

directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court, shall order that no wages shall be payable under this section for such period or part, as the case may be."

6. While reading the above said section, it is clear that the amount is to be paid for the

period of pendency of the proceedings. It does not say that the application has to be decided during the pendency of the writ petition. No other interpretation is, therefore, possible so far as this question is concerned. Even if any other interpretation was possible, then also Industrial Disputes Act being benevolent legislation, the interpretation in favour of the workman has to be accepted.

7. In view of the above reasons, we do not find any bar in allowing this application. The petitioner is directed to pay to the applicant-workman for the period from the date of filing of the writ petition till it was finally disposed of the sum at the rate of wages last drawn by him.

8. This order would be complied with within two months from today. Copy of this order be given dasti on payment to the learned counsel for the parties.

Order accordingly.

2001 (3) L.L.N. 779

IN THE HIGH COURT OF JUDICATURE, PUNJAB AND HARYANA

[Civil Writ Petition No. 10524 of 1999, decided on 19 January 2001]

PRESENT:

JUSTICE SRI AMAR BIR SINGH GILL
JUSTICE SRI V.S. AGGARWAL

Between

H.L. Sahni, Principal, and others

and

State of Haryana and another

Constitution of India, Art. 309 — University Grants Commission Act, 1956, S.14 — Age of retirement — Petitioners are Lecturers and Professors working in Government colleges in the State — They have challenged the notification fixing the age of retirement at 58 years instead of 60 years as recommended by the University Grants Commission — Petitioners citing the case of Government aided colleges where assistance extends to as much as 95 per cent fixing retirement age at 60 years — Held, recommendation of the UGC was not binding on the State Government and it was open to them to accept or not to accept the scheme as a whole or in part, with such modifications or alterations as it liked — Held service on a post under the State stands on different footing from that of service under any other authority. [Para. 12]

Cases referred: Para.

A.I.R. 1974 S.C. 2184 10

For petitioners. — Sri P.S. Patwalia.

For respondents. — Sri Surya Kant, A.G. Haryana and Sri J.P.S. Dhull.

JUDGMENT

Per Amar Bir Singh Gill, J.: — The petitioners are working as Lecturers and Principals in various Government Colleges in the State of Haryana. Feeling aggrieved of the action of respondent-State in not enhancing the retirement age to 60 years, they have approached this Court for declaring Cl. (19) of the notification, dated 13 May 1999, Annexure P2 as *ultra vires* of Art. 14 of the Constitution of India to the extent that it provides the age of retirement of Lecturers/Principal of Government Colleges as 58 years instead of 60 years being illegal, arbitrary and discriminatory as the similarly situated Lecturers/Principals of

the private aided colleges, Universities and University maintained colleges are being retired at the age of 60 years. The petitioners further pray that the respondents be restrained from retiring them at the age of 58 years and allow them to continue in service till the age of 60 years.

2. The case of the petitioners, in brief, who during the pendency of this petition have since retired, is that they joined the service as Lecturers on different dates and were promoted as Principals and their dates of retirement are indicated in the writ petition which read as under :—

<i>"Pet No.</i>	<i>Date of initial appointment as Lecturer</i>	<i>Date of Promotion as principal</i>	<i>Date of attaining of 58 years</i>
1	13 July 1964	10 January 1990	31 August 1999
2.	29 October 1963	4 May 1994,	31 August 1999
3.	3 October 1967	Not promoted	31 August 1999
4.	16 November 1965	6 August 1991 30 September 1999	
5.	7 July 1972	Not promoted	31 October 1999
6.	14 April 1968	Not promoted.	31 March 2000

3. It is claimed that the qualifications, pay-scales and other service conditions of the Lecturers of Government Colleges, Universities, University maintained Colleges and private aided Colleges are same. However, the Lecturers and Principals who are working in the Government Colleges are retiring at the age of 58 years whereas their counter-parts working in the Universities, private aided Colleges or University maintained Colleges are being retired at the age of 60 years and the petitioners are being discriminated in so far as their date of retirement is concerned, who are made to retire at the, age of 58 years. They also claim that the State Government grants aid to the private aided Colleges to the extent of 95 per cent besides the Universities, University maintained Colleges and private aided Colleges are also being financed by the State Government. It is claimed that the pay-scale and other conditions of the Lecturers through out the country are governed by the Regulations/Guidelines of the University Grants Commission (for short to be referred as the U.G.C) which are blinding in nature and are

being followed uniformly by every State Government, Universities and University maintained Colleges and private aided Colleges and Lecturers/Teachers are being paid the revised pay-scales only on the recommendations of the U.G.C. The revision of pay-scales by the State Government for various employees are not applicable in the case of teachers and Lecturers and their pay-scales are only revised on the basis of the recommendations of the U.G.C. The U.G.C. issued notification, Annexure P1, on 24 December 1998 prescribing the minimum qualifications for appointment of teachers in the Universities and Colleges and other measures for maintenance of standards. The State Government implemented the notification. Annexure P1 by notification, dated 13 May 1999, and revised the pay-scales of the petitioners who are working in the Government Colleges. However, the State Government did not implement the recommendations of the U.G.C. in respect of age of retirement. By the impugned notification, the State Government has provided as under:

"AGE OF SUPERANNUATION:

19. The age of super superannuation will remain unchanged and teachers working in Government Colleges will continue to retire on attaining the age of 58 years and the teachers personnel working in private affiliated Colleges and Universities will continue to retire on attaining the age of 60 years."

