

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS GWALIOR
Original Application No.202/00724/2021

Jabalpur, this Tuesday, the 28th day of March, 2023

HON'BLE JUSTICE SHRI AKHIL KUMAR SRIVASTAVA, JUDICIAL MEMBER
HON'BLE SHRI KUMAR RAJESH CHANDRA, ADMINISTRATIVE MEMBER



1. Prof. L. N. (Laxmi Narayan) Sarkar, Aged 61 years, S/o Late Shri P. Sarkar, Occ. Service as professor, Lakshmibai National Institute of Physical Education, Shakti Nagar, Mela Road, Gwalior 474001

2. Prof. Vivek Pandey, Aged 60 years, S/o Shri M D Pandey, Occ. Service as professor, Lakshmibai National Institute of Physical Education, Shakti Nagar, Mela Road, Gwalior 474001

3. Prof. S Mukherjee, Aged 61 years, S/o Late Shri Amarnath Mukherjee, Occ. Service as professor, Lakshmibai National Institute of Physical Education, Shakti Nagar, Mela Road, Gwalior 474001

4. Prof. A S Sajwan, Aged 61 years, S/o Late Shri S S Sajwan, Occ. Service as professor, Lakshmibai National Institute of Physical Education, Shakti Nagar, Mela Road, Gwalior 474001

5. Prof. Leons Wilfred Vaz, Aged 61 years, S/o Shri Paul Vaz, Occ. Service as professor, Lakshmibai National Institute of Physical Education, Shakti Nagar, Mela Road, Gwalior 474001

-Applicants

(By Advocate - **Shri Pawan Dwivedi**)

V e r s u s

1. Lakshmibai National Institute of Physical Education, Shakti Nagar, Mela Road, Gwalior 474001

2. Board of Management, Lakshmibai National Institute of Physical Education, Gwalior 474001

3. Union of India, Through the Secretary, Department of Sports, Ministry of you Affairs & Sports, Shastri Bhawan, New Delhi 110001

- Respondents

(By Advocate- Shri Akshay Jain)

(Date of reserving order: 16.02.2023)



Order

By Shri Kumar Rajesh Chandra, AM.

The Original application has been filed by the applicants being aggrieved by the action of the respondents whereby they have been denied the benefit of enhancing the age of superannuation of teaching staff from 62 years to 65 years contrary to the statutory provisions under the UGC Regulations.

2. Briefly stated facts of the case of the applicant as projected in the Original Application are that all the applicants are working as Professor with the respondent no. 1. The respondent no. 1 i.e. Lakshmibai National Institute of Physical Education, Gwalior was established in August 1957. The Institute started as an affiliated college of Vikram University, Ujjain and then came into the fold of Jiwaji University, Gwalior in 1964. The Institute was given status of national importance in the year 1973. The College was conferred the status of an Autonomous College of Jiwaji University, Gwalior, in

1982. Thereafter, the respondent institute was declared a "Deemed University" by Ministry of human Resources Development vide Notification dated 21.09.1995 on recommendations of University Grants Commission under UGC Act 1956. In the year of 2000, a separate Ministry was created named as Ministry of Culture, Youth Affairs and Sports which was further bifurcated in two Ministries i.e. Ministry of Culture and Ministry of Youth Affairs and Sports in the year 2003. The respondent no. 1 is working under the Ministry of Youth Affairs and sports. As per Annexure A/3, all the regulation orders etc. regarding service, such as pay and allowances, fixation of pay, leave rules, incentives of P.hd/ M.phil, promotion, probation and confirmation etc. and other academic related matters as prescribed by UGC in respect of teaching and other academic staff of the Universities will be applicable to the teaching and other academic staff of the institute. For all other matters, the rules and orders of the Central Government will be applicable. Also the regulations have been approved the Government of India vide letter dated 23.12.2016 (Annexure A/4). In para 4 of the said letter, it has specifically been directed by the GOI that the respondent no. 1 Institution has to strictly follow the guidelines of UGC while framing Bye-laws etc. The Govt. of India, Ministry of HRD issued the order dated 23.03.2007 to the UGC regarding enhancement in age of



superannuation from 62 to 65 years for teaching positions in centrally funded institutions in higher and technical education. The respondent university also sought clarification from the UGC regarding applicability of such directions for them, vide letter dated 06.09.2007. The UGC informed them vide reply letter dated 18.10.2007 that it is applicable to all the centrally funded institutions. The Govt. of India issued another letter on 31.12.2008 to the UGC thereby conveying decision of central Govt. regarding recommendations to revise the pay-scale of teachers w.e.f. 01.01.2006 and mentioning therein also under Para 8(f) regarding “Age of Superannuation”, it prescribed the age of superannuation as 65 years. The respondent institute had also issued an order dated 01.04.2009 where it reiterated its decision for not extending the benefit in retirement age from 62 to 65 years, only on the sole ground that there is no shortage of qualified persons to teach Physical Education. The teachers indulged in the field of Physical Education have involvement of class room teaching, apart from imparting sports oriented classes in relevant sport/game. Later on the UGC has again issued letter dated 29.09.2016 to all the Universities therein it was specifically mentioned that the UGC Regulations once notified in the Gazette of India, are mandatory in nature and shall be followed. UGC requested all the universities to take proactive step in ensuring to follow all the Regulations



