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Central Administrative Tribunal
Principal Bench

OA No.919/2004

New Delhi this the 5th day of January, 2010.

Hon'ble Mr. Shanker Raju, Member (J)

Hon'ble Dr. Veena Chhotray, Member (A)

1. UGC Research Scientists Association [Regd.], A-35, East of Kailash, New Delhi-110 065.
2. Dr. V. Peesapati, Industrial Chemistry Laboratory, Centre for Environment, JNT University, Mahaveer Marg, Hyderabad-500 028 [AP].
3. Dr. Prem Chowdhry, Nehru Memorial Library, Teen Moorti Marg, New Delhi-110 001.

-Respondents

(By Senior Counsel Ms. Geeta Luthra with Shri Ankur Mittal, Advocate)

-Versus

The University Grants Commission, through its Chairman, Bahadurshah Zafar Marg, New Delhi-110 002.

-Respondent

(By Advocate Shri Amitesh Kumar)

1. To be referred to the Reporters or not? *Yes*
2. To be circulated to Outlying Benches or not? *Yes*

S. Raju
(Shanker Raju)
Member (J)

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O R D E R

Hon'ble Mr. Shanker Raju, Member (J):

The expression 'conditions of service' construes those conditions which regulate holding of post by a person right from the time of his appointment till retirement and even beyond it in the matters like pension etc., as ruled by the Apex Court in **State of Punjab v. Kailash Nath**, AIR 1989 SC 558.

2. In the matter of cut off date of age of retirement, interference by judicial review is permissible only if it is

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discriminatory or arbitrary, as ruled by the Apex Court in ***Govt. of A.P. v. N. Subbaraydu***, 2008 (4) SCALE 117.

3. The applicants, U.G.C. Research Scientists and two others, by virtue of this OA have challenged respondents' order dated 12.11.2003, whereby their request for the purpose of age of retirement at par with regular faculty members of the Central Universities has been turned down.

4. A long history of litigation necessitates a brief factual matrix to be highlighted. Respondent-UGC in 1984 with an object to promote excellence in research in Indian Universities and institutions and with a view to attract talented academics to return to India with assurance of research facilities, amenities and infrastructure, a Scheme has been promulgated by the UGC and guidelines have been formulated, where all appointments were made on contract basis for a period of five years, extendable on review and evaluation of contribution satisfactorily. Three Scientists were selected after a stringent process. It was made clear in the Scheme that the Scientists A, B and C would be treated at par with Lecturers, Readers and Professors respectively. An assurance on promise has been made for a guaranteed tenure and pensionary benefits. They were attached with various Central and State Universities and Institutions. The initial appointment letters had indicated the allowances as admissible to these Research Scientists at par with Central

Universities Lecturers. The retiral benefits were also extendable to them as admissible in the Central Universities. However, these retiral benefits have not been implemented in the case of applicants. Right from the inception of the Scheme few of the Scientists have been allowed GPF and retiral benefits like Professor B.P. Singh and Dr. S.C. Malik, who had been allowed to work till the age of 65 years. However, the Minister of Civil Supply sought review of the work of the Scientists and assured that they would get all the retiral benefits as stated in the contract. However, through a letter written by the UGC on 24.4.1995 it was decided that unless the work of a Scientist is found unsatisfactory, he may be continued till superannuation. The UGC in a letter to HRD Minister on 4.3.2007 distinguished between the Research Associates and Research Scientists Scheme by designating the latter one as a permanent fiction. It is also pertinent to mention that once a Research Scientist is appointed under the Scheme, his pay and emoluments have been decided to be at par, as per the conditions of service prevalent in the Universities and Institutions to which he has been attached to. However, the jurisdiction and competence to transfer the Research Scientists from one Institution was available with the UGC, as a result of which the Research Scientists who have been attached to a Central University where vide UGC notification the retirement age has been enhanced from 60 to 62 and thereafter from 62 to 65 to enable them to retire on

attainment of this age but for others it is 58 or 60 years as per the norms in the Universities. However, the UGC on 9.6.2000 for Research Scientists working under the pre-revised Scheme of UGC decided that the age of superannuation of the concerned Scientist should be identical to that of faculty members of the Institute/University where the concerned Scientist is working.

