

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.19342 of 2015 (O&M)

Date of decision: 24.12.2015

Dr.Jasvir Kaur Chahal and others

... Petitioners

versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Sameer Sachdeva, Advocate,
for the petitioners.

Mr.Amit Sethi, Addl.AG, Punjab
for respondent No.1.

Mr.Sanjeev Sharma, Sr. Advocate, with
Mr.I.P.S.Doabia, Advocate,
for respondent No.2-UT Chandigarh.

Mr. Anupam Gupta, Senior Advocate with
Mr. Gautam Pathania, Advocate,
for respondent No.3-Panjab University.

Mr.Nimar Preet Sidhu, Advocate,
for respondent No.4-Union of India.

Mr.N.R.Dahia, Advocate,
for respondent No.5-UGC.

...

AMOL RATTAN SINGH, J. (Oral)

CM No.15867 of 2015

By this application, petitioner No.1, Dr.Jasvir Kaur Chahal, seeks to withdraw as a petitioner from this petition, with liberty to approach this Court again for redressal of her grievances, in accordance with law.

Before the application is allowed, it needs to be stated that the respondent-UT Administration (respondent No.2) has taken a preliminary objection in the written statement filed that this petition itself is not

maintainable in view of the fact that employees of the UT Administration, which includes all the petitioners, fall within the purview of Section 14 of the Administrative Tribunals Act, 1985.

Mr.Sanjeev Sharma, learned Senior counsel appearing for the UT Administration, submits that, as a matter of fact, the contention made by the petitioners in para 20 of this petition, to the effect that there is no other equally efficacious remedy available to them, except to approach this Court under Article 226 of the Constitution of India, is incorrect, in view of the fact that the employees of the UT Administration are included in the Explanation to Section 14(1) of the Act of 1985, pursuant to which their first remedy in respect of redressal of any grievance raised against their employer, i.e. the UT Administration, would lie before the Central Administrative Tribunal and not this Court.

The contention of learned Senior counsel is obviously correct and the petitioners can be put to costs on that count, for deliberately making an incorrect statement. However, since the petition is being transferred to the learned Central Administrative Tribunal (Chandigarh Bench), and the stay granted is being vacated for the reasons being given further ahead, nothing further is being said on that issue. Correctly, the averment made in para 20 of the petition should not have been made.

Consequently, while allowing this application and permitting petitioner No.1, Dr.Jasvir Kaur Chahal, to withdraw from this petition, it is made clear that if she has any further grievance, at a subsequent stage, she would first approach the Central Administrative Tribunal, for redressal of such grievance.

CWP No.19342 of 2015

The petitioners in this petition are seeking a direction to the respondents to allow them to continue in service till the age of 65 years, in view of the letter dated 31.12.2008 (Annexure P-1), addressed by the Deputy Secretary to the Government of India, Ministry of Human Resource Development, Department of Higher Education, New Delhi, to the Secretary, University Grants Commission, the subject matter of the letter being the scheme of revision of pay of teachers and equivalent cadres etc., including therein the issue of raising the age of superannuation of the teaching faculty in universities and colleges.

The UT Administration (respondent No.2) has raised a preliminary objection, as already stated above while disposing of CM No.15867 of 2015, that the petitions, at the first instance, are not maintainable before this Court and that the petitioners be relegated to their remedy before the learned Tribunal.

However, the issue of the stay operating in favour of the petitioners, granted vide order dated 16.9.2015, allowing them to continue in service beyond the age of 58 years needs to be settled, as submitted by Mr. Sharma, before the matter is transferred to the learned Tribunal (Chandigarh Bench), in view of the fact that the stay was granted by this Court. The said stay was granted in the same terms as in CWP No.15353 of 2014, and this petition was ordered to be heard along with that petition.

It has been pointed out by learned Senior counsel for the UT Administration, that the petitioners, who are all employees of the Government colleges in the Administration, are governed by a separate set of rules as regards their service conditions, which are titled as the Conditions of Service of Union Territory of Chandigarh Employees Rules,

1992 (Annexure R2 with the written statement filed by the said respondent).

