

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 6953/2001**

Reserved on: 22.09.2011
Date of Order: 01.11.2011

UMESH CHANDRA PANDEY

..... Petitioner

Through: Mr. Ashok Bhalla, Advocate

Versus

UNIVERSITY GRANTS COMMISSION & ANR. ... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

M.L. MEHTA, J.

1. In this writ the challenge is to the order dated 20th July, 2001 of respondent No. 2, Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeeth, Katwaria Sarai, New Delhi-110016 and also its order dated 12th October, 2001, whereby the representation dated 1st August, 2001 of the petitioner was rejected.

2. The petitioner was initially appointed by Rashtriya Sanskrit Sansthan, Shastri Bhawan, New Delhi, (hereinafter referred to as 'the Sansthan') and was posted as Librarian at Sri Sadasiva

Kendriya Sanskrit Vidyapeetha, Puri with effect from 30.07.1974. The age of superannuation of the post was 58 years. The post was temporary, but likely to continue and was transferable anywhere in India. In April, 1976 he was transferred to the institute of Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeetha (hereinafter referred to as 'the employer') at New Delhi. It is seen from the record that in addition to his duty as Librarian, the petitioner was also taking teaching classes.

3. Since the petitioner continued to work with the employer, he was accordingly offered appointment to the post of Librarian in the Pay Scale of Rs.2,200/- to Rs.4,000/- along with his personal promotion in the pay scale of Rs.3,700/- to Rs.5,700/- plus other allowances as admissible under the Rules. In the meantime, vide office order dated 7th May, 1983 of the Sansthan, the petitioner was appointed to the post of Librarian with effect from 01.11.1981 in the substantive capacity. In the offer of appointment issued by employer vide order dated 30.10.1991, it was stated that the service rendered by the petitioner in the Sansthan shall be counted for pension and other service benefits as admissible under the Rules of the employee and his present service conditions would not be altered to his disadvantage. It was also stipulated that his duty and responsibility with the

employer shall be governed in the light of the guidelines issued by the University Grants Commission vide their letter dated 18/26.11.1988. The petitioner accepted the appointment offer of the employer on 12.12.1981 and subsequently vide office order dated 12.12.1981, he was appointed as Librarian with effect from 01.11.1981. It was mentioned in the said order that since he was working as Librarian, he will be getting his personal promotion in the pay scale of Rs.3,700/- to Rs.5,700/-. The employer in its meeting held on 19.12.1984 decided that the Librarians were to be treated as Readers as per guidelines of UGC i.e. respondent No. 1 and accordingly all the benefits available to the teachers were extended to the Librarians of the employer including the date of retirement to be 60 years as were for the teaching staff of the employer. In response to the representation of the petitioner, the employer vide their letter dated 16.12.1986 informed him that the age of superannuation of the Librarian was 60 years. Subsequently, vide office order date 27th November, 1997, the petitioner was promoted from the post of Reader to Professor in the pay scale of Rs.4,500/- to Rs.5,700/- on the recommendation of the Selection Committee with effect from 27.11.1997. Subsequent upon his promotion in the pay scale of Rs.4,500/- to Rs.5,700/- vide office order dated 27.11.1997, the pay scale of

the petitioner was fixed at Rs.4,500/- to Rs.5,700/- with effect from 27.11.1997.

4. The department of Education, Ministry of Human Resource Development, Govt. of India on 06.11.1998, in continuation of its earlier letter dated 27.11.1997 and supersession of the letter dated 22.09.1998, intimated to respondent No. 1 the decision of the Government relating to revision of pay scales of university and college teachers and modifications made in the existing scheme regarding pay and age. Specifically, this letter contained the following communication:

"Readers & Professors

The pay of Readers and Professors who were in the pre-revised scales of Rs.3000-5000/- and Rs.4500-5700/- will be fixed at the appropriate stage of the revised scales of Rs.10000-325-15200 and Rs.16400-450-20900-500-22400/- respectively as on 1.1.1996."

5. Regarding the age of superannuation, this letter contained the under-mentioned condition:

"Age of Superannuation

The age of superannuation of 62 years indicated in para 1 (iv) of our letter under reference shall also be applicable to Registrar, 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."

6. Subsequently, on 24.12.1998, the respondent No. 1 issued a Circular to all the Universities and Education Secretaries, all State Governments and Union Territories communicating the decision of the Government of India as contained in its letter of 6th November, 1998 regarding the age of superannuation. The relevant clauses of this circular read as under:

"16.0.0 SUPERANNUATION AND RE-EMPLOYMENT 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 employer issued an office order dated 25th April, 2000 whereby the re-fixation of the date of promotion of the professors including the petitioner was done from the date of eligibility i.e. on completion of 10 years of service in the Reader's grade. Their promotion was stated to be notional up to 31st December, 1995 and financial benefits were to be provided with effect from 1.1.96.

From this it is evident that the date of promotion to the post of Reader as mentioned therein was 2.3.1985 and to the post of Professor 27.11.1997. The date of completion of 10 years as Reader was mentioned as 02.03.1995. The date of notional promotion up to 31.12.1995 and the date of financial benefits were with effect from 01.01.1996. It was also mentioned that the arrears arising out of this office order were to be paid to all who were the beneficiaries of this office order. Consequently, vide office order dated 12.5.2000, the pay of petitioner was fixed at Rs.4950/- in the pre-revised pay scale of Rs.4500-5700/-. Subsequently, the UGC i.e. respondent No. 1, in its meeting held on 16.08.2000 discussed the issue of age of retirement of Assistant Registrar, Deputy Registrar, Assistant Librarian, Deputy Librarian, Assistant Director, Assistant Director Physical Education and Deputy Director of Physical Education 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.”

