

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

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Judgment delivered on: 23.07.2012

+ **W.P.(C) 4607/2008**

**INDIAN COUNCIL OF AGRICULTURAL RESEARCH ...** Petitioner

versus

**PREM DUREJA & ORS**

... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr Gagan Mathur

For the Respondents : None

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

1. This matter had been placed in the prioritized category of 'Senior Citizens' at the asking of the respondent No.7. However, when the matter is called out, nobody is present on behalf of the respondents and it is only the counsel for the petitioner who is present before us and who has argued this matter. We have, therefore, heard this matter in the absence of the respondents.

2. The petitioner is the Indian Council of Agricultural Research (ICAR) which falls within the Ministry of Agriculture. The writ petition is directed against the order dated 30.05.2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2348/2007. The main issue involved in this case is whether the scientists working under the ICAR and particularly with the IARI (Indian Agricultural Research Institute) can be given the benefit of the Government of India letter dated 23.03.2007 which had been issued by the Ministry of Human Resource Development, whereby the age of superannuation of the centrally funded institutions in higher and technical education falling under the said Ministry of Human Resource Development was increased from 62 to 65 years.

3. It is the contention of the learned counsel for the petitioner that the Tribunal has erred in allowing the Original Application filed on behalf of the respondents and in directing that the age of superannuation be increased from 62 to 65 years even in respect of the scientists working under the ICAR and with the IARI. The contention of the learned counsel for the petitioner is two-fold. In the first instance, the learned counsel submitted that the Government of India letter dated 23.03.2007 as also the

clarificatory letter dated 19.04.2007, make it abundantly clear that it applies only to the centrally funded institutions in higher and technical education falling under the Ministry of Human Resource Development. It does not apply to the ICAR or the IARI, which fall under the Ministry of Agriculture. He also submitted that the matter had been considered by the ICAR and the ICAR had issued a circular dated 22.06.2007 specifically rejecting the representation of several scientists within the fold of the ICAR for increasing the age of superannuation from 62 years to 65 years. Secondly, it was contended by the learned counsel for the petitioner that, in any event, the scientists working with the ICAR and/ or the IARI were not in regular teaching positions, which was the essential requirement for the benefit being granted under the said Government of India letter dated 23.03.2007, as clarified by the letter dated 19.04.2007.

4. First of all, let us examine the letter dated 23.03.2007. The said letter has clearly been issued by the Ministry of Human Resource Development. The said letter reads as under:-

“F.No.1-19/2006-U.II  
Government of India  
Ministry of Human Resource Development  
Department of Higher Education

New Delhi, the 23<sup>rd</sup> March, 2007

To  
The Secretary,  
University Grants Commission,  
Bahadur Shah Zafar Marg,  
New Delhi.

Subject:- Enhancement in the age of superannuation from 62 to 65 years for teaching positions in centrally funded institutions in higher and technical education.

Sir,

I am directed to say that at the time of revision of pay scales of teachers in universities and colleges, following the revision of pay scales of Central Government employees on the recommendations of the Fifth Central Pay Commission, it was provided, Inter alia, in this Ministry's letter No.1-22/97-U.I dated 27<sup>th</sup> July, 1998 that "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 the UGC up to the age of 65 years".

2. The matter has been reviewed by the Central Government in the light of the existing shortage in teaching positions in the centrally funded institutions in higher and technical education under this Ministry, and in the context of 'Government's decision to expand the capacities of such Institutions for increasing access to higher education and for implementing the policy of reservations for the weaker sections without affecting the number of seats in the unreserved category available through general merit. Accordingly, it has been decided that –

(i) The age of superannuation of all persons who were holding teaching positions on regular employment against sanctioned posts as on 15.3.2007 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 15.3.2007 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.

3. It is further clarified that the enhancement of retirement age as mentioned above and the provision for re-employment, will apply only to persons in teaching positions against posts sanctioned in centrally funded higher and technical education institutions coming under the purview of this Ministry, in order to overcome the shortage of teachers.

4. Necessary Notification in this regard may be issued by the University Grants Commission.

Yours faithfully,  
-sd/-  
(R.Chakravarty)  
Deputy Secretary to the  
Government of India”

(underlining added)

5. A plain reading of the said letter would indicate that the relaxation in the age of superannuation from 62 to 65 years has been made applicable only to the centrally funded higher and technical education institutions falling under ‘this Ministry’, implying thereby the ‘Ministry of Human Resource Development’. Moreover, the letter also indicates that it pertains to persons holding regular teaching positions.

6. This letter was followed by the clarificatory letter, once again issued by the Ministry of Human Resource Development on 19.04.2007. The clarifications issued under that letter were as under:-

“(i) The enhancement of the age of superannuation from 62 years to 65 years and the provisions for re-employment as mentioned in this Ministry’s letter dated 23.3.2007 referred to above, have been made in order to overcome the shortage of teachers and is applicable only to the ‘Teachers’ in centrally funded institutions in higher and technical education under the Ministry of Human Resource Development, who are actually

engaged in teaching classes/ courses/ programmes of study in such institutions.

(ii) The provisions of the Ministry's letter of even number dated 23.3.2007 mentioned above shall not be applicable to any other categories of employees in such institutions, notwithstanding the fact that the posts they hold may be considered as 'equivalent' to teaching positions.

(iii) As provided in this Ministry's letter of even number dated 23.3.2007, those teachers who are occupying teaching positions on regular employment against sanctioned posts in centrally funded higher and technical education institutions as on 15.3.2007, would henceforth retire at the age of 65 years. Therefore, the retirement age of any such regular teacher, who was actually in position as on the crucial date of 15.3.2007, would be 65 years."

