

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

% Judgment delivered on 28.05.2012

+ **W.P.(C) 5414/2011**

C.B. JOSHI ... Petitioner

Versus

NATIONAL INSTITUTE OF HEALTH AND FAMILY WELFARE ... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Randhir Jain, Mr Dhananjai Jain, Ms Ruchika Jain, Advs.
For the Respondent : Mr Mukul Gupta, Sr. Adv. with Mr Rajat Katyal, Adv.

AND

+ **W.P.(C) 6618/2011**

P.L. TRAKROO ... Petitioner

Versus

NATIONAL INSTITUTE OF HEALTH AND FAMILY WELFARE AND ANR.
... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Randhir Jain, Mr Dhananjai Jain, Ms Ruchika Jain, Advs.
For the Respondent : Mr Mukul Gupta, Sr. Adv. with Mr Rajat Katyal, Adv.
Mr Sumeet Pushkarna, with Mr Gaurav Varma, Mr Varun Dubey
Advs. for the UOI.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

1. These writ petitions arise out of the common order passed on 18.06.2010 in T.A. Nos. 6 & 7 of 2008. The said order dated 18.06.2010 was that of the Vice Chairman (A) of the Central Administrative Tribunal, Principal Bench, New Delhi. Earlier the said T.A's were heard before a Division Bench of the said Tribunal. However, there was a difference of opinion between the members of the said Division Bench. As a result, the matter was referred by the Chairman of the Central Administrative Tribunal to the Vice Chairman (A) by virtue of the provisions of Section 26 of the Administrative Tribunal Act, 1985. The decision taken by the said Vice Chairman (A) by virtue of the order dated 18.06.2010 is therefore be determinative decision in the said T.A's.

2. The entire issue before the Tribunal was with regard to the age of superannuation of the petitioners herein. There was also a supplemental issue with regard to the curtailment of the period of extension of one of the petitioners, namely, Dr P.L. Trakroo. We shall first consider the question with regard to the age of superannuation.

3. The petitioners were working in the National Institute of Health and Family Welfare (NIHFW). The claim of the petitioners before the Tribunal was that they were governed by the University Grants Commission (UGC) package of 24.12.1998 whereby the age of superannuation had been increased from 60 to 62. On the other hand the case of the NIHFW was that the UGC package of 24.12.1998 did not at all apply to NIHFW nor was it adopted by the NIHFW. It was further contended that in fact, a conscious decision was taken by the Governing Body of the NIHFW not to adopt the UGC package

of 24.12.1998. This is apparent, according to the learned counsel for the respondent, from the decision of the Governing Body taken on 16.08.2011.

4. The learned counsel for the petitioners, in rejoinder pointed to the office order dated 17.05.1993 issued by the NIHFW which, according to him, indicates that the UGC package was adopted and implemented by NIHFW.

5. After the 5th Central Pay Commission recommendations the University Grants Commission took out a notification on revision of pay scales, minimum qualifications for the appointment of teachers in universities and colleges and other measures for the maintenance of standards in 1998. The entire package was known as the UGC package of 24.12.1998. In the communication dated 24.12.1998 issued by the UGC to the Vice Chancellors of all the universities, Education Secretaries of all the States/ Union Territories, it was specifically provided in paragraph 1.0 thereof as under:-

“1.0 These shall apply to every University established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the concerned University under Clause (f) of Section 2 of the University Grants Commission Act, 1956, and every institution Deemed to be a University under Section 3 of the said Act.”

6. A plain reading of the said paragraph 1.0 makes it clear that the UGC package was to apply to every university, established or incorporated by or under a Central Act, Provincial Act or a State Act. It was also to apply to every institution including a

constituent or an affiliated college recognized by the Commission. It was also to apply to every institution deemed to be a university under section 3 of the University Grants Commission Act, 1956. It is an admitted position that NIHFW is neither a university falling within the definition of section 2 (f) of the University Grants Commission Act, 1956 nor is it a deemed university as defined in section (3) thereof. It was contended by the learned counsel for the petitioner that NIHFW would fall within the ambit of an affiliated college. However, we find it is not just the affiliation which has to be taken into account but the fact that the affiliated college must also be recognized by the UGC. When we asked the learned counsel for the petitioner to produce any document or piece of evidence to indicate that NIHFW was, firstly, an affiliated college and secondly, was recognized by the UGC, he was unable to do so. It is also the positive case of the respondent that NIHFW is not an affiliated college recognized by the UGC. As such, it is abundantly clear that the UGC package of 1998 is not applicable to NIHFW.

7. However, even though the UGC package of 1998 may not ipso facto apply to NIHFW there is always the possibility that it could have been adopted by the NIHFW. But, the indication is to the contrary. This would be clear from the Governing Body decision taken on 16.08.2000. The said Governing Body decision taken in the meeting held on 16.08.2000 in respect of the agenda item No. 5 reads as under:-

“Agenda Item No. 5:	To consider the report of the committee of members of Governing Body regarding adoption of UGC Package 1998 containing age of superannuation, career advancement etc. for faculty of NIHFW.
---------------------	---

The Governing Body held detailed discussion on the adoption of UGC package 1998 for faculty of NIHFW and on the report of the committee of members of the Governing Body constituted for the purpose. The Governing Body took following decisions:

- a) The age of superannuation for faculty of the Institute consisting of Professors, Readers and Lecturers should remain 60 years. However, extension of service beyond 60 years and up to 62 years for the faculty should be granted by the Appointing Authority on the recommendation of the Standing Screening Committee, based on the objective parameters of excellence. The Standing Screening Committee will be constituted by the Chairman of the Governing Body. The objective parameters of excellence will be decided by Standing Screening Committee.
- (b) Other points of the UGC Package 1998 regarding career advancement etc, will be considered by Governing Body in its next meeting, which would be held within a time frame of two months.”

