

CWP No.4626 of 2016

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.4626 of 2016
Reserved on 29.03.2016
Pronounced on: 03.05.2016

Dr. Asit Kumar Chakraborti and others

....Petitioners

Versus

National Institute of Pharmaceutical Education and Research and another

....Respondents

CWP No.4627 of 2016

Dr. Kamlesh Kumar Bhutani

....Petitioner

Versus

National Institute of Pharmaceutical Education and Research and another

....Respondents

CWP No.12264 of 2015

Dr. Parikshit Bansal

....Petitioner

Versus

Dr. K.K. Bhutani and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Argued by: -

Mr. R.K. Malik, Sr. Advocate, with
Mr. Pranav Chadha and Mr. Vijay Dahiya, Advocate,
for the petitioners in CWP Nos.4626 & 4627 of 2016 and
for respondent No.1 in CWP No.12264 of 2015.
Mr. Dinesh Rawat, Advocate, for the petitioner
in CWP No.12264 of 2015.
Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Dheeraj Jain, Sr. Counsel, Government of India.

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PARAMJEET SINGH DHALIWAL, J.

This order shall dispose of CWP No.4626 of 2016 titled 'Dr. Ashit Kumar Chakraborti and others v. National Institute of Pharmaceutical Education and Research and another', CWP No.4627 of 2016 titled 'Dr. Kamlesh Kumar Bhutani v. National Institute of Pharmaceutical Education and Research and another' and CWP No.12264 of 2015 titled 'Dr. Parikshit Bansal v. Dr. K.K. Bhutani and others', as common questions of law and facts are involved in these writ petitions.

The common question of law involved in these writ petitions is as to whether petitioners can continue in service till the age of 65 years as approved by the Board of Governors (hereinafter referred to as 'Board') of respondent No.1 – National Institute of Pharmaceutical Education and Research, Sector 67, S.A.S. Nagar, Mohali (for short 'NIPER') in its meeting held on 23.03.2013 (Annexure P-4 in CWP No.4626 of 2016 and Annexure P-6 in CWP No.4627 of 2016) or upto 60 years as per letter dated 02.03.2016 (Annexure P-5 in CWP No.4626 of 2016 and Annexure P-7 in CWP No.4627 of 2016) issued by the Government of India whereby directions have been issued not to continue with the service of the employees beyond the age of 60 years.

Brief facts relevant for disposal of these writ petitions are that petitioners are working as Professors and Kamlesh Kumar Bhutani (petitioner in CWP No.4627 of 2016) is working as Officiating Director and his substantive post is of Professor and Head of Department in respondent No.1 – NIPER. Respondent No.1 is an institute of national importance created under the Act of Parliament known as 'The National Institute of

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Pharmaceutical Education And Research Act, 1998' (for short 'the Act'). The First Statutes have been framed exercising the powers under Sub-section (1) of Section 36 of the Act. The Statutes are known as 'The National Institute of Pharmaceutical Education and Research Statutes' (for short 'Statutes').

In CWP No.4626 of 2016, petitioner No.1 was appointed as Assistant Professor on 09.11.1994, promoted as Associate Professor w.e.f. 09.11.1999, further promoted as Professor and Head of Department on 19.04.2001 and currently holding the post of Dean w.e.f. 03.07.2014. Petitioner No.2 was appointed as Professor on 10.02.2003 and is continuing as such. Petitioner No.3 was appointed as Assistant Professor on 01.01.1997, promoted as Professor on 07.05.2004 and is continuing as such.

In CWP No.4627 of 2016, petitioner No.1 was appointed as Associate Professor on 01.09.1994, promoted as Professor w.e.f.01.09.1999 and has been working as Director (Officiating) since 12.01.2010.