4. The petitioners approached the respondents by various representations, Annexures P3 to P8. However, the respondents did not consider the removal of disparity in respect of age of retirement of the petitioners with the Lecturers and Principals working in the Universities. The action of the respondents being illegal, arbitrary and unconstitutional, the petitioners have approached this Court.

5. The respondents, in their written statement, have refuted the claim of the petitioners. In the preliminary objections raised by the respondents, they have submitted that in rule 3.26 of CSR Vol.1 Part-1, the age of retirement of the Government employee is provided as 58 years and he can not be retained in service after the age of compulsory retirement. Since the Government has not raised the age of retirement of the Government employees, the petitioners have no claim to be retained in service beyond 58 years. The provisions regarding age of retirement as recommended by the U.G.C. has not been accepted by the State Government and the State Government has categorically in the notification, dated 13 May 1999, stated that the age of superannuation will remain unchanged and the teachers working in Government Colleges will continue to retire on attaining age of 58 years even the enhancement of age of superannuation of teachers in the Central Universities has no bearing on the decision of the State Government in respect of the retirement age of the teachers working in the State Government Colleges. On merit, the respondents have taken similar plea that the State Government has right to make distinction in terms and conditions of service of employees working in Government College *vis-a-vis* the private affiliated Colleges and the petitioners have no right to claim that they are

being discriminated on account of superannuation of age.

6. Learned counsel for the petitioners has mainly contended that the refusal of the State Government to accept the recommendations of the U.G.C. contained in the notification, Annexure P1, in respect of revision of age of superannuation of the Lecturers working in the Government Colleges on the face of it is arbitrary besides being discriminatory since the similarly situated persons working in the Universities and the Government aided private schools are being retired at the age of 60 years. He further contends that the recommendation of the U.G.C. are binding in nature as it is the only statutory authority which prescribes the standards of education to be maintained in the Universities and the Universities maintained colleges. Its functions include taking steps for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities primarily as per S.12 of the University Grants Commission Act, 1956 (for short to be referred as the the Act). Besides, it allocates and disburses, out of the Fund of the Commission, grants to Universities established or incorporated by or under a Central Act for the maintenance and the development of such Universities or for any other general or specified purpose.

7. The contention of the counsel for the petitioners has no merit especially on the basis of the recommendations of the U.G.C, as per Annexure P1. It is no doubt true that the State Government to some extent funds the Government aided colleges as well as its Universities and also for the purpose, utilizes the grants received from the U.G.C. However, the recommendation, as contended by the counsel for the petitioners, is in no way binding on the State Government. The very fact that the statutory name given to the Commission is University Grants Commission, it deals primarily with the Universities as it makes recommendations to the Universities and its allied Colleges or the Colleges run under the Universities. The consequences of failure of Universities to comply with the recommendations of the Commission have been provided under S. 14

of the Act. Section 14 of the Act reads as under :

"14. *Consequences of failure of Universities to comply with recommendations of the Commission.*— If any University grants affiliation in respect of any course of study to any college referred to in Sub-sec. (5) of S.12A in contravention of the provision of that sub-section or fails within a reasonable time to comply with any recommendation made by the Commission under S. 12 or S.13, or contravenes the provisions of any rule made under Cl. (f) or Cl. (g) of Sub-sec. (2) of S. 25, or of any regulation made under Cl. (e) or Cl.(f) or Cl. (g) of S.26, the Commission, after taking into consideration the cause, if any, shown by the university or such failure or contravention, may withhold from the University the grants proposed to be made out of the fund of the Commission."

8. It would be seen from the above statutory provision the extent of the control of the U.G.C. in respect of funds/grants extended to the Universities for the purposes which fall within the purview /functions of the U.G.C.. It is no doubt that the recommendations of the U.G.C. are intended to be accepted by the State Government for application to the government teachers working in the Government Colleges for the purposes of maintaining the standards of education in the Government Colleges. However, the very fact that the U.G.C. makes recommendations which are in the nature of recommendations only leaves an option of acceptance to the authorities to which these recommendations are made. As indicated in S. 14 of the Act, reproduced above, the non compliance of the recommendations are envisaged and the action on the same is provided, *i.e.*, in the nature of withdrawal of the grants or suspension or stoppage of the grants to the concerned institutions. The State Government by notification Annexure P2, admittedly has accepted the recommendation of the U.G.C. provided in Annexure P1 to the extent of revision of pay of Lecturers in the Government Colleges. However, it has not accepted the recommendation in so far as age of retirement

is concerned. Notification, Annexure P1, issued by the UGC has a subject as follows:

"Sub . Minimum qualifications for the appointment of teachers in universities and colleges, and measures for the maintenance of standards."

