

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

+ **W.P.(C) 2833/2015**

% **27th May, 2015**

SHRI V. JEGANATHAN ARULMONI AND ANR. Petitioners

Through Ms. Rashmi Chopra, Advocate

versus

CHIEF SECRETARY, GNCTD AND ORS. Respondent

**Through Mr. Naushad Ahmad Khan, Addl.
Standing Counsel for GNCTD
Ms. Latika Chaudhury, Adv. for
Ms. Avnish Ahlawat, Adv. for DTU**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed under Articles 226 and 227 of the Constitution of India by two persons who claim themselves as teachers in the respondent no. 3/Delhi Technological University (in short 'University'). The claim in the writ petition is for benefit to the petitioners of increase of age of retirement to the age of 65 years. The writ petition seeks application of the principle of equal pay for equal work and also states that the petitioners are very much lecturers/teachers and once other lecturers/teachers of respondent no.3/University have been given benefit of increase

of age of retirement to 65 years, petitioners also must be given similar treatment by increasing their age of retirement to 65 years.

2. Respondent nos. 1 & 2 in the writ petition are Chief Secretary, Govt. of NCT of Delhi and Department of Training and Technical Education. Respondent nos. 1 & 2 have filed their counter affidavit in which it is specifically mentioned that the petitioners are not the employees of the respondent no. 3/University but are employees of the Govt. of NCT of Delhi and for which purpose reference is made in the counter affidavit of respondent nos. 1 & 2 to the provision of Section 4(d) of the Delhi Technological University Act, 2009 (in short 'Act'). In the counter affidavit, decision of the learned Governor of Delhi is also referred by which employees of the respondent no. 3/University are continuing as deemed employees of the Govt. of NCT of Delhi on deemed deputation to respondent no. 3/University. In the counter affidavit claim of parity claimed by petitioners both the regular/ordinary lecturers/teachers in respondent no.3/University is denied and respondent nos. 1 and 2 also question the legality of action of respondent no.3/University in re-designating foreman instructors such as the petitioners as lecturers. Claim of parity of petitioners to lecturers of respondent no.3/University can also not be granted to petitioners who are foreman-instructors because petitioners

are employees of Govt. of NCT of Delhi and other foreman-instructors employed with Govt. of NCT of Delhi (not working with respondent no.3/University as deputationists from Govt. of NCT of Delhi) are to retire at the age of 62 years and not 65 years.

3. With respect to the writ petition, two aspects have to be examined by this Court, either for entertaining of the writ petition itself or for grant of interim orders. The first aspect is that, if petitioners are employees of the Govt. of NCT of Delhi, this Court would not have jurisdiction inasmuch as, service disputes of employees of Govt. of NCT of Delhi with Govt. of NCT of Delhi have to be decided by Central Administrative Tribunal (in short 'CAT'), Principal Bench, New Delhi and not by this Court. The second aspect is that, even assuming this Court has jurisdiction, whether increase of age which has been brought about by the respondent no.3/University's Board has received the necessary approval of the Chancellor/Lieutenant Governor of Delhi (in short 'LG') in terms of the Section 31(3) of the Act read with Section 30(c) of the Act specifically with respect to re-designation of foreman instructors as lecturers. As per these statutory provisions, terms and conditions for continuation of teachers and other employees of respondent no. 3/University can only be changed with the prior approval of

the Chancellor/LG and re-designation of foreman instructors as lecturers for the foreman instructors to get the benefit of service conditions applicable to lecturers/teachers will amount to change of service conditions of foreman instructors which have financial implications.

4. I put a specific query to the counsel for the petitioner as to whether petitioners have exercised the option in terms of the Section 4(d) of the Act for them to have become employees of respondent no.3/University and hence they do not continue as employees of Govt. of NCT of Delhi, and to this specific query no document could be pointed out on behalf of the petitioners that petitioners have exercised the option to not remain as employees of Govt. of NCT of Delhi and they have become employees of respondent no. 3/University. Therefore, petitioners continue to be employees of the Govt. of NCT of Delhi and in this regard the following averments made in the counter affidavit by the respondent nos. 1 & 2 become relevant:-

“1. That the petitioner accepts the terms and conditions as per the Board Resolution dated 21.11.2009 has severed the relationship with the Delhi College of Engineering as per section 4(d) of the DTU, 2009 (Delhi Act 6 of 2009). The petitioner cannot take excess benefits beyond section 4(d) of the aforesaid Act.

