

(1999) 02 DEL CK 0074
In the Delhi High Court
Case No : Civil Writ No.293/99

Union of India

APPELLANT

Vs

Central Administrative Tribunal and others

RESPONDENT

Date of Decision : 05-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 AD 8 : (1999) 78 DLT 356

Hon'ble Judges : Devinder Gupta, Acting C.J.; J.B. Goel, J

Bench : Division Bench

Advocate : Mr. A.K. Sikri and Mr. V.K. Rao, for the Appellant; Mr. B.T. Kaul and Ms. Bimla K. Kaul, for the Respondent

Judgement

Devinder Gupta, A.C.J.

1. Order (annexure P.2) dated 7.1.1999 passed by the Central Administrative Tribunal, Principal Bench, New Delhi disposing of miscellaneous application No.2726/98 in O.A.2560/98 filed by respondents 2 to 5 is under challenge by the petitioners.

2. The respondents working as scientists in different institutions under Indian Council of Agricultural Research (for short "I.C.A.R."), approached the Tribunal on 28.12.1998 against the proposed action to retire them on attaining the age of 60 years. On 29.12.1998, while issuing notice in the main petition, by way of interim measure, the petitioners were restrained from retiring the respondents on 31.12.1998. After hearing the miscellaneous application impugned order was passed holding that it was a fit case where interim order deserves to be extended till final disposal of the petition on the condition that the respondents shall give an undertaking before their respective Institutions/ Directorates that in case they do not succeed in their petition, they shall deposit back, in lump sum, the excess salary received by them.

3. The challenge by the petitioners to the impugned order is on various grounds.

The main ground being that Byelaw 33(a) of I.C.A.R. provides age of superannuating of scientific and technical personnel as 60 years and no extension of service is permissible unless absolutely essential in the interest of research. I.C.A.R. is only a deemed university for the purpose of giving recognition to the degrees so offered by the Institutes and cannot be considered as an university falling within the parameters of Section 4 of the University Grants Commission Act. Tribunal erroneously assumed that the recommendations of Chadha Committee, constituted to advise on pay package, retirement age and other conditions of service of teachers/scientists etc. recommending the raising of the retirement age from 60 to 62 years, had been approved by the Agriculture Minister (the Prime Minister), who is also the Ex Officio President of I.C.A.R. There was no such approval on the file. Approval was only to the note of putting up the recommendations of the Committee before the Cabinet for its approval. Only on approval by the Cabinet that the recommendations of the Chadha Committee, if ultimately approved by the Governing Body, any right would have accrued to the respondents to claim increase in the age of retirement. Neither the Cabinet, nor the Governing Body had yet approved the recommendations of the Committee. To the contrary the Cabinet had returned the proposal. The Department of Personnel and Training had also raised serious objection while putting up the recommendation of Chadha Committee before the Cabinet. In this view of the matter, the Tribunal, in the impugned order, wrongly assumed that "admittedly the proposal to enhance the age of retirement of the scientists, engaged in teaching and research has been approved by the President of ICAR, namely, the Prime Minister of India as the Minister in Charge of Agriculture." The Tribunal also wrongly assumed that the proposal relating to the extension of age from 60 to 62 years, in ICAR Scientists duly approved by the Department of Expenditure and Department of Personnel and Training stands submitted to the Cabinet. As a matter of fact Department of Personnel and Training had objected to the recommendations. On misreading of record and on this erroneous premise the Tribunal remarked that "the possibility of the Governing Body not agreeing to the Cabinet decision is remote since the proposal has emanated from the Council itself duly approved by Agriculture Minister."

4. Learned counsel for the parties were heard at the admission stage itself. The respondents along with reply affidavit also placed on record documents, which the petitioners had not appended with the petition, which formed part of pleadings before the Tribunal.

5. Mr. B. T. Kaul, Learned counsel for the respondents vehemently contended that ICAR is totally funded by Government of India and its complete administrative control vests in Government of India through Department of Agricultural Research and Education, Ministry of Agriculture. On the recommendation of University Grants Commission, Government of India, Ministry of Human Resources Development issued a policy circular on 27.7.1998 whereby pay scales of all teachers in Central Universities were revised with effect from 1.1.1996. In addition to the revised pay scales and other terms and conditions of

service of teachers, a decision was also taken by the Government of India to increase the age of superannuation of university and college teachers from 60 to 62 years. It was slightly modified by another circular dated 6.11.1998 whereby the benefit of increase in the age of superannuation was also made available to nonteaching officers/employees of the Central Universities including Registrars, Librarians, Physical Education personals etc., who were being treated at par with teachers. In respect of working teachers in institutions affiliated/ controlled by AICTE like S.P.A., N.I.F.T. etc. a policy circular was issued by Ministry of Human Research Development on 31.7.1998 increasing the retirement age from 60 to 62 years. The scientists, teachers and administrators working in various institutes of ICAR had some genuine additional demands over and above pay revision with effect from 1.1.1996 and superannuation age from 60 to 62 years, on the pattern of University Grants Commission's recommendation. Chadha Committee was constituted. It made recommendations, which were duly approved and accepted by Prime Minister of India being Minister in Charge. The only thing which remained to be done was to carry out the decision of the Prime Minister, who was also ex officio President of ICAR. Thus the Tribunal was right in allowing the interim relief to the respondents, after it came to the conclusion that a strong case had been made out in respondents' favour.

