

(2017) 02 MAN CK 0018

MANIPUR HIGH COURT

Case No: 213 of 2016

R.K. Narendra Singh

APPELLANT

Vs

The Union of India &
anr.

RESPONDENT

Date of Decision: Feb. 22, 2017

Hon'ble Judges: N. Kotiswar Singh

Bench: Single Bench

Advocate: H.S. Paonam, N. Bipin, B.P.Sahu, Jotibala, S. Suresh

Judgement

1. Heard Mr. H.S. Paonam, learned senior counsel assisted by Mr. N. Bipin, learned counsel for the petitioner, Mr. B.P. Sahu, learned senior counsel assisted by Ms. S. Jotibala, learned counsel for the RIMS respondent as well as Mr. S. Suresh, learned CGC for the Union respondents.

2. This writ petition involves determination of the age of superannuation in respect of a non-medical teaching faculty in the RIMS, of a person who is not holding any medical degree but who is a part of the teaching faculty. When this matter was taken up on 18.01.2017, this Court passed the following order:

"Heard Mr. H.S. Paonam, learned senior counsel assisted by Mr. N. Bipin, learned counsel for the petitioner, Mr. B.P. Sahu, learned senior counsel assisted by Mr. M. Tapan Sharma, learned counsel for the RIMS respondent as well as Mr. S. Suresh, learned CGC for the Union respondents.

[2] In this writ petition, the petitioner, who is presently serving as a Professor in the Biostatic Unit in Department of Community Medicine, Regional Institute of Medical

Sciences (RIMS), has challenged the order dated 03.10.2011 by which the petitioner has been sought to be retired on reaching the age of 60 years contending that such order is not in terms of the decision of the Executive Council which has decided the appropriate order relating age of superannuation.

[3] The petitioner who is a non medical staff but who possesses the qualification of M.Sc. and Ph.D. in Statistics, joined service as Statistician-Cum-Lecturer in the S.P.M. Department of the Regional Medical College, Manipur vide order dated 20.04.1985. Subsequently, the petitioner though a non-medical staff who had been engaged in the teaching and as such became a member of the teaching faculty of the RIMS, was promoted to the post of Assistant Professor on 19.05.2003 in the Department of Community Medicine, RIMS. Later, the petitioner was promoted to the post of Professor vide order dated 21.01.2008 in the BioStatistics Unit of the Community Medicine of RIMS as mentioned above. As far as the appointment of the petitioner as a Statistician, Assistant Professor and Professor in the Department of Community Medicine is concerned, it is not in dispute. It is also not in dispute that the petitioner is presently engaged in teaching and as such as member of the teaching faculty of the RIMS. The issue involved in this writ petition is about the age of superannuation which according to the RIMS is 60 years, though the petitioner claims that it is 65 years in terms of the decision of the competent authority.

[4] The petitioner claims that an order was issued on 28.02.2007 by the RIMS authorities declaring that the age of superannuation of specialist/teaching faculty of the Regional Institute of Medical Sciences, Imphal is enhanced from 60 years to 62 years w.e.f. 28th February, 2007 as per order issued by the Deputy Director (Admn.), RIMS, Imphal. Subsequently, by an order dated 31.12.2008 in pursuance of the decision of the Executive Council, Society of Regional Institute of Medical Sciences (RIMS), Imphal in their meeting held on 3rd December, 2008 of the 38th Meeting the age of superannuation for Faculty Staff of Regional Institute of Medical Sciences, Imphal was enhanced from 62 years to 65 years. It is this order dated 31.12.2008 which has been relied on by the petitioner in claim of his age of superannuation at 65 years and hence, the same is reproduced hereinbelow :-

"REGIONAL INSTITUTE OF MEDICAL SCIENCES

(An autonomous Institute under the Ministry of Health & Family Welfare,
Government of India)

IMPHAL : MANIPUR

O R D E R S

Imphal, the 31st December, 2008

No.M/1/2008-RIMS (38): In pursuance of the decision under Agenda Item No. 2 of the 38th Meeting of the Executive Council, Society of Regional Institute of Medical Sciences (RIMS), Imphal held on 3rd December, 2008, the Chairman, Executive Council, Society of RIMS, Imphal is pleased to enhance the age of superannuation from 62 years to 65 years for Faculty Staff of Regional Institute of Medical Sciences, Imphal.

