

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 24058 of 2019 (O&M)

Reserved on : 12.09.2023

Date of Decision : 13.12.2023

Narinder Paul Singh

...Petitioner

Versus

I.K. Gujral Punjab Technical University, Jalandhar
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Petitioner in person.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Arjun Partap Atma Ram, Advocate for the respondents.

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SANJEEV PRAKASH SHARMA, J.

The petitioner by way of this writ petition has prayed for quashing the order dated 30.08.2019 issued by the Respondent-University whereby he has been ordered to be retired immediately.

2. Petitioner, who is in person, has submitted that he was appointed on regular basis in the University in the year 2010 to the post of Dean and was re-designated as Dean-cum-Professor. At the time of his appointment, the University had not set up separate teaching department, which was started in the year 2016. The post was re-designated in the year 2018. He has been discharging his academic duties and is also designated as a Supervisor for Ph.D. The UGC as per its Regulations of 2010 has enhanced the age of superannuation of teachers to 65 years. The regulations of UGC have been adopted by the Board of Governor of the University and in view thereof the age of superannuation of teachers in the colleges of the university has also been enhanced to 65 years but the petitioner has been

directed to retire at the age of 60 years. He submits that the action of the University is wholly illegal, arbitrary and in violation of UGC Regulations.

3. Petitioner further submits that the university does not have its own regulations or rules to govern the conditions of services of the employees and the UGC Regulations have been adopted for pay scales, qualifications, eligibility including fixing the service conditions of retirement, etc. The petitioner has been performing the work of teaching and has been regularly given teaching assignments and teaching classes in Applied Sciences- Physics. The petitioner has published 24 research papers in international journals and 7 students have been guided for award of Ph.D. in Applied Sciences-Physics after 2010. Thus, for all purposes, it is submitted that the petitioner is a teacher. The petitioner has been also assigned lab development in the University and the lab development is also a teaching work with regard to the practical studies in physics lab. The University circulated a letter on 03.12.2018 conveying its decision of enhancement of age of superannuation of the teachers in the technical institute to 65 years and also re-employment on contractual basis upto the age of 70 years. The petitioner attained the age of 60 years on 05.08.2019 but adopting the practice of retirement on the last day of June or last day of December, the University has issued a letter stating that his retirement age would be 31.12.2019. He also relies upon judgment of this Court in CWP No. 10316 of 2010 – **Dr. A. C. Mongra and another vs State of Punjab and others**, decided on 28.09.2011. It is further stated in the written submissions that as per UGC Regulations, Professor is required to have 14 teaching hours, minimum of 6 hours per week may have to be allocated for research activities for a teacher. It is stated that Faculty of Physical Sciences is a separate faculty. The petitioner had represented the University in three international conference and all expenses were borne by the University. He also conducted two National Workshops/ seminars on behalf of the University and

Government of Punjab. Thus, he submits that he has worked more than the required time. It is further submitted that even as per AICTE Regulations, age of superannuation of the petitioner would be 65 years. The petitioner also submits that duties of Professor and of the Dean are identical. So far as the teaching experience is concerned, he was performing the duties of the teacher as per UGC Regulations. It is stated that Principals and Directors working under the University are working beyond the age of 60 years. To show that faculties are working beyond the age of 60 years, Annexures P-38 and P-39 have been placed on record by the petitioner.

4. The Respondent-University has raised objections and it is stated that the petitioner was appointed as a dean and the post was not re-designated as Dean-cum-Professor and a person as a dean cannot be treated to be a teacher. It is further stated that the Board of Governors vide its decision dated 20.05.2003, decided that all the employees of the University shall retire at the age of 60 years and the petitioner, who is employee of the University and not a teacher would retire at the age of 60 years. It is stated that all the persons detailed in Annexures P-38 and P-39 are employees of Self-Financed Unaided Affiliated Colleges of the University and they are not the employees of I.K. Gujral Punjab Technical University. An affidavit in this regard has also been filed by the Deputy Registrar of the University.

5. Counsel for the Respondent-University has also invited attention to the 68th meeting of the Board of Governors to show that the superannuated teachers have been given a chance for re-employment after the age of 65 years.

