petitioner for his re-employment on the assumption that Clause 2(ii) of the Circular dated 23.03.2007 was to apply to his case, as argued on behalf of the respondents.

18. A perusal of Clause 2(ii) of Circular dated 23.03.2007 extracted above would show that all those University teachers who had retired prior to 15.03.2007 on attaining the age of 62 years were entitled for re-employment till the age of 65

years in accordance with the University Grants Commission's guidelines and the only condition was that their re-employment was to be against vacant sanctioned teaching positions. Two questions arise here for consideration, first is whether there were vacant sanctioned teaching positions against which petitioner was seeking his reemployment and the second question is what guidelines of University Grants Commission were to govern the procedure of reemployment.

19. With regard to the first question regarding the number of vacant sanctioned teaching positions on the date the petitioner sought his re-employment, it will be relevant to refer to Ground "M" at page 12 of the petition, which deals with the vacancy position pleaded by the petitioner. The same is extracted below:

Because in the Department of Sanskrit there are 18 sanctioned posts and at the moment only 5 posts are filled whereas the remaining 13 posts are lying vacant. Furthermore, out of the aforesaid 18 posts, 3 posts are for Professors. Out of the three posts of Professor only one post is filled whereas the remaining 2 posts (including the one that of the petitioner) is lying vacant. It is submitted that the respondents by not filling up the posts in Department of Sanskrit have virtually decided to close down the said Department.

20. The respondents have not denied the above vacancy position either in their counter affidavit or in any of their additional affidavits or the written submissions filed by them. Therefore, it stands admitted by them that there were and are still two vacancies of Professors in the Department of Sanskrit which have remained unfilled till date. Thus, it cannot be said that there was no vacant sanctioned teaching position in the Department of Sanskrit against which the petitioner was to be considered for his re-employment. Now, coming to the second question regarding the guidelines of U.G.C. applicable for re-employment, it may be noted that this Court vide its initial order of 16.07.2007 and also by a subsequent order of 14.08.2008 had directed the respondents to place the guidelines of the UGC referred to in the Circular of Ministry of Human Resource Development dated 23.03.2007, on record but despite these directions, the respondents have failed to place the guidelines of UGC applicable for re-employment on record till date. However, the model guidelines framed by the UGC on 23.11.2007 with regard to re-employment have been placed on record by the petitioner as Annexure "AA-1" to his additional affidavit filed on 22.07.2008 (pages 143 to 149 of the Paper Book). A perusal of these guidelines reveals that the said model guidelines were framed by the UGC pursuant to the Circular of Ministry of Human Resource Development dated 23.03.2007 and were circulated to all the Universities and the Colleges. Clauses 4, 5, 7 and 8 of these guidelines are relevant and the same are extracted below:

4. Tenure of Appointment:

The tenure of appointment of a superannuated teacher shall be for a maximum period of three years at a time or up to the teacher reaching the age of 65 years (70 years in case of Centrally funded institutes), whichever is earlier. However, it

shall be open for the institution to make appointments for shorter period at a time, like one/two years, or for a further maximum period of three years, as the case may be, so long as the teacher is below the age of 65 years (70 years in case of Centrally funded institutes) with a proviso that in case of Centrally funded institution, all those who superannuated after 62 years, but not attained 65 years, as on 15th March, 2007 (date of Government's order), the reappointment shall be only against sanctioned vacant posts as in the case of 65-70 years age group. In case the number of claimants in the category of superannuated teachers who have not attained 65 years as on 15.03.2007, is more than available sanctioned posts, it may be left to the University/College to make selection of teachers from amongst that claimants, based on the requirements and availability of regular vacancies of sanctioned posts.

5. Principals to be Followed:

The institutions shall follow the following principles, while taking up the cases of superannuated teachers for re-employment:

(a) There shall be vacancies of teachers at the University Department or at the College, remaining unfilled for at least one year.

(b) The number of teachers to be re-employed in a University Department and/or College at any given time shall be limited to 50% of the vacancies identified, as above.

(c) Re-employment of superannuated Teachers may be made only against regular sanctioned posts, which could not be filled up.

(d) Re-employment of superannuated teachers shall be in the best interest of the concerned University Department or the College.