5. In CWP No.5090/2000 the Research Scientists through their Association before the High Court of Delhi sought various reliefs including pay parity with Central University Lecturers, Readers and Professors earlier promised to them by the UGC in all matters pertaining to service conditions, retirement benefits in addition to assessment of every five years for promotion under the Scheme. This Writ Petition figures the guidelines for recruitment and it has been contended that the purpose of review is an act to the detriment of Scientists and having regard to the earlier conditions a unilateral change is forbidden. Termination of service and grant of retiral benefits, as agreed to, was also impressed upon. Non-continuity of service was also assailed in view of Section 18 of the UGC Act, which binds them from their assurance and representation made to the Parliament and estoppel was also raised. On 23.1.2002 while the Writ Petition was heard on a consent and amicable settlement has been arrived at, according to which a Research Scientist under the Scheme of UGC will be continued on the same

terms and conditions as the department and centres in the Universities and there will be no issue of any review after every five years as stated in para '1' of the scheme since the applicants have been working with the UGC over a long period of time. A Review Application in CM No.4872/2002 has been filed before the Single Bench of the High Court and on 3.5.2002 holding that the only concession made was that instead of review after five years action was permitted to be taken against the candidates as per the Rules and Regulations relating to Department and Centres in the Universities. It was also taken cognizance of that UGC revised the scheme to continue the research scientists till the age of superannuation subject to that performance not being unsatisfactory. Accordingly, a consent order was not interfered and review was dismissed. This led to filing of a LPA before the High Court of Delhi, which by an order dated 20.1.2003 was also dismissed.

6. UGC Research Scientists Association vide CWP No.5177/2003 sought retirement age at par with the Central Universities. On an objection raised by the respondents counsel on 1.3.2004 that in view of notification of UGC on 1.2.2002 to be amenable to the jurisdiction of Central Administrative Tribunal the matter was transferred to this Tribunal. A contempt petition No. 258/2002 was also filed, which was listed on 6.7.2004 where respondents have agreed to give the same grade to the Research Scientists as given to

the departments and centres of the Universities. This contempt petition was finally heard on 15.12.2007, where taking stock of all the contentions raised, including the issue of retirement age, whereby it is contended that Scientists are employees of UGC and are entitled to common UGC rules prescribed for Teachers, entitling them to a uniform retirement age as per the UGC notification issued in 1998. It was taken cognizance of that an issue is pending before the Tribunal. However, in the aforesaid order, the following observations have been made:

"10. Today, a preliminary objection was raised by Mr. Raju Ramachandran, learned Senior Counsel for the Respondents regarding the scope of the present contempt petition. He pointed out that Petitioner No.1, that is, the UGC Research Scientists Association had on 4th November, 2004 filed an application being OA No.919 of 2004 in the Central Administrative Tribunal ("Tribunal") Principal Bench, Delhi. He placed before the Court a copy of said application in which a reference has been made to the order dated 23rd January, 2002 passed by this Court in W.P. (C) No.5090 of 2000. The application challenges the UGC's letters dated 10th February, 2003 and 12th November, 2003 by which it rejected the representations made by the Petitioners seeking retirement benefits on par with the regular employees; grant of priority in the matter of pension, provident fund, gratuity and leave encashment as admissible to regular permanent employees. A further prayer was for a direction to the UGC not to discriminate amongst research scientists as regards the retirement age irrespective of their places of work. According to Mr. Ramachandran, since prayers made before the Tribunal overlapped with the relief sought in the contempt petition and with the petitioners having opted to file the application before the Tribunal after the filing of the present contempt petition, they should rightly be relegated to the remedy before the Tribunal without detaining this Court in the present contempt petition.

11. The Court is not prepared to entertain the preliminary objection raised. The order of the Court dated 23rd January, 2002 does encompass all the terms and conditions that govern the research scientists. This would include the age of retirement, the eligibility for promotion, the scales of pay and allowances and generally all benefits incidental to the service. Since the admitted position is that the order dated 23rd January, 2002 has attained finality there can be no manner of doubt that it requires to be strictly implemented. The minutes of the meeting held as recently as on December, 2006 itself indicates that many elements of the order dated 23rd January 2002 remain to be implemented. The Court is not unmindful of the fact that the order dated 23rd January, 2002 required compliance within six weeks from that order in so far as the question of arrears of pay was concerned. By any reasonable estimate it could have never been contemplated that the order would remain unimplemented for six years after it was passed."

Accordingly, on 3.10.2008 High Court of Delhi in an order given finality to the contempt proceedings by discussing the promotion and grant of GPF benefits noted down the contentions of the petitioners that their outstanding issue concerning retirement age will be agitated in the proceedings pending before the Tribunal CP was closed.

7. The above petition was filed before the Tribunal on 12.4.2004 where notices have been issued and the response of the respondents has come. Pleadings are complete.

