

\$~

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

Reserved on: 02.07.2018

Pronounced on: 25.07.2018

+ **W.P.(C) 3549/2016, C.M. APPL.22788/2018**

GOVT. OF NCT OF DELHI AND ANR.Petitioners

Through: Sh. Naushad Ahmad Khan, ASC for
GNCTD.

Versus

V. JEGANATHAN ARULMONIRespondent

Through: Ms. Rashmi Chopra, Advocate for
R-1.

Ms. Avnish Ahlawat and Sh. N.K. Singh, Standing
Counsel, for DTU/R-2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

S. RAVINDRA BHAT, J.

1. The Govt. of NCT of Delhi, in this writ petition, challenges an order of the Central Administrative Tribunal (hereafter "CAT"), which declared and directed that the respondent (hereafter "Arulmoni") had to be treated as holding a post equivalent to a Lecturer and was therefore entitled to a higher age of retirement.

2. The facts necessary to decide this case are that Arulmoni joined the Delhi College of Engineering ("DCE") when it was directly administered by the Govt. of NCT. He was appointed as a Foreman Instructor on the recommendations of UPSC by office letter dated 17.02.1994. He holds a doctorate (Ph.D.) as he is a postgraduate in engineering. Upon the enactment of the Delhi Technological

University Act pursuant to its provisions, Arulmoni's services were placed at the disposal of the University (hereafter "DTU") where he continued to work. By a letter dated 10.03.2005, the Government of NCT of Delhi recommended to the Principal Secretary (TTE), Directorate of Training and Technical Education, Govt. of NCT of Delhi that Foremen Instructors, including Arulmoni had been teaching at UG level and were conducting workshop classes and laboratories and that the posts of Foreman Instructor were created as follow up of Madan Committee report with the purpose to strengthen the workshop teaching and practice in Colleges of Engineering & Technology. In terms of recommendations of the Madan Committee, Foreman Instructors had been kept at the level of lecturers and they also assume the responsibility for teaching workshop technology. It was felt that therefore, they are entitled to career advancement Scheme and other benefits available to teachers as per AICTE pay structure.

3. The request was acceded to by the Government of NCT of Delhi and approval of the competent authority was conveyed for grant of career advancement Scheme benefits to the Foreman Instructors of Delhi College of Engineering at par with lecturers, through letter dated 23.08.2006. This was followed up and an order was issued on 13.04.2007 granting senior scale and selection grade to Foreman Instructors, including Arulmoni (at par with Lecturers). Later the Board of Management of Delhi Technological University (erstwhile DCE) in its second meeting approved the categorical proposal that the four posts of Foreman Instructor (Mechanical Engineering/Production

Engineering Department) should be re-designated as Lecturer in Mechanical/Production Engineering.

4. Implementation of this decision was through an order by the Delhi Technological University Office Order dated 15.12.2009, which reads as:

“Sub:- Re-designation of Foreman Instructor as lecturer.

The Competent Authority is pleased to re-designate 4 post of Foreman Instructor as lecturer in the mechanical/Production Engg. Deptt. with immediate effect. The terms & conditions of service remain the same.

No extra remuneration/scale shall be paid by the DTU.

This issues with the approval of BOM in the second meeting held on 21.11.2009.”

5. By an Office Order dated 29.07.2010, the Government of NCT of Delhi (DTTE) issued an order enhancing the age of superannuation for teachers in degree level technical institutions from 62 to 65 years i.e. for those involved in classroom teaching in order to attract eligible people to the teaching career and to retain teachers in service for a longer period. Para 7 of the order reads as follows:

“7. AGE OF SUPERANNUATION:

- (i) *The age of superannuation for teachers in Degree Level Technical Institutions has been enhanced from 62 to 65 years for those involved in classroom teaching in order to attract eligible people to the teaching career and to retain*

teachers in service for a longer period. Whereas there is no shortage in the category of librarians who aren't involved in classroom teaching, the increase in the age of superannuation from present 62 years shall not be available to the category of librarian.