(e) There shall be adequate work load for the reemployed teacher/s at the concerned University Department or the College, to justify the appointment.

(f) Re-employment of superannuated teacher/s shall be possible either at the same University or College where the teacher had served before superannuating or at any other institution.

(g) The expenditure towards re-employment shall be met by the institution from its budget allocation.

7. Re-employment Procedure:

The procedure to be followed for the re-employment of superannuated teachers at a University/College shall be as given below:

(a) The University/College Department desirous of filling any vacancies by superannuated teachers shall obtain their CV for considering their cases.

(b) Each CV shall include a detailed account of all the contributions made by the teachers, highlighting his/her achievements during the last five years.

(c) The CV shall be discussed at a formal meeting of the Departmental Council/Committee of the University/College as the case may be, before making the Departmental recommendations.

(d) The departmental recommendation shall be forwarded to the Vice Chancellor in the case of a University through the Dean of Faculty or Chairperson, Governing Council in the case of a College through Principal for their consideration.

(e) The Vice Chancellor/Chairperson of the Governing Council shall constitute the following Expert Committees for evaluating the proposals:

(i) In the case of a University

1. Vice Chancellor (in the Chair) 2. Two Subject Experts* (Members) 3. Dean of the Faculty (Member) 4. Head of the Department (Member) (ii) In the case of a College

1. Chairperson of Governing Council (in the Chair) 2. Two Subject Experts* (Members) 3. Principal of the College (Member) 4. Head of the Department (Member) (*Nominated by the Vice Chancellor/Chairperson of the Governing Council from the approved panel of experts for the Selection Committees in the University Department/College).

(f) Each of the above Committees shall consider the full papers put up before it and also call any candidate for discussion, if necessary, before arriving at its recommendation on the appointment.

(g) The recommendation of the Committee and the terms of appointment shall be placed before Executive/Governing Council of the University/ College, as the case may be.

(h) The decision of the Executive/Governing Council shall be final and binding on the teacher.

8. Emoluments and Other Privileges:

(a) A re-employed teacher shall be eligible to draw emoluments equivalent to the last pay drawn minus pension as a consolidated amount which shall remain the same through out the tenure of re-employment.

(b) The institution may consider the re-employed teachers for campus housing on prevailing terms, if available, or compensate them to the extent possible towards the house rent.

(c) A re-employed teacher shall be entitled to casual/special casual/duty leave on a par with teaching faculty in regular service.

(d) The institution shall provide all the essential academic facilities to the re-employed teacher.

21. On a perusal of Clause 7 extracted above, it may be seen that in case of re-

employment of a University teacher, the composition of the Expert Committee for evaluating the proposal for re employment was to be as follows:

1. Vice Chancellor (in the Chair) 2. Two Subject Experts (Members) 3. Dean of the Faculty (Member) 4. Head of the Department (Member)

22. In the present case, admittedly the case of the petitioner for his re-employment was not evaluated by the Expert Committee mentioned above. I do not find any merit in the argument of Mr. Bansal appearing on behalf of the respondents that the case of the petitioner for re-employment was required to be considered according to the old policy. It is crystal clear on a reading of Clause 2(ii) of Circular dated 23.03.2007 that the cases of all those who had retired prior to 15.03.2007 on attaining the age of 62 years, but before 65 years of age, were required to be considered in accordance with the guidelines framed by the UGC on 23.11.2007 for implementing the directions of the Government for enhancing the age of the University teachers contained in its circular dated 23.03.2007.

23. In fact, the respondents themselves have stated in para 9 of their additional affidavit filed by them on 02.07.2008 that in view of judgment of Hon"ble Supreme Court in University of Delhi Vs. Raj Singh and others, , the decisions of the UGC are binding on the University. The respondents have stated that the University has been giving effect to the decisions and the guidelines of the UGC in the matter of pay revision, age of superannuation and re-employment of teachers, etc. even if they are at variance with the University Ordinances. Since as per own case of the respondents, the guidelines of the UGC are binding on them, they were required and were under a legal obligation to consider the case of the petitioner for his continuance in the service of the respondents up to the age of 65 years strictly in terms of the Circular of Ministry of Human Resource Development dated 23.03.2007 and the guidelines of the UGC extracted above. This has admittedly not been done by the respondents and, therefore, the action of the respondents in denying re-employment to the petitioner communicated to him vide covering letter of respondent No. 3 dated 02.07.2007 cannot stand the test of judicial scrutiny.