8. Before we proceed to highlight the rival contentions of the parties, the position of rules, regulations etc. are to be highlighted. No doubt, to attract talent and to bring back eminent scientists to India, the UGC promulgated a Scheme for appointment of Research Scientists and at that time in

1984 they were to be treated at par in usual allowances admissible to other University Teachers but this appointment was on contract basis for a period of five years in the first instance. It is also not in dispute that appointments have been made and allowances are admissible to the Scientists, as admissible to Central University Lecturers. However, this has been corrected in 1985 that the basic salary of the Scientists will be the same as admissible to University Teachers and other benefits for University Teachers where they will be employed. Since 1985 this contractual appointment has been in a hot pursuit for consideration to make it as continuing affairs so that the Research Scientists are continued till they reach the age of superannuation. Also observed by the UGC that the simultaneously holding lien by a Research Scientist in the parent institute they have been instructed resign the earlier post in order to have their service continued. The determination of age has come by a decision of the Commission on reconsideration on 9.6.2000 where it is at par with the faculty members of the University/Institute where the concerned Scientist is working. This has been individually apprised to the applicants vide the impugned orders. As per UGC supplementary terms and conditions Regulation 1967 Research Scientists are not on the regular strength of UGC but by virtue of the Scheme Regulations prescribe their conditions of service which UGC from time to time formulated. Accordingly, while joining under the

Scheme it was for the Research Scientists to show the intent to be placed on a particular university or institute whether Central or State and accordingly UGC which provides the finance deliberates with the Institute and where Scientist is allowed to work. Accordingly, whatever is admissible to the counterparts in these Universities will decide the conditions of service and these are *mutatis mutandis* applicable, including the age of retirement.

8. At the outset, learned counsel of respondents Shri Amitesh Kumar raised the following preliminary objections:

- i) The OA is barred by limitation, as the UGC letters dated 10.2.2003 and 12.11.2003 have been challenged but the UGC decision regarding retirement age dated 9.6.2000 not being challenged in case the repeated representations would not extend the period of limitation, as ruled by the Apex Court in **C. Jacob v. Director of Geology & Mining**, (2008) 10 SCC 115.
- ii) *Res judicata* and *constructive res judicata* are alleged stating that in the Writ Petition No.5090/2000 the applicants were aware of the communication dated 9.6.2000 and having not challenged they are estopped from challenging it.
- iii) It is stated that the Association representing the applicants is not a recognized Association by the UGC, as such have no *locus standi*.

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9. This has been rebutted by the learned senior counsel Mrs. Geeta Luthra, appearing for the applicant. It is stated that the present proceeding is within limitation period, as UGC communication was challenged on 21.10.2002 and a Writ Petition to this effect was filed bearing No.5177/2003 and following a statement made by UGC on 20.2.2004 jurisdiction has been taken over by the Tribunal, which was pointed out only on 20.2..2004. As such, in the light of the fact that the applicants were not retiring and after two LPAs and two SLPs the circulars of the UGC, which were issued on 27.7.1990 and 27.10.1999, the representation and issue of circular on 19.6.2000 by the respondents, which extends V Central Pay Commission's recommendations to only Central Universities, a discrimination when meted out, first of all the OA was filed within the limitation and against violation of fundamental right, no limitation is required.

10. As regards non-recognized Association is concerned, it is stated that by their conduct the respondents are estopped and have acquiesced on waiver this objection as UGC and HRD Ministry have been inviting Dr. Daksh Lohia and UGC having filed a Review Petition against the Association, it is stated that this objection is only a hyper technical and even an unregistered association can raise the grievance of the employees.

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11. Regarding the third objection as to *res judicata* and *constructive res judicata* it is stated that on liberty given by the High Court where the issue of retirement age was not decided on merits, applicants have a right and a valid cause of action to be propagated before the Tribunal.

12. We have carefully considered the preliminary objections raised by the learned counsel of respondents. In our considered view, being a party, the Association before us even if not recognized, will not make any difference as they are espousing the case of Research Scientists and being made party by the respondents themselves before the High Court of Delhi, they cannot approbate and reprobate simultaneously, such a hyper technical objection will not come in the way of dispensing justice by us in judicial review.