6. Mr. Kaul also contended that on an earlier occasion decision regarding pattern to be adopted for the revision of pay scales of IACR was for consideration by Government of India. On 30.10.1988 a policy decision was taken that U.G.C. package be extended to ICAR scientists, which was made applicable with effect from 1.1.1986. Once there was a parity between those governed by U.G.C. recommendations and the one governed by ICAR, it was imperative upon the petitioners to have implemented the U.G.C. recommendations mutates mutants, when revised pay package and other conditions of service were made applicable to scientists, teachers etc. with effect from the issuance of notification dated 27.7.1998.

7. Learned counsel for the respondents also made reference to the two decisions of the Supreme Court in Dr/S. M. Ilyas and others Vs. Indian Council of Agricultural Research and others 1998 (4) S.C.C. 182 and I.C.A.R. Vs. Satish Kumar and Another, in support of his submission that in so far as U.G.C. package is concerned, the same mutates mutants applies to all scientists/teachers as this was made applicable with effect from 1.1.1986 and when through notification dated July, 1998 it was applied to all Central Universities, it automatically applied to respondents also and thus in view of a strong case having been made out by respondents, the Tribunal was justified in granting interim relief with which no interference was called for by this Court in exercise of its writ jurisdiction.

8. Having considered submissions made at the bar, we are of the view that for more than one reason, it was not permissible for the Tribunal to have passed the impugned order by way of interim measures, which has the effect of almost allowing the relief prayed for in the main petition. The case of the respondents is

yet to be adjudicated on merits. May be that, as has been contended by learned counsel for the respondents that there is a very strong prima facie case in favor of the respondents, but that alone cannot form the basis to grant such a relief by way of an interim measure, since such a relief will have to be granted to the respondents only on allowing the petition. At this stage when only the question of interim relief was being considered, in addition to a very strong prima facie case, it was also incumbent upon the Tribunal to have taken into consideration two other aspects, namely, balance of convenience and irreparable loss and injury.

9. In *Bank of Maharashtra Vs. Race Shipping and Transport Co. Pvt. Ltd.* and another AIR 1975 S.C. 1368, the Supreme Court deprecated the practice of granting interim orders, which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and other relevant factors. Again in *Bharat Bhushan Sona ji Kshirsagar (Dr.) Vs. Abdul Khalik Mohd. Musa* 1995 (2) S.C.C.583, it was held that it was not proper to allow interim relief, which has the effect of almost allowing the main relief itself.

10. Admittedly, the impugned order has been made subject to condition that the respondents will pay back salary, to be drawn by them, in case of dismissal of their petition. It was the case of the respondents before the Tribunal that as per existing byelaw action was being taken by the petitioners to superannuate them on 30.12.1998. For the reasons stated in the petition they were entitled to continue till the age of 62 and not till the age of 60. In such a case when on the existing Bye Laws of ICAR the respondents would have retired on 30.12.1998 on attaining the age of 60 years, a fresh lease of service life, for the duration of the pendency of their petition before the Tribunal has been granted by the impugned order. The Tribunal failed to consider an important aspect that in the event of success of the respondents in their petition, they can very well be compensated in terms of money. To the contrary in case their petition would fail it will also have the effect of an employee being continued on the rolls of the I.C.A.R., who otherwise would not be entitled to hold that position. In that situation it would amount to usurping the right of others, who would have been in their position, but for the interim order. Thus the balance of convenience did not lie, in such like situation, in granting injunction in favor of the respondents. Moreover on perusal of the relevant files, we find that the Tribunal proceeded contrary to the facts on two basic aspects. Neither the Prime Minister, being the Ex Officio President of I.C.A.R., in the capacity of Minister in Charge of Agriculture, had given his approval to the recommendations of Chadha Committee, nor there is concurrence to such a proposal by the Department of Personnel and Training. The note for putting up of the report of the committee before Cabinet alone was approved by the Prime Minister, as Minister in Charge of Agriculture. There was a strong objection raised by the Department of Personnel and Training in accepting recommendation of Chadha Committee. Thus on wrong assumption an opinion

was formed by the Tribunal that the possibility of Governing Body not agreeing to Cabinet decision is remote.

11. In the circumstances aforementioned the Tribunal was not at all justified in having allowed the respondents' prayer by way of interim measure and thereby permitting them to be continued beyond the age of superannuation, as provided in the byelaws and for that reason, we are of the view that the writ petition deserves to be allowed and the impugned order deserves to be quashed and set aside. Ordered accordingly. Needless to add that the observations made herein will not prejudice the case of either parties on merits nor, influence the Tribunal while disposing of the main petition of the respondents.