

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**



Hearing through Video Conferencing

O.A.61/53/2020

Reserved on: 29.06.2020
Pronounced on: 24.07.2020

**Hon'ble Dr. Bhagwan Sahai, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)**

Dr. Dinesh Gupta, age 61 years
S/o Late Shri Satish Chander
R/o H.No.93, Sector 6,
Trikuta Nagar, Jammu

...Applicant

(Through Shri Raghu Mehta, Advocate)

Versus

1. UT of J&K through Financial Commissioner Health and Medical Education Department, Government of Jammu and Kashmir, Civil Secretariat, Jammu
2. Commissioner/ Secretary General Administrative Department, Government of UT of J&K, Civil Secretariat, Jammu
3. Dr. Kuldeep Singh, Principal Medical College, Rajouri ...Respondents

(Through Shri Amit Gupta, Additional Advocate General)

ORDER

Per Dr. Bhagwan Sahai, Member (A)



Dr. Dinesh Gupta, working as Professor and Head, Department of Ophthalmology, Government Medical College (GMC), Jammu, has filed this OA on 10.06.2020 seeking quashing of Government of J&K order dated 29.04.2020, extending tenure of Dr. Kuldeep Singh as Principal, GMC, Rajouri beyond the date of his superannuation, and his promotion and appointment as Principal, GMC, Rajouri or, in the alternative, his placement in pay scale of Principal (Rs.182200-Rs.224100) with effect from 01.05.2020. As an interim relief, the applicant seeks stay on the order of the respondents dated 28.04.2020 and direction to them to promote and appoint him as Principal, GMC, Rajouri, with consequential benefits.

2. We have heard the arguments of the applicant's counsel and the respondents' counsel on 29.06.2020.

3. In the OA, rejoinder and during arguments of his counsel, main contentions of the applicant are these:

- (i) He has been working as Professor and Head, Department of Ophthalmology since 01.01.2013 and as per seniority list of Professors notified on 15.03.2020 by the Principal, GMC, Jammu, after retirement of Dr. Nasib Chand Digra in 2020, the applicant is the senior most Professor and Head, and he is eligible to be appointed as Principal of that College.
- (ii) In response to a communication of Health and Medical Education Department, Government of Jammu dated

03.03.2020, he submitted his willingness/ consent on 05.03.2020 for consideration for appointment as Principal, GMC, Doda/ Kathua/ Rajouri, after superannuation of Dr. Kuldeep Singh, Principal, GMC, Rajouri, who was due to retire on 30.04.2020.

- (iii) However, instead of appointing him as the Principal of GMC, Rajouri, the Government of UT of J&K has illegally extended the services of Dr. Kuldeep Singh, Principal, GMC, Rajouri for one year beyond his retirement on 30.04.2020 by order dated 29.04.2020, without assigning any reason and in violation of the principles of natural justice and service rules.
- (iv) Retirement age for teaching faculty at GMCs has been fixed as 62 years as per SRO 266 dated 30.10.2014 issued by Finance Department, Government of J&K. The respondents have neither jurisdiction nor competence to extend the services of Dr. Kuldeep Singh for one year after his retirement on 30.04.2020. By the impugned order, the respondents have deprived the applicant of his further promotion as Principal, GMC, Rajouri, resulting in adverse civil consequences and financial loss to him.
- (v) The impugned order has not been issued with approval of Cabinet of Government of J&K and thus it is in violation of Rules of Business of the State / UT Government.
- (vi) The reasons mentioned by the respondents in their reply relating to Article 226 of Civil Service Regulations (CSR) are not relevant for the applicant's case because that stipulation is for compulsorily retired persons at 55 years of age; and





(vii) Objections taken by the respondents in their reply to para 4, 5, 6 and 7 of the OA are not justified. Article 226 (1) of CSR relied upon by them in the impugned order is ill-founded and misplaced because that Regulation deals with employees who have been compulsorily retired at the age of 55 years whereas the case of Respondent no. 3 is not of compulsory retirement. Similarly, reliance of respondents on Rule 8 of J&K Business Rules is also misplaced as it is in violation of the power of the Government for extension of service of Gazetted Officers who have been compulsorily retired. Rule 8 of J&K Business Rules with respect to entry 34 of Schedule 2 of Business Rules is vague and lacks statutory support as it does not disclose for how long and for what period of time the Government has power to extend the services of a Gazetted Officer. Therefore, the OA should be allowed and relief sought in it should be granted by the Tribunal.

