emphasising that the statement recorded by the learned trial court of the accused was most unsatisfactory. He should have dissected the questions and put the same to each of the accused. But can it be stated that the same has caused prejudice to the petitioner-accused. Each of them had answerd that they do not anything about it. Even if the questions were put separately and the accused again answered that he do not know anything, the net result would have been the same. It is not a case where accused are illiterate or they could state that they did not understand the evidence or the questions. When it is a case of denial, in toto they cannot turn around and allege that prejudice has been caused. In fact when no prejudice as noted above is caused, the learned Additional Sessions Judge patently fell into an error in simply noting that because the statement had not been recorded of the accused properly, it must be so done. No useful purpose would be served otherwise again recording the evidence. The order of the learned Additional Sessions Judge, therefore, cannot be sustained.

(15) At this stage, it requires to be noted that some of the accused had not preferred the revision against the order passed by the learned Additional Sessions Judge. But we know from the decision of the Supreme Court in the case of *Ajit Singh* v. *State of Haryana* (10), that if some of the accused do not prefer an appeal, they would be entitled to the benefit which may accrue to the other accused. Therefore, once the order of the learned Additional Sessions Judge is being set aside, the remitting of the case pertaining to the other accused would automatically would also be set aside.

(16) As a result of the reasons given above, the petitions are allowed. The order passed by the learned Additional Sessions Judge is set aside. It is directed that the learned Additional Sessions Judge will hear and decide the appeals on their merits. Keeping in view that it is an old litigation, the same may be heard within a period of six months from the date of receipt of copy of this judgment.

S.C.K.

Before Jawahar Lal Gupta, J

AJIT SINGH,—*Petitioner*

versus

THE PUNJABI UNIVERSITY, PATIALA,—*Respondent*

CWP 13494 of 94

15th May, 1997

Constitution of India, 1950-Arts.226/227Punjabi University Statutes Statute 38(c)-Petitioner re-employed in university after retirement at 60 years from 1st August, 1986 to 31st July, 1988/ paid fixed amount of

(10) 1996(1) RCR 667

Rs. 2500—Non payment of salary last drawn challenged as arbitrary and violative of principle of 'equal pay for equal work'—Held that university cannot arrogate to itself the absolute discretion and offer extension to one, re-employment to another and fix different service conditions—Such action can be sustained only when authorities show good cause-None shown in present case—Action in non-payment of last drawn salary cannot be sustained.

Held that, a perusal of Statute 38(c) would show that normally a member of the teaching staff retires on reaching the age of 60 years. However, the University has the power to grant an extension for a period up to two years. Thus, a teacher may not be allowed to retire on reaching the age of 60 years. His period of service may be enlarged. He may be allowed to continue in service upto the age of 62 years. Still further, the Statute does not contemplate any alteration in the conditions of service during the extended period.

(Para 7)

Further held that admittedly, the petitioner was to retire on attaining the age of 60 years on July, 1986. Vide order dated 1st August, 1986, the petitioner was "re-employed as Professor of Law...". It was further provided that the "term of this appointment will be one year in the first instance on contract basis" and that "the remuneration for this post will be Rs. 2500 (fixed) per month. No other allowance will be admissible." It, thus, appears that instead of granting 'extension' as contemplated under Statute 38(c), the University 're-employed the petitioner on contract basis'. Why this departure from the statutory provisions? There is no explanation whatsoever. Apparently, there was no justification.

(Para 9)

Further held, that certain amount of freedom is essential to enable the academic bodies to attract men of distinction. Some moving space may be really essential. However, in a society like ours which is governed by the rule of law, no body has absolute freedom to act according to his whim. The action of the authorities like a University are subject to the scrutiny by courts. Whenever challenged, it is under a duty to demonstrate that its action conforms to the requiremets of Article 14 of the Constitution. In the present case, nothing has been pointed out or placed on record to show that the action of the University in reduction of the petitioner's emoluments from Rs. 5000 which he was drawing at the time of retirement to Rs. 2500 was justified

(Para 13)

Further held, no one howsoever high is above the law. No authority in this country has the power to treat equals unequally. The University cannot arrogate to itself the absolute discretion and to offer extension to one, re-employment to another and to fix different conditions of service for different people. Such an action can be sustained only when the authority shows a good cause. In the present case, none has been shown. Consequently, the action cannot be said to be legal.

