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

% *Date of Judgment : 19th December, 2019*

+ W.P.(C) 13433/2019

JOGINDER SINGH VERMA Petitioner

Through Mr. Sourabh Ahuja, Advocate

versus

GOVT OF NCT OF DLEHI & ORS Respondents

Through Mrs. Avnish Ahlawat, Standing Counsel(Services) with Mr. Nitesh Kumar Singh, Advocate for GNCTD. Mr. Anil Soni, Standing Counsel with Mr. Devesh Dubey, Advocate for AICTE/respondent no.6.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM APPL. 54518/2019 (exemption)

1. Exemption is allowed subject to all just exceptions.
2. Application stands disposed of.

CM.APPL 54516/2019 (Addl documents)

3. The application is dismissed as not pressed.

W.P.(C) 12659/2019

4. The petitioner has filed the present writ petition being aggrieved by the order dated 03.09.2019 passed by Central Administrative Tribunal (the ‘Tribunal’).
5. The petitioner was working with the Department of Training and Technical Education (DTTE), Government of NCT of Delhi as a Workshop Superintendent in the polytechnics since 20.08.1998. Upon reaching the age of 60 years, he was retired from service by an order dated 28.06.2019. This order was challenged by the petitioner before the Tribunal.
6. According to the petitioner, ‘Workshop Superintendents’ enjoy the same status as ‘Lecturers’. In support of this contention, attention of the Court is drawn to the Notification dated 5th March, 2010 of the All India Council for Technical Education (‘AICTE’). The relevant paragraphs relied upon by the petitioner are extracted below:

“General

- (i) *There shall be designations in respect of teachers in Polytechnics, namely, Lecturer, Head of the Department and Workshop Superintendent.*

.....

.....

Workshop Superintendent

Workshop Superintendent is treated at par with Lecturers and is to be considered for upward mobility similar to that of Lecturers.

....

....

Age of Superannuation:

- (i) *In order to meet the situation arising out of shortage of teachers in Technical Institutions and*

the consequent vacant positions therein, the age of superannuation for teachers in Technical Institutions has been enhanced to sixty five years, vide the Department of Higher Education letter No.F.No.1-19/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period.”

7. Learned counsel for the petitioner contends that a reading of the aforesaid paragraphs, which deal specifically with those designated as ‘Workshop Superintendents’, for the purpose of promotion and age of superannuation, leaves no room for doubt that the retirement age for the petitioner should be 65 years. He further submits that this fact was rightly appreciated by the Tribunal in paragraphs 10, 12 and 13 of the order. The relevant paragraphs are reproduced below:

“10. With this, the steps taken by the 1st respondent, treating the post of WS on par with Lecturer at least in the context of age of superannuation, got the seal approval from the 6th respondent. The present stand taken by the 1st respondent that a WS can be treated on par with Lecturer, if only he holds the qualifications stipulated through notification dated 05.03.2010, is somewhat difficult to be accepted. Such an interpretation would amount to reading something into what is specifically mentioned in the notification, as regards the post of WS, as extracted above.

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12. The only basis for the 1st respondent to deny the benefit to enhance the age of superannuation to the applicant is that he did not fulfill the qualifications prescribed for the post of Lecturer. We find from the record that no doubt whatever was expressed by the 1st respondent in this behalf, much less any clarification was sought from

the 6th respondent. The net result is that the applicant is entitled to be continued in the service up to the age of 65 years, subject, however, to the condition that in case the 6th respondent stated that equation of the post of WS to that of Lecturer in Polytechnics, shall be subject to the former holding the qualification stipulated for the post of Lecturer, a different situation may arise.

“13. We, therefore, allow the O.A. and direct the respondents to reinstate the applicant within four weeks from the date of receipt of a copy of this order, and continue him in service till he attains the age of 65 years. This, however, shall be subject to the condition that in case the 6th respondent issues a clarification to the effect that the equation of the post of WS shall be subject to the WS holding the qualification stipulated for the post of Lecturer, the applicant shall be liable to be retired from the date of receipt of such a clarification, if any. It is made clear that the applicant shall not be entitled to any back-wages but shall be entitled to the benefit of continuity of service.”