4. In their reply and during arguments of their counsel, the respondents contend that:-

(i) the OA filed by the applicant is misconceived. Based on a decision of State Administrative Council dated 30.07.2019 and Government order dated 05.08.2019, Dr. Kuldeep Singh, respondent no.3 was appointed as Principal, GMC, Rajouri on regular basis with effect from 26.04.2019, the date on which he had been temporarily assigned the charge of that post;



- (ii) for appointment to the post of Principal in the draft Recruitment Rules for newly established Medical Colleges, promotion from Professors with minimum 10 years teaching experience as Professor and Associate Professor in the concerned GMC, out of which at least 5 years should be as Professor in any department in the same college, and in case of non-availability of eligible members from the concerned Medical College, selection is to be made from eligible persons of GMCs, Srinagar/ Jammu/ Rajouri. In pursuance to the proposed method of recruitment, Dr. Kuldeep Singh was appointed as Principal of the GMC, Rajouri on 05.08.2019 with effect from 26.04.2019;
- (iii) a government employee has a right to be considered for promotion but he has no right for promotion and appointment. The applicant was considered but he was not selected for that post as per the Rules and, therefore, this OA needs to be dismissed;
- (iv) Dr. Kuldeep Singh has been doing well as Principal, GMC, Rajouri and in light of prevailing Covid-19 pandemic situation to maintain continuity in the academic activities of GMC, Rajouri, his services have been extended in the best interest of the college for one year after the date of his retirement on 30.04.2020;
- (v) extension of service of Dr. Kuldeep Singh has been granted by the competent authority in the interest of administration and patient care as per the order dated 29.04.2020 and there is no legal lacuna in passing that order;
- (vi) in response to communication from the Government, the applicant had submitted his consent and willingness on

03.03.2020 to work as Principal of any medical college.

But at the time of consideration of his case in April, 2020, he had only two months of service left before retirement.

Therefore, the services of Dr.Kuldeep Singh, in the best interest of GMC, have been extended by one year;

- (vii) Article 226 of CSR has been amended by which the age of retirement of faculty of GMCs has been fixed as 62 years. The power of granting extension in service vests with the Government and on the strength of decision of State Administrative Council, extension of service has been granted to respondent no.3. The applicant has not mentioned the overall position of law in relation to extension of service. Article 226 (1) of CSR provides that an officer shall retire compulsorily on attaining the age of superannuation, unless the competent authority considers him efficient and permits him to remain in service. He may, however, be retained in service after the date of compulsory retirement in very special circumstances, with the sanction of the Government on public grounds which must be recorded in writing; and
- (viii) SRO 266 is only an amendment and has been added after proviso third of the Article 226(1). Therefore, the whole provision should be read in full. Contents of OA in para 4 and para 5 (ii), 5 (iii), 5 (iv), 5(v), 5 (vi), 5(vii), 5(viii) and 5(ix) are denied;

In view of above submissions, there being no merit in the OA, it should be dismissed.



5. The main contention of the applicant is that stipulations of Article 226 (1) of Civil Services Regulations are applicable only till the age of retirement of 55 years and the respondents are not competent to grant extension in service to respondent no.3 by one year. We have carefully considered the submissions and contentions of the applicant as well as of the respondents along with the material placed on case file. From this consideration, undisputed facts of this case are as under:



- (i) The case record shows the age of retirement was 55 years as per SRO 45 of 28.01.1980. Subsequently, as per SRO 10 dated 05.01.1987, the age of retirement was raised to 58 years and finally with SRO 266 dated 30.10.2014, the age of retirement applicable to the applicant and the respondent no.3 is 62 years.
- (ii) SRO 266 dated 30.10.2014 issued by the Finance Department amending Article 226 (1) of CSR, has provided that a member of the teaching faculty of GMC in service on 19.06.2014, or appointed on or after that date, shall retire on attaining the age of 62 years. Thus the age of retirement of the applicant as well as respondent no.3 is 62 years. The date of retirement on superannuation of Dr. Kuldeep Singh (respondent no.3) was 30.04.2020 and of the applicant, it was 30.06.2020. Both of them are gazetted officers. Therefore, the above contention of the applicant about applicability of SRO 266 has no relevance and the extension in service has to be considered with reference to presently applicable age of retirement/ superannuation of respondent no.3 which undoubtedly is 62 years.