Rule 2 of the aforesaid Rules reads as under:-

"2. ***Conditions of Service of persons appointed to the Central Civil Services and posts under the administrative control of Administrator:-*** *The conditions of service of persons appointed to the Central Civil Services and posts in Groups A, B, C and D under the administrative control of the Administrator of Union Territory of Chandigarh shall, subject to any other provision made by the President in this behalf, be the same as the conditions of service of persons appointed to the corresponding posts in Punjab Civil Services and shall be governed by the same rules and orders as are for the time being applicable to the latter category of persons.*

Provided that in the case of persons appointed to the services and posts under the administrative control of Administrator, Chandigarh, so long as they are drawing pay on the rates admissible to the corresponding categories of employees of the Government of Punjab, it shall be competent for the Administrator to revise their scales of pay from time to time so as to bring them at par with the scales of pay which may be sanctioned by the Government of Punjab from time to time to the corresponding categories of employees."

In view of the fact that employees of the U.T. Administration are subject to the same service conditions as are employees of the Government of Punjab, Mr. Sharma then pointed to Rule 3.26 of the Punjab Civil Service Rules (Volume-I, Part I), which reads as follows:-

"3.26. (a) Except as provided in other clauses of this rule, the date of retirement of a Government employee other than a Class IV Government employee, is the date on which he attains the age of 58 years. He must not be retained in service after the age of retirement, except in exceptional circumstances with the sanction of competent authority on public grounds, which must be recorded in writing.

(b) *A Government employee in Class IV should be required to retire at the age of 60. He may not be retained in service after that age except with the sanction of competent authority.*

(c) *The following are special rules applicable to P.W.D. Officers:-*

(1) *Except as otherwise provided in this clause Government employees in the Punjab Service of Engineers, Class I (B & R. and I. B.) must retire on reaching the age 58 years, and may be required by the competent authority to retire on reaching the age of 50 years if they have not attained the rank of Superintending Engineer.*

(2) *Subject to the requirements of this clause as to re-appointment, the competent authority may, in special circumstances, which should be recorded in writing, grant an extension of service, not exceeding three months to a Chief Engineer.*

(3) *No Chief Engineer shall, without re-appointment, hold the post for more than five years, but re-appointments to the posts may be made as often, and in each case for such period not exceeding five years as the competent authority may decide: Provided that the term of re-appointment shall not extend more than three months beyond the date on which the Government employee attains the age of 58.*

+(d) *Notwithstanding anything contained in this rule a Government employee whose date of birth falls on any day of the month other than the first of that month, shall on attaining the age of superannuation determined in accordance with the provision of clause (a), (b) or (c) as the case may be, retire on the last day of that month, which will be a working day.*

Explanation.- *A Government employee whose date of birth is the first of the month shall retire on the afternoon of the last day of the proceeding month.”*

The said rule is also followed up by six 'Notes', none of which is relevant to the issue of continuance of the stay order in favour of the petitioners, at this stage at least.

In view of the aforesaid rules, Mr. Sharma submitted that the case of the petitioners is not identical to that of the petitioner in CWP No.15353 of 2014, who is an employee of a private college affiliated to the University. Therefore, they have no right to continue in service beyond the age stipulated in the statutory rules and as such, the stay order granted prior to the respondents putting in an appearance in these petitions, deserves to be vacated.

Learned Senior counsel has also pointed to paragraph 5 of the preliminary objections raised in the written statement filed on behalf of respondents No.2 and 4, to submit that the petitioners have actually been granted extension of service for a period of one/two years beyond the age of 58 years, as is shown in the table provided in the said paragraph of the written statement. A perusal thereof shows that the petitioner who has now withdrawn from the petition, i.e. Dr. Jasvir Kaur Chahal, was granted an extension of one year upto 30.11.2015, petitioner No.2, Sukhdev Singh, was granted an extension of one year upto 29.2.2016, petitioner No.3, A.C. Sharma, was granted extension of two years, upto 30.9.2015 and petitioner No.4, Neelam Nagpal, was granted extension upto 31.10.2015, again for a period of two years. Thus, other than Sukhdev Singh, all other petitioners have also already 'exhausted' the period of extension granted to them, to continue in service beyond the age of 58 years.