exactly. The respondents further submitted that the age of superannuation in other universities/deemed universities/institutes, which are funded by the Govt. of India, is 65 years and it is a well settled principle of law since reported in (2019) 16 SCC 796, therein, Hon'ble Apex Court has held that such type of act of the Government in discrimination of private colleges is not permissible and it has been held that the teachers deserve to continue up to 65 years of age.



3. The respondents have filed their reply, wherein it has been submitted by the respondent no. 1 & 2 that the similar question was earlier duly considered by this Hon'ble Tribunal in TA No. 9/2009 vide order dated 01.02.2012 (**Vijay Kumar Sud Vs. LNIPE & Ors.**) therein Tribunal that enhancing the age is a policy decision. Hence the present OA has no merit. Also the respondent no. 3 also subsequently considered the matter of enhancement of retirement age of teachers of respondent institute from 62 to 65 years and reiterated its earlier decision vide order dated 08.05.2019 having found that there is no justification to enhance the retirement age.

The respondent no. 3 has also filed reply wherein they have reiterated the stand taken by the respondent nos. 1 & 2 and also submitted that the relief sought by the applicants cannot be granted in their favour because of the simple reason that their case is based on the directions



issued by the University Grants Commission under the Regulations regarding increase in age of superannuation to 65 years in place of 62 years, who are involved in class room teaching; whereas these applicants are working in the Physical Education Institution, whose duties are quite distinguishable from the persons who are engaged in class-room teaching institutions only. In the present case, the teachers, who are working in the Physical Institutions are not only involved in the class room teaching, but also having practical classes for which, the one's physical fitness is essential ingredient as paramount consideration. Hence they are not comparable with those involved in class-room teaching alone, for which the UGC made increase in the age of retirement from 62 to 65 years under the Regulations in question. The analogy of persons who are working in AYUSH or Nursing Department, cannot be applied here because such cases are quite distinguishable from each other and reasonable discrimination is always permissible in Article 14 of the Constitution of India and in the present case, the concept of reasonable discrimination is applied by the respondents while passing the order dated 08.05.2019 (Annexure R-3/2). Moreover, the answering respondents had challenged the interim order of this Tribunal dated 13.12.2021 before Hon'ble High Court of Madhya Pradesh, bench at Gwalior and the

order of the Tribunal was set aside vide order dated 31.01.2022 (Annexure R-3/3).

4. The applicant has filed the rejoinder, wherein the applicants have submitted that as the respondent no. 3 have stated in their reply that teachers of LNIPE are working in class rooms as well as practical classes, for which, physical fitness is essential ingredients. In this behalf, it is submitted that under the respondent no. 1, there is a Central University namely National Sports University, Imphal, Manipur (Govt. of India, M/o Youth Affairs and Sports) (herein called as NSU) and all their academic staff are to be retired at the age of 65 years, while they are also working on the similar footings and they have also class room teaching as well as practical on the field. NSU Supplied the information under RTI Act in respect of retirement age of teachers in NSU and in reply thereto, they stated that it is “As per UGC guidelines” and also supplied the copy of their Ordinance No. XXV in support of the same. The LNIPE is declared as Deemed to be University under Section 3 of UGC Act on the advice of UGC by the parental Ministry, i.e. M/o HRD (Annexure A/1) and as such it is duty bound to comply with UGC Regulations. The applicants further submitted that the mode of appointment, educational qualification for teaching posts, norms for promotion, research work and pay-scale the same as per UGC Regulations as applicable for



other teachers in other Central Educational Institutions including National Sports University, Imphal, Manipur, where retirement age is granted up to 65 years of age, but it is denied to the applicants.