- (ii) Subject to the availability of vacant position and fitness, teachers shall also be reemployed on contract appointment beyond the age of 65 years upto the age of 70 years. Reemployment beyond the age of superannuation shall however, be done selectively for a limited period of three years i.e. the first instance and another further period of two years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.*
- (iii) Whereas the enhancement the age of superannuation for teachers engaged in classroom teaching is intended to attract eligible periods to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period."*

In terms of Corrigendum issued on 26.11.2010, Arulmoni's pay was fixed as Associate Professor along with Lecturer. In this background, when the issue of date of Arulmoni's superannuation arose, the Govt. of NCT of Delhi took the position that as Foreman Instructor, under the rules, he held no post that was assigned classroom teaching responsibilities; it differed with the opinion and recommendations of

the DTU. Consequently, it said that the lower age of retirement applicable to non-teaching personnel applied to Arulmoni. Aggrieved, he approached the CAT.

6. Before the CAT, Arulmoni relied on all the previous GNCTD orders, including those re-designating him as an Associate Professor, orders granting him career advancement in terms of norms applicable to teaching staff and other documents evidencing equivalence of Foreman Instructors with Lecturers. The Govt. of NCT of Delhi argued that retirement age of Foreman Instructors in other institutes of GNCTD was 60 years. Consequently, the DTU had to process Arulmoni's case for retirement at the age of 60 years. It was argued that since Foreman Instructors had no promotional avenues and were given only financial benefits they are treated at par with Lecturers for such purpose alone. NCT argued that the post of Foreman Instructor had not been changed to Lecturer by it. It was highlighted that Office Order dated 29.07.2010 provided for revision of pay scale and other service conditions of the teacher and other eligible staff of degree level technical institutions and not of Foreman Instructor.

Tribunal's findings in the impugned order

7. The CAT compared the recruitment rules applicable to both Lecturers and Foremen Instructors and held that they did not contain any difference with respect to pay scale, eligibility conditions, including educational qualifications, experience, etc. and that the terms and conditions applicable to both was similar. It then considered pay parity, career advancement proposals and acceptance, re-

designation of the posts and other material circumstances, including the content of work assigned to Foremen Instructors. Particularly, the CAT examined that Arulmoni was assigned regular teaching responsibilities and was asked to set and correct examination papers. It therefore, held that the DTU's decision not to treat him as entitled to the benefit of higher age of retirement was on account of the Govt. of NCT's decision (i.e. the competent authority) and that the nomenclature difference in his case (i.e. Foreman Instructor as opposed to Lecturer/Professor) was not material. He was directed to be treated at par with such teaching staff, and also entitled to the enhanced age of retirement.

8. Mr. Naushad, learned counsel for the Govt. of NCT argued that Arulmoni is an employee of Govt. of NCT of Delhi and other foreman-instructors employed with Govt. of NCT of Delhi retire at the age of 60 years and not at 65 years. If he is given the benefit of enhancement of age of retirement to 65 years from 62 years (62 years done by DTU without approval of the Government) it will lead to unsettling consequences and Recruitment Rules would be rendered irrelevant. He argued that the CAT ignored the fact that Arulmoni joined the erstwhile DCE, Government of NCT of Delhi and after his services were taken over by DTU, he continued to be an employee of Govt. of NCT of Delhi and only worked in DTU on deemed deputation from the Government. Counsel submitted that the recommendations of DTU cannot be treated as binding or final, because they have to be approved by the Government of NCT/ Chancellor/ Lt. Governor of Delhi.

9. It was argued that re-designation of foreman instructors by DTU as lecturers for the foreman instructors to get the benefit of service conditions applicable to lecturers will amount to change of service conditions of foreman instructors. The All India Council for Technical Education (AICTE), the apex body for technical education in the country, which among other things decides the pay scales, service conditions and qualification for the teachers and other academic staff in technical institutions clearly stated in its letter dated 07.04.2015 that the cadre of Foreman Instructor is not an approved cadre in AICTE regulation. Counsel also relied on Section 4(d) of DTU Act,

“Every person employed by the Delhi College of Engineering immediately before such commencement shall hold his office or service in the University by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or he has opted for the University’s terms and conditions of employment.”

It was submitted that in regard to exercise of option in terms of Section 4(d) of the Act to become employee of DTU and discontinue as an employee of Govt. of NCT of Delhi, Arulmoni had not accepted the terms and conditions.