This order supersedes the previous orders issued in this regard.

By Order and in the name of Chairman

Sd/-

(Prof. L. Fimate)

Director,

Regional Institute of Medical Sciences, Imphal.

Memo No.M/1/2008-RIMS (38)

Imphal, the 31st December, 2008

Copy to:

1) The P.S. to the Secretary, Ministry of Health & Family Welfare, Government of India, New Delhi- for kind information of the Chairman, Executive Council, Society of RIMS, Imphal.

- 2) The Medical Superintendent, RIMS Hospital, Imphal.
3. The Dean (Academic), RIMS, Imphal.
4. All Heads of Departments/Units/Sections, RIMS, Imphal
5. The Deputy Director (Admn.), RIMS, Imphal
6. The CAO/FA, RIMS, Imphal
7. The Administrative Officer, RIMS, Imphal
8. The Accounts Officer, RIMS, Imphal
9. All S.Os. of the Sections, RIMS, Imphal
10. Bill Assistant concerned, RIMS, Imphal
11. Order Book

Sd/-

(Prof. L. Fimate)

Director,

Regional Institute of Medical Sciences, Imphal."

[5] However, subsequently, another order was issued by the Director, Regional Institute of Medical Sciences, Imphal on 03.10.2011 by which the age of superannuation of Non-Medical Teaching Faculty had been fixed at 60 years with which the petitioner is aggrieved and is the subject matter of challenge in this writ petition. Accordingly, the said

order dated 03.10.2011 is also reproduced hereinbelow :-

"REGIONAL INSTITUTE OF MEDICAL SCIENCES

(An autonomous Institute under the Ministry of Health & Family Welfare,
Government of India)

IMPHAL : MANIPUR

O R D E R S

Imphal, the 3rd October, 2011

No.M/1/2010-RIMS (42): In pursuance of the decision under Agenda Item No. 6 of the 42nd Meeting of the Executive Council, Society of RIMS, Imphal held on 5th August, 2011, the Chairman, Executive Council, Society of RIMS, Imphal is pleased to decide the age of superannuation of i) Medical Teaching Faculty ii) Non-Medical Teaching Faculty and iii) Non-Teaching Doctor of RIMS, Imphal as follows.

i) Medical Teaching Faculty - 65 years.

ii) Non-Medical Teaching Faculty - 60 years.

iii) Non-Teaching Doctor - 62 years.

This decision & orders will have immediate effect. The decision & orders in force in this regard immediately before these orders shall, in so far as it provides for any of the matters contained in these orders, cease to operate.

Notwithstanding such cessation of operation, anything done or any action taken under this order, in so far as such thing or action is not inconsistent with the provision of this order, be deemed to have been done or taken under the previous orders in this regard and shall continue in force until superseded by anything done

or action taken under this order.

Sd/-

(Prof. S. Sekharjit Singh)

Director,

Regional Institute of Medical Sciences, Imphal.

No.M/1/2010-RIMS (42)

Imphal, the 3rd Oct., 2011

Copy to:

1) The P.S. to the Secretary, Ministry of Health & Family Welfare, Government of India, New Delhi- for kind information of the Chairman, Executive Council, Society of RIMS, Imphal.

2) The Medical Superintendent, RIMS Hospital, Imphal.

3) The Dean (Academic), RIMS, Imphal.

4) All Heads of Departments/Units/Sections, RIMS, Imphal

5) The Deputy Director (Admn.), RIMS, Imphal

6) The C.A.O./F.A., RIMS, Imphal

7) The Administrative Officer, RIMS, Imphal

8) The Accounts Officer, RIMS, Imphal

9) All S.Os., RIMS, Imphal

10) Bill Asstt. concerned, RIMS, Imphal

11) Order Book

Sd/-

(Prof. S. Sekharjit Singh)

Director,

Regional Institute of Medical Sciences, Imphal."