13. As regards *res judicata*, no doubt the High Court has considered the fact that the service conditions of employees would remain at par with their counterparts in the Universities and Institutions to which the Research Scientists are attached to, yet the issue of retirement age was never adjudicated by laying down finality to the issue on merits in any of the proceedings before the High Court and during the pendency of the contempt petition when retirement issue has been raised, on assumption of jurisdiction by the Tribunal before it, the issue having not been decided and attained finality, *res judicata* would have no application. Regarding

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constructive res judicata though the issue of conditions of continuity of retiral benefits was before the High Court, yet this specific plea of age of retirement was never in issue whether it should be uniform or not in case of Research Scientists retired on different ages as per the University/Institutions to which they are attached to. Accordingly, this issue which is emanated only in 2000 and in 2003, applicants had no occasion to challenge that order. As such, *constructive res judicata* would have no application.

14. Insofar as limitation is concerned, no doubt 2003 letter informs the applicants about rejection of their request for retirement, which has been challenged before the Tribunal in 2004 within one year, which is well within limitation period, as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

15. Insofar as decision of 9.6.2007 is concerned, once a representation has been preferred and finally disposed of, limitation would run from that date. Accordingly, the objection as to limitation would not be logical and irrational and is liable to be overruled.

16. Overruling the preliminary objections, we shall now highlight the rival contentions of the parties.

17. At the outset, the learned Senior Counsel would contend relying upon the decision of the Apex Court in **Post-**

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Doctoral Research Associates of S. V. University, Dr. K. Krishna Reddy & others v. Union of India & others, JT 2002 (4) SC 352 that the Research Scientists Scheme had built into the UGC and is a permanency having equivalence with the Universities Teachers. Learned counsel would further contend that supplementary terms and conditions Regulations of 1967 providing an employee appointed on contract or tenure basis being exempted from the Regulations would not apply, as on a decision of the UGC to retire the applicants on attaining the age of superannuation applicants are to be governed as per para 8 of the UGC terms and conditions of service of employees Rules 1953 and would have to be retired at the age of 62 and now 65 years, as prescribed by UGC Notifications of 1998 and 1999 raising the age of retirement from 60 to 62 years and thereafter to 65 years.

18. Learned counsel would also propagate that there has been an employer-employee relationship of Research Scientists and UGC though the initiation was on a contract but the service conditions are regulated by the UGC, who is bearing the bulk of payment to the applicants financing the universities etc. and regulations of pay, appointments, pay scales when decided by the UGC, including the retirement age, then by regulating the promotion of Senior Scientists and alteration of their service conditions non-mention of the post of Senior Scientist in the Schedule is an afterthought argument. It is stated that once there is permanency to the

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Research Scientists, they are deemed to be employee and in such an event the age of retirement, as allowed to the Central Universities counterparts, shall *mutatis mutandis* apply to them. Learned counsel would also contend that there has been an invidious discrimination in the matter of pay, as a policy decision taken by the respondents whereby the age of retirement would be as per the prevalent conditions in the University/Institution, to which a Scientist is attached to show that in Central University one Scientist is attached he would get 65 years of age and for others in State even the lesser pay scale is prescribed. Accordingly, when the mode of appointment is identical then in the matter of pay such a distinction, when persons are identically situated, is a hostile discrimination. Learned counsel contend that when the power of transfer from one Institute or University is with UGC then by virtue of transfer to an Institute where the retirement age is more than one is admitted to have advantage, which is lacking in case of others whose transfer request, if made, is not acceded to, also constitutes discrimination.

19. Learned Senior Counsel has filed a summary of submissions, as directed by us. It is in this regard stated that UGC has never derived a Scientist on transfer on placement by quoting the example of one Dr. S.K. Kulkarni and Shri Vikram Soni, who have been transferred on their requests a week before their retirement to an Institute where retirement age is 65 years. The UGC policy does not contain

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any object or achieve it necessitating retiring Scientist by placing at a Institute where retirement age is higher when they are not their employees and which in transferable placement is not logical. It is also stated that the Pay Commission's recommendations have been extended by the UGC to the Scientists irrespective of State or Central as per the V CPC recommendations of 27.7.1998 and communicated to the Universities in December 1998, which was implemented in Central Universities in 1999 and in State by 2002. Accordingly, this shows that the Scientists were regarded as UGC employees.

20. Learned Senior Counsel would further contend that as per 2nd proviso to UGC Supplementary Regulations Scientists are exempted from these Regulations. In 1984 when the Scheme was a contractual 5 years Scheme there was no question of retirement of age. In the initial Scheme Scientists would be continued till 60 years and their decision to continue them till superannuation was taken in 1994. In pre-IV CPC the retirement age of Central Govt. employees was 58 years, which was applied to UGC employees. However, the retirement age in UGC was 60 years for Teachers. A non-discriminatory policy of retired Scientists uniformly at 60 years was adopted under IV CPC. This prescription of age for Teachers was not as a retirement age of non-academic employees. Learned senior counsel would say that the letter dated 9.6.2000 is not a matter of policy. The policy of

transfer employees at Institution where the retirement age is 62 a place where it is 65 years, no rational is made out.