6. I have considered the submissions.

7. An advertisement was issued for filling up a post of Dean (Academic) in the year 2003 and it was mentioned in the advertisement that age of

superannuation would be 60 years. In the 67th meeting of Board of Governors, it was decided that since now University has established, academic campus and created teaching department in the University and constituent campuses, therefore, permanently appointed Deans may be re-designated as Dean-cum-Professor. The said matter was approved by the Chairman of Board of Governors on 13.02.2018. The Board of Governors also rectified in the agenda item no. 67.10 of re-designation of the permanently appointed Deans as Dean-cum-Professor. The petitioner has placed on record his service record before this Court, which reflects that he has been performing his duties as a teacher and a guide for Ph.D students. The post of Dean has been treated in terms of the Minutes of the meeting dated 24.05.2011 as a regular post in the academic cadre. It appears in the 52nd meeting vide agenda item no. 52.7, the Committee recommended that as per practice in other universities, the position of Directors of UIT, Registrar, Dean and Controller of Examinations may be treated as tenure post and the post of Controller of Finance to be treated as regular post. All tenure posts were to be decided to be on contract for a period three years or on attainment of 65 years of age, whichever is earlier. Based on these guidelines, advertisement was issued for filling up the post of Dean. However, as noticed above, the University took a conscious decision to re-designate the post of Dean working on regular basis as Dean-cum-Professor. So far as the petitioner is concerned, he was designated as Dean-cum-Professor and so assigned the work from 2016 onwards.

8. The University in its reply has, however, submitted that the petitioner was treated as a staff member and his age of retirement was treated as 60 years. The UGC Regulations of 2010 only state that the age of superannuation in the Central Educational Institutions would be enhanced to 65 years. Regulation 8(f) and 8(p) are not applicable in the case of the petitioner and the examples of persons who are working above 60 years of age are relating to aided institutions and not the

staff of the Respondent-University. The Respondent-University has also stated that the petitioner was working as a Professor in Physics at Sant Longowal Institute of Engineering and Technology where after he was appointed as a Dean in the present University. He could do research and guide Ph.D students, however as per University record, no candidate has been enrolled for Ph.D with the petitioner after 2012. The UGC Regulations 2010 would only apply to teachers and other academic staff and the petitioner being not a teacher and has not attended classroom for teaching till today, and therefore, Regulations 8(f) and 8(p) are not applicable. He was retired on 31.8.2019 and not on 31.12.2019 as stated by the petitioner. The petitioner's date of birth is 16.08.1959.

9. This Court noticed that in the Admission Brochure 2016-17 issued by the Punjab Technical University, Jalandhar, the name of the petitioner is reflected as faculty member Professor (Dr.) N.P. Singh, Dean, Planning & Development. There is another Professor (Dr.) Anirudh Pratap Singh, who is shown as Dean, RIC. The other teachers are Assistant Professors. While in the Admission Brochure, the petitioner has been shown as Dean, Planning & External Programs, while Dr.Amit Sarin Associate Professor shown as HOD. Research Scholars have been shown to be Ph.D Supervisors but the petitioner is not shown as a supervisor. In the case of University of Delhi vs Raj Singh and others 1994 (4) Scale 10, the Apex Court has held as under:-

“23. We now turn to analyse the said Regulations. They are made applicable to a University established or incorporated by or under a Central Act a Provincial Act or a State Act, every institution, including a constituent or an affiliated college recognised by the U.G.C. in consultation with the University concerned, and every institution deemed to be a University. The said Regulation are thus intended to have the widest possible application, as indeed they must have if they are to serve the purpose intended, namely, to ensure that

all applicants for the post of lecturer, from whichever University they may have procured the minimum qualificatory degree, must establish that they possess the proficiency re-quired for lecturers in all Universities in the country. This is what clause 2 of the said Regulations mandates, thus : " No person shall be appointed to a teaching post in university.....in a subject if he does not fulfill the requirements as to the qualifications for the appropriate subject as provided in the Schedule 1". The first proviso to clause 2 permits relaxation in the prescribed qualifications by a University provided it is made with the prior approval of the U.G.C. This is because the said Regulations, made under the provisions of Section 26 (l)(e), define the qualifications that are ordinarily and not invariably required of a lecturer. The second proviso to clause 2 makes the application of the said Regulations prospective. Clause 3 of the said Regulations provides for the consequence of the failure of a University to comply with the recommendation made in clause 2 in the same terms as are set out in section 14 of the U.G.C. Act. The provisions of clause 2 of the said Regulations are, therefore, recommendatory in character. It would be open to a University to comply with the provisions of clause 2 by employing as lecturers only such persons as fulfill the requirements as to qualifications for the appropriate subject provided in the schedule to the said Regulations. It would also be open, in specific cases, for the University to seek prior approval of the U.G.C. to relax these requirements. Yet again, it would be open to the University not to comply with the provisions of clause 2, in which case, in the event that it failed to satisfy the U.G.C. that it had done so for good cause, it would lose its grant from the U.G.C. The said Regulations do not impinge upon the power of the University to select its teachers. The University may still select its lecturers by written test and interview or either. Successful candidates at the basic eligibility test prescribed by the said Regulations are awarded no marks or ranks and, therefore, all who have cleared it stand at the same level. There is, therefore, no element of selection in the process. The University's autonomy is not entrenched upon by the said Regulations.