5. The respondents have also filed additional reply, wherein they have reiterated their earlier stand and also submitted that parity claimed with teachers in NSU, Manipur, is wrong and distorted as it is a Central University having the distinctive approaches to academics, research, athletic performance and extension services, which set it apart from other universities of institution of higher Education. Whereas, Lakshmibai National Institute of Physical Education (LNIPE) is an autonomous institute of Physical education being funded by the grant-in-aid from the respondents. Moreover, NSU has adopted UGC instructions regarding appointment, conditions of service, pay etc of academic staff (teachers) and accordingly, the UGC prescribed superannuation age of 65 years for teachers in universities is being followed. This is in accordance with the NSU Ordinance No. XXV, Cl. 2 whereas the LNIPE, being a physical Education institute is managed by its own Board of Management. Furthermore, the NSU in the State of Manipur is a specialised University of its kind, to promote sports education in the areas of sports sciences, sports technology, sports management and sports coaching besides functioning as the national training center for



selected sports disciplines by adopting best international practices for matters connected therewith or incidental thereto, whereas the LNIPE undertakes courses in physical education, for which teaching staff requires more physical fitness and youthfulness.



6. This Tribunal has considered the matter and also perused the documents annexed with the Original Application. The judgments relied upon by the counsels during the time of argument have also been taken into consideration.

7. The case of the applicant is based upon regulations of the UGC under Appendix 1 (Annexure A/12) wherein clause (f) states that “in order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers Central Educational Institutions has already been enhanced to 65 years, vide the department of higher education letter no. F.No.119/2006-U.II dated 23.03.2007 for those involved in classroom teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. In order to substantiate their claim, the applicants placed the recruitment and terms and conditions of appointment of teaching staff promulgated by Ordinance No. XXV. Further reliance has been placed to the benefit

of age enhancement given to the academic staff of NSU, Imphal, Manipur, which is also under the same Ministry, i.e. M/o Youth Affairs & Sports.



8. The issue of enhancement of age of superannuation of the teaching positions in the LNIPE, Gwalior to 65 years, was placed before the concerned Ministry to accord its permission and ultimately the M/o Youth Affairs & Sports vide its letter dated 08.05.2019 (Annexure R-1/1) after considering the nature of duties performed by the teaching staff of the institute, has decided as under:

"On careful examination it is seen that the LNIPE is an institute that requires physical fitness and youthfulness. It needs persons of relatively better fitness. There is no shortage of qualified persons to teach in the field of physical education, hence there is no justification to enhance the retirement age from 62 to 65 years in LNIPE. This being sports training institute, it cannot have ageing staff trying to train young coaches or athletes. Hence, there is no justification to enhance the retirement age from 62 to 65 in the LNIPE."

It is pertinent to mention that the applicants have not challenged the aforesaid decision taken by the MoYA&S and initially got interim protection in their favour. This fact ultimately came in the knowledge of this Tribunal when the respondents have produced the copy of the same before the Hon'ble High Court of Madhya Pradesh in M.P. No. 285/2022, challenging the interim order passed by this Tribunal on

13.12.2021. While quashing the interim order passed by this Tribunal the Hon'ble High Court in its order dated 31.01.2022 has observed as under :



“It further appears that the aforesaid communication has not been pointed out to the Judicial Member, CAT while the impugned interim order was passed. As such, the aforesaid order is in ignorance thereof. That apart, the impugned order refers to orders of this Court in relation to doctors and nurses on the subject of age of retirement. Such orders undisputedly, have neither any bearing nor relevance to the age of retirement of private respondents who are professors who are professors working in petitioner no. 2/Institute.”

9. We find rationale in the reasonings given by the respondents-Ministry for not enhancing the retirement age from 62 to 65 years in LNIPE to the fact that it is a sports training institute and, therefore, it cannot have aging staff trying to coach young coaches and athletes and recruitment of new energetic young staff against the vacant posts after retirement would be desirable.

10. It is settled law that prescribing the age of retirement is a managerial function and it is not open to Court to formulate a policy as to what the age of retirement should be. If the M/o YA&S has taken a policy decision, not to enhance the age of superannuation in the respondent –institution, on the stated grounds in Annexure R-1/1, it is not open to us to go into correctness or otherwise of the said

decision. Moreover, the issue regarding enhancement of age of faculty staff of LNIPE has already been put to rest by this Tribunal in transferred application no. 9/2009 decided on 01.02.2012 (**Vijay Kumar Sud Vs. Lakshmibai National Institute of Physical Educaion and Ors.**)



11. So far as the parity claimed by the applicants vis-a-vis the appointment, conditions of service, pay etc. of the academic staff (teachers), it has been categorically stated by the respondent no. 3, i.e. MoYA&S that the conditions of service adopted by the NSU, Imphal, Manipur is in accordance with the National Sports University Ordinance No. XXV, clause 2 whereas the LNIPE, being a physical education institute is managed by its own Board of Management. Therefore, the applicants cannot claim equity with that of the academic staff of NSU, Imphal, Manipur having different service conditions.

12. In view of the aforesaid discussion, there is no merit in this Original Application and the same is accordingly dismissed. No order as to costs.

(Kumar Rajesh Chandra)
Administrative Member
 VK/-

(Akhil Kumar Srivastava)
Judicial Member