24. It is not the case of the respondents that they had considered the case of the petitioner for re-employment on the basis of Circular of Ministry of Human Resource Development dated 23.03.2007 and the UGC guidelines dated 23.11.2007. On the date the Advisory Committee held its meeting on 14.03.2007, neither the Circular of the Government of India dated 23.03.2007 nor UGC guidelines of 23.11.2007 were there in existence. Even if for a moment, it is assumed that the case of the petitioner for his re-employment was to be considered under the old rules and the guidelines, still the impugned decision not to grant re-employment to the petitioner cannot stand because it is an admitted case of the respondents that even under the old guidelines, the competent authority to decide the issue of re-employment of a University teacher was the Executive Council and not the Advisory Committee. It is admitted on behalf of

the respondents that the case of the petitioner for reemployment was never placed for consideration either before the Vice-Chancellor or before the Executive Council. The judgment of this Court in Madhu Rathour's Case (supra) relied upon by the counsel for the respondents is not applicable to the facts of this case for two main reasons, the first is that in Madu Rathour's Case (supra), the re-employment was declined by the Vice-Chancellor and for that reason, the case of that teacher was not placed for further consideration before the Executive Council. However, in the present case, the case of the petitioner for his re-employment never went beyond the Advisory Committee and the second reason why Madhu Rathour's Case will not apply to the present case is that in that case the Court had not adjudicated upon the Circulars of the Government of India dated 23.03.2007 by which the age of University teachers was enhanced from 62 years to 65 years or even the guidelines dated 23.11.2007 framed by the UGC pursuant to the said Circular. Even the judgment of the Division Bench of this Court in Dr. V.K. Aggarwal's Case (supra) referred to and relied upon by the counsel for the respondents is not applicable to the facts of the present case because in that case, the Division Bench has ruled that the administrative action of the University to grant or not to grant re-employment cannot be questioned in judicial review unless the procedure and the action of the University is vitiated in mala fides and arbitrariness. In the present case, this Court finds that the respondents have not at all considered the case of the petitioner for re-employment in terms of Circular of the Government of India dated 23.03.2007 enhancing the age of University teachers from 62 years to 65 years and for this complete inaction on the part of the respondents, their decision not to grant re-employment to the petitioner has to be regarded as an arbitrary action and such an arbitrary decision cannot withstand the test of judicial scrutiny. At this stage, I would like to note that this Court vide its order dated 03.02.2010 and again vide order dated 05.02.2010 had directed the respondents to produce the original record containing office nothings in the file from time to time, right from the date the application of the petitioner for his re-employment was received in the office of the respondents, till the date the decision thereon was taken by the competent authority. Pursuant to the said directions of this Court, what the respondents have produced before the Court are two files, none of which contains the office nothings to show how the application of the petitioner for re-employment was dealt with by various officials in hierarchy in the office of the respondents. Mr. Amit Bansal, counsel appearing on behalf of the respondents, had stated on instructions, that no such record of office nothings is maintained in the University. This stand taken on behalf of the respondents lacks transparency in dealing with the official matters. All Government Departments are expected to maintain official record of the office nothings and produce the same before the Court, if called for, to justify fair play in the transaction. It is hoped and expected that the respondents will maintain proper record of office nothings in future for the purpose of transparency in its functioning. Loose leaflets kept in the files produced before the Court could not satisfy the conscious of this Court and, therefore, I have no hesitation in holding that the procedure followed by the

respondents in considering the case of the petitioner for his reemployment is vitiated on account of arbitrariness and cannot stand the test of judicial scrutiny.

25. Had the case of the petitioner for his re-employment been considered by the respondents even as per Clause 2(ii) of Circular dated 23.03.2007, no screening for re-employment up to the age of 65 years was required in terms of Clause 4 of the UGC guidelines of 23.11.2007 extracted above. The petitioner, in that event, was straightway entitled for his re-employment till the age of 65 years as admittedly two posts of Professors in the Department of Sanskrit are lying vacant since February 2007. Since in the present case, the petitioner has indeed worked with the respondents in the same manner as he was working in the past prior to 31.01.2007 till he attained the age of 65 years on 31.01.2010, he is deemed to have been re-employed by the respondents and is, therefore, entitled to salary and other benefits admissible to him under the rules of the University for the said period.