The case set up by the petitioners is to the effect that the Board of Governors of the NIPER is competent to determine the conditions of service of employees working in the NIPER. In the 21st meeting of Board of Governors held on 09.02.1999 (Annexure P-3), decision was taken with regard to increasing the age of superannuation of the teaching staff from 60 years to 62 years. Further the Board of Governors in the 59th meeting held on 23.03.2013 (Annexure P-4) enhanced the age of superannuation of teaching staff/faculty from 62 years to 65 years. However, the Government of India issued impugned letter dated 02.03.2016 (Annexure P-5) to relieve the teaching staff who have attained more than 60 years of age. Since the

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impugned letter has been issued, petitioners have approached this Court on the ground that they cannot be superannuated in view of the conditions of service amended by the Board of Governors and the Government of India has no jurisdiction to issue impugned letter. Hence, these writ petitions.

In pursuance of notice of motion, respondents have filed written statement averring that the petitioners have concealed from this Court the letter dated 18.03.2015 issued by the Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, Government of India, directing the Registrar, NIPER, Mohali to intimate the names of the faculty members working beyond 60 years of age. It is further averred that meeting under the Chairmanship of Secretary, Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, having the officers from the Department of Personnel & Training, Ministry of Finance and Ministry of Law & Justice etc. was held on 01.12.2015 and thereafter the impugned letter dated 02.03.2016 has been issued to relieve the officials who are serving beyond 60 years of age. It is further averred that petitioner Dr. A.K. Chakraborti is the Dean of NIPER, Mohali while other two petitioners are faculty members. No legal right of the petitioners is infringed. Section 27 of the Act deals with procedure for amendment to the Act and Statutes. Statute 9 of NIPER Statutes specifies the maximum age to hold the office of Director. Originally, maximum age to hold the office of Director was 65 years but later on it was abolished. Statute 14 of the NIPER Statutes provides maximum age for Dean as 62 years. There is no provision in the Act and the Statutes specifying the age limit of the faculty and the employees. Board of Governors of NIPER has no power to increase

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the retirement age of the teaching faculty. NIPER is an institution fully funded by the Government of India. Change in age of retirement causes serious financial implications on the Government of India. The continuation of petitioners beyond 60 years of age by the NIPER would not only violate the Act and the Statutes but also cause loss to the public exchequer. It is admitted that Dean can continue upto the age of 62 years.

Replication to written statement, denying the preliminary objections as well as on merit, has been filed. It is averred that it is the Board of Governors which is competent authority to decide the conditions of service of various employees.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners vehemently contended that Board of Governors of the NIPER is a competent authority to determine the service conditions of the employees of NIPER. Board of Governors has taken a conscious decision dated 23.03.2013 (Annexure P-4) to enhance the age of superannuation of the teaching staff/faculty from 62 years to 65 years, as a result of which petitioners have been continuing as such. The Government has no jurisdiction to change the decision of Board of Governors so the impugned letter dated 02.03.2016 (Annexure P-5) in CWP No.4626 of 2016 and Annexure P-7 in CWP No.4627 of 2016) is without jurisdiction and not sustainable in the eyes of law. Learned counsel for the petitioners further contended that resolution of Board of Governors is still subsisting so petitioners cannot be relieved from service. Under Section 4 of the Act, NIPER has been constituted as a body corporate by the name

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aforesaid. NIPER has perpetual succession and a common seal with power, subject to the provisions of the Act to acquire, hold and dispose of property and to contract and by that name sue and be sued. In Sub-section (3) of Section 4 of the Act reference has been made to the constitution of Board of Governors of NIPER.

The learned senior counsel further contended that it is mentioned in Section 5 of the Act that all the properties which had vested in the Society, immediately before the commencement of the Act, shall, on and from such commencement vest in the Institute i.e. NIPER.

Under Section 11 of the Act, President of India shall be the Visitor of NIPER. The Visitor may appoint one or more persons to review the work and progress of NIPER and to hold inquiries into the affairs thereof and to report thereon in the manner as Visitor may direct. Under Section 12 of the Act, authorities of NIPER have been defined, specifically the Senate.

I have considered the contentions raised by learned counsel for the parties.

Relevant Sections of the Act are as follows: -

“2. Whereas the objects of the institution known as the National Institute of Pharmaceutical Education and Research, Sector-67, S.A.S, Nagar (Mohali), District Ropar, Punjab are such as to make the institution one of national importance, it is hereby declared that the institution known as the National Institute of Pharmaceutical Education and Research is an institution of national importance.