(underlining added)

From the above decision it is clear that the Governing Body of NIHFW actively considered the issue of adoption of the UGC package of 1998 pertaining to the age of superannuation, career advancement etc., insofar as the faculty NIHFW was concerned. However, the Governing Body after a detailed discussion on the subject, inter alia, took the conscious decision that the age of superannuation for the faculty of the institute, which comprises of Professors, Readers and Lecturers, should remain 60 years. At the same time it was decided that extension of service beyond 60 years could be granted up to the age of 62 years for the faculty by the Appointing Authority on the recommendation of the Standing Screening Committee based on objective parameters of excellence which were to be decided by the Standing Screening Committee.

8. It is, therefore, apparent that neither was UGC package, by itself applicable to NIHFW nor had it been made applicable to NIHFW by adoption. Therefore, the plea of the petitioners that their age of superannuation should be 62 years and not 60 years is not tenable

9. The petitioner had also placed reliance on the office order dated 17.05.1993 issued by the NIHFW, the relevant portion of the office order reads as under:-

“ With the approval of the Governing Body of the Institute in its meeting held on 30.09.92 the UGC package is extended to the faculty of the Institute in toto as per guidelines contained in the Ministry of Human Resources Development, Department of Education, letter No. F-1-21/87-VI dated 22nd July, 1988 as amended from time to time.”

In our view, the petitioners cannot take advantage of this officer order inasmuch as it was issued prior to the UGC package of 1998. The office order merely extended the UGC package which was then in existence to the faculty of the institute as amended from time to time. It did not mean that whenever the UGC package would be amended the same would automatically stand extended to the faculty of NIHFW. All that it meant was that the UGC package as amended from time to time as it existed on 30.09.1992 would be extended to the faculty of NIHFW. In any event, the UGC package of 1998 was subsequent to the package referred to in the said office order of 17.05.1993. Furthermore, the Governing Body of NIHFW had taken a conscious decision on 16.08.2000, not to adopt the UGC package of 1998 insofar as the age of superannuation was concerned.

Therefore, the contention of the learned counsel for the petitioner based on the said office order dated 17.05.1993 is of no consequence.

10. The learned counsel for the petitioner drew our attention to a memorandum dated 31.05.1999 issued by the NIHFW in respect of a representation dated 20.05.1999 which had been submitted by one Dr V.K. Singh, Research Officer. The relevant portion of the said memorandum reads as under:-

“age of superannuation UGC scheme has been adopted in the institute with the approval of the Governing Body only for the faculty posts. The post of Research Officer cannot be treated at par with the faculty post of institute because of there being different recruitment rules, recruitment qualifications, duties.....”

11. Although, the memorandum dated 31.05.1999 does indicate that the age of superannuation as indicated in the UGC scheme has been adopted in the NIHFW with the approval of the Governing Body for faculty post, it is not clear as to which UGC scheme is being referred to. In any event, it is not at all clear as to whether the memorandum was concerned with the UGC package of 1998 or not? On the contrary, we have a clear decision of the Governing Body of NIHFW which was taken subsequently on 16.08.2000 where a conscious decision was taken not to adopt the age of superannuation of 62 years but to retain the age of superannuation 60 years, which was also the case under the earlier UGC package, that is, prior to the 1998 UGC package. To make it clear, the age of superannuation under the pre-1998 UGC package was 60 years and it was only in the 1998 UGC package that the age of superannuation was raised to 62 years. Though, there

may be some evidence of adoption of the pre-1998 UGC package but that would be of no help to the petitioners as the age of superannuation under that package was only 60 years. Thus, this plea of the petitioners is also not tenable.

12. We now come to the case of Professor P.L. Trakroo, who had superannuated at the age of 60 years on 21.10.2000 but had been granted extension for one year by the Chairman of the Governing Body on the recommendations of the Standing Screening Committee of NIHFW. This is evident from the office order dated 31.10.2000. The period of extension was for one year with effect from 01.11.2000. However, before that period of one year could be completed, the extension was cancelled by a letter dated 17.05.2001 on the ground that the ACC had not approved the proposal for extension of tenure of the service of Dr P.L. Trakroo, Professor and Head of the Department of Communication, NIHFW. Though, the Committee had regularized his service with effect from 01.11.2000 till he was relieved, as on contract. Two things need to be kept in mind while considering this aspect of the matter. The first being that the Chairman was the Appointing Authority insofar as Dr P.L. Trakroo was concerned and, therefore, he had the authority to grant the extension of one year. The second thing to be noted is that the said extension was not subject to the further approval from the ACC. In view of these two factors, we are of the opinion that the extension period of the petitioner Dr P.L. Trakroo ought not to have been curtailed and ought to have been permitted to run its course. The said extension was wrongly curtailed by a period of five months. Consequently, Dr P.L. Trakroo needs to be compensated for the same. After considering all the facts and

circumstances of the case, we feel that if a sum of Rs. 35,000/-, which roughly works out to 25% of his emoluments, is given to him by way of compensation for the period of five months, the ends of justice would be met.

13. The writ petitions are accordingly disposed of as indicated above. The said payment be made by NIHFV to Dr. P.L. Trakroo within eight weeks.

BADAR DURREZ AHMED, J

V.K.JAIN, J

MAY 28, 2012

kb