(Para 16)

Ajit Singh, *petitioner-in-person.*

Mohinderjit Singh Sethi, Sr. Advocate with Amit Sethi, Advocate, *for the Respondent*

JUDGEMENT

Jawahar Lal Gupta J

(1) The petitioner is a former Professor and Head of the Department of Laws. He had retired from the Punjabi University Patiala on 31st July, 1996. He was re-employed from 1st August, 1986 to 31st July, 1988. During this period, he was paid a fixed amount of Rs. 2,500 per month. He represented. Nothing fruitful having ensued , he has approached this Court through the present writ petition. It is alleged that the action was arbitrary and violative of the principle of equal pay for 'equal work'. The petitioner has also cited instances to show that the action was discriminatory. He prays that the respondents be directed to pay him a salary equal to the last pay drawn by him at the time of retirement together with all allowances and interest etc.

(2) The Respondent-University contests the petitioner's claim on the ground that he having accepted a contractual employment on a fixed salary of Rs. 2,500 per month is now stopped from claiming the pay as drawn by him at the time of his ratirement. He cannot claim parity with the regular employees serving in the University. In any event, the writ petition filed by him suffers from the vice of laches. Even a suit on the same cause of action would be barred under law of limitation. The representation submitted by the potitioner was duly considered by the Syndicate in its meeting held on 23rd March, 1992. His plea was not found tenable. Hence, it was rejected. He was informed of the decision vide letter dated 22nd April, 1992. The University also repudiates the allegation of discrimination. It has, however, been admitted that "Professor P.K. Kapur of the Department of Business Management was offered employment on a fixed salary which he was drawing at the time of superannuation on contract basis... the Syndicate had considered it fit to grant full pay and allowances to Shri P.K. Kapur on his re-employment as a Professor." Similarly, an attempt has been made to explain the factual position with regard to various other persons named by the petitioner. On these premises, it has been claimed that the writ petition be dismissed.

(3) The petitioner has filed a rejoinder to controvert the averments made in the written statement. He has inter alia submitted that it was "only on 30th October, 1993 that.....(he) was informed of the rejection of his application by the Syndicate of the respondent." Even on merits, the petitioner has submitted facts in support of his claim.

(4) The petitioner argued his case with clarity. He contended that the action of the University was violative of Statute 38(c). It suffers from the vice of discrimination. There was no basis to deny the scale of the post of Professor to him. On the other hand, Mr. M.S. Sethi who appeared for the respondents contended that the University had the discretion to offer extension, re-employment or a fresh employment on contract basis. The petitioner having voluntarily accepted the offer, he was estopped from making any claim for a higher salary. Learned counsel further submitted that the petition was liable to be dismissed on the ground of delay.

(5) The questions that arise for consideration are :—

(i) Was the action of the University in paying the petitioner a fixed salary of Rs. 2,500 per month legal and valid?

(ii) Was the petitioner estopped from making a claim for higher salary?

(iii) Should the petition be dismissed on the ground of delay?

Reg :(I)

(6) The conditions of service governing the employees of the University including the members of the teaching staff are embodied in the Statutes framed by the University. Statute 38 deals with the age of retirement etc. Clause (c) *inter alia* provides as under :—

"All whole-time members of the teaching staff shall retire on reaching the age of sixty years;

Provided that an extension for a period up to two years but not exceeding one year at a time, may be allowed in special cases on the recommendation of the Vice Chancellor. Such extension, however, shall not be beyond 31st July, of the year in which the employee attains the age of 62 years...."

