
(24) There is no such prayer in the petition. However, if the petitioners have any grievance in this behalf, they may make a representation to the Administration. We have no doubt that it shall be given consideration that it deserves.

Bona fides of the Petitioners :

(25) On behalf of the respondents, it was vehemently contended that the petition is not calculated to promote public interest. Is it so?

(26) Mr. Sibal submitted that the petitioners do not want that the sub-standard unit should be closed. They do not object to the installation of any other Petrol Pump. They have not raised their little finger against the continuance of the pumps which employ old technology.

(27) The modern city of Chandigarh richly deserves a modern facility. To forestall the setting up of such a facility would not promote public interest. In the circumstances of the case, the suggestion on behalf of the respondents that the petition is not in public interest but a private interest litigation cannot be said to be wholly unfounded. We say no more.

(28) In view of the above, there is no merit in this petition. It is, consequently, dismissed. Resultantly, even the interim order passed by the Bench on January 4, 1997 shall stand vacated. It is a case where the respondents should have been compensated by way of costs. However, we desist from doing so only with the hope that the petitioners would espouse a better cause in future.

R.N.R.

Before Jawahar Lal Gupta & Balwant Rai, JJ.

Dr. Ram Sarup Kukreja,—Petitioner.

versus

P.G.I. Chandigarh & another,—Respondents.

C.P.W. No. 256 of 97

30th July, 97

The Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967—Regs. 37-A. 40-A,

Schedule III—Age of superannuation—Members of the Teaching Faculty to superannuate at the age of 60 years—Tutor in the department of Experimental Medicine—Whether a member of the Teaching Faculty.

Held, that the Regulations do not specifically define a member of the teaching faculty. In the absence of a specific provision, the correct position has to be ascertained with reference to the other Regulations. A perusal of Schedule III of Regulation 40-A shows that the posts have been divided into various divisions like—the Teaching Division, Personnel Division, Accounts Division, Academic Division, Nursing Faculty Division etc. In each Division, the various categories of posts along with the pay scales sanctioned therefor have been mentioned separately. Tutor (for non-medical scientists) is included in the teaching division. The petitioner was appointed as a tutor (Experimental Medicine). His post is a part of the teaching division. He belongs to the teaching faculty. He has, thus, a right to continue in service till the age of 60 years.

(Paras 9 & 16)

O.P. Sharda, Advocate, *for the Petitioners.*

D.S. Nehra, Sr. Advocate with Mr. Arun Nehra, Advocate,
for the Respondents

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioner who is working as a Tutor in the department of Experimental Medicine at the Post Graduate Institute of Medical Education and Research, Claims that he has a right to continue in service till the age of 60 years. The Institute maintains that in accordance with the provisions of Regulation 37A of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967, the age of superannuation is 58 years. What is the correct position? Firstly, a few facts may be noticed.

(2) The petitioner had initially joined service as a Technical Assistant in the PGI. In the year 1982, the Institute had advertised a post of Tutor in the Department of Experimental Medicine. The petitioner who does not hold a Medical Degree like MBBS but was otherwise qualified, applied for recruitment to the post. He was considered by the Selection Committee. He was selected. On

December 11, 1982, the Institute offered to him the post of Tutor in the scale of Rs. 550—25—750/30—900 plus allowances. A copy of the letter is at Annexure P. 1 with the writ petition. Since the petitioner was already working in the Institute, he joined the post of Tutor on the same day. The petitioner asserts that ever since his appointment, he has been participating in the teaching programmes like other members of the faculty. He has produced extracts from the duty rosters or the notices issued by the Department regarding teaching programmes at different intervals of time to show that he has been delivering lectures to the students. In particular, it has been pointed out that the subjects like “the circulatory system; Regulation of arterial pressure; Cardiac cycle and cardiac functions; the pulmonary circulation; pulmonary ventilation; pulmonary function indices and Regulation of Respiration” have been allotted to him on different occasions. He has also delivered lectures to the students on subjects like Physiology of muscle function, contractions, muscle tone and fatigue. Similarly, he has availed of the facility of vacations like other members of the teaching Faculty. The petitioner complains that in spite of these facts, he has not been treated as a member of the “teaching Faculty” and is sought to be retired at the age of 58 years instead of 60 years. The petitioner alleges that this action is violative of the provisions of the statutory regulations, wherein the post of Tutor has been included in the teaching division. It is further pointed out that the action is even discriminatory. According to the petitioner, the posts of Clinical Instructors, Sister Tutors and Tutor Technicians Medical Technology were not included in the regulations in the teaching division. On February 7, 1995, these posts were re-classified and the age of retirement was raised from 58 years to 60 years. However, a request for parity of treatment submitted by him was arbitrarily turned down by the Director of Institute,—*vide* his order dated November 9, 1995. A copy of this order has been produced as Annexure P. 16 with the writ petition. He again represented. A detailed agenda note was prepared. A copy of this note has been produced as Annexure P. 19 with the writ petition. In the administrative comments, it was mentioned that the petitioner is due to retire “with effect from 31st August, 1997 i.e. the date on which he attains the age of 58 on the ground that had he continued on a substantive post of Technical Assistant (Lab.) he was to retire on 31st August, 1997. Since he was neither appointed to the post of Tutor Technician (Laboratory) nor held the said post at any time,