(iii) By order dated 05.08.2019, Dr. Kuldeep Singh, Principal, GMC, Rajouri was appointed as Principal, GMC, Rajouri on regular basis with effect from 26.04.2019.

(iv) In view of ensuing retirement of Dr. Kuldeep Singh on 30.04.2020, the respondents initiated process for selection of Principal, GMC, Rajouri. Accordingly, by letter dated 03.03.2020 from Health and Medical Education Department, Government of J&K, consent/willingness was sought from the applicant and others for consideration for appointment as Principal, GMC, Doda/ Kathua/ Rajouri and the applicant submitted his consent/ willingness on 05.03.2020.

(v) By government order No.414-JK (HME) of 2020 dated 29.04.2020 issued by the Department of Health and Medical Education, Government of J&K, in the interest of administration and patient care, sanction was accorded to extension of services of Dr. Kuldeep Singh, Principal, GMC, Rajouri for one year beyond the due date of his retirement on superannuation on 30.04.2020.

6. While the applicant contends that in pursuance of his willingness sought for consideration for appointment as Principal, GMC, Doda/ Kathua/ Rajouri, he submitted his consent but he was not considered by the respondents for promotion and appointment as Principal, GMC, Rajouri before granting extension of service for one year to respondent no.3. However, the respondents have explained that method of recruitment approved in the draft RRs for the post of Principal for the newly established medical colleges is by promotion from Professors with a minimum of ten years of teaching experience as Professor and



Associate Professor in the concerned GMC out of which at least five years should be as Professor in any department in the same college. In case of non-availability of eligible members from the concerned medical college, selection shall be made from eligible Professors of GMC, Srinagar/ Jammu/ Rajouri.



7. As per Article 226 (1) of CSR, an officer shall retire compulsorily on attaining the age of superannuation, unless the competent authority considers him efficient and permits him to remain in service. He may, however, be retained in service after the date of compulsory retirement in very special circumstances with the sanction of the Government on public grounds which must be recorded in writing. By SRO 266, a stipulation has been provided in Article 226 (1) dated 30.10.2014, according to which the retirement age of Principal of the GMC, who was in service on 19.06.2014 or appointed on or after that date, has been fixed as 62 years. Because of this amendment to Article 226 (1) only, the applicant as well as respondent no.3, were due to superannuate on 30.06.2020 and 30.04.2020.

8. In response to communication dated 03.03.2020 seeking consent/ willingness from Professors for consideration for appointment as Principal, GMC, Rajouri, the present applicant Dr. Dinesh Gupta, Professor, Ophthalmology and Dr. Bupesh Khajuria, Professor, Forensic Medicine conveyed their willingness. Dr. Bupesh Khajuria is presently under suspension pending disciplinary proceedings against him. The age of retirement of the present applicant being 30.06.2020, at the time of consideration of his case in April 2020, he had only two months of service left. Therefore, neither of these two Professors was found suitable for appointment to the post of Principal, GMC, Rajouri. In view of the enabling provision in Article 226 (1) for retaining an officer in

service after the age of superannuation, with the approval of the SAC, respondent no.3 has been granted extension in service for one year after 30.04.2020.



9. The above stipulations and submissions make it clear that with the approval of the competent authority, a gazetted officer can be retained in service beyond the age of superannuation as is the case with respondent no.3. The submissions of the respondents also clearly bring out that after submission of his willingness for consideration, the name of applicant for appointment as Principal, GMC, Rajouri came to be rejected in view of only two months of his service left and continuation of respondent no.3 as Principal, GMC, Rajouri was approved.

