

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.16659 of 2016 (O&M)
Date of Decision: 08.09.2016

Suresh Mittal

... Petitioner

Versus

Maharaja Agrasen Institute of Medical Research and Education, Agroha,
Hisar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Aman Sharma, Advocate,
for the petitioner.

TEJINDER SINGH DHINDSA, J.

Petitioner who was initially appointed on the post of Accountant/Cashier in the Maharaja Agrasen Institute of Medical Research and Education, Agroha, Hisar on 22.05.1996 stands retired w.e.f. 31.03.2016 upon attaining the age of superannuation i.e. 58 years.

Challenge in the instant petition is to the decision taken by the Maharaja Agrasen Medical Education and Scientific Research Society (hereinafter referred to as 'the Society') at Annexure P-20 declining the prayer of the petitioner for enhancement of the superannuation age of the non-teaching staff from 58 years to 62 years.

Writ of mandamus is also sought for directing the respondent Institute to implement the Service Rules as are applicable in Pt. B.D.Sharma Post Graduate Institute of Medical Sciences, Rohtak.

Counsel appearing for the petitioner would submit that an agreement dated 01.06.1990 had been entered into between the State of

Haryana and the Society for the establishment of an Institute of Medical Research and Education in the State of Haryana and for which 267 acres and 14 marlas of land was acquired and given at a nominal lease of Rs.1 per year. As per Clause (9) of the Agreement, the State Government had agreed to pay all recurring charges to the extent of 99% in advance in half yearly installments towards the expenses of the Institute including all expenditure for running the hospital and the college etc.

Heavy reliance has been placed upon communication dated 19.02.2015 (Annexure P-5) issued from the Additional Chief Secretary to Government of Haryana, Medical Education and Research Department and addressed to the Director of the respondent Institute and as per which it had been observed that till such time Service Rules are not framed by the respondent Institute, the Service Rules of PGIMS, Rohtak be implemented and adopted.

Counsel argues that the age of superannuation in the PGIMS, Rohtak is 62 years for the non-teaching staff and as such the respondent Institute is bound to follow the instructions of the State Government and as contained in the letter dated 19.02.2015 (Annexure P-5). Further argued that it is the Executive Committee of the Maharaja Agrasen Medical Education and Scientific Research Society which has been entrusted with the control and management of the Institute and such Executive Committee has already taken a decision unanimously to adopt the Service and Pension Rules of PGIMS, Rohtak and in spite thereof the age of superannuation in respect of non-teaching staff has not been enhanced to 62 years. A plea of discrimination has also been raised by submitting that the Service Rules of PGIMS Rohtak are being implemented in respect of the teaching faculty

while on the other hand the benefit of enhanced age of superannuation is being denied to the non-teaching staff.

Counsel for the petitioner has been heard at length and pleadings on record have been perused.

The scope of judicial intervention in matters relating to fixation of age of retirement came to be considered by the Apex Court in ***K.Nagaraj and others Vs. State of Andhra Pradesh and another, (1985) 1 Supreme Court Cases 523.***

Facts in ***K. Nagaraj's Case (supra)*** were that the elections were held to the Legislative Assembly of Andhra Pradesh in January, 1983 and a new political party called Telugu Desam came into power. It assumed Office on 09.01.1983. On 08.02.1983, a decision was taken to reduce the age of superannuation of all Government employees other than in the last grade service from 58 years to 55 years. Towards implementation of such decision even the Statutory Service Rules were suitably amended. Challenge to such action was negated and the action of the State Government in having reduced the age of retirement from 58 years to 55 years was held to be in conformity with law. In ***K. Nagaraj's case (supra)***, the Hon'ble Supreme Court also indicated the approach which the Courts should adopt while examining the question regarding fixation of the age of retirement and observed as follows:-

“Public interest demands that there ought to be an age of retirement in public services. The point of the peak level of efficiency is bound to differ from individual to individual but the age of retirement cannot obviously differ from individual to individual for that reason. A common scheme of general

application governing superannuation has therefore to be evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counterbalance conflicting claims while determining the age of superannuation. On the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these conflicting claims of the different segments of society involves minute questions of policy which must, as far as possible, be left to the judgment of the executive and the Legislature. These claims involve consideration of varying vigour and applicability. Often, the court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of a given case.”

