

**(2011) 07 DEL CK 0190**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 3129 of 2008

Suresh Kumar Sud and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 21-07-2011

**Acts Referred:**

Institutes of Technology Act, 1961 — Section 21, 3

**Citation :** (2011) 181 DLT 183

**Hon'ble Judges :** Rekha Sharma, J

**Bench :** Single Bench

**Advocate :** G.S.Raghav and Pankaj Kumar, for the Appellant; Anuj Aggarwal and Arjun Mitra, for the Respondent

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## **Judgement**

Rekha Sharma, J.—This is the second round of battle for the Petitioners who happen to be in the Research Faculty as Scientific & Design staff with Respondent No. 3, namely, the Indian Institute of Technology, Delhi (hereinafter referred to as the "IIT, Delhi"). Admittedly, there are two well-defined services; one is the "teaching cadre" and, the other the "scientific cadre", though both the "teaching staff" and the "scientific & design staff" get inducted into the service under one common codified Act, Statutes, Rules and Regulations. The main job of the Petitioners who are in the scientific cadre is to conduct research and promote development activities. In contradistinction to the above, the teaching cadre is primarily devoted to teaching and Professors are selected for their knowledge and ability to be effective teachers and for them, research is an ancillary activity.

2. It appears that the IIT, Delhi was facing shortage of teaching staff and so it started engaging the members of the scientific & design staff to take to teaching assignments, though not on regular basis. This, however, created a problem. The problem first arose when the pay scales of the teaching staff were increased but not of the research and design staff. Aggrieved by that, they filed a writ-petition in the High Court, titled Dr. Bej Nath Gupta and Ors. v. Government of India and Ors. reported in 1996 III AD (Del) 167. The High Court feeling that since the

services of the research and design staff were being utilized for teaching purposes, invoked the principle of "equal pay for equal work" and accordingly held that they, too, should be equated with the teaching staff in the matter of salary. That was the first round.

3. It so happened that Respondent No. 1, namely, the Government of India, Ministry of Human Resource Development decided to raise the retirement age of the teaching staff from 62 to 65 years. Hence, vide communication dated March 23, 2007, it inter-alia informed the Secretary, University Grants Commission, that in the light of existing shortage in teaching positions in the centrally funded institutions in higher and technical education, and in the context of Government's decision to expand the capacities of such Institutions for increasing access to higher education, it had been decided that the age of superannuation of all persons who are holding teaching positions on regular employment against sanctioned posts as on March 15, 2007 in any of the centrally funded institutions in higher and technical educations shall be increased from 62 to 65 years. It was made clear in paragraph-3 of the said communication that the enhancement of retirement age was to apply only to persons in teaching positions against posts sanctioned to Centrally funded higher and technical education institutions coming under the purview of the Ministry, in order to overcome the shortage of teachers. It appears that on receipt of the aforementioned communication, clarifications were sought by some Universities whether the enhancement of age of superannuation from 62 to 65 years also applied to those who were holding posts equivalent to teaching posts but were not actually engaged in teaching in the centrally funded institutions in higher and technical education. The Government of India vide its letter dated April 19, 2007 to the Secretary, University Grants Commission, clarified that decision to enhance the age had been made in order to overcome the shortage of teachers and was applicable only to the "teachers in centrally funded institutions in higher and technical education, who are actually engaged in teaching classes/courses/programmes of study in such institutions." It further clarified that the provisions of the Ministry's letter dated March 23, 2007 were not applicable to any other categories of employees, notwithstanding the fact that the posts they held might be considered as equivalent to the teaching positions. In the meanwhile, the IIT, Delhi basing itself on the letter dated March 23, 2007, issued notification dated March 30, 2007 and thereby enhanced the age of retirement of its scientific and design staff from 62 to 65 years. This was objected to by the Government of India and in response thereto, the IIT, Delhi vide letter dated September 17, 2007 addressed to the Joint Secretary, Ministry of Human Resource Development tried to justify its decision on the ground that the situation at IIT, Delhi was very different from that at other IITs, as the members of its scientific and design staff were engaged in teaching courses at UG and PG levels and guiding PhD research. The Government of India remained unconvinced. On February 29, 2008 it wrote to the Director, IIT, Delhi once again clarifying that the Government's approval for the enhanced age of superannuation from 62 to 65 years was applicable only

to the teaching staff and to none other category of employees though considered to be equivalent to teachers. The letter went on to say that the enhancement of age of superannuation from 62 to 65 years could not be extended to any category of employees other than Assistant Professors, Associate Professors and Professors, and that the spirit of the Government's decision was based on the basic premise of shortage of faculty. Faced with this letter of February 29, 2008, the IIT, Delhi on April 02, 2008 withdrew its earlier order enhancing the age of superannuation of scientific and design staff from 62 to 65 years. Hence, this writ-petition by the Petitioners seeking quashing of order dated April 02, 2008 and a direction to Respondent No. 1 not to interfere in the management and affairs of IIT, Delhi. I need not go into great details. The main contentions raised by the Petitioners were as under:

(i) Since the services of the Petitioners are also being utilized in holding teaching classes, therefore, there ought to have been No. discrimination in respect of their retirement age.

(ii) The IIT, Delhi itself had felt that there ought to have been parity in the matter of retirement age and on that basis, the age of retirement was actually raised from 62 to 65 years thereby bringing it at par with the teaching staff.