10. In support of the decision to extend the service of respondent no.3, the respondents have further submitted that he has been working as Principal of GMC, Rajouri since 26.04.2019 and by the due date of his superannuation i.e. 30.04.2020, he already had one year of experience on that post. He has been doing well in that position and in view of Covid-19 pandemic situation, in order to maintain continuity in academic activities of GMC, Rajouri, and in the best interest and functioning of that College, extension in service of one year has been granted to respondent no.3.

11. We find lot of force in the contention of the respondents that respondent no.3 already had experience of one year as Principal, GMC, Rajouri by the time he was due to retire and in the prevailing circumstances of Covid-19 pandemic when the role of the medical college in tackling the pandemic has become even more important, continuity of leadership as Head of the Medical College was fully

justified. Since the present applicant had only two months of service left beyond 30.04.2020 and had no previous experience of working as Principal of any medical college even in capacity as in-charge , the case of the applicant was not found fit for that appointment.



12. In view of the above discussion, it is clear that the respondents did consider the case of the applicant, however, did not find him fit for appointment as Principal of the GMC, Rajouri.
13. We do not find any merit in the contentions of the applicant that there is no provision for extension of service for a member of teaching faculty as per SRO 266 of 2014 and the respondents have no jurisdiction and competence to sanction extension in service of respondent no.3 for one year beyond his date of retirement on superannuation.

Similarly, the contention of the applicant that as per Rule 8 of J&K Govt. Business Rules, only Cabinet has the power to grant extension in service to gazetted officers, is also irrelevant.

14. As per Rule 8 under second schedule among cases to be brought before the Cabinet, entry 34 pertains to extension in service of gazetted officers.

However, as per the notification dated 21.11.2018, the J&K Legislative Assembly was dissolved by Hon'ble Governor of J&K. Thereafter Cabinet was not in office. Subsequently, by notification dated 19.11.2019, Administrative Council has been constituted under chairmanship of Hon'ble Lt. Governor to dispose of cases mentioned in second schedule to J&K Govt. Business Rules.

In view of the above, we are shocked to note that the applicant who has worked as Professor and Head of a department and his counsel are not even aware of these notifications and contend that only the Cabinet can grant extension in service and the respondents are not competent to do so.



15. As explained by the respondents, extension in service to Dr. Kuldeep Singh for one year has been granted with approval of the Hon'ble Lt. Governor and it was conveyed by GAD on 21.04.2020 to Financial Commissioner, Health and Medical Education Department for further necessary action.

16. From the above analysis of the issue, we conclude that although the case of the applicant was considered by the respondents for appointment to the post of Principal, GMC, Rajouri, he was not found fit and, therefore, came to be excluded. The extension of one year in service granted to Dr. Kuldeep Singh, respondent no.3, by the respondents has been by the competent authority i.e. with the approval of the SAC and as per the enabling provisions of CSR 226 (1). This action of the respondents in favour of respondent no.3 is based on fully justified administrative considerations and we do not find any infirmity in this.

17. The alternative prayer of the applicant in the OA that he may be placed in pay level 15 (Rs.182200-Rs.224100) with effect from 01.05.2020 is still worse in terms of merit. Against a particular sanctioned one post, only one person can be appointed at a given time. Since respondent no.3 has already been granted extension in service for one year and has been continued in the position of Principal, GMC, Rajouri



from 01.05.2020, the only one post of Principal, GMC, Rajouri stood occupied by him. Therefore, there is no scope for appointing the applicant to the post of Principal of GMC, Rajouri from 01.05.2020. We are not aware of any stipulation under any of the Service Rules enabling appointment of more than one person on one post at the same time. The applicant has also not brought to our notice any such stipulation under which on one particular sanctioned post, two persons can be appointed and thus two salaries can be drawn against one sanctioned post. Therefore, this alternative prayer of the applicant to grant him pay scale of the Principal is totally devoid of merit.

18. In view of the above discussion, the OA being devoid of merit deserves to be dismissed. It is accordingly dismissed. No costs.

(Rakesh SagarJain)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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