the 60 years age of superannuation is not *suo-moto* applicable in his case." These comments were considered by the Financial Advisor. He had recommended that "age limit of 60 years may be allowed in the case of Shri R.S. Kukreja who is a regular Tutor". However, the Standing Finance Committee of the Institute rejected the proposal in the meeting held on April 17, 1996. The decision was conveyed to the petitioner by the Director,—*vide* letter dated August 5, 1996. A copy of this letter has been produced as Annexure P. 18 with the writ petition. The petitioner challenges this order. He prays that the decision taken by the respondents be quashed and he be allowed to continue till the age of 60 years like the Sister Tutors and Tutor Technicians Medical Technology.

(3) The respondents contest the petitioner's claim. In the written statement filed on their behalf, it has been *inter alia* mentioned that the post of Tutor in Experimental Medicine is "a tenure post for a period of three years...." The posts of Tutors (Non-medical) are "meant for scientific research carried out by the Institute. Besides research activities, the incumbents of the said posts are also required to take part in the teaching programmes of the concerned department." Even the Non-Medical Tutors are "allowed vacations, if recommended, by the Head of the department, as per the rules of the Institute subject to the condition that atleast 50% of staff remains on duty during vacations." In the regulations, there is no provision for the grant of vacations to the Tutors. It has been further averred that "the Government of India, Ministry of Health & Family Welfare,—*vide* its letter dated 7th November, 1989 (Annexure R/1) *inter alia* decided that the existing tenure posts of Tutor re-designated as Senior Demonstrator (non medical) are to be abolished but the existing incumbents of these posts may be allowed to continue till their term of appointment expires. It was also decided that the revised pay scale shall be applicable only to the existing incumbents and no further appointment to these posts should be made in future. Consequently, there was no question of treating the petitioner either as a teacher or a non teacher in the year 1995 as averred..." The Standing Finance Committee of the Institute in its meeting held on August 24, 1992 made a recommendation to the Governing Body regarding the revision of pay scales of the Tutors (Non Medical). In the meeting held on September 22, 1992, the Governing Body decided to re-designate the posts as Junior/Senior Demonstrators and also fixed the pay

which was to be given to the incumbents of these two categories of posts. These are tenure posts. As against this, the posts of Clinical Instructors, Sister Tutors, Tutor Technicians, Medical Technology are regular posts meant for teaching of Nurses and Medical Technologists in the quota of Nursing and Laboratory Technology. Thus, the benefits admissible to the incumbents of teaching posts were given to them also. Since the post held by the petitioner is a tenure post, he has no right to continue till the age of 60 years. He has been allowed to work till 58 years as he held the substantive appointment as a Technical Assistant. On these premises, the respondents maintain that the petitioner is not entitled to continue in service till the age of 60 years.

(4) Learned counsel for the parties have been heard.

(5) The short question that arises for consideration is—Are the respondents entitled to retire the petitioner at the age of 58 years or do the Regulations permit his continuance in service till the age of 60 years?

(6) The Parliament had promulgated the Post Graduate Institute of Medical Education and Research, Chandigarh Act, 1966 to declare that the Institution is “of national importance and to provide for its incorporation and matters connected therewith.” Section 5 lays down the composition of the Institute. Section 10 provides for the constitution of the Governing Body and other Committees. Section 12 lays down that “the objects of the Institute shall be—to develop patterns of teaching in under-graduate and post-graduate medical education in all its branches...; to bring together, as far as may be, in one place educational facilities of the highest order for the training of personnel...; and to attain self-sufficiency in postgraduate medical education to meet the country’s needs for specialists and medical teachers.” Section 13 provides that for the promotion of objects, the Institute may “provide for undergraduate and postgraduate teaching...facilities for research in the various Branches of...sciences; provide for the teaching of humanities; conduct experiments in new methods of medical education...” Under Section 31, the Central Government is competent to frame rules in consultation with the Institute to carry out the purposes of the Act. Section 32 empowers the Institute to make Regulations with the previous approval of the Central Government. In exercise of this power, the Institute has framed Regulations called the Post Graduate Institute of Medical Education

and Research, Chandigarh Regulations 1967. Regulation 37-A which deals with the age of superannuation *inter alia* provides as under:—

“37-A. Superannuation—(1) The age of superannuation of the employees of the Institute other than the Director, the Medical Superintendent, the members of the teaching faculty and Class IV employees shall be 58 years.