2. It is further submitted that the Principal Secy. TTE

conveying the decision of the Hon'ble Lieutenant Governor of Delhi vide dated 21/7/2014 in terms of the reference.

“Whereas, a W.P.(C) No. 3207/2012 titled Sandeep singh and Ors. Vs. GNCTD was filed by 26 Technical Staff members of the erstwhile Delhi College of Engineering (DCE) now posted in Delhi Technological University (DTU) before the Hon'ble High Court with the prayers “to pass an order/direction in the nature of writ mandamus directing the respondents to repatriate the petitioners to Department of Training & Technical Education (DTTE) under GNCT of Delhi and post them in any other technological institute under the DTTE and to maintain in the interregnum the disciplinary control over the petitioners under the provisions of CCS(CCA) Rules, 1965 as it were prior to the deemed deputation of the petitioners. Hon'ble High Court vide its order dated 29/05/2012 directed the respondents i.e. this Government to decide the representations/legal notice made by the petitioners in W.P.(C) No. 3207/2012 within six weeks and to convey the outcome thereof to the petitioners.”

Which was replied under para 6 and 7 of the order dated 21.07.2014 which is reproduced below.

“Now, in view of the grounds stated above and as per the provisions of Section 4(d) of DTU Act, 2009, the Competent Authority is pleased to order that all the erstwhile DCE staff including petitioners in W.P.(C) No. 3207/2012 will continue to work in DTU on deemed deputation from the GNCT of Delhi without affecting their rights and privileges as Govt. employees and at the same time protecting their interest such as their service conditions, like remuneration, pension, leave, gratuity, provident fund and other matters until they opt for the

University terms and conditions of employment. However, all the service related matters of the persons employed in erstwhile Delhi College of Engineering shall continue to be dealt in the same manner as was being dealt prior to enactment of DTU Act, 2009 till they remain on deemed deputation in DTU. This is issued with the prior approval of Hon'ble Lt. Governor, Delhi."

3. Copy of the communication vide file no. F.No.10(15)/2013/Sect. Branch/1262-1267 dated 21/07/2014 is annexed herewith as **Annexure R-1.**"

5. It is clear therefore that since petitioners are employees of Govt. of NCT of Delhi that this Court has no jurisdiction in view of paragraph 99 of the judgment of the Constitution Bench of the Supreme Court in the case of *L. Chandra Kumar Vs. Union of India & Ors. AIR 1997 SC 1125* and its para 99 has observed as under:-

"99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the

Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.” (underling added)

6. The counsel for the petitioner sought to place reliance upon Annexure 16 to the writ petition, being the letter dated 8.12.2014 issued by the respondent no. 3/University to the petitioner no. 1, and on which basis it is argued that petitioner no. 1 is an employee of the respondent no. 3/University, however, in my opinion letters cannot change the requirement of the statutory provision being Section 4(d) of the Act and which requires that before persons becomes employees of respondent no. 3/University, specific option has to be exercised but existence of that option being exercised has not been shown to this Court.

7. Though with respect to the second issue as per para 3, *prima facie* I am of the view that nothing has been substantiated before this Court to show

compliance of the provisions of the Section 31(3) of the Act, that Chancellor/LG has given permission for re-designation of foreman-instructors to lecturers having financial implications by increase of age, and that amendment in the statute after permission of the Chancellor/LG has or has not been notified in terms of the Section 46 of the Act, I need not observe anything in this regard on merits one way or the other, as merits will have to be considered by the CAT, Principal Bench, New Delhi and not by this Court.

8. This Court has no jurisdiction to decide the petition and therefore it is dismissed.

VALMIKI J. MEHTA, J

MAY 27, 2015*/hkaur*