21. Learned counsel states that in case of Dr. Prem Chand, who was in Delhi University where the age of retirement was 62 had gone to NMML where the retirement age was 60 years. She turned 60 in 2004 but continued till 62 and after retirement she has been transferred to Miranda House. On the other hand, Dr. S. Kulkarni, who joined the Scheme in 1998 on attainment of 60 years of age in June 2009 and before that when placed in IISCR her retirement age has become 65 years, which on the very face of it shows discrimination. Learned counsel states that on 3.5.2008 a categorical observation of the High Court as to pending case before the Tribunal not being prejudiced UGC's Counsel statement made on 15.12.2007 and petitioners there being conceded to agitate the present issue before the Tribunal the jurisdiction of the Tribunal has been mutually accepted by the parties. It is stated that the UGC has never filed any appeal or endeavor to enforce the retirement age issue in the contempt matter and as the age of retirement being an anomaly a representation preferred in 2003 makes a continuous cause of action.

22. On the other hand, learned counsel of respondents would vehemently oppose the contentions and stated that when a prayer has been made as to age of retirement in Writ

Petition in view of order dated 19.6.2000, liberty subsequently sought, which was not even granted to raise the issue of age of retirement is inconsequential. Learned counsel states that the Association representing the case is not recognized. It is also stated that no formal representation has been made to challenge the order dated 19.6.2000. It is stated that UGC being the governing body taking a final decision, applicants having not questioned the order dated 9.6.2000 the conditions of service includes facet of retirement as part and parcel, the decision of the High Court having attained finality, it is stated that the applicants are not employees of UGC, where appointment was contractual.

23. Shri Amitesh Kumar stated by filing his written statement that the applicants are not employees of UGC. They were selected by the UGC under the Scheme and are placed in different Universities and Institutions. Estoppel and waiver have been enforced against applicants by stating that in the earlier Petition before the High Court having made a prayer to treat them at par with Lecturers, Readers and Professors in respective universities in all matters pertaining to the service conditions, retirement benefits and the order passed in consequence on 23.2.2001 by the High Court they have accepted all other conditions of pay etc. and allowances, now raising the plea of age of retirement amounts to approbating and reprobating simultaneously by the applicants.

24. Learned counsel would further contend that even assuming for the sake of arguments on legal fiction even if applicants are employees of UGC then age of retirement of UGC employees to 60 years as per the policy of the Govt. of India though these Research Scientists are not employees and there is no such post in the conditions Regulations, learned counsel states that in view of the decision of the Apex Court in ***Sher Singh v. Union of India***, (1995) 6 SCC1515 courts below have been directed to be slow in interfering with the matter of policy of the Govt. It is stated that it is the prerogative of the UGC to specify the age of retirement of UGC Research Scientists and the decision dated 9.6.2000, which was not even challenged, the age of retirement is not in consonance with the age of retirement of the Universities to which these Research Scientists have been attached to.

25. Lastly, it is stated that in contempt petition No.258/2002 having not granted any liberty to the applicants to raise the issue of age of retirement in the present proceedings, mere referring of submissions of the petitioners counsel cannot be construed as a direction, leave or liberty of the High Court. As such, he presses for dismissal of the OA.

26. We have carefully considered the rival contentions of the parties and perused the material on record.

27. It is no more *res integra* in view of the order passed by the High Court in contempt No.258/2002 on 15.12.2007 that

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the grievance of discrimination and retirement age of Research Scientists being agitated separately before the Tribunal, the preliminary objection was not entertained as the order dated 23.1.2002 passed in the Writ Petition has attained finality. However, it was made clear in this order that the petitioners were to be treated at par with those in the departments and centres of the university. Subsequently, this order underwent a correction in review order dated 3.5.2008, where the issue regarding treating the Research Scientists as employees of UGC and the issue of retirement age has been left open. Further reaffirmation of this conclusion is apparent from the order passed on 3.10.2008 where the issue of retirement age to be agitated in the proceedings before the Central Administrative Tribunal was taken cognizance of the High Court. The aforesaid has a background also as the applicants in 2000 when the policy of the UGC was to employ them for five years and review the tenure after expiry of each five years apprehended dismissal/ouster from service a writ of mandamus was sought to dispense with this procedure of five years and regarding service conditions of retiral benefits to be treated at par with respective university to which they are attached to, specifically the relief of retirement age was not in issue. However, this leaves us to a conclusion that the following issues are left open by the High Court to be agitated before us in this OA, namely:

- i) Whether the Research Assistants are employees of UGC?
- ii) Whether discrimination between the Research Assistants merely on the basis of posting in Central/State Universities in the matter of retirement age is illegal being opposed to the Principle of Equality?

