

CASE NO.:
Appeal (civil) 4247-4248 of 2001

PETITIONER:
Union of India

RESPONDENT:
Dr. Jai Dev Wig & Ors

DATE OF JUDGMENT: 30/10/2007

BENCH:
H.K. Sema & Lokeshwar Singh Panta

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NOS.4247-4248 OF 2001

Heard Mr. T.S. Doabia, learned senior counsel for the Union of India, and Ms. Kamini Jaiswal, learned counsel appearing for the Union Territory of Chandigarh. None appears on behalf of the principal respondents-Dr. Jai Dev Wig and Dr. M.S. Sekhon.

The challenge in these appeals is to the orders dated 7.8.1998 in CWP No. 12360-C/1998 and 8.7.1999 in CWP 6169-C/1998 passed by the High Court of Punjab and Haryana at Chandigarh.

Despite receipt of notice, principal respondents-Dr. Jai Dev Wig and Dr. M.S. Sekhon are not represented either by themselves or by a counsel. It was contended that by this time they might have retired from service.

Briefly stated the facts are as follows:

The respondent-Dr. Jai Dev Wig was working as Additional Professor, Department of Surgery, Post Graduate Institute of Medical Education and Research, Chandigarh. The Government of India, Ministry of Home Affairs, Department of Personnel & A.R., issued an Office Memorandum dated 9.4.1981 on the subject of relaxation of upper age limit for departmental candidates in Government departments giving relaxation of a maximum of 5 years in the upper age limit for recruitment to other Group \021A\022 or Group \021B\022 posts through an advertisement by the Commission. The respondent-Dr. Jai Dev Wig filed an application before the Central Administrative Tribunal claiming benefit of age relaxation provided to the Government servants in terms of the aforesaid office memorandum. The Tribunal allowed the application.

Aggrieved thereby, the Union Public Service Commission filed a writ petition before the High Court as aforesaid. By the said order the High Court was of the view that the post held by the principal respondent was akin to the Government servant and, therefore, he is entitled to the relaxation. The High Court was, however, of the view that the provisions of Article 311 of the Constitution of India do not apply to the employees of the Institute. Before the High Court, it was the case of the Commission that Dr. Wig was overage as on the cut-off-date and he being not in Government service was not eligible for the benefit of relaxation. The said contention was repelled by the High Court holding Dr. Jai Dev Wig entitled to the relaxation at par with the Government servants.

It is not in dispute that the Post Graduate Institute in which respondents-Dr. Jai Dev Wig and Dr. M.S. Sekhon were

serving is a creation by an Act of Parliament and as such it is an autonomous body. However, the services of the respondents were not covered by the proviso to Article 309 of the Constitution. Article 311, as held by the High Court, was also not attracted in their case. Therefore, in our considered opinion it cannot be held that the respondents are Government servants. The benefit of Office Memorandum dated 9th April, 1981 giving relaxation of upper age limit for departmental candidates for appointment to Group \021A\022 and Group \021B\022 posts cannot be legally extended to the service conditions of Dr. Jai Dev Wig and Dr. M.S. Sekhon.

Thus, the contrary view taken by the High Court holding both the respondents entitled for benefit of relaxation in terms of the aforesaid Office Memorandum is erroneous and cannot be sustained. The appeals are allowed in the aforesaid terms. The orders of the High Court as well as the order of the Tribunal granting benefit to the respondents shall stand set aside. We may clarify that in the meantime if