8. The employer vide its letter dated 2/19th March, 2011 wrote to respondent No. 1 seeking clarification as regards the age of superannuation in the case of the petitioner and one Shri S.C. Gupta stating therein that they both were working in the pay scale of Rs.16400-22400/- in the merit promotion scheme respectively as Librarian and PTI (Reader, Physical Education). It was stated that taking into account the pay scale of Rs.8000-13500/-, these posts can be equated with the post of Assistant Librarian and Assistant Director of Physical Education for which the age of retirement have been brought down to 60 years by the respondent No. 1. With these facts, clarification was sought as to the age of superannuation in the case of the petitioner and Shri S.C. Gupta. Though, there is nothing on record to show any response having been received by the employer/respondent No. 1, it appears that the impugned office order dated 20.07.2001 was issued by the employer to retire the petitioner with effect from 31.12.2001. the said order reads like this:

“Prof.(Dr.) Umesh Chandra Pandey, Librarian, working against the substantive post of Assistant Librarian, in the Vidyapeetha, will retire on 31st of December 2001 on attaining the age of superannuation which is 60 years in his case as per clarification issued by

University Grants Commission vide their letter No. F.3-1/94(PS)Age of Sup. Dated 18th June 2011."

9. The petitioner made representation on 1.8.2001 to the employer protesting his superannuation at the age of 60 years on the ground that he was working against the substantive post as Librarian and not as Assistant Librarian and as per the notification of 1998, the age of superannuation was to be 62 years. This was replied by the employer vide its letter dated 12.10.2001 observing as under:

"The Post of Librarian in the Vidyapeetha can not by any stretch of imagination be considered as vocational. There is no teaching work involved and, as mentioned, it has to be considered as non-academic in the situation existing in our Vidyapeetha. It is certainly not comparable to the case of Delhi University where Library Science is being taught in the University and the Librarians are apparently involved in the teaching work. In this case Dr. Pandey has no teaching responsibility nor has he any record of teaching in the past. It seems that even the promotion under the merit Promotion Scheme from the scale of Rs.3700-5700 was done without full consideration of the facts since it was only on an analogy of the cases existing in the Delhi University. It seems University Grants Commission has some reservations on this matter also."

10. Vide the aforesaid letter, the petitioner was also permitted to present his version on the above matter to enable the

employer to take further appropriate action. The petitioner presented his version vide his communication dated 24/29.10.2001. The petitioner reiterated the fact that he was not working as Assistant Librarian, but as a Librarian. He also reiterated that he was promoted under the merit Promotion Scheme after fulfilling conditions of the post by referring to office order. He also stated that Professors and Librarians are considered as teaching staff. He further stated that he had sufficient past record of teaching not only from the previous employer Sri Sadasiva Kendriya Sanskrit Vidyapeetha, Puri, but also from the employer. A certificate dated 28.12.1981 issued by the employer in this regard was specifically referred to.

11. From all the notifications, office orders and circulars, as noted above, it would be seen that the petitioner was initially employed as Librarian with Sri Sadasiva Kendriya Sanskrit Vidyapeetha, Puri. Thereafter he was transferred to Shri Lal Bahadur Shastri Kendriya Sanskrit Vidyapeetha, New Delhi as Librarian and was subsequently appointed as Librarian with effect from 1.11.1981 against the substantive post. It is also seen that vide office order dated 6.11.98 the age of superannuation of 62 year was also made applicable to Librarians etc. who were being treated at par with teachers whose age of superannuation was 60

years. Vide order dated 5.10.2000, the age of superannuation of 62 years was withdrawn and brought down to 60 years in respect of Assistant Registrar, Deputy Registrar, Assistant Librarian etc. It would be seen that there was no mention of "Librarian" in this office order. Having seen that the petitioner was not posted as Assistant Librarian but Librarian, this office order bringing down the superannuation age to 60 years would not apply in his case. Further it is also seen that the petitioner was also promoted to the post of professor and was granted scale of professor as applicable. There is also sufficient evidence on record, as noted above, that the petitioner was also involved in teaching work. In view of this, the superannuation age of the petitioner, in any case, was to be 62 years and not 60 years.

12. The notification of 24.12.1998 regarding revision of pay scale and superannuation age of teaching and other staff was also the subject matter of interpretation by this Court in **S. Dildar Haider Vs. Jamia Milia Islamia and Anr.** decided on 18.08.2006 in W.P.(C) 2829/2003. This court in the said case held 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 others treated 'at par' with such teachers would be 62 years. The letter of 06.11.1998 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 27.07.1998 and 06.11.1998. 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 Registrar, 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, later 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.

33. The Supreme Court, in its decision reported as Osmania University v. V.S. Muthurangam had held 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 sought 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 expansive the others 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 teachers – 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 the case if it is held to cover instructor; any other interpretation would render the latter part of para 16.2.0 a surplusage."

13. In view of my above discussion, the petitioner is entitled to the enhanced age of superannuation of 62 years.

14. Consequently, the impugned order dated 20.07.2001 is hereby quashed. The respondent No. 2 is directed to treat the petitioner as having continued in service till 31st December, 2003. The respondent shall pay to the petitioner his salaries up to 31.12.2003 i.e. for the period of two years from 1.1.2002 to 31.12.2003 and all other benefits as applicable like pension benefits, PF etc. and differential amount shall be paid to the petitioner within 12 weeks of this order.

15. The petition stands disposed of in the above terms.

**M.L. MEHTA
(JUDGE)**

NOVEMBER 01, 2011
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