28. A master-servant relationship for determining whether one is an employee of Government, the test is all pervasive control. A multiple pragmatic approach is to be adopted, which includes that the employees should have been fully integrated in employer concerned, the power of appointment and dismissal is vested with the employer and liability to pay remuneration and organize the work, terms and conditions on mutual obligation.

29. As ruled in **Ram Kumar's** case (supra) applying the aforesaid test a scheme of employing Research Scientists was promulgated by the UGC in 1984 with an object to promote the scientific development in the country and to prevent brain-drain. It is a cadre based scheme and UGC created posts of Research Scientists at the level of Lecturers, Readers and Professors and assign them through appropriate university/department the selection was held by the Commission on placement also by the UGC. It was with an object to build a pool of UGC of Researchers.

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30. Insofar as funding is concerned, 100% expenses are borne by UGC with 10% overhead expenditure is being paid to the Institution. We are of the considered view that it is not open to the UGC to approbate and reprobate simultaneously by taking a different stand in an affidavit filed before the High Court in Writ Petition at page 712 of the paper book. It is also admitted that the pay scales accorded to Research Assistants are similar to Lecturers, Readers and Professors who are regularly appointees of the University. It was categorically admitted as a stand that these Research Scientists are not employees of the respondents and have been engaged under a Scheme framed by the UGC. It is also accepted that conditions of the Scheme never equated university Teachers with Research Assistants. A policy decision taken on 9.6.2000 whereby the retirement age has been fixed as per the attachment in the concerned State/Central University of a Research Scientist, which was earlier decided in 1995 to be uniform with that of Central Universities. During the pendency of the Writ Petition minutes of the meeting held on 6.1.2005, it was decided to absorb these Research Scientists and after absorption they will not be part of the scheme but simultaneously it is stated that as far as possible, these Scientists would get accommodated in Central Institutions and Universities. Further meeting of UGC held on 22.11.2006 reiterated the aforesaid plea but the Association represented by one Mr.

Daksh Lohia has not consented to it. In the meeting held on 29.12.2006 on the objection that Mr. Daksh Lohia is not the President of the Association, terms and conditions formulated by UGC of Research Scientists in pursuance of Writ Petition No.5090 of 2001 were laid down on 25.2.2008, where regarding age of retirement rules applicable to Lecturers, Readers and Professors of the Universities/Centres where the Research Scientists have been working are adopted.

31. In our considered view though the supplementary conditions of service rules do not stipulate a post of Research Scientist but there cannot be a denial on abundant material on record that the Research Scientists cadre was a creation of UGC and controlled by them. Even if there is no post of Research Scientist is included, yet all other service conditions have been regulated by the UGC, which had funded their continuance till superannuation by paying to the Central and State University the total expenditure borne on them and 10% overhead. It is also to be noted that overhead grant to the host Institution is with a view that they do not pay any contribution towards the salary of the applicants a single paisa, we go on the premise that even in case of Chairman and Vice-Chairman of the UGC the posts exist and are employees of the UGC, despite the schedule of the regulations do not specify these two posts. In case of applicants Research Scientists their selection, appointment, promotion, disciplinary proceedings and continuance when controlled by

the UGC and coupled with their own admission, leaves no doubt in our mind that this Scheme of Research Scientists had developed into and built on permanency equivalence with University Teachers.

32. The Apex Court in an identical situation in **Post-Doctoral Research Associates** (supra) having ruled in respect of UGC permanency of Research Scientists with equivalence with University Teachers the UGC are the Scientists employed on the pay scale from time to time promulgated by UGC binding on Central Universities and State Universities which have been adopted having been granted to the applicants they are at par with the corresponding teaching staff is a parity inter-se with UGC specified rules for Teachers as for UGC employees placed in Regional Centres where the conditions as per the Regional Centres is less beneficial the conditions of UGC are accepted. Inter-se transfers of Teachers from State to Central Universities at the discretion of the UGC leaves no doubt in our mind that they are on permanence being employed under the UGC, as such with the predominant control of UGC over employment of Research Scientists and from arrangement to post them on placement to the State/Central Universities would not obliterate their status of employer. As such, being a master-servant relationship we have to hold that the Research Scientists are employees of UGC. Even an indirect

control over their service conditions is sufficient to support this conclusion.

