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

% *Date of Judgment : 1st November, 2019*

+ W.P.(C) 11584/2019

RAJENDER PERSHAD BHARDWAJ Petitioner

Through Mr. M.K. Bhardwaj, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through Mrs. Avnish Ahlawat, Standing
Counsel GNCTD with Mr. Nitesh
Kumar Singh, Advocate for the
respondents.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM.APPL 47582/2019(Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The matter has been received on urgent mentioning before DB-I.
4. The present petition is directed against order dated 20.09.2019 passed by the Central Administrative Tribunal (the 'Tribunal').
5. Brief facts which are required to be noticed for the disposal of this petition are that the petitioner was appointed as a Workshop Superintendent in the Department of Training & Technical Education, Government of NCT of Delhi in the year 1998. It is the case of the petitioner that the respondents enhanced the age of superannuation of the Lecturers as well as persons who were serving as Workshop Superintendents from 60 to 62 years as per the All India Council for

Technical Education (AICTE) Notifications dated 27.12.2005 and 02.02.2006. It is also the case of the petitioner that in the year 2010, the AICTE notified the All India Council for Technical Education (Pay Scales, Service Conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma) Regulations, 2010) whereby the age of superannuation for Lecturers was enhanced to 65 years.

6. The petitioner sought parity with Lecturers with regard to age of superannuation. OA filed by the petitioner herein was allowed by the Tribunal by the order dated 20.09.2019, which reads as under:

“The subject matter of this O.A is same as the one in O.A No.1861/2019. The question involved is as to whether the Workshop Superintendent (WS) in the Polytechnic under the Delhi Administration are entitled to continue in the service up to the age of 65 years on par with the Lectures. This issue was decided in favour of the applicant in O.A No.1861/2019.

2. Though, the learned counsel for respondents has sought time, we are of the view that this O.A can be disposed of in terms of O.A. No.1861/2019, particularly, when the applicant is due to retire on 30.09.2019, if the relief is not extended.

3. We, therefore, allow the O.A and direct the respondents to continue the applicant in service till he attains the age of 65 years. This however, shall be subject to the condition that, in case the 5th respondent issues a clarification to the effect that the question 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.

There shall be no order as to costs.”

7. Mr. Bhardwaj, learned counsel for the petitioner submits that after passing of this order, the petitioner received a communication dated 30.09.2019 informing him that he would continue in service till he attains the age of 65 years. Mr. Bhardwaj submits that this order was in fact based on the stand taken by the AICTE in the short counter reply filed before the Tribunal. Reliance is placed on paragraphs 5 and 6 of the short counter affidavit, which we reproduce below:

“5. In this connection, reference may be made to AICTE notification dated 05.03.2010 (6th CPC) under which the pay scales and other service conditions for teachers and other academic staff in diploma level technical institutions have been issued. Under this notification, Workshop Superintendent has been treated at par with Lectures and is to be considered for onward mobility similar to that of Lecturer. In the matter of age of superannuation, the relevant provisions laid down in above notification reads as under:-

- a) 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 23.03.2007, for those involved to class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period.
- b) Subject to availability of vacant positions and fitness, teachers shall also be reemployed on contract appointment beyond the age of sixty five years up to the age of seventy years. Reemployment beyond the

age of superannuation shall, however, be done selectively, for a limited period of 3 years in the first instance and then for another further period of 2 years, purely on the basis of merit, experience area of specialization and peer group review and only against available vacant positions without effecting selection or promotion prospects of eligibility teachers.

- c) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible persons to a career to teaching and to meet the shortage of teachers by retaining teachers in service for a longer period, and whereas is no shortage in the categories of librarians, the increase in the age of superannuation from the present sixty two years shall not be available to the categories of librarians.
6. Incidentally, it is also mentioned that after 6th CPC notification, AICTE has also issued the Notification dated 01.03.2019(Annexure-R-1), 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 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 of 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.”

8. It would also be useful to reproduce order dated 30.09.2019, which reads as under:

“OFFICE ORDER

In supersession of this Office order No.F.1(5)/ABP/Admn/2013/2296-2306 dated 16.07.2019, Sh. Rajender Pershad Bhardwaj, Work Shop Supdt. Will continue in service till he attains the age of 65 years, as per Hon’ble CAT Order in OA No.2200/2019 dated 20.09.2019, till further Order received from DTTE(HQ).

Further, the aforesaid Office Order dated 16.07.2019 stands cancelled with immediate effect.”

9. The complaint of the petitioner is that in light of the aforesaid, the petitioner was shocked to receive order dated 31.10.2019 informing the petitioner that he would stand retired w.e.f. 30.09.2019.
10. Learned counsel for the respondents, who appears on advance copy, submits that there is no infirmity or illegality in the order passed by the Tribunal or order dated 31.10.2019 passed by the respondents, for the reason that the petitioner cannot be equated with the ‘Lecturers’ as their minimum qualifications are not the same; and also the duties performed are different. Counsel further submits that the Tribunal had granted liberty to the respondents to examine the issue and pass an order. Additionally, it is pointed-out that before passing order dated 31.10.2019, an opinion was also sought from the AICTE, as per which the age of retirement of ‘Lectures’ and ‘Workshop Superintendents’ would be the same, provided he/she fulfils all the other eligibility

conditions, such as qualifications, experience, publications, training etc. required to be in service and for promotions.

11. We have heard the learned counsels for the parties and have examined the order passed by the Tribunal.
12. Other things apart, we notice that at present the petitioner is aggrieved by order dated 31.10.2019, which would amount to a fresh cause of action, and we are of the considered view that the petitioner would have to assail the same, if so advised.
13. Mr. Bhardwaj fears that order dated 20.09.2019 of the Tribunal may stand in his way. However, we find that this apprehension is unfounded as the grounds sought to be urged by Mr. Bhardwaj were neither raised in the previous application nor were these considered or decided by the Tribunal.
14. Resultantly, the writ petition must fail. The same is accordingly dismissed.
15. As prayed, liberty is granted to the petitioner to approach the Tribunal to assail order dated 31.10.2019, including to urge all fresh grounds which may be available to him in accordance with law.

CM.APPL 47581/2019(stay)

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

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 01, 2019/pst