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4. (1) With effect from such date as the Central Government

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may, by notification in the Official Gazette, appoint, the National Institute of Pharmaceutical Education and Research shall be constituted as a body corporate by the name aforesaid.

(2) The Institute shall have perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and shall, by that name, sue and be sued.

(3) The Institute shall consist of the Board of Governors having the following persons, namely:—

(a) a Chairperson, who shall be an eminent academician, scientist or technologist or professional, to be nominated by the Visitor;

(b) the Director of the Institute, ex officio;

(c) the Joint Secretary, incharge of Pharmaceutical Industries in the concerned Ministry or Department of the Government of India, ex officio;

(d) the Secretary, Technical Education, Government of Punjab, Chandigarh, ex officio;

(e) the Financial Adviser of the Ministry or Department of the Government of India dealing with the pharmaceutical industries, ex officio;

(f) the Drug Controller General of India, Ministry of Health and Family Welfare of the Government of India, ex officio;

(g) the Member Secretary, All-India Council for Technical Education, ex officio;

(h) the Director of any one of the national laboratories of the Council of Scientific and Industrial Research to be nominated by the Director General of Council of Scientific and Industrial Research, New Delhi;

(i) the Director of either the All-India Institute of Medical Sciences, New Delhi or the Post-Graduate Institute of Medical Education and Research, Chandigarh, to be nominated by rotation by the Ministry of Health and Family Welfare of the

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Government of India;

(j) the President, Indian Drugs Manufacturers' Association, ex officio;

(k) the President, Organisation of Pharmaceutical Producers of India, exoffticio;

(l) three eminent pharmaceutical experts, one of whom shall be an educationist, a research scientist and a biotechnologist, to be nominated by the Central Government;

(m) three eminent public persons or social workers one of whom shall be either from the Scheduled Castes or the Scheduled Tribes to be nominated by the Visitor out of a panel prepared by the Central Government;

(n) two pharmaceutical industrialists to be nominated by the Visitor out of a panel prepared by the Central Government;

(o) three Members of Parliament, two from Lok Sabha to be nominated by the Speaker of Lok Sabha and one from Rajya Sabha to be nominated by the Chairman of Rajya Sabha.

(4) The term of office of the Chairperson and Governors other than ex officio Governors shall be three years and they shall be entitled for such allowances as may be determined by the Central Government.

(5) The term of office of Governor nominated to fill a casual vacancy shall continue for the remainder of the term of the Governor in whose place he has been nominated.

(6) The Board shall meet at least three times in a year at such place and time and observe such rules of procedure in regard to the transaction of business at its meetings as may be determined by the Board.

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8. *(1) Subject to the provisions of this Act, the Board shall be responsible for the general superintendence, direction and control of the affairs of the Institute and shall exercise all the powers not otherwise provided for by this Act, the Statutes and*

the Ordinances, and shall have the power to review the acts of the Senate.

(2) Without prejudice to the provisions of sub-section (1), the Board shall—(a) take decisions on questions of policy relating to the administration and working of the Institute;

(b) fix, demand and receive fees and other charges;(c) supervise and control the residence and regulate the discipline of students of the Institute and to make arrangements for promoting their health, general welfare and cultural and corporate life;(d) institute academic and other posts and to make appointments thereto (except in the case of the Director); (e) frame Statutes and Ordinances and to alter, modify or rescind the same;

(f) institute and award fellowship, scholarship, prizes and medals;

(g) consider and pass resolutions on the annual report, the annual accounts and the budget estimates of the Institute for the next financial year as it thinks fit together with a statement of its development plans; and

(h) do all such things as may be necessary, incidental or conducive to the attainment of all or any of the aforesaid powers.

(3) The Board shall have the power to appoint such committees as it considers necessary for the exercise of its powers and the performance of its duties under this Act.

(4) Notwithstanding anything contained in sub-section (2) of section 4, the Board shall not dispose of in any manner any immovable property without the prior approval of the Central Government.