26. The respondents, in fact, need not have gone into the procedure of re-employment contemplated in Clause 2(ii) of the Circular dated 23.03.2007 because in the opinion of this Court, his case for re-employment comes within the purview of Clause 2(i) extracted above. Clause 2(i) of circular dated 23.03.2007 stipulates that all those teachers who were in the service of the University as on 15.03.2007, were entitled to continue in service till the age of 65 years. It is a matter of record that the petitioner was continuing in the service of the respondents on 15.03.2007, the cut-off date mentioned in the Circular of the Government dated 23.03.2007. However, according to the petitioner, he was continuing as a regular employee against sanctioned vacant post of Professor whereas according to the respondents, his continuance with the respondents was as a guest lecturer. To buttress his argument, Mr. Bansal, counsel appearing on behalf of the respondents, had referred to and relied upon Attachment-5 to his written submissions dated 21.01.2010, which is a list of co-operative teachers of the Sanskrit Department for the academic year 2008-09. This list of cooperative teachers relied upon by the counsel for the respondents, does not advance the case of the respondents that the petitioner was appointed as a guest lecturer after the date of his superannuation on 31.01.2007. In the list of co-operative teachers relied upon by the counsel for the respondents, names of two teachers at serial No. 11 and 33 are mentioned as guest lecturers and against the name of the petitioner at serial No. 6 in the list, the description given is "retired". The respondents have not explained the capacity in which the names of retired teachers find mention in the list of co-operative teachers.

27. It may be noted that the petitioner could not have been appointed as a guest lecturer after 31.01.2007 as on that date, he had already attained the age of 62 years being the maximum age prescribed for such appointments prior to the amendment of the University Ordinance amended in October, 2007. Moreover, it is difficult to believe that the appointment of the petitioner as guest lecturer was made telephonically as alleged on behalf of the respondents.

28. Furthermore, the appointment as guest lecturer is limited in duration whereas admittedly, the petitioner is continuing teaching both in North and South Campus of the University for the last three years beyond 31.01.2007, date of his superannuation in terms of old rules. It is borne out from the record that the petitioner had been regularly taking three to four periods in a week as are given to other Professors appointed on regular basis and also had as many as 15 Ph.D. students under his supervision out of whom 4 have completed their Ph.D. Degrees in 2008-09 and 11 students are still doing Ph.D. under his supervision. As per amended Ordinance VI-B, which is Attachment-1 to the written submissions of the petitioner dated 25.01.2010, normally 8 Ph.D. students are assigned to a Professor and in case of retirement of a teacher, Ph.D. students under his supervision are re-distributed among other teachers. The Clause 3 of amended Ordinance VI-B relating to Doctor of Philosophy (Ph.D.) is relevant and is extracted below:

The student intake will be regulated in each Department as per the availability of seats according to the norm of Professor-8 students, Reader-6 students, and Lecturer-4 students, by the Departmental Research Committee. However, in such cases where teachers are retiring or leaving and where redistribution/reallocation of their Ph.D students to other faculty members is required, the norm can be relaxed by the Departmental Research Committee and the Board of Research Studies. The Departmental Research Committee shall also appoint Supervisor(s) which will be reported to the Board of Research Studies.

29. The fact that 11 students assigned to the petitioner by the Board of Research Studies are still doing their Ph.Ds under his supervision by itself suggests that the petitioner is continuing in the service of the respondents even after 31.01.2007.

