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

+ W.P.(C) 14200/2009

Dr. M.P.S. MAHENDRU Petitioner
Through: Ms. Archana Gaur, Adv.

versus

LT. GOVERNOR AND ORS. Respondents
Through: Mr. Sanjoy Ghose, ASC with
Ms. Pratishtha Vij and Mr. Rishabh
Jetley, Advs. for R1 and R2.
Mrs. Avnish Ahlawat and Ms. Palak
Rohmetra, Advs. for R3.
Mr. Ravinder Aggarwal and Mr. Amit
Yadav, Advs. for respondent UGC.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **27.04.2017**

1. The present petition has been filed by the petitioner, with the following prayers:

“In view of the facts and circumstances and submissions made above, it is respectfully prayed that this Hon’ble Court may kindly be pleased to pass;

(i) *A writ of mandamus or any other appropriate writ, order or direction thereby directing the respondents to implement the notification dated 31.12.2008 issued to U.G.C. by Govt. of India,*

Ministry of Human Resource Development Deptt. of Higher Education bearing Order no.1-32/2006-U-II/U.(I) and further Notification dated 07.10.2009 issued by Govt. of India M.H.R.D. to the Secretaries dealing with Technical Education of all States/Union Territories, in the interest of justice.

(ii) A writ/order/direction thereby declaring the letter dated 16.11.2009 and all subsequent letters of for holding an interview/personal interaction etc. and the result thereof as null and void as the same is without rules and regulations of the Universities.

Any other order/relief/direction may also kindly be passed in favour of the petitioner and against the respondents as this Hon'ble Court may deem fit, just and proper according to the facts and circumstances of the case."

2. It is the contention of the learned counsel for the petitioner that in terms of the notification dated December 31, 2008, the retirement age of the Teachers has been increased from 62 years to 65 years. She states the Government of NCT of Delhi, has also issued notification dated April 24, 2008 to grant extension in age of superannuation from 62 years to 65 years. She states, in terms of the Delhi Technological University's order dated November 10, 2009, a Committee was constituted to consider the case of the petitioner. The said Committee did not have the Experts of the field of the petitioner, which resulted in the name of the petitioner not being

recommended for extension in age of superannuation from 62 years to 65 years. She states, this action of the respondents is illegal and the petitioner is entitled to relief as prayed for.

3. On the other hand, learned counsel for the UGC (respondent No. 4) would submit the notification dated December 31, 2008, which relates to the revision of pay scales, also stipulated increase in the retirement age from 62 years to 65 years. The said notification was with regard to the Central Universities.

4. Insofar as the State Universities were concerned, the applicability of the said notification was subject to the State Government wishes to adopt and implement the same and meet the 20% of the additional expenditure from its own sources. In other words, Central Government was to contribute 80% of the additional expenditure and the State Government concerned, the balance 20% of the additional expenditure. According to him, the Supreme Court in the case of ***Jagdish Prasad Sharma and Others Vs. State of Bihar and Others, 2013 (8) SCC 633***, has in para 78 held as under:

“78. We are then faced with the situation where a composite scheme has been framed by the UGC, whereby the Commission agreed to bear 80% of the expenses incurred by

the State if such scheme was to be accepted, subject to the condition that the remaining 20% of the expense would be met by the State and that on and from 1st April, 2010, the State Government would take over the entire burden and would also have enhanced the age of superannuation of teachers and other staff from 62 to 65 years. There being no compulsion to accept and/or adopt the said scheme, the States are free to decide as to whether the scheme would be adopted by them or not. In our view, there can be no automatic application of the recommendations made by the Commission, without any conscious decision being taken by the State in this regard, on account of the financial implications and other consequences attached to such a decision. The case of those Petitioners who have claimed that they should be given the benefit of the scheme dehors the responsibility attached thereto, must, therefore, fail”.

5. According to him, the State has not adopted the increase in the age of superannuation from 62 years to 65 years in the manner prescribed in the notification dated December 31, 2008, but, in the manner as prescribed in the notification dated April 24, 2008 issued by the Government of NCT of Delhi.

6. On the other hand, Mrs. Ahlawat, learned counsel appearing for the University would submit, in terms of the notification dated April 24, 2008,

increase in age of superannuation from 62 years to 65 years was on case to case basis, to be considered by the Approval Committee and the case of the petitioner was considered by the Committee on November 17, 2009 but the Committee did not recommend his extension from 62 years to 65 years. She counters the plea of the learned counsel for the petitioner that the Committee which considered his case, did not have the Experts. She draws my attention to reply to para 10 of the writ petition filed by the respondent Nos. 1, 2 and 3 to state that the member of the Committee i.e. Prof. K.G. Sharma had expertise in Rock Mechanics and Soil and Foundation Engineering, Constitutive Modelling Dams, Underground Structure etc. She also states, the allegation of bias against Dr. S.K.Singh, are not tenable as Dr. S.K.Singh was not part of the Committee, which considered the name of the petitioner.

7. Mr. Sanjoy Ghose, learned counsel appearing for the Government of NCT (respondent Nos. 1 and 2) would reiterate the submissions made by Mrs. Ahlawat.

8. Having heard the learned counsel for the parties, the issue which arises for consideration is, whether the petitioner is entitled to the increase in age of superannuation from 62 years to 65 years. Suffice to state, the Government of NCT of Delhi has decided to increase the age of the

superannuation from 62 years to 65 years on case to case basis on the recommendation of the Approval Committee. The notification dated August 24, 2008 has not been challenged by the petitioner. The case of the petitioner was considered for extension of the age of his superannuation from 62 years to 65 years by the Approval Committee, but, was not found fit by the said Committee. The petitioner having appeared in the Interview and taken a chance, surely, is estopped from challenging the notification on which basis, his case was considered. The allegation of mala fide were primarily against Dr. S.K.Singh, who is not a party in these proceedings, nor was a Member of the Approval Committee which considered his case. That apart, the plea that there was no Expert in the Civil Engineering in the Approval Committee, is not sustainable as in Para 10 of the writ petition no name of the member has been given by the petitioner who was not an Expert, nor qualifications of the members have been given in support of this plea. Suffice to state, in reply to para 10 of the writ petition, the respondent Nos. 1, 2 and 3 have denied such a stand of the petitioner by contending that Prof. K.G.Sharma, Professor, I.I.T. was an Expert in the field of Geology to which the petitioner belongs and the petitioner himself was teaching subjects of Civil Engineering. This aspect has not been controverted in Rejoinder.

9. In view of the above, I do not see any merit in the writ petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J

APRIL 27, 2017/akb