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11. *(1) The President of India shall be the Visitor of the Institute.*

(2) The Visitor may appoint one or more persons to review the

work and progress of the Institute and to hold inquiries into the affairs thereof and to report thereon in such manner as the Visitor may direct.

(3) Upon receipt of any such report, the Visitor may take such action and issue such directions as he considers necessary in respect of any of the matters dealt with in the report and the Institute shall be bound to comply with such directions.

12. *The following shall be the other authorities of the Institute, namely:*

(a) a Senate;

(b) such other authorities as may be declared by the Statutes to be the authorities of the Institute.

13. *The Senate of the Institute shall consist of the following persons, namely:—*

(a) the Director, ex officio, who shall be the Chairperson of the Senate;

(b) the Dean, ex officio;

(c) five professors of the Institute, to be nominated by the Chairperson in consultation with the Director, by rotation;

(d) three persons, not being employees of the Institute, to be nominated by the Chairperson in consultation with the Director, from among educationists of repute, one each from the fields of science, engineering and humanities and one of them shall be either from the Scheduled Castes or from the Scheduled Tribes; and

(e) such other members of the staff as may be laid down in the Statutes.

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16. *(1) The Director of the Institute shall be appointed by the Board with the prior approval of the Visitor.*

(2) The Director shall be the principal academic and executive officer of the Institute and shall be responsible for the proper administration and academic performance of the Institute and

for imparting of instruction and maintenance of discipline therein.

(3) The Director shall submit annual reports and accounts to the Board.

(4) The Director shall exercise such other powers and perform such other duties as may be assigned to him by this Act or the Statutes or the Ordinances.

17. (1) The Dean of the Institute shall be appointed on such terms and conditions as may be laid down by the Statutes and shall exercise such powers and perform such duties as may be assigned to him by this Act or the Statutes or the Director.

(2) The Dean shall report to the Director.

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25. All appointments of the staff of the Institute, except that of the Director, shall be made in accordance with the procedure laid down in the Statutes—

(a) by the Board, if the appointment is made on the academic staff in the post of Assistant Professor or above or if the appointment is made on the non-academic staff in any cadre, the maximum of the pay-scale for which is the same or higher than that of Assistant Professor; and

(b) by the Director, in any other case.

26. Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:—

(a) the formation of departments of teaching;

(b) the institution of fellowships, scholarships, exhibitions, medals and prizes;

(c) the classification, the method of appointment and the determination of the terms and conditions of service of officers, teachers and other staff of the Institute;

(d) the reservation of posts for the Scheduled Castes, the Scheduled Tribes and other categories of persons as may be determined by the Central Government, from time to time;

- (e) the constitution of pension, insurance and provident funds for the benefit of the officers, teachers and other staff of the Institute;*
- (f) the constitution, powers and duties of the authorities of the Institute;*
- (g) the establishment and maintenance of halls and hostels;*
- (h) the manner of filling vacancies among members of the Board;*
- (i) the authentication of the orders and decisions of the Board;*
- (j) the meetings of the Senate, the quorum at such meetings and the procedure to be followed in the conduct of their business;*
- and*
- (k) any other matter which by this Act is to be, or may be, prescribed by the Statutes.*

27. (1) *The first Statutes of the Institute shall be framed by the Board with the previous approval of the Visitor and a copy of the same shall be laid as soon as may be before each House of Parliament.*

(2) The Board may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner hereafter in this section provided.

(3) A new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may assent thereto or withhold assent or remit it to the Board for consideration.

(4) A new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented to by the Visitor.”

The relevant Clauses of the Statutes read as under: -

“3. The Board, the Senate and the Committees

3.1 The Board

3.1.1 Composition

The composition of the Board shall be in accordance with the provisions of Section 4(3) of the Act.

3.1.2 Functions and Powers

xx xx xx xx xx

3.6 Selection Committee

Quorum : 50% of the total strength of the members in addition to the chairman.

There shall be selection committees for making recommendations for the appointment to the post of the Professors, Associate Professors, Assistant Professors, Registrar, Principal Library and Information Officer, Principal Scientific Officer and other posts. The Selection Committee for appointment to the posts specified in column 1 of Table I below shall consist of the persons specified in the corresponding entry in column 2.