10. The issue with regard to the question as to whether certain Regulations framed by the UGC had a binding effect on the educational institutions being run by different States and under the State enactment was examined at length by the Apex Court in **Jagdish Prasad Sharma etc. vs State of Bihar and others** 2013 (8) SCC 633. The relevant para nos. 18, 64 and 65 of the aforesaid judgment are extracted below:-

“18. This brings us to the substantial challenge, in these appeals and connected Writ Petitions and Transferred Cases, as has been set out in paragraph 2 of the impugned judgment of the Division Bench of the Patna High Court, which is, whether in view of the decision contained in the letter dated 31.12.2008 issued by the Department of Higher Education, Ministry of Human Resource Development, Government of India, in the context of Section 64(a) of the Patna University Act, 1976 and Section 67(a) of the Bihar State Universities Act, the age of superannuation of teachers working in different Universities and colleges of Bihar would automatically be enhanced to 65 years. The focus is, therefore, on whether in view of the Scheme mentioned in the aforesaid letter of 31.12.2008, not only the Central Universities and colleges, which were bound by the UGC Regulations, but the different States and institutions situated therein would be bound to accept the Scheme, as set out in the said letter of 31.12.2008. As has been mentioned hereinbefore, the Scheme envisaged in 31.12.2008, in no uncertain terms, indicates that in case the State Governments opted to revise the pay scales of teachers and other equivalent cadres covered under the Scheme, financial assistance from the Central Government to such State Governments would be to the extent of 80% of the additional expenditure involved in the implementation of the revision. The Scheme also indicates that the State Government which opted for revision of pay scales would have to meet the remaining 20% of the additional expenditure from its own sources. The third consideration is that such financial assistance would be provided for the period from 1.1.2006 to 31.3.2010, and that, thereafter, the entire liability on account of revision of pay scales of the University and college

teachers would have to be taken over by the State Government with effect from 1.4.2010. The fourth and the most important condition stipulated by the Commission was that payment of Central assistance for implementing the Scheme was subject to the conditions that the entire Scheme of revision of pay scales, together with all the conditions to be laid down by the UGC, by way of Regulations and other guidelines, would have to be implemented by the State Government and Universities and Colleges coming under their jurisdiction, as a composite scheme, emphasis supplied, without any modification except in regard to the date of implementation and scales of pay mentioned hereinabove. This entailed and included the enhancement of age of such teachers to 65 years. In other words, along with the enhancement of pay, of which 80% would be borne by the Commission, the other condition of the Commission was that the age of the teachers would be enhanced to 65 years, and that the balance 20% of the expenditure would have to be borne by the State from its own resources till 31.3.2010, and, thereafter, the entire burden of expenditure would have to be borne by the State.

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64. *We are inclined to agree with such submission mainly because of the fact that in the amended provisions of Section 67(a) it has been categorically stated that the age of superannuation of non-teaching employees would be 62 years and, in no case, should the period of service of such non-teaching employees be extended beyond 62 years. A difference had been made in regard to the teaching faculty whose services could be extended up to 65 years in the manner laid down in the University Statutes. There is no ambiguity that the final decision to enhance the age of superannuation of teachers within a particular State would be that of the State itself. The right of the Commission to frame Regulations having the force of law is admitted. However, the State Governments are also entitled to legislate with matters relating to education under Entry 25 of List III. So long as the State legislation did not encroach upon the jurisdiction of Parliament, the State legislation would obviously have primacy over any other law. If there was any legislation enacted by the Central Government under Entry*

25 List III, both would have to be treated on a par with each other. In the absence of any such legislation by the Central Government under Entry 25 List III, the Regulation framed by way of delegated legislation has to yield to the plenary jurisdiction of the State Government under Entry 25 of List III.

65. 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.”

11. Thus, conscious decision of increasing the age from 60 years to 65 years has to be taken by the concerned University since the University more so has financial implications and in view of the specific submission made by learned counsel for the University that the University has not taken a conscious decision to enhance the age of its teachers and on the other hand, the Board of Governors in its 10th Meeting had taken a decision to retire its staff at 60 years of age, the retirement of the petitioner at the age of 60 years cannot be said to be illegal or unjustified. The regulations with regard to enhancement of age have to be treated as directory and not mandatory. The submissions of the petitioner that he has

worked as a teacher would have, therefore, no bearing to the facts of the case where the age of superannuation has not been increased beyond 60 years. The other person, Dr. A. P. Singh, who was selected as Dean along with the petitioner also retired at the age of 60 years. The claim of the petitioner is found to be without any basis and the writ petition, therefore, fails. The same is dismissed.

- 12.No costs.
- 13.All the pending applications also stand disposed of.

13.12.2023VS(SANJEEV PRAKASH SHARMA)JUDGE

Whether speaking / reasoned:Yes / No

Whether Reportable:Yes / No