33. Having answered the aforesaid now the issue of retirement age of Research Scientists. Uniformity in conditions of service to identically situated is an essence of Principle of Equality enshrined under Article 14 of the Constitution of India.

34. Though we are aware that determination of age of retirement being the prerogative of the Government is beyond the pale of judicial review but an exception is when such a decision is actuated with malafides and is discriminatory, violative of Articles 14 and 16 of the Constitution of India. Nothing prevents the Court or Tribunal in judicial review to interfere. From 1984-1995 when the age was not specified only tenure appointment on contract was the essence of promulgation of Scheme by the UGC for Research Scientists. A decision in 1995 to continue them as per the age prescribed for retirement in UGC for Teachers. However, a decision taken in June, 2000 decided to continue with the review after five years and in the matter of age of superannuation what has been adopted is the age in vogue in the Universities to which the Scientists were attached to. However, when a Scientist is placed where it is neither Central University nor State University the Institutions adopt the age of retirement for Research Scientists is applicable *mutatis mutandis* to the

counterparts in Central Universities. As a result of which, those who have opted for Central Universities and were placed there, where UGC notifications for enhancement of age upto now 70 through notification issued in 1998-2000 and 2005 and 2008 have been put in an advantageous position but those with the State Universities where UGC notification of July, 1998 makes a discretion upon the State Universities to pick the age of retirement set out by the UGC they retired at a lower age of retirement. Moreover, it is the discretion of the UGC to allow transfer of Research Scientists working in the State Universities even after approaching the age of superannuation as per the Universities Rules to a Central University, where not only further continuance but enhanced age is accorded to the concerned Scientists. It appears that only by virtue of being placed at a particular State/Central University there is a variance in the age of retirement of the Research Scientists. In ***B. Bharat Kumar & Ors. v. Usmania University & Ors.***, 2007 (6) SCALE 608 an issue where UGC enhanced the age for Teachers and staff of the Universities and Colleges vide notification of 1998 the Supreme Court cautioned the courts below not to tinker as it would amount to trail into the dangerous area of wisdom. However, there the Scheme itself gives discretion to the State Government to accept a part of the Scheme it was held to be perfectly within the power of the State Govt. not to accept. However, situation is different here, as once the applicants

are not employees of the University, they have no discretion not to allow Research Scientists to continue till the age of superannuation as prescribed by the UGC and the discretion to the State Universities is not available to the applicants in such a case. What is to be followed by the State Universities is the conditions of enhancement of age promulgated by UGC, as admittedly by UGC when these Universities are funded 100% by UGC and overhead 10% expenses to be borne by it, they are not to be treated as employees of those Universities and rightly not treated as the methodology of their selection and conditions of service not being controlled by the State Universities they are the cadre employees of UGC attached to the Universities, may be for all other purposes of pay scale etc. which incidentally even State Universities have adopted it at par with UGC. The only difference between the employees of Universities and Research Scientists is the age of retirement, which by virtue of the stand taken by the UGC are to be treated at par with their University counterparts cannot be imposed upon Research Scientists. As within the cadre itself those attached to the Central Universities when attain the age of superannuation as per the UGC notification, non-compliance of uniform criteria *mutatis mutandis* to the Scientists attached with the State Universities in the matter of age of retirement would be an invidious discrimination, violative of Articles 14 and 16 of the Constitution of India.

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35. A policy promulgated by the Government if irrational, discriminatory and makes distinction in a particular condition of service of one set of employees, such a hostility when not based on any intelligible differentia with a reasonable nexus with the object sought to be achieved cannot pass the twin tests of reasonableness under Article 14 of the Constitution of India, which has been well explained by the Apex Court in a Constitution Bench decision in **D.S. Nakara Vs. Union of India** 1983 SCC (L&S) 183.

36. The object of promulgation of Research Scientists Scheme by the UGC was to promote scientific development and also not to waste the talent by employing Scientists for doing research etc. It was not an object that these Scientists merely by virtue of being placed in Central/State Universities would be discriminated arbitrarily in the matter of their retirement age though fearing their dismissal and non-continuance after five years they might have resorted to at one point of time a desire to be governed by the rules of University to which attached was solely with an object that this five years review, which is hanging on their head as a sword of Damocles must go was for a security of tenure at least with their counterparts in the matter of age of retirement in the Universities. It should not be construed as a waiver or acquiescence and their agitation of their retirement age at par with Central Universities Research Scientists on a uniform application by UGC they cannot be

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estopped from assailing inequality and a resort to Articles 14 and 16 of the Constitution of India.