(7) A perusal of the above Statute would show that normally a member of the teaching staff retires on reaching the age of 60 years. However, the University has the power to grant an extension for a period up to two years. Thus, a teacher may not be allowed to retire on reaching the age of 60 years. His period of service may be enlarged. He may be allowed to continue in service up to the age of 62 years. Still further, the statute does not contemplate any alteration in the conditions of service during the extended period.

(8) What is the position in the present case?

(9) Admittedly, the petitioner was to retire on attaining the age of 60 years on 31st July, 1986. Vide order dated 1st August, 1986, a copy of

which is on record as Annexure P.4, the petitioner was "re-employed as Professor of Law....". It was further provided that the "term of this appointment will be one year in the first instance on contract basis" and that "the remuneration for this post will be Rs. 2,500 (fixed) per month. No other allowance will be admissible." It, thus, appears that instead of granting 'extension' as contemplated under Statute 38(c), the University 're-employed the petitioner on contract basis'. Why this departure from the statutory provisions? There is no explanation whatsoever. Apparently, there was no justification.)

(10) Mr. Sethi, learned counsel for the University, attempted to justify the action on the ground that the duties assigned to the petitioner were different from those which were being performed by him prior to 1st August, 1986. Consequently, the University was entitled to grant a fixed salary of Rs. 2500 per month.

(11) It is true that while working in the University, the petitioner had held various offices of responsibility and trust. He was Dean of Faculty of Law; Dean Academic Affairs of the University Chairman and Member of the Regulations Committee of the University; Director I.A.S. Training Centre of the University; a Member of the Senate, Syndicate, Academic Council and Chairman of the Board of Studies at different intervals of time. However, this by itself was not enough to deny the petitioner the salary of the post of Professor. This is all the more so in view of the fact that in the order dated 1st august, 1986, it had been specifically provided that the petitioner "will be assigned the same work-load as is prescribed for the post of Professor and such other duties as the Vice-Chancellor/ Syndicate may deem necessary". Thus, the work load had not decreased. The petitioner was also liable to perform 'other duties'. If the Vice-Chancellor or the Syndicate did not assign him any 'other duties', the petitioner was not to blame. Consequently, it cannot be said that there was any change in the work-load which could have warranted a reduction in the remuneration.

(12) Further more, even if it is assumed that in spite of the provisions of Statute 38, the University had an independent right to make employment on contract basis, it will not be absolved of the duty to act fairly. It is a statutory body. Its actions have to conform to the provisions of Article 14 of the Constitution. Whether it distributes largess or offers employment, its actions have to be just, fair and reasonable. It cannot grant different salaries to different persons without disclosing a reasonable basis. In the present case, it is the admitted position that the yard-stick had varied from time to time and person to person. While the petitioner who was a Professor was granted only Rs. 2,500 Mr. J.C. Dabra who was re-employed as a Deputy Registrar was paid Rs. 3,000. Professor Manmohan Singh

was paid Rs. 3,500 per month. Sardar Harbans Singh who had retired as Professor of Sikh Studies was granted Life-time Fellowship with free telephone, secretarial support and was allowed to continue to occupy the house. The remuneration was raised from time to time. Similarly, Dr. Ganda Singh was also appointed as a Life-Fellow on such terms as the Vice Chancellor thought fit. The petitioner has quoted instances and given details which indicate that different Vice Chancellors followed different policies.