9. Clause 5.0 of the Notification, Annexure P1 which refers to the State Government' reads as under :

"5.0 The University Grants Commissions expects that the entire scheme of revision of pay-scales, together with all the conditions attached to it, would be implemented by the State Governments as a composite scheme without any modifications, except the date of implementation and the scales of pay as indicated in Government of India notification No.F.1-22/97-U.I, dated 27 July 1998, 22 September 1998 and 6 November 1998. It shall be necessary for the Universities and the management of colleges to make the necessary changes in their statutes, ordinances, rules, regulations, etc. to incorporate the provisions of this scheme."

10. The U.G.C. itself has only shown expectation from the State Governments for acceptance of the scheme. In these circumstances, the contention of the learned counsel for the petitioners that the recommendations of the U.G.C. are of binding in nature in so far as the acceptance of the same is concerned, is not tenable. It has also been observed by the Hon'ble Supreme Court in *State of Maharashtra and others v. Association of Maharashtra Education Service Class II Officers and others* [A.I.R. 1974 S.C. 2184], it is open to grave doubt whether the recommendations of a body like the University Grants Commission can give rise to rights and obligations enforceable in a court of law.

11. It has also been contended by the counsel for the petitioners that even the Central Government has accepted the recommendations of the U.G.C. as contained in its notification, Annexure P1 and has enhanced the age of retirement of the Lecturers working in the Central Government Institutions. Be that as it may, the action of the Central Government can not be *ipso facto* deemed to be binding on the State Government unless. the State

Government by a conscious decision accepts the same. Even otherwise, the respondents have placed on record Annexure R1 a letter issued from the Ministry of Human Resource Development, Department of Education, Government of India, addressed to the Financial Commissioner and Education Secretary, Government of Haryana, wherein reference to the enhancement of age of superannuation of the teachers working in the Central Universities has been made. In Annexure R1 it has been mentioned as under :

"In this regard, I would like to inform you that the Central Government has since enhanced the age of superannuation of teachers in the Central Universities *vide* its letter, dated 27 July 1998 (copy enclosed). A decision about the age of superannuation of teachers in the State Universities and colleges is required to be taken by the concerned State Government. The order, dated 27 July 1998, issued by the Central Government is not meant for them."

12. Now whether the case of discrimination is made out if the State Government does not accept the recommendations of the U.G.C. and extend the age of retirement from 58 to 60 years to the Lecturers and Principals working in the Government Colleges, the answer obviously is in the negative. The age of retirement is a condition of service and the rules framed under S. 309 of the Constitution of India by the State Legislature regulating the service conditions of its employees have fixed the age of retirement as 58 years including the Lecturers and Principals working in the Government Colleges. By a conscious decision, the State Government has not accepted the recommendation of the U.G.C. for enhancement of age of Lecturers and Principals of the Government Colleges. Service on a post under the State, *i.e.*, the Government service stands on a different footing as that of service under any other authority. Even earlier to the revision of pay-scales, the age of retirement of the

teachers of the Universities and its affiliated colleges was 60 years whereas the Lecturers working in the Government Colleges were being retired on completion of 58 years. Simply because of revision of pay on the basis of the recommendations of the U.G.C, there appears to be no valid change in so far as the condition of service of the two categories of the Lecturers, *i.e.*, the Lecturers working in the Government Colleges and in the Universities. The revision of pay as recommended by the U.G.C. in respect of Lecturers of the Government Colleges has been accepted since the Government of India was to provide assistance to the State Government to the extent of 80 per cent of the additional expenditure involved in giving effect to the revision of pay-scale while the State Government was to bear the remaining 20 per cent from its own resources. The recommendation of the U.G.C. admittedly, being not binding, at all, upon the State Government and it was open to the State Government to accept or not to accept the scheme as a whole or in part, with such modifications or alterations that it liked and in this case the State Government has accepted only that mode of the scheme/recommendation which related to the revision of pay-scales and accordingly had issued the order, Annexure P2. The Government order/notification, Annexure P2 is explicit and quite clear in terms as it expressly covers the subject of pay-revision. The acceptance of the recommendation by the State Government being a policy decision, no *mandamus* can be issued commanding the State Government to accept the part of the recommendation pertaining to the age of retirement as well.

13. In the circumstances, the petitioners have no case for issuance of any directions in the matter from this Court.

14. In the light of the discussion made above, there is no merit in this petition. It is accordingly dismissed

Petition dismissed.