37. Discrimination lies *writ large* on scanning through the record which shows that during the 4th Plan from 1986 to 1988 all Scientists were to retire at the age of 60 years which was also the retirement age of Teachers. One Dr. S.C. Malik and A.K. Malik and A.K. Gupta who retired at the age of 60 years and then continued till 1998 there was a provision of re-employment which allows them to continue upto the age of 65 years. Thus these Doctors conformed to Central Universities as per the V CPC though there was no retirement age in the original scheme and those Scientists working in the non-Central universities and Institutions where there were no Teachers they retired as per the UGC retirement age for Central Universities. This leaves us no doubt in our mind that determination of retirement age has neither any uniformity nor rationality by the UGC.

38. An example where the UGC on 8.7.2009 enhanced the retirement age as per V CPC but 65 years applied it to the classroom Teachers but this has been made applicable to equivalent cadres as well. Scientists are participating in the classroom teaching as well and in such an event by allowing two Doctors namely Dr. Tej Singh and Dr. Veena Bhasin they had continued beyond 62 years. We have also been apprised names of certain Doctors like Dr. Harinder Mahajan, Dr. A. P.

Rao, Dr. K.S. Chandran, Dr. V.P. Verma, Dr. S.C. Malika and others, who had continued beyond the age of retirement at the place of work but at par with UGC Rules for Teachers. This shows that the UGC has not acted uniformly in retirement age of the Research Scientists. Basically, though one has no right to assail determination of retirement age by the Government but once this determination suffers from the vice of inequality and discrimination. This offends the purpose and object of the Scheme, which is to promote research and for which merely because a Scientist is placed himself in Central University if gets retirement age for longer years than those who are attached to a State University get lower age of retirement, this determination of retirement age of these State Universities Research Scientists who are not treated as employees of the University and when the control is of UGC, non-extension of age of retirement to these Research Scientists whereas others have been allowed the same, it cannot be said that it is the volition of the person to be placed at a particular place for research purposes. The fact that inter-transfer is permissible from State to Central Universities and those who by virtue of the transfer being benefited by the age of retirement of Central Universities the others have been deprived of the same, creates a class within the class, which is not approved of under Article 14 of the Constitution of India.


39. Basically Research Scientists are creation of UGC and being employees they are not to be treated at par with non-teaching staff. As it is not disputed that teaching being a part of duties of Research Scientists, depriving them of the enhanced age of retirement at par with their counterparts Central Universities, is deprivation of their right especially when they perform identical duties. If on promulgation of the Scheme in 1984 the observation in the context of Scientists pursuant upon the High Court's order dated 23.1.2002 was to the effect that if the State Universities are to be treated as employers only then their promulgated service conditions would be binding on Research Scientists. However, when these Scientists are selected and placed with the Universities by the UGC which control their service conditions on more than 100% funding including the funding, the State Universities cannot be treated as their employer and for service conditions any resort to service conditions promulgated by the State Universities to their employees would not be applicable, more particularly on an agitated issue of age of retirement before us, to which we are primarily concerned.

40. As we have concluded that these Research Scientists are UGC employees, whatever age has been determined to them for retirement in the context of their counterparts in Central Universities irrespective of their being attached to a

place, should be uniformly made applicable to them as a condition of service.

41. Accordingly, we find that there has been an invidious discrimination meted out to the applicants. The policy decision of the respondents, impugned before us, whereby applicants' request for treating their age of retirement at par with the Central Universities being turned down, cannot be countenanced in law. This non-uniform methodology by the UGC has failed to pass the twin tests of reasonableness under Article 14 of the Constitution of India. A hostile discrimination only on the ground of being placed at a particular University has also no reasonable nexus with the object sought to be achieved.

42. Resultantly, for the foregoing reasons, OA is allowed. Impugned orders are set aside. Respondents are directed in the light of their notifications to treat the applicants' age of retirement at par with their counterparts in Central Universities. In such an event, consequences would ensue to them in accordance with law. Respondents are further directed to comply with these directions within a period of three months from the date of receipt of a copy of this order. No costs.


(Dr. Veena Chhotray)
Member (A)


(Shanker Raju)
Member (J)

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