10. Counsel also stated that the letter dated 21.07.2014 recorded that Principal Secretary, TTE by order dated 21.07.2014 conveyed the

decision of the Lt. Governor, Delhi that all the erstwhile DCE staff will continue to work in DTU on deemed deputation from the Government of NCT 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. Since Arulmoni was appointed as Foreman Instructor on the recommendations of UPSC by office letter dated 17.02.1994, the government had not re-designated his post as Lecturer and also not enhanced the age of his superannuation and as on date he was working in DTU erstwhile DCE on deemed deputation from the Government and as per CCS (CCA) Rules, his retirement age is 60 years. It was highlighted that the post of Foreman Instructor had no promotional avenues and therefore, only to give financial benefits under Career Advancement Scheme, he was treated at par with Lecturers and granted financial benefits under CAS. Lastly it was emphasized that AICTE recommendations were for faculty involved in class room teaching and other eligible staff and not for Foreman Instructors as they are non-vocational posts and are governed by rules and regulations applicable for other Government employees. It was urged that AICTE's clarification dated 07.04.2015 stated that cadre of Foreman Instructor was not an approved cadre in its Regulations. Therefore, benefits applicable to lecturers could not be extended to Foreman Instructors.

Analysis and Findings

11. The factual narration shows that when recruited, Arulmoni was appointed as Foreman Instructor. It would be useful to notice and extract the comparative table setting out the conditions applicable to teaching posts (Lecturers) and Foremen Instructors:

	<i>Lecturer</i>	<i>Foreman Instructor (Associate Professors)</i>
<i>Recruitment</i>	<i>Direct through UPSC</i>	<i>Direct through UPSC</i>
<i>Group of Service</i>	<i>Group A Gazetted</i>	
<i>Pay scale at the same point of joining</i>	<i>2200-75-2800-100-4000</i>	<i>2200-75-2800-100-4000</i>
<i>Eligibility criteria</i>	<i>First class bachelor Degree in appropriate Branch of Engineering. Desirable Two years</i>	<i>First class bachelor Degree in appropriate Branch of Engineering Desirable Two years</i>
	<i>Professional/teaching experience out of which at least one year should be in the shop floor of a large Engineering workshop of repute.</i>	<i>Professional/teaching experience out of which at least one year should be in the shop floor of a large Engineering workshop of repute</i>
<i>Xxx</i>	<i>Xxx</i>	<i>Xxx</i>
<i>CAS (Career Advance Schemes)</i>		
<i>Senior Scale (Rs.10,000-325-</i>	<i>Yes</i>	<i>Yes</i>

15200)		
Selection Scale(Rs.12000-420- 18300)	Yes	Yes
POB IV scale	Yes	Yes
Nature of Duties	Yes	Yes
Classroom Teaching	Yes	Yes
Laboratory instructions	Yes	Yes
Student assessment and evaluation including University examination work.	Yes	Yes
Supervising Students, Research and Project Work	Yes	Yes
Developing learning Resource material and laboratory development	Yes	Yes
Attending National/International conferences, Seminars, Faculty Development Programs and Short Term Courses, etc	Yes	Yes
Administration both at department level as well as College/University level.	Yes	Yes
Age of Superannuation	65 Years	62 Years

12. While recommending career advancement at par with Lecturers, for Foremen Instructors, it was noted that *“These posts were created as a follow-up of Madan Committee Report with the purpose to strengthen the workshop teaching and practice in college of engineering & technology. As per the recommendations of the Madan Committee, foreman instructors have been kept at the level of lecturers and it is clearly mentioned that foreman instructors also assume the responsibilities “for teaching workshop technology”. Therefore, they are entitled for Career Advancement Scheme and other benefits currently available to the teachers as per AICTE pay structure.”* This recommendation was accepted on 23.08.2006. An order was issued on 13.04.2007 granting senior scale and selection grade to Foreman Instructors, including Arulmoni – this too was at par with Lecturers. The order of 15-12-2009 stated that *“The Competent Authority is pleased to re-designate 4 posts of Foreman Instructor as lecturer in the mechanical/Production Engg. Deptt. with immediate effect. The terms & conditions of service remain the same.”*