30. At this stage, it will also be relevant to refer to one more letter dated 10.03.2008 received by the petitioner from the Head of Sanskrit Department (respondent No. 3), annexed as Annexure "AA 2" (at page 150 of the Paper Book) to his additional affidavit filed on 22.07.2008 and the said letter is extracted below:

To

Prof. Devendra Mishra,

C-19, Maurice Nagar,

University of Delhi,

Delhi-110007

Dear Sir,

I am writing to thank you for your kindness and indulgence in sharing your precious time with the Department of Sanskrit and taking care of the students interest, something you have always done as a regular faculty member of this

Department. Without your kind co-operation it would not have been possible to run the M.A. (Final) group-I (Indian Astrology) option. You very kindly engaged the classes on Jatalankara and Laghuparashari, two important texts of the syllabus. Not just that, you also engaged the class as always to teach the Meghdoot to M.A. (Previous) students and also Uttararamacharita to the students of M.A. (previous) in South Delhi Campus. I really do not know how I would have managed to take care of students of Indian Astrology at M. Phil and Ph. D levels without your unstinted supports. You very kindly accepted seven students to supervise for their M. Phil. Dissertations and were magnanimous enough to even act as co-supervisor (due to technical reasons) keeping in view the future and interest of three Ph. D. Candidates.

I feel the Department is indebted to you for this act of kindness and magnanimity and hope that you will keep this relationship alive even in the future.

With personal regards.

Sincerely yours.

Sd./

(Prof. Dipti Tripathi)

31. Furthermore, the petitioner has also placed on record a certificate dated 14.03.2008 issued to him by the Head of Sanskrit Department (respondent No. 3 herein) certifying that he is still employed in the respondent University but not as a guest faculty.

32. The letter dated 10.03.2008, certificate dated 14.03.2008 and the letter of Board of Research Studies assigning him more and more Ph.D. students under his supervision, all goes to show that the petitioner is working with the respondents in the same manner as he was working prior to attaining the age of superannuation of 62 years on 31.01.2007.

33. Since I have found that the respondents have not considered the case of the petitioner for his re-employment in terms of the Circular of the Government dated 23.03.2007 read along with the guidelines of the UGC dated 23.11.2007 referred above, I need not go into the question of mala fides or bias raised on behalf of the petitioner. In the facts and circumstances of the case, the plea of bias taken by the petitioner against the subject expert is of no legal consequence because the petitioner otherwise has to succeed in the present case.

34. Though the petitioner has worked with the respondents even after 31.01.2007 till now, but he has not been paid even a single penny towards his salary after 31.01.2007. It is borne out from the record that the petitioner is dedicatedly working with the respondents unmindful of non-payment of his salary to him after 31.01.2007 only with a hope that he may get his legitimate dues through the process of the Court. He is fighting his battle for almost about

three years by now.

35. In the XIIIth Chapter of "Bhagwat Geeta", the characteristics of a real teacher are laid down as essence of pride, free from hypocrisy, non-violence, forgiving nature, straightforwardness, service of the preceptor, purity of mind and body, steadfastness and self-control. In line with this, centuries ago, in this land of "Vedas", the teacher devoted all his time for upliftment of all his pupils in all directions, knowledge, morales, values, etc. He was called the "Guru" or "Acharya". It seems that the petitioner has all the required virtues of a "Guru" in true sense. Indeed, it is really sad and strange that the respondent No. 1, being a Central University, has not discharged its statutory duty in considering the case of the petitioner for his re-employment in terms of the Circular of the Government dated 23.03.2007 read along with the guidelines of the UGC dated 23.11.2007, and kept taking work from him as they were taking in the past prior to 31.01.2007 without payment of any salary or remuneration to him. A salaried person by and large depends upon income from salary for his sustenance and sustenance of his family and if he is not paid salary despite working for a long period, will it not affect his life and liberty? This, in the opinion of this Court, amounts to denial of basic human rights of a citizen and would also amount to deprivation of his life and liberty guaranteed to every citizen under Article 21 of the Constitution of India.

36. In the facts and circumstances of the case delineated above, the impugned communicated dated 20.06.2007 (Annexure 4 at Page 25 of the petition) is hereby set aside and the petitioner is hereby declared to be in the deemed employment of the respondents till attaining the age of 65 years which he has attained on 31.01.2010. The respondents are directed to pay all emoluments to the petitioner that may be admissible to him under the Rules, treating him in service till 31.01.2010, within a period of 8 weeks from today failing which the arrears would carry an interest @ 12% per annum. The petitioner is also held entitled to costs of Rs. 50,000/-for the present proceedings.

37. This writ petition is disposed of in terms referred above.