8. However, the petitioner submits that in paragraph 13, where it has been stated that the petitioner would be continued in service till the age of 65 years but subject to the condition that AICTE may render a clarification, was not required in view of the specific stand taken by the AICTE in the counter affidavit filed before the Tribunal, more particularly, paragraph 6, which is reproduced below:

“6. Incidentally, it is also mentioned that after 6th CPC notification, AICTE has also issued the notification dated 01.03.2019, where the post of Workshop Superintendent has not been mentioned in the cadre of faculty in diploma level technical institutions. This, however, does not mean that the Workshop Superintendent has ceased to be at par with Lecturer which was the case under the 6th CPC notification. In other words, the provisions of 6th CPC

notification dated 05.03.2010 in so far as it relates to the status on the Workshop Superintendent equivalent to Lecturer still remains in force and the issue relating to the age of superannuation has to be decided in accordance with the relevant provisions laid down in this regard in that notification as mentioned above as the Govt. of NCT accepted the recommendations of 5th CPC in the matter of enhancement of age of superannuation from 60 years to 62 years, the instant case should have also been dealt with on the same analogy and the applicant should not have been retired on attaining the age of 60 years as the same is not in accordance with the provisions given under AICTE notification dated 05.03.2010 which still subsists and is not overruled in anyway by the 7th CPC AICTE notification dated 01.03.2019.”

9. It is the petitioner's contention that this observation in para 13 of the Tribunal's order nullifies the relief granted to him.
10. It so transpires that soon after the Tribunal rendered the decision by order dated 03.09.2019, the Government of NCT of Delhi sought a clarification from the AICTE in line with what was observed in the order of the Tribunal dated 03.09.2019; and the AICTE in fact issued a clarification on 25.09.2019 qualifying that the post of 'Workshop Superintendent' will continue to be at par with that of 'Lecturer' for purposes of benefits available to Lecturers by way of a Notification dated 01.03.2019, provided however, that a Workshop Superintendent would need to fulfil all other eligibility conditions required of Lecturers such as qualifications, experience, publications, training etc. for the purposes of continuing in service and for promotions. In effect, therefore the benefit obtained by the petitioner from the Tribunal by its order dated 03.09.2019 got nullified since by way of reasons clarified

on 25.09.2019 the petitioner was now required to have the qualifications, experience, etc. of a Lecturer to be entitled to continue in service till the age of 65 years.

11. Documents placed on record have also been relied upon to show that the nature of duties carried-out by a Workshop Superintendent are similar to those of Lecturers.
12. Per contra, learned counsel for the respondents submits, that a clarification regarding the qualifications required for a Workshop Superintendent to be treated equivalent to a Lecturer has been issued; and in view of the clarification so issued by the AICTE, the petitioner is not entitled to be employed till the age of 65 years; and further that if the petitioner had any objection to it, the petitioner should have first challenged such clarification. Learned counsel for the petitioner submits however that even if he challenges the clarification dated 25.09.2019, the aforesaid paragraph of the order passed by the Tribunal would stand in his way.
13. We have heard the learned counsel for the parties and have considered their rival submissions.
14. In view of the subsequent development which has taken place, the effect of the order of the Tribunal has indeed been set to naught. In the circumstances, we grant liberty to the petitioner to challenge the notification passed by the AICTE on 25.09.2019 before the Tribunal. The Tribunal would decide the challenge without being affected by the observations made in the impugned order dated 03.09.2019. The petitioner would be entitled to raise all grounds which have been raised

in this writ petition, including subsequent developments and any other ground which may be available to him, in accordance with law.

15. The writ petition stands disposed of in above terms.

CM.APPL 54517/2019(stay)

16. The application also stands disposed of in view of the order passed in the present writ petition.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

DECEMBER 19, 2019

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