Adverting back to the facts of the present case, it may be noticed that the Maharaja Agrasen Institute of Medical Research and Education, Agroha (MAMC) is being run by the Society i.e. a Society registered under the Societies Registration Act. The agreement dated 01.06.1990 was entered into between the State of Haryana through its Governor and the Society for the establishment of an Institute of Medical

Research and Education, Agroha, Hisar. As per agreement, the capital expenditure was to be borne by the Haryana Government and the Society in the ratio of 50:50. The recurring expenses were to be borne by the parties as per agreement in the ratio of 99:1. Clause 3 of the agreement would be relevant to the controversy at hand and reads as follows:

“The control of management including financial management of the institute shall vest in the executive committee of the society initially consisting of 15 members of which, 5 members shall be nominated by the State Government from out of serving officers preferably from departments concerned with the development of the institute like; PWD (B&R), PWD (Public Health), Finance and Education. The maximum number of members on the executive committee shall not excess twenty.”

In the impugned decision taken by the Society and placed on record at Annexure P-2, it becomes apparent that a Committee of five members had been constituted to consider the claim of the petitioner and the Committee had recorded a speaking order dated 04.05.2016 and which in turn has been accepted by the Society. In such order dated 04.05.2016 passed by the Committee, it has been noticed that the Society is functioning through its Executive Committee and sub committees have also been constituted to look into the affairs of the Institute on behalf of the Executive Committee, namely, HRD Committee, Purchase Committee and Construction Committee which comprise of Government nominees as well. The decision making process as regards terms and conditions of employment applicable to the employees i.e. teaching staff and non-teaching

staff fall within the purview of the HRD Committee wherein agenda items are discussed, decisions are taken and then placed before the Executive Committee of the Institute. In the impugned decision, a reference has been made to agenda item No.5 placed before the HRD Committee of the Executive Committee in its meeting dated 25.07.2006 and upon deliberation thereupon, the following decision was taken:-

To consider the retirement age of teaching/non-teaching staff (Appendix-D) The retirement age for faculty and Non-Teaching Staff is 58 years as per Haryana Government norms. As per MCI norms, faculty can be appointed up to the age of 65 years.

It was proposed and approved that faculty, after the age of 58 years be re-appointed on consolidated salary not to exceed that admissible in PGIMS Rohtak, as was decided in the Executive Committee meeting at Chandigarh on 19 Dec. 2005. In the case of non-teaching staff, after 58 years of age, extensions/reappointment can be made up to the age of 60 years on a case to case basis, depending on the individuals professional efficiency as decided by the Management Committee and to be put up before HRD Committee for its final approval.

The above meeting of the HRD Committee were also stated to have been discussed in the Executive Meeting held on 01.09.2006 and the retirement age of teaching and non-teaching staff was approved as per the agenda.

The impugned order further reveals that the issue of retirement

was again placed before the HRD Committee of the Executive Committee on 28.05.2014. Committee was apprised that the age of superannuation for teaching and non-teaching staff in the respondent Institute at Agroha is as under:

i) Teaching staff	60 years
ii) Non-teaching staff except Group 'D'	58 years
iii) Group 'D' employees	60 years

The matter was thereafter deliberated and discussed and it was decided that the Executive Committee or the HRD Committee in deserving cases as per requirement and performance but on case to case basis would extend the age of superannuation in respect of teaching staff up to 65 years. Such extension of superannuation was permissible by making a maximum extension of two years at a time. In other words, a total of three extensions up to the age of 65 years were envisaged. Even in the case of teaching staff, there was no automatic extension in the age of superannuation. The reason for such extension to be granted was also cited i.e. there being a scarcity of teaching staff in Medical College. However, the HRD Committee of the Executive Committee did not make any change as regards superannuation age of non-teaching staff and as such the age of superannuation remains at 58 years.

Petitioner has been retired having attained the age of 58 years. These are matters which are in the realm of policy decision making. The impugned decision declining enhancement of retirement age has not been shown to be in violation of any statutory provision.

To the contrary Rule 3.26 (a) of the Punjab Civil Services Rules (Vol.I Part I) as applicable to the State of Haryana stipulates an age of

retirement as 58 years. It appears that the respondent Institute has followed such pattern as regards the non-teaching staff. Extensions are permissible qua the teaching staff to meet out the exigency defined and noticed in the impugned order i.e. scarcity of teaching staff in the Medical College.

Pleadings on record do not make out a case for this Court to record a finding that the age of superannuation of non-teaching staff in the respondent Institute and taken as 58 years is arbitrary.

No basis for interference is warranted.

Writ petition is dismissed.

08.09.2016

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No