13. In addition to these salient facts, the CAT also noted that functionally, there was complete identity distinction between the posts of Foremen Instructors in the college, and teaching faculty in terms of workload, classroom teaching, paper setting and examination. During the hearing in this case, these materials, and in addition, the replies to queries made under the Right to Information Act (RTI) with respect to class room teaching workloads and the subjects assigned, were shown to the court. These support the CAT’s conclusion; in fact, they show that Arulmoni used to be involved in teaching subjects that Lecturers

were routinely undertaking. Unsurprisingly, this aspect – which goes into the heart of the issue- was not addressed by the Govt of NCT of Delhi, which chose to argue that the ultimate power to say whether a post corresponded with another was with it (i.e. the competent authority) and that since it did not accept Arulmoni's request, this court should let matters alone, reversing the CAT's decision.

14. This court finds the NCT's position strange. It is one thing to say that it has the power, and entirely another to say why it chose to exercise it a particular manner- in this case, by denying the undeniable parity. Mere iteration of a fact, i.e. existence of power and the differentia, as it were, is insufficient. One *rationale* discernable from the NCT's argument is that there are other Foremen Instructors, and that if CAT's decision is allowed to stand, there will be a clamor for parity in retirement age as in this case. That reason, again is unpersuasive. There may arguably be other Foremen Instructors: yet, whether they discharge workshop teaching and classroom teaching as in the case of Arulmoni, a doctorate in engineering, is unknown. The history of designation of Foremen Instructors in the erstwhile DCE clearly shows that the posts were originally treated as part of the Lecturer cadre; the Madan committee recommendations led to their being carved out of that cadre and their creation as a separate teaching stream. In a sense they are a sub-species of the same species, i.e. Lecturers.

15. In this context, it would be useful to extract the minutes of the DTU Board's meeting dated 21 November, 2009, recommending change in designation for the post of Foremen Instructors:

“The designation of Foreman instructor confuses with the position of Foreman in workshop which is a Technical Staff post in a much lower grade. Further, as the position of Foreman instructor does not exist in NSIT and other leading institutions such as IIT Delhi etc., the incumbents occupying the above positions in erstwhile DOE / DTU have been facing hardship on account of the designation relating to their posts. The pay scale of Foreman instructor is Rs.8000-13500 (pre-revised) which is at par with the pay scale applicable to the Lecturers position. Further, the Foreman (Selection Grade) is given the scale of Rs. 12000-18300 (pre-revised) which is also at par with the Lecturer (Selection Grade).”

There is no dispute that this recommendation was acted upon. It is also useful to extract the Govt of NCT's decision dated 29 July, 2010, enhancing the age of superannuation of teaching staff, reads as follows:

“7. (i) The age of superannuation for teachers in Degree Level Institutions has been enhanced from 62 years for those involved in classroom teaching in order to attract eligible people to the teaching career and to retain teachers in service for a longer period. Whereas there is no shortage in the category of librarians who aren't involved in classroom teaching the increase in the age of superannuation from present 62 years shall not be available to the category of librarian.”

16. These materials point unequivocally to NCT's resolution to increase the age of retirement to members of its teaching staff; the express exclusion in that regard was the class of librarians, who were not involved in classroom teaching. In the present case, given the

complete parity in regard to eligibility conditions of Arulmoni's post and those of Lecturers, the necessity for candidates to have possessed teaching experience, pay scales, and, more crucially the *interchangeability of teaching responsibilities*, it could not be justifiably urged that the two class of employees were different, merely on account of a different nomenclature for one or that there were others with similar nomenclature. As far as this case was concerned, the CAT, in this court's opinion, correctly concluded that the applicant before it, i.e. Arulmoni, was recruited for and did discharge teaching responsibilities, for which he was entitled to be treated as a member of the teaching staff, and eligible for the enhanced age of superannuation (65). The NCT's plea lacks merit; consequently, the directions of CAT shall be implemented within 6 weeks. Arulmoni shall be entitled to differential pay, and all benefits that a regularly placed official of his equivalent rank would have been entitled to, till attainment of 65 years. The pay fixation order along with consequential arrears, for the relevant period shall be released within 10 weeks. The petition is dismissed, but in these terms.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

JULY 25, 2018