(13) It is true that certain amount of freedom is essential to enable the academic bodies to attract men of distinction. Some moving space may be really essential. However, in a society like ours which is governed by the rule of law, no body has absolute freedom to act according to his whim. The action of the authorities like a University are subject to the scrutiny by courts. Whenever challenged, it is under a duty to demonstrate that its action conforms to the requirements of Article 14 of the Constitution. In the present case, nothing has been pointed out or placed on record to show that the action of the University in reducing the petitioner's emoluments from Rs. 5,000 which he was drawing at the time of retirement to Rs. 2,500 was justified. In fact, it is the admitted position that the pay scale of the post of Professor was revised and raised to Rs. 4,500-150-5,700-200-7,300 with effect from January 1st 1986. Yet, the petitioner was paid less than even the starting salary of the post. Even a Lecturer who was employed at that time was drawing substantially higher emoluments than the petitioner. In this situation. it cannot be said that the respondent University had acted fairly. Its action was not reasonable. It did not conform to the requirements of Article 14 of the Constitution.

(14) Mr. Sethi submitted that the petitioner had already retired. He was re-employed. He could not claim parity with a person who was working on regular basis. Why? There is no explanation. Admittedly, the petitioner had worked in the University since the year 1965. He had performed his duties to the satisfaction of all concerned. He had held various offices of responsibility. His long experience was a qualification. It could not be treated as a disqualification. Still further, the mere fact that the petitioner had attained the age of 60 years did not justify a differential treatment. The normal rule is that the person with a long experience is given higher emoluments. In the present case, for some inexplicable reason, the University acted to the contrary.

(15) In the written statement filed on behalf of the respondents, it has been inter alia stated that the Syndicate of the University had taken a decision that "no teacher should be granted extension in service after attaining the age of superannuation". Undoubtedly, such a decision appears to have been taken on 19th July, 1986. It finds mention in paragraph 5 of

the written statement. Yet, it is the admitted position that various persons who had retired after the decision of the Syndicate were granted re-employment or allowed to continue in service after retirement. Even members of the administrative staff were given such benefits. In any event, the University had passed an order re-employing the petitioner. Having done so, it has not given any explanation for fixing his emoluments at Rs. 2,500 per month. If the post carried a pay scale of Rs. 4,500—7,300, there was no justification for giving him only Rs. 2,500 per month.

(16) No one howsoever high is above the law. No authority in this country has the power to treat equals unequally. The University cannot arrogate to itself the absolute discretion and to offer extension to one, re-employment to another and to fix different conditions of service for different people. Such an action can be sustained only when the authority shows a good cause. In the present case, none has been shown. Consequently, the action cannot be said to be legal.

(17) Mr. Sethi referred to the decision of their Lordships of the supreme Court in *State of West Bengal and others* v. *Monirujjaman Mullik and others* (1), to contend that differential treatment in pay was permissible. This case is clearly distinguishable. It was held that the persons who were working in the non-formal educational centres cannot be equated with those working in the primary schools. There were qualitative differences between the two kinds of institutions. The nature of work and the duties, the method of appointment; the source of appointment; the method of teaching and the hours of duty were different. As such, differential treatment was justified. Such is not the situation in the present case.

(18) In view of the above, it is held that :—

(i) The action of the University was not in conformity with the provisions of Statute 38(c).

(ii) It was discriminatory. Persons who were similarly situated were treated differently without any basis.

(iii) No reason whatsoever has been disclosed for according a differential treatment to the petitioner. Persons who were appointed to lower posts were given higher salary. To illustrate: Mr. J.C. Dabra was given a monthly pay of Rs. 3,000 in spite of the fact that he was re-employed on the lower post of Deputy Registrar. The action was, thus, arbitrary. It violated Article 14 of the Constitution.

Reg: (ii)

(19) Mr. Sethi contended that the petitioner having accepted the terms of appointment as offerred to him,—*vide* letter dated 1st August,

(1) J.T. 1996 (7) S.C. 49

1986, he is now estopped from claiming a higher rate of emoluments.

(20) This contention cannot be accepted. Firstly, it is the duty of the University to act fairly and in conformity with the provisions of Article 14 of the Constitution. A citizen cannot waive his right under Article 14 or relieve the University of its duty. Secondly, the petitioner did not really waive his right. Apparently, forced by circumstances, he had accepted the offer. Simultaneously, he had represented. In this situation, the principle of estoppel cannot be invoked to deny the petitioner his rightful dues. Still further, the University having imposed an unfair condition cannot be permitted to take advantage of its own wrong. Thus, the plea of estoppel as raised by the respondents cannot be sustained.