[6] The main grievance of the petitioner is that the aforesaid impugned order dated 03.10.2011 by which the age of superannuation of Non-Medical Teaching Faculty has been fixed at 60 years purportedly in pursuance of the decision of the Agenda Item No. 6 of the 42nd Meeting of the Executive Council, Society of RIMS, Imphal held on 5th August, 2011 is not correct in as much as no such decision was taken by the said Executive Council, Society of RIMS, Imphal in its 42nd Meeting as mentioned in the impugned order dated 03.10.2011. In support of his contention, Mr. H.S. Paonam, learned senior counsel for the petitioner has drawn attention of this Court to the document at Annexure A/13 to the additional affidavit filed by the petitioner, which is a copy of the Minutes of the 42nd Meeting of the Executive Council, Society of RIMS, Imphal held on 05.08.2011. The decision taken in the Agenda Item No. 6 of the said meeting which is the relevant one is accordingly reproduced hereinbelow :-

"Agenda Item No. 6 Age of superannuation of Medical & Non-Medical Faculty Staffs, RIMS, Imphal.

The Joint Secretary (NE) pointed out that the age of superannuation of Medical Teaching Faculty in AIIMS, New Delhi; PGIMER, Chandigarh; NIMHANS, Bangalore; RIMS, Imphal; AIH&PH, Kolkata and LGBRIMH, Tejpur was enhanced from 62 years to 65

years vide Ministry of Health O.M. F.No.A.12034/2/2007-CHS V, dated 22.7.2008. The age of superannuation of specialist doctors belonging to Non-Teaching cadre and Public Health Sub-cadre of CHS was enhanced from 60 to 62 years vide order of the Health & FW Ministry dated 16.11.2006. It was accordingly decided that RIMS should follow these norms."

[7] Mr. Paonam, learned senior counsel submits that reading of the aforesaid decision of the Agenda Item No. 6 would clearly reveal that the decision taken was in respect of superannuation of specialist doctors belonging to Non-Teaching cadre and Public Health Sub-cadre of CHS which was enhanced from 60 to 62 years and not relating to Non-Teaching Faculty which had been already enhanced from 62 years to 65 years earlier. In other words, no decision was taken by the Executive Council in their 42nd Meeting as regards the age of superannuation of Non-Medical Teaching Faculty of which the petitioner is a member. Whatever decision was taken in the 42nd Meeting of the Executive Council of the RIMS as indicated in Agenda Item No. has no relation to the order dated 03.10.2011 as far as the NonMedical Teaching Faculty is concerned. Accordingly, it has been submitted by Mr. H.S. Paonam, learned senior counsel for the petitioner that the order dated 03.10.2011 fixing the date of superannuation in respect of Non-Medical Teaching Faculty as 60 years cannot be sustained as no such decision was taken by the Executive Council in their 42nd Meeting held on 05.08.2011. If that is so, the earlier order dated 31.12.2008 by which the age of superannuation was enhanced to 65 years for Faculty Staff would stand and as such, the age of superannuation of the petitioner would be 65 years. Mr. H.S. Paonam, learned senior counsel further submits that the age of superannuation to serve upto 65 years is also in consonance with the Medical Council of India (MCI) Regulations and hence, the impugned order dated 03.10.2011 is liable to be set aside.

[8] In response, Mr. B.P. Sahu, learned senior counsel for the RIMS authorities submits that he would like to clarify before this Court after getting the latest instructions in this regard and prays that the matter be listed again on 30.01.2017 as part heard.

[9] Mr. B.P. Sahu, learned senior counsel submits that a copy of this order may be furnished to him. Let it be done so. Hearing will continue. List the matter again on 30.01.2017 as part heard."