TABLE	
(1)	(2)
Professor/Associate Professor/Professor/Assistant	-Chairman : An eminent Scientist/academician/professional/technologyst nominated by the Board. - One academician scientist of repute nominated by the Board. At least two external experts in the representative specilization to be nominated by the Director. - Director, Ex-officio.
Principal Library and Information Officer/Principal Scientific Officer/Other Technical Staff	(a) The Director of the Institute, who shall be the Chairman of the Committee. (b) The Dean. (c) Three experts nominated by the Director.
Registrar/Deputy Registrar/other Administrative staff	(a) The Director of the Institute who shall be the Chairman of the Committee. (b) The Dean. (c) Two experts nominated by the Director. (d) Registrar, except for the post of Registrar, who shall also be the Secretary of the committee.

Other posts not covered by the above mentioned categories and carrying a scale of Pay the Maximum of Pay exceeds Rs.3050.00 per mensem	(a) Director or his nominee who shall be the Chairman of the Committee. (b) Head of the Department concerned or the Registrar, as the case may be. (c) two members from the Staff of the Institute nominated by the Director.
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9. Appointment of Director

The appointment shall be for a 5 year term, renewable for one more term of 5 years provided that the upper age limit does not go beyond 65 years.

Amended vide letter No.52 (8)/98-PI-IV dated 16th October, 2001

Amendment: The appointment shall be for a 5 years term, renewable for one more term up to 5 years.

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Dean	(a) To assist the Director in academic and administrative work and in maintaining liaison with other institutions of higher learning and research and also with industrial undertaking and other employees. (b) Shall hold office for a period of three years and be eligible for reappointment for one more term provided the upper age limit does not go beyond 62 years.
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NIPER is an institute of national importance and is governed by the Act. Under Section 2 of the Act, NIPER has been declared as an institute of national importance. Under Section 4 of the Act the Institute (NIPER) shall be a body corporate having perpetual succession and common seal consisting of a Chairperson, Director and other members of the Board. Section 8 deals with the powers of the Board and the Board shall exercise all powers provided by the Act, the Statutes and the Ordinances and shall have the power to review the acts of the Senate. Under Sub-section (2)(d) of Section 8 of the Act Board shall appoint persons to the academic as well as to other posts in the Institute. Section 11 states that President of India shall be the Visitor of the Institute. Section 12 of the Act

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refers to the authorities of the NIPER i.e. the Senate and other authorities which may be declared by the Statutes. Section 13 of the Act declares that Senate of the NIPER shall consist of Director, Dean, five professors of the Institute to be nominated by the Chairperson in consultation with the Director by rotation and other persons mentioned in the Section. Under Section 16 of the Act, Director of the NIPER shall be appointed by the Board with the prior approval of the Visitor. Under Section 17 of the Act, Dean of the NIPER shall be appointed on such terms and conditions as may be laid down by the Statutes. Section 25 of the Act specifically states that all appointments of the staff of the NIPER except the Director shall be made in accordance with the procedure laid down in the Statutes by the Board in case the appointment is made on academic staff in the post of Assistant Professor or above or in case of non-academic staff in any cadre maximum pay scale for which is the same or higher than that of Assistant Professor and by the Director in any other case. Section 26(c) of the Act states that Statutes may provide for classification, method of appointment and determination of the terms and conditions of the service of officers, teachers and other staff of the NIPER. Section 27(1) of the Act states that First Statutes of the NIPER to be framed by the Board with the prior approval of the Visitor. The Board may from time to time make new or additional Statutes or may amend or repeal the Statutes in the manner mentioned in the Section.