Reg: (iii)

(21) Mr. Sethi submitted that the petition suffers from the vice of laches. Is it so?

(22) Admittedly, the petitioner had represented. The matter was considered by the Syndicate in the meeting held on 23rd March, 1992. The petitioner's claim was rejected. He had again represented. Ultimately, the decision was conveyed to the petitioner;—*vide* letter dated 30th October, 1993. This categorical averment in the rejoinder has not been controverted by the respondents. Still further, it is the admitted position that this matter was listed before V.K. Bali, J. on 23rd May, 1996. After having "heard arguments at considerable length" it was observed that "the petitioner may file representation within 7days from today to the learned Vice Chancellor... who would consider the same sympathetically and decide the matter... within 2 months from the date representation is made." The petitioner had made the representation of 23th August, 1996. It was stated that the matter had to be decided by Syndicate of the University. Ultimately, it was stated that the Syndicate had not accepted the representation.

(23) It may also be mentioned that the petitioner had filed this writ petition on 21st September, 1994. In spite of the objection of delay having been raised, the petition was admitted on 3rd May, 1995. In the circumstances it cannot be said that the petition is delayed.

(24) The decision taken by the Syndicate in the meeting held in the year 1992 having been conveyed to the petitioner in October, 1993 and the writ petition having remained pending in this court, even the remedy of suit which the petitioner may have availed of in the year 1994 will not be available to him now. In this situation, it would not be fair to dismiss the writ petition on account of delay. Still further, it appears from a perusal of the decision of the syndicate, a copy of which is on record as Annexure P.7 that the petitioner's claim was rejected "after taking legal opinion from a lawyer of the Punjab and Haryana High Court." A perusal of the proceedings of the Syndicate dated 28th June, 1993, a copy of which is on record as

Annexure P.13, shows that after its earlier decision the University had decided that "legal opinion from another leading lawyer be obtained." The proceedings indicate that "legal opinion was also taken from the Senior Advocate of the Supreme Court, Shri P.P. Rao..." It is, thus, clear that the University itself was considering the matter till June, 1993. It was obtaining legal opinion. In this situation, it cannot be said that the petitioner had erred in waiting for the decision of the University or that he was resting on his oars.

(25) The petitioner submitted that the legal opinion given by the Senior Advocate of the Supreme Court was, in fact, in his favour. The respondents had been advised that giving higher emoluments to those who have not attained the age of superannuation and lower emoluments to professors who had been re-employed without any explanation was not justified. In view of this advice, the petitioner was hopeful that he would get the requisite relief. The petitioner cannot be blamed for entertaining this hope and waiting for the decision. The petition cannot be dismissed on the ground of delay.

(26) In view of the above, the preliminary objections regarding delay and estoppel are rejected. The writ petition is allowed. It is held that the petitioner shall be entitled to the payment of his salary for the period from 1st August, 1986 to 31st July, 1988, at the rate at which he would have drawn if he had continued in service without retirement. He would also be entitled to interest at the rate of 12 per cent from the date of accrual till the date of payment. The petitioner shall also get his costs which are quantified at Rs. 5000.

J.S.T.

Before K. Sreedharan, C.J., N.K. Sodhi &

T.H.B. Chalapathi, JJ

RAHUL PRABHAKAR,—*Petitioner*

versus

PUNJAB TECHNICAL UNIVERSITY, JALANDHAR AND OTHERS,—*Respondents*

CWP 5281 of 97

22nd April, 1997

Indian Post Office Act, 1893—S.3—Constitution of India, 1950-Art. 226-Information Brochure for the Common Entrance Test, 1997—Para 6.5-Admission to Engineering Courses-Prospectus fixing last date of receipt of