(2) The age of Superannuation of the Director, the Medical Superintendent, members of the teaching faculty and Class IV employees shall be 60 years :

Provided that the services of members of the teaching faculty including the Director may be retained upto the age of 62 years in exceptional cases of such members for reasons to be recorded in writing on the merits of each such case and subject to physical fitness and continued efficiency of the member or as the case may be, the Director concerned.”

(7) Clause (3) is not relevant for the purposes of the present case.

(8) A perusal of the above provision shows that the age of superannuation for the members of the teaching faculty is 60 years. Consequently, if it is found that the petitioner is a member of the teaching faculty, he would be entitled to continue in service till the age of 60 years. Otherwise, he would be liable to retire on attaining the age of 58 years.

(9) The Regulations do not specifically define a member of the teaching Faculty. In the absence of a specific provision, the correct position has to be ascertained with reference to the other Regulations. Regulation 40-A provides that “the various posts in the Institute and the scales of pay and allowances attached thereto shall be as specified in Schedule III.” Thus, Schedule III is a part of the Regulations. A perusal of the Schedule shows that the posts have been divided into various divisions like—the Teaching Division, Personal Division (Personnel 7), Accounts Division, Academic Division, Nursing Faculty Division etc. In each Division, the various categories of posts alongwith the pay scales sanctioned therefor have been separately mentioned. In the teaching division,

the entries are as under :—

<i>Sr. Designation No. of the post</i>	<i>Scale of pay</i>	<i>Allowance</i>
Teaching Division		
1. Director	Rs. 3,500 inclusive N.P.A.	As admissible from time to time.
2. Dean	Rs. 2,500—100—3,200	
3. Professor (Medical)	Rs. 2,500—100—3,200	
4. Professor (Non-medical)	Rs. 1,700—75—2,525	
5. Associate Professor (Medical)	Rs. 2,100—75—2,625	
6. Associate Professor (Non-medical)	Rs. 1,600—60—2,020	
7. Assistant Professor (Medical)	Rs. 1,800—75—2,100— 100—2,400	
8. Assistant Professor (Non-Medical)	Rs. 1,300—60—1,720	
9. Lecturer (Medical)	Rs. 1,500—60—2,040	
10. Lecturer (Non-Medical)	Rs. 900—50—1,600	
11. Senior Resident	Rs. 650—30—710 plus N.P.A. @ Rs. 150 P.M.	
12. Tutor	Rs. 650—30—740—35— 880—EB—40—960	
13. Tutor (for non-medical scientists)	Rs. 550—25—750—30—900	

The petitioner was admittedly appointed as a Tutor. He does not possess a Medical degree like MBBS etc. He was placed in the

scale of Rs. 550—25—750/30—900. Thus, his appointment was to the post which has been included in the Teaching Division. It is also admitted by the respondents in paragraph 6 of the written statement that “the petitioner is still continuing on the said post...” Thus, it appears that the petitioner was factually appointed to a teaching post.

(10) Mr. Nehra, counsel for the respondents emphasised that the petitioner does not have a degree in Medicine or Surgery. He is not a Medical Scientist. Thus, he cannot claim parity with the members of the Teaching Faculty who are specialists in different fields of Medicine and Surgery.

(11) Even this contention cannot be accepted. A perusal of the entries in Schedule III shows that various categories of posts in the Non-medical field have been included in the teaching division. To illustrate : the posts at Sr. Nos. 4, 6, 8 and 10 are of Professor, Associate Professor, Assistant Professor and Lecturer (Non-medical). If non-medical Scientists can be appointed to the various Faculty positions of lecturers etc., it cannot be said that a tutor who is a non-medical scientist could not have been included in the teaching faculty. Therefore, the mere fact that the petitioner does not have a medical degree cannot lead to the inference that he is not a member of the teaching Faculty.

(12) Learned counsel for the respondents also contended that Schedule III only indicates the pay scales sanctioned for various posts. It does not specify the members of the teaching faculty.

