

(2008) 12 DEL CK 0147

Delhi High Court

Case No: LPA 2 of 2002

Shyam Singh Shah

APPELLANT

Vs

Jawahar Lal Nehru University
and OthersRESPONDENT

Date of Decision: Dec. 19, 2008**Hon'ble Judges:** Sanjay Kishan Kaul, J; Mool Chand Garg, J**Bench:** Division Bench**Advocate:** Rishikesh and Rajiv Dewan, for the Appellant; S.C. Dhanda, for the Respondent**Final Decision:** Dismissed

Judgement

Sanjay Kishan Kaul, J.

The appellant joined Jawahar Lal Nehru University as a Semi Professional Assistant in 1964 and was promoted as professional Assistant in 1975. The appellant claims that he was upgraded as an Assistant Librarian on 30.07.1997 and was given senior scale of Rs. 3,000-5,000/- with effect from 16.01.1998.

2. The age of retirement for the post of Assistant Librarian was 60 years and the appellant was attaining the said age on 31.05.1999. The notifications dated 06.11.1998 and 20.01.1999 were issued by the Ministry of Human Resource Department, Government of India in respect of the increase of age to 62 years.

3. It is the case of the appellant that the respondent No. 1 followed and implemented the decision, but it is the appellant who was not given the benefit of increase of age.

4. The appellant thus filed a writ petition No. 3538/1999 before this Court seeking a declaration in his favour that he was entitled to continue in service till the age of 62 years. The stand of the respondent No. 1 in the said writ petition was that clarifications had been issued by the University Grants Commission ("UGC for short") to the effect that the Librarians and Assistant Librarians would stand retired on attaining the age of 60 years and thus the benefit of extension of age, if any, was

not available to the appellant.

5. It may be noticed that the appellant was granted interim protection against retirement when he filed the writ petition and thus continued in service. The appellant in the writ proceedings held on 22.01.2001 sought not to press the petition provided the respondent No. 1 took no steps to recover the salary received by him. The learned Single Judge (as he then was) directed that the appellant shall stand retired from service at the age of 60 years for all purposes, but the salary received by him till date of the Order would not be recovered from him under any circumstances by the respondents. The retiral benefits were to enure to the appellant as if he had retired from service on completion of 60 years of age and those payments were directed to be made at the earliest.

6. The appellant consequently stood relieved from service on 14.02.2001 and his salary and all pay and allowances were paid till that date inclusive of two increments earned by him in the meantime.

7. The appellant filed CM 4894/2001 in the writ petition making a grievance of non implementation of the Order dated 22.01.2001. The respondent No. 1 took a stand that an Office order dated 14.08.2001 had been issued where the retiral benefits had been granted to the appellant under different heads and the pay scale of the appellant was fixed provisionally in the revised pay scale of Rs. 6,500-10,500/- because the UGC had not approved the payment of higher pay scale and thus the respondent No. 1's stand was that till such approval is granted by the UGC, the payment in terms of the higher pay scale cannot be given. It was simultaneously stated that when similarly situated persons are granted the benefit, the petitioner would be treated in no different manner. The learned Single Judge (as he then was) even directed in terms of the Order dated 16.08.2001 that the discrepancy in the amount may be sorted out with the Finance Office of the JNU. The claim of the appellant for grant of interest was, however, not accepted though the question of any further grievance of the appellant was left open and the application was disposed of on the said date. The appellant has filed the present letters patent appeal aggrieved by this Order dated 16.08.2001.

8. The first submission of the Learned Counsel for the appellant is that the appellant should be granted benefit of two increments earned by him between 1999-2001 for purposes of calculation of the retiral benefits. This plea has only to be stated to be rejected for the reason that the consent order passed on 22.01.2001 is crystal clear that the appellant was to be deemed to have retired on the date when he attained the age of 60 years though the emoluments paid to him thereafter including increments for the period he worked would not be recovered. It is apparent that the appellant, unsure of the result of the writ petition, preferred to accept the retirement at the age of 60 years so long as the emoluments paid to him were protected and cannot be permitted to re-agitate the matter.

9. The second aspect urged is on the question of grant of interest which has been declined by the learned Single Judge.

10. We are of the considered view that there is no inordinate delay in payment of the retiral benefits which have been so paid within six months especially keeping in mind the aspect of approval of the UGC coming in the way of quantification of the amount.

11. Learned Counsel for the appellant sought to raise the issue of grant of similar benefits to certain other persons and thus causing discrimination to the appellant.

12. Firstly, in view of the consent order dated 22.01.2001, in our considered view, the said plea is not open to the appellant.

13. Secondly, it has to be noticed that the substantive post of the appellant was of Semi Professional Assistant which was upgraded vide Office Order dated 30.07.1997 designating the appellant as an Assistant Librarian. The said letter itself made it clear that the upgradation of the petitioner to the post of Assistant Librarian was purely personal to the appellant and on the retirement of the appellant, the post was to be reverted to Professional Assistant. The examples given of Sh. S.M. Ali, Assistant Librarian and Mr. Dilip Singh, Deputy Librarian do not support the case of the appellant as they were holding substantive posts and the Circulars whereby the benefit of enhancement in age on superannuation was given would thus not ipso facto be applicable to the appellant. These persons were working at an age which was beyond 60 years but the benefit was withdrawn as soon as the UGC issued Circular dated 12.10.2000 making it clear that such persons should be retired with immediate effect. The appellant, on the other hand, was only working in pursuance to the interim directions of the learned Single Judge of this Court. The appellant cannot be permitted to plead that the appellant should also be treated as having retired on 12.10.2000 and thus be granted retiral benefits calculated on that basis rather than the date when he attained the age of 60 years.

14. Learned Counsel for the appellant did try to impress that the decision of the appellant to compromise the matter on 22.01.2001 was in ignorance of the UGC Circular dated 12.10.2000 and had he known about the Circular, he might not have agreed to settle. In our considered view, this is hardly a plea to be advanced as it was for the appellant to know about the said Circular. Not only that, the appellant was clearly informed about the Circular dated 12.10.2000 by a letter dated 23.10.2000 addressed to the appellant by JNU in the following terms:

Dear Sir,

The University has issued a circular No. Admn. III 2000 dated 12th October, 2000 notifying that the age of superannuation of Assistant Registrar, Deputy Registrar, Public Relation Officer, Joint Registrar, Assistant Registrar of Physical Education, Assistant Librarian, Deputy Librarian, Assistant Finance Officer, Deputy Finance

Officer shall now be 60 years with immediate effect. Consequently, Group "A" officers who may have continued beyond the age of 60 years shall also stand superannuated with immediate effect.

I am desired to inform you that though the above orders are also applicable to you, however, its implementation is withheld pending the Court order on CMP No. 10706/1999 in CWP No. 3538/1999 filed by you in the Hon"ble High Court of Delhi.

15. The plea of the Learned Counsel for the appellant that the appellant was unaware of the Circular dated 12.10.2000 is thus clearly fallacious.

16. It is important to note that the writ petition was disposed of by a consent order dated 22.01.2001 against which no appeal would lie. The appellant cannot seek to achieve indirectly what he cannot achieve directly. The appellant seeks to make an endeavour to get out of the consent order dated 22.01.2001 while having enjoyed the benefits under the said Order. This is wholly impermissible.

17. We find no merit in the appeal.

18. Dismissed.