(iii) Despite having agreed to raise the retirement age and even having implemented the order, the IIT, Delhi was not justified in withdrawing the same at the instance of the Government of India and that by doing so, the IIT, Delhi had abdicated its authority.

(iv) The Government of India has No. authority to interfere in the matter of appointment and service conditions of the staff, as the IIT, Delhi is autonomous in character and is governed by the Institutes of Technology Act, 1961, the Statutes and the Ordinances framed thereunder.

4. I think it is necessary to keep in mind that the service conditions and making changes therein are a matter of policy. Of-course, it should not suffer from the vice of arbitrariness. In the present case, as I have observed at almost the initial stage of this order, there are two distinct classes of employees, as far as the present writ-petition is concerned, and they are the "teaching staff" as distinct from the "scientific and design staff". The mere fact that they are appointed through the same open selection as the teaching staff with professional designations would not blur the distinction. Similarly, to my mind, the mere fact that due to exigencies of the situation created by paucity of teaching staff, the services of scientific and design staff were availed of for teaching, would not erase the distinction. Such an act would not amount to merger of two distinct services, nor would it do away with the clear distinction between the two. The judgment of this Court in Dr. Bej Nath Gupta's case (supra) was on its own facts. It simply granted the same pay-scale to the scientific & design staff on the principle of "equal pay for equal work".

5. True, the IIT, Delhi in its wisdom decided to give the same benefit with regard

to the retirement age to the scientific and design Staff as had been given to teaching staff by the Government, but this benefit was withdrawn for the obvious reason that the IIT, Delhi could not under the Act alter the service conditions. The power to do so lies with the Council under Sub-section (1) of Section 31 of the said Act, of which the Minister in charge of Technical Education in the Central Government is the ex officio Chairman besides other members. Section 33(2)(b) of the said Act empowers the Council to lay down policy regarding cadres, methods of recruitment and conditions of service of employees, institution of scholarships and freeships, levying of fees and other matters of common interest. In view of this provision, it is well within the jurisdiction of Respondents No. 1 & 2, i.e. the Ministry of Human Resource Development and the Council of IITs, to lay down the policy regarding service conditions of the employees of IITs including the Petitioners. It is paradoxical that the Petitioners who are contending that Respondent No. 1 has No. authority to lay down the policy regarding service conditions of the employees of the IITs or to tinker with the same, have not sought quashing of order dated March 23, 2007. On the contrary, relying upon this very order, they are seeking parity with the teaching staff. This goes to show that in a way, they accept the authority of Respondents No. 1 & 2 to lay down service conditions of the employees of the IITs, or to alter the same. If that be so and it being so, the Petitioners cannot derive any benefit from order dated March 23, 2007, for it is confined only to the teaching staff with the sole purpose of overcoming the paucity in the teaching staff.

6. The IITs are facing shortage of teaching staff. If more teaching staff is not available and their paucity is throttling the very existence of the IITs, then the best way-out would be to keep the existing experienced staff for little more time to give breathing space to the authorities to wrestle with the situation and look out for lasting solution.

7. It may also be noted that the IIT, Delhi is not the only IIT. There are 6 more. And I was told, and this was not challenged, that in none of those IITs the scientific and design staff was ever asked to take teaching classes on regular or irregular basis. If IIT, Delhi makes a change, it affects the other IITs also. It cannot, thus, be said that the decision which was taken by the Government of India as a national level policy to give the benefit of enhancement of age of superannuation from 62 to 65 years to "all persons who were holding regular 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", was contrary to the prevailing situation.

8. It will not be out of place to refer to Section 21 of the Institutes of Technology Act, 1961 which empowers the Central Government to grant financial aid to the IITs after due appropriation made by Parliament by law in this behalf. It is not disputed that the IITs are receiving grants in each financial year to the extent of more than 50% to meet their expenditure. In this view of the matter, the order of the IIT, Delhi enhancing the age of superannuation of the scientific & design

staff from 62 to 65 years, though that order was later withdrawn, but if implemented it would have had the effect of putting extra financial burden on the Government without its approval to which it rightly did not agree.

9. Before concluding, let me refer to Statute 11 of the Statutes framed u/s 3(k) of the Institutes of Technology Act, 1961, for an argument was sought to be raised by the learned Counsel for the Petitioners basing himself on the said Statute. The Statute classifies the members of the staff of the Institute into three different classes, namely, Academic, Technical, & Administrative and others. In the Academic class is included Director, Deputy Director, Professor, Associate Professor, Assistant Professor, Lecturer, Workshop Superintendent, Associate Lecturer, Assistant Lecturer/Instructor, Scientific Officer, Research Assistant, Librarian, Deputy Librarian and such other academic posts as may be decided by the Board. Relying upon the fact that the Scientific staff is included in the Academic class along with the teaching staff, such as, Professor, Director, Lecturer etc., it was contended that the Petitioners could not be treated different from the teaching staff. If this argument is to be accepted, then the Librarian and Deputy Librarian can also not be left out, as they too are included in the Academic class. It is true that the Scientific Officer, Research Assistant, Librarian and Deputy Librarian are included in the Academic class, but the policy decision taken by the Government of India enhancing the age of the teaching staff from 62 to 65 years has been confined only to the said class on account of shortage in the teaching staff and not for any other purpose. It is nobody's case that there is any shortage in the other categories of the Academic class.

For what has been noticed above, I find No. merit in the writ-petition. The same is dismissed.