3. Pursuant to the said order dated 18.01.2017, Mr. B.P. Sahu, learned Sr. Counsel for the RIMS respondent has submitted before this Court that he has instruction to the effect that the provisions relating to age of superannuation as applicable to the members of the Central Health Services is not applicable to the RIMS. However, this Court is of the view that such instruction in the facts of the case is not relevant to decide the issue raised. As

mentioned above, as reflected in the order dated 18.01.2017 quoted above, the main grievance of the petitioner relates to the impugned order dated 03.10.2011 by which the age of retirement of Non-Medical Teaching Faculty was fixed at 60 years purportedly in pursuance of the decision of the Agenda Item No. 6 of the 42nd Meeting of the Executive Council, Society of RIMS, Imphal held on 5th August, 2011, which the petitioner contends cannot be sustained, for the simple reason that the Executive Council, Society of RIMS, Imphal in the said 42nd Meeting held on 5th August, 2011 never took any decision for fixing the age of superannuation for Non-medical teaching faculty at 60 years. Admittedly, there is an order dated 31.12.2008 issued by the Director of the RIMS which had enhanced the age of superannuation of the faculty staff of the RIMS from 62 to 65 years on the basis of which the petitioner is claiming his continuation in service till 65 years. The aforesaid order dated 31.12.2008 has not been recalled by the authorities. However, the effect of the aforesaid order dated 31.12.2008 is sought to be nullified by the subsequent order dated 03.10.2011 which is challenged in the writ petition. In other words, if the subsequent order dated 03.10.2011 is upheld, the petitioner has to retire in terms of the subsequent order dated 03.10.2011. However, it has been contended by the petitioner that the said subsequent order dated 03.10.2011 cannot be sustained as the fixation of age of superannuation in respect of Nonmedical teaching faculty was based purportedly on the decision which was never taken.

4. This Court has perused the records more particularly, to the Agenda Item No. 6 of the 42nd Meeting of the Executive Council which has been reproduced above. There is nothing to indicate in the minutes of the Agenda Item No. 6 that the Executive Council had taken a decision to the effect that the age of superannuation in respect of the Non-medical teaching faculty has to be fixed at 60 years. Therefore, since no such decision was taken in the 42nd Meeting of the Executive Council held on 5th August, 2011, the foundation for the issuing order dated 03.10.2011 cannot be said to be in existence. In other words, the impugned order dated 03.10.2011 fixing the age of superannuation of the Non-medical teaching faculty at 60 years is without any basis or without the decision of any competent authority, which in the present case is the Executive Council of the Society of RIMS.

5. The submission made by Mr. B.P. Sahu, learned Sr. Council for the RIMS respondent that there is a reference to an Office Memorandum dated 22.07.2008 in the Agenda Item No. 6 which relates to Central Health Services is not applicable in the RIMS, is of no consequence as far as the issue raised in this writ petition is concerned. It does not in any way support or can form the basis for issuing the impugned order dated 03.10.2011 for fixing the date of superannuation of non-medical faculty member at 60 years. Accordingly, this Court holds that the order issued by the Director, RIMS on 03.10.2011 fixing the date of superannuation of the non-medical teaching faculty at 60 years is without valid decision of the competent authority and as such, it cannot have the effect nullifying the earlier decision taken by the 38th Meeting of the Executive Council of the RIMS on the basis of which the earlier order dated 31.12.2008 was issued fixing the date of superannuation at

65 years for faculty staff of the RIMS of which the petitioner is undisputedly a member, though he may belong to non-medical section of the faculty.

6. Accordingly, the present writ petition is allowed. The impugned order dated 03.10.2011 as far as providing the age of superannuation in respect of non-medical teaching faculty at 60 years is concerned, is set aside. The petitioner accordingly, would be entitled to serve in terms of the earlier order dated 31.12.2008 so long as the said order is not validly modified by the competent authority. Subsequently, the retirement order dated 14.12.2016 issued by the RIMS authorities as far as the petitioner is concerned is also set aside.