Statute 3 of the Statutes provides for the Board, the Senate and the Committees. Statute 3.1 refers to the Board, Statute 3.1.1 refers to the composition of the Board and Statute 3.1.2. refers to the functions and

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powers of the Board. Statute 3.6 refers to Selection Committee for making recommendations for appointment to the post of Professors, Associate Professors, Assistant Professors, Registrar and other officers and other posts specified in column 1 of Table I mentioned along with it and the Selection Committee shall consist of the persons specified in the corresponding entry in column 2 of Table I. Under Statute 9 appointment of the Director shall be for a five years term, renewable for one more term of five years provided that upper age limit does not go beyond 65 years. The said provision was further amended on 16.10.2001, which states that appointment shall be for a five years term, renewable for one more term of five years. The maximum age criterion has been deleted. Statute 10 provides for appointment of Professor of Eminence. Under Statute 14, powers, duties and functions of the Director, Dean, Head of the Department and Registrar have been defined. Dean is to assist the Director in academic and administrative work and in maintaining liaison with other institutions of higher learning and research and also with industrial undertaking and other employees. It is further provided that Dean shall hold the office for a period of three years and shall be eligible for reappointment for one more term provided the upper age limit does not go beyond 62 years.

From the reading of aforesaid provisions it is clear that terms and conditions of service of the officers, teachers and other staff of the NIPER shall be governed by Section 26(c) of the Act. Under Section 27(1) of the Act, the First Statutes of the NIPER shall be framed by the Board with the previous approval of the Visitor. Under Section 27(2) of the Act it is the Board which can make new or additional Statutes or may amend or

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repeal the Statutes in the manner prescribed in the Section.

Now question arises whether by way of impugned letter dated 02.03.2016 (Annexure P-5) Government can fix the age of superannuation or it is the Board which is competent to do the same?

In view of the discussion above with specific reference to Section 26(c) of the Act, it is clear that the power for classification, method of appointment and the determination of terms and conditions of service of officers, teachers and other Staff of the NIPER vests in the Board and not with any other authority. The amendment in the Statutes can be made by the Board under Section 27(2) of the Act. The Government of India may frame policy with respect to the institute of excellence to coordinate and determining the standard of institutions for higher education but so far as the conditions of service like age of superannuation of teachers and other staff are concerned, they are governed by the Statutes which can only be amended by the Board as per provisions referred above.

Admittedly, in the present case, the Board in its 21st meeting held on 09.02.1999 (Annexure P-3), fixed the age of superannuation of teaching faculty at 62 years and for Director age of superannuation was raised to 65 years. Further the Board in its 59th meeting held on 23.03.2013 (Annexure P-4) enhanced the age of superannuation of teaching staff/faculty from 62 years to 65 years. From the afore-referred provisions of law, it is evident that the terms and conditions of service of officers, teachers and other staff can be provided only under Section 26(c) of the Act and the Board can amend the terms and conditions of service by amending the Statutes under Section 27(2) of the Act. In the present case, the age of

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superannuation of the academic faculty, in which the petitioners are covered, has been enhanced in exercise of powers prescribed in Section 26 (c) read with Section 27(2) of the Act and Statutes by the Board in its 21st meeting and 59th meeting. In view of this, Government was not competent to decrease the age to 60 years as per impugned letter dated 02.03.2016, which is not in consonance with the provisions of the Act and the Statutes referred in the foregoing paragraphs, accordingly not sustainable in the eyes of law.

In these circumstances, impugned letter dated 02.03.2016 is quashed, CWP No.4626 of 2016 titled 'Dr. Ashit Kumar Chakraborti and others v. National Institute of Pharmaceutical Education and Research and another' and CWP No.4627 of 2016 titled 'Dr. Kamlesh Kumar Bhutani v. National Institute of Pharmaceutical Education and Research and another' are allowed. Petitioners in these writ petitions will be entitled to consequential benefits accordingly.

CWP No.12264 of 2015 titled 'Dr. Parikshit Bansal v. Dr. K.K. Bhutani and others' has been filed for removal of respondent No.1 who is working as Officiating Director of the NIPER, Mohali after attaining the age of 62 years. Since in CWP No.4626 of 2016, I have come to the conclusion that age of academic faculty has been rightly enhanced to 65 years by the Board, this writ petition is dismissed.

No order as to costs.

(Paramjeet Singh Dhaliwal)
Judge

May 03, 2016
R.S.