(13) Even this contention cannot be accepted. Firstly, the posts in the cadres of Professor, Associate Professor, Assistant Professor, Lecturer, Senior Resident and Tutor are admittedly a part of the teaching faculty. That being so, there can be no rationale for excluding the Tutor (for non-medical scientists) from the teaching faculty. Secondly, it also deserves mention that the post of Tutor (non-medical) is not included in any other division in the Schedule. It deserves notice that there are posts of Tutors which are mentioned in the Technical Staff Division like—Tutor Technician (Radiology, Radio-therapy Biochemistry, Pathology, Microbiology, Laboratory Technique). There are also posts of Tutor Technician-cum-Lab Supervisor Cl. Pathology, Tutor in Medical Statistics (Bio-Statistics) and Tutor Technician (Hospital Administration). All these posts are in the scale of Rs. 550—900. Yet, these are not included in the teaching division. The post of

Tutor (Experimental Medicine) is admittedly in the category of non-medical scientists. It has not been included in any division other than the teaching division. That being so, the contention of Mr. Nehra that the post is not a part of the teaching faculty, cannot be accepted.

(14) There is another aspect of the matter. It is the admitted position that the posts of "Tutor (non medical) which existed in various departments/specialities of the respondent—Institute during the year 1982 were teaching posts..." It is also admitted by the respondents that "the posts of Tutor (non-medical) are meant for scientific research carried out by the Institute. Besides research activities, the incumbents of the said posts are also required to take part in the teaching programmes of the concerned department." The petitioner's averment that he has been teaching in the Institute has not been controverted. It is, thus, apparent that the petitioner is actually teaching. Can he be still excluded from the teaching faculty? We think it will be unfair to do so. According to Section 13, the primary functions of the Institute are to provide "facilities for research....and teaching in the science of modern medicine and other allied sciences including physical and biological sciences." Research and teaching are the two primary functions of the Institute. The petitioner is admittedly performing both the functions like all other members of the teaching faculty. There is no ground for treating him differently.

(15) Mr. Nehra contended that the post of a Tutor is only a tenure post. The petitioner cannot claim a right to continue in service till the age of 60 years.

(16) Even this contention is untenable. A copy of the letter of appointment issued to the petitioner in December 1982 is at Annexure P.1 with the writ petition. There is not even a faint suggestion that the appointment is only for a fixed duration. Equally, no document has been produced to show that the post of Tutor to which the petitioner had been appointed was ever abolished. In any event, the petitioner having continued for the last about 15 years, it cannot be said that the appointment was for a fixed tenure of three years. Still further, the claim made by the petitioner was processed in the office of the Respondent-Institute. After the administrative comments, the Financial Advisor had categorically observed that "age limit of 60years may be allowed in the case of Shri R.S. Kukreja who is a regular tutor." The recommendation was made in April, 1996. It has not even been

suggested that it was wrong. It is true that the matter was placed before the standing Finance Committee. However, nothing has been pointed out to show that the said Committee can determine the age of retirement for various post. In fact there is a clear provision in Regulation 37-A. This provision has not been amended or modified in accordance with the provisions of the Act or the Rules. Neither the decision of the Central Government as contained in letter dated November 7th, 1989, a copy of which has been produced as Annexure R.1 nor that of the Governing Body as circulated on October 16th, 1992 a copy of which has been produced as Annexure R. 2 is of any consequence so far as the petitioner is concerned. He was appointed as a Tutor (Experimental Medicine). His post is a part of the teaching division. He belong to the teaching faculty. He has, thus, a right to continue in service till the age of 60 years.

(17) In view of the above, the writ petition is allowed. The impugned order which his claim was rejected, is quashed. It is declared that a Tutor (Non-medical) like the petitioner is a member of the teaching faculty and is entitled to be treated at par with the other members. The petitioner shall be entitled to his costs which are assessed at Rs. 3,000

S.C.K.

Before Jawahar Lal Gupta and Balwant Rai, JJ

NARSI RAM,—*Petitioner*

versus

GURU JAMBHESHWAR UNIVERSITY, HISAR AND
OTHERS,—*Respondents*

C.W.P. No. 732 of 97

20th, August, 1997

Constitution of India, 1950- Art. 226- Selection made to two posts of Readers in Environmental Science and Engineering in the Guru Jambheshwar University- Selections and appointments challenged- Petitioner put on the waiting list claiming that one of the selectees had failed to join the post by the time extended by the University and, therefore, offer should be treated as cancelled—Claim upheld