(underlining added)

7. A reading of the above clarification would also clearly indicate that it pertains to the centrally funded institutions in higher and technical education under the Ministry of Human Resource Development and that too to persons who are actually engaged in teaching classes/ courses/ programmes of study in such institutions. In other words, it applies only to the institutions falling under the fold of the Ministry of Human Resource Development and only pertains to regular teaching positions.

8. Next, we need to consider the circular issued by the ICAR on 22.06.2007 whereunder, the ICAR considered the question of enhancement in the age of superannuation from 62 to 65 years within its organization on the basis of several representations received from the scientists as well as the ARS Scientists' forum. The representationists sought parity in the ICAR with what was available for institutions under the Ministry of Human Resource Development. However, after considering the representations, the ICAR came to the clear and categorical conclusion that there was no justification for enhancing the age of superannuation of the ICAR scientists from 62 to 65 years. The said circular reads as under:-

**“INDIAN COUNCIL OF AGRICULTURAL RESEARCH  
KRISHI BHAWAN: NEW DELHI**

F. No: 1(9)/06-Per. IV

Dated, the 22<sup>nd</sup> June, 2007

To

The Directors/Project Directors /Project Coordinators  
Zonal Coordinators/National Bureaus of ICAR institutes

Subject : Enhancement in the age of superannuation from 62 to 65 years – representations – reg.

Pursuant to the decision of the Central Government to enhance the age of superannuation from 62 to 65 years for teaching positions in centrally funded institutions for higher and technical education under the Ministry of HRD, representations

have been received from Scientists as well as from the ARS Scientists' Forum for similar action in the case of ICAR scientists. The matter has been carefully considered in the Council and it is observed that that Ministry of HRD notification enhancing the age of superannuation from 62 to 65 years is applicable to the teachers of centrally funded institutions of higher and technical education who hold regular teaching position against sanctioned post who are actually engaged in teaching classes / courses / programmes of studies in institutions under the MHRD. The scientists working in ICAR institutes are appointed to do research work in agriculture and related areas. Some of the scientists in the institutes with deemed university status are assigned teaching work as one of the functions. They are an integral part of Agricultural Research Service and the ICAR system and are liable to work in any institution in ICAR anywhere in the country. Therefore, the claim for enhancement of retirement age in ICAR institutes with deemed university status is not justified. In view of above, it has been decided that there is no justification for enhancing the age of superannuation of ICAR scientists from 62 to 65 years.

Yours faithfully,

sd/-  
(A.K. UPADHYAY)  
Secretary, ICAR"

9. We have been taken through the entire impugned order passed by the Tribunal and we find that virtually the entire discussion in the order is with regard to the question of whether the scientists under the ICAR would qualify as persons holding regular teaching positions or not. The Tribunal

has gone to a great length in concluding that the ICAR scientists would also be regarded as persons holding regular teaching positions. The Tribunal came to the following conclusion:-

“46. Resultantly, for the forgoing reasons, we are of the considered view that the applicants are holding teaching positions in IARI, which is a centrally funded institution and as the clarification dated 19.4.2007 is not applicable to them, what is applicable is the notification dated 23.3.2007. Withholding the benefit of enhancement of age to 65 years to the applicants cannot be countenanced in law. Resultantly OA is allowed. Impugned order dated 22.6.2007 is set aside. Respondents are directed to forthwith allow the benefit of extended age of superannuation to the applicants, who are functioning in an institution imparting education from 62 to 63 years with all consequences. No costs.”

From the above, it is clear that the Tribunal directed the petitioner to forthwith allow the benefit of extended age of superannuation to the respondents, who were working in an institution imparting education from 62 to 65 years with all consequential benefits.

10. We may also point out that the learned counsel for the petitioner submitted and, in our view, rightly, that the direction of the Tribunal is contrary to the service rules of the ICAR which provide for a specific superannuation age of 62 years. The Tribunal has sought to re-write the service rules of the ICAR by virtue of the impugned decision. That is

impermissible. We may point out that the Tribunal, while it has gone to great lengths in trying to arrive at the conclusion that the ICAR scientists are to be considered as occupying regular teaching positions, it has failed to consider the very fundamental issue of whether the Government of India letters dated 23.03.2007 and 19.04.2007 were at all applicable to the ICAR. We find this strange particularly because the ICAR had considered several representations from its scientists as also from the ARS Scientists' Forum and after considering the totality of the circumstances, it came to the conclusion that the benefit of extending the age of superannuation from 62 to 65 years could not be granted to the scientists working with the ICAR for the reasons indicated in the circular dated 22.06.2007.

11. Consequently, without going into the issue of whether the ICAR scientists could be regarded as holding regular teaching positions or not, the very fact that the letters dated 23.03.2007 and 19.04.2007 applied only to institutions under the Ministry of Human Resource Development and not to institutions under the Ministry of Agriculture, we find that the Tribunal's decision ignoring this aspect of the matter, cannot be upheld. The said letters do not apply to the Ministry of Agriculture and, consequently, to the

ICAR which falls within the fold of the Ministry of Agriculture. As a result, the impugned order is set aside. There shall be no order as to costs. We also make it clear that the issue of whether the ICAR scientists are to be regarded as holding regular teaching positions is left open.

**BADAR DURREZ AHMED, J**

**SIDDHARTH MRIDUL, J**

**JULY 23, 2012**  
**SR**