Mr. Sachdeva, learned counsel for the petitioners, on the other hand, has submitted that this petition and CWP No.9947 of 2015, both

pertaining to teachers of Government colleges, be continued to be heard alongwith the other connected petitions pertaining to teachers of the University and its affiliated privately managed colleges.

Alternatively, he submitted that though, on the point of jurisdiction, he cannot object to the matters being transferred to the Tribunal, however, in that eventuality also, the stay order be allowed to continue to operate and that issue be also decided by the Tribunal.

He also sought further time to argue the matter on the issue of continuance of the stay order, other than vehemently arguing that the petitioners would also be entitled to the benefit of continuing till the age of 65 years, in terms of the letter of the Government of India, dated 31.12.2008.

Mr. Sanjeev Sharma, however, contended that the petitioners not being on the same footing as the employees of the University and private colleges affiliated to the University, their service conditions necessarily have to be considered in terms of the existing statutory rules and the balance of convenience be weighed accordingly. He submitted in that regard, that in view of the fact that the petitioners are not at all entitled to continue in service beyond the period of extension already granted to them, if they eventually succeed in their claim before the Tribunal, the relief would, obviously be granted by it accordingly, (with remedy against that open to the respondents). On the other hand, if their claim is rejected, then it would be impossible for the Administration to recover from them, the salary that they would have earned and consequential benefits arising therefrom. Hence, in view of the statutory provisions pointed out, he submitted that the interim order deserves to be vacated.

Before considering the matter with regard to continuance of the stay order operating in favour of the petitioners, on merits, it needs to be stated that this Court had it made very clear to all learned counsel appearing, even on 18.12.2015 and 23.12.2015 when the matters had earlier been listed, that the issue of continuance of the interim order, would be decided by this Court positively today and that counsel would address arguments on that issue, failing which the stay would be liable to be vacated. Hence, the submission made by Mr. Sachdeva that he be granted more time to argue the matter till the next date of hearing (after the winter break), is not acceptable to this Court, in view of what has been argued on behalf of the respondent Administration, both, with regard to jurisdiction, as also on merits of continuation of the order granting stay.

On merits, the continuance of the interim order, in the opinion of this Court, is wholly uncalled for. The aforesaid rules governing the conditions of service of the petitioners having been framed under Article 309 of the Constitution, in my opinion, the said rules, qua Government employees as are by governed them, would hold the field over and above the University Calendar and, unless amended, they would prevail over any scheme framed by the University Grants Commission.

As a matter of fact, the hon'ble Supreme Court in **Jagdish Prasad Sharma v. State of Bihar**, (2013) 8 SCC 633, had considered this issue and had held as follows:-

"69. To some extent there is an air of redundancy in the prayers made on behalf of the respondents in the submissions made regarding the applicability of the Scheme to the State and its universities, colleges and other educational institutions. The elaborate arguments advanced in regard to the powers of UGC to frame such regulations and/or to direct the increase in

the age of teachers from 62 to 65 years as a condition precedent for receiving aid from UGC, appears to have little relevance to the actual issue involved in these cases. That the Commission is empowered to frame regulations under Section 26 of the UGC Act, 1956, for the promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research, cannot be denied. The question that assumes importance is whether in the process of framing such regulations, the Commission could alter the service conditions of the employees which were entirely under the control of the States in regard to State institutions?

70. The authority of the Commission to frame regulations with regard to the service conditions of teachers in the Centrally-funded educational institutions is equally well-established. As has been very rightly done in the instant case, the acceptance of the Scheme in its composite form has been left to the discretion of the State Governments. The concern of the State Governments and their authorities that UGC has no authority to impose any conditions with regard to its educational institutions is clearly unfounded. There is no doubt that the Regulations framed by UGC relate to Schedule VII List I Entry 66 to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution. Under List III Entry 25, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any Central legislation."

(Emphasis applied by this Court)

Thus, it seems obvious that the rules framed under Article 309 of the Constitution, are to hold sway over even the Regulations framed by

the UGC.

Though this too would be gone into in further detail by the learned Tribunal, however, in view of the above, I find absolutely no ground to continue with the interim order in favour of the petitioners.

The contention of Mr. Sachdeva to the effect that the stay order in favour of the petitioners deserves to be continued as in the case of the petitioners in the other connected matters, who are employees of the University and private colleges, also does not merit acceptance, in view of the fact that admittedly, those employees are governed by the Panjab University Act, 1947 and the statutes framed thereunder and the University Calander etc., with no reference to any statutory rules framed under Article 309 of the Constitution. Hence, the contention of Mr. Sachdeva, is wholly misplaced in that regard and is rejected, in relation to the balance of convenience being the same in favour of the present petitioners (who are Government employees, governed by separate statutory rules). Of course, as already said, the issue on the merits of the controversy would obviously be considered at the time of final adjudication of the petitioners' claim. However, the balance of convenience definitely, in the opinion of this Court, no longer continues to operate in favour of the petitioners in this petition, in view of the statutory rules referred to in the written statement and in view of what has been observed hereinabove.

Other than that, the petition itself is being transferred to the Tribunal in view of jurisdiction lying before it, and therefore, with this petition (and CWP No.9947 of 2015) being segregated from the other connected matters in this bunch, it is appropriate that the stay order earlier granted by this Court in favour of the petitioners, be adjudicated upon, in

terms of the stand taken by the respondents, before transferring the matters. In any case, that apart, the case of these petitioners is different to those in the connected petitions, where the issue of the autonomy of the University etc. may need to be gone into.

Hence, for the detailed reasons given hereinabove, while transferring this writ petition to the learned Central Administrative Tribunal (Chandigarh Bench), the interim order dated 16.9.2015 is vacated, without prejudice to the rights of the petitioners to pursue their petition (Application before the learned Tribunal), on merits. Needless to say, that if the learned Tribunal eventually comes to the conclusion that the petitioners' claim deserves to be allowed, they would be entitled to all the benefits as would be granted in consequence thereof by the Tribunal, regardless of the vacation of the stay granted by this Court.

An issue has also been raised on behalf of the petitioners, that relieving them at this stage would be detrimental to the studies of the students in the current academic year. I do not see how relieving of the petitioners would be any different from a member of the teaching faculty superannuating from service, at any time during any academic year. Obviously, with each retirement, the number of the teaching faculty goes down, to be 'replenished' only upon new recruitments being made. Hence, while rejecting that argument, it is made clear that if the respondent Administration itself wishes to continue the petitioners in service, during the current academic session, or beyond, that would be entirely at the discretion of the Administration itself and vacation of the stay order would not stand in the way of the petitioners.

It is made clear that all the aforesaid observations made by this

Court, are only in relation to the issue of vacation of the stay order dated 16.09.2015, in view of the statutory rules pointed out to this Court by learned counsel for the respondents. The reference to the judgment of the Supreme Court in *Jagdish Prasad Sharmas' case* (supra) will also be construed, at this stage, only to be with regard to continuance or vacation of the stay order. The learned Tribunal would, naturally, while adjudicating upon the claim of the petitioners, as is made out by them, consider the entire case in extenso.

Learned counsel for the petitioners lastly submits that the petitioners have not been paid their salaries for the period for which they continued in service, pursuant to the interim order of this Court, dated 16.9.2015.

The respondent-UT Administration would look into this contention and if the same is found to be correct, salaries for the period that the petitioners have continued in service, be disbursed to them forthwith without any delay, within one month at the most.

With the aforesaid observations, this writ petition is directed to be transferred to the learned Central Administrative Tribunal (Chandigarh Bench), qua petitioners No.2 to 4.

24.12.2015
pk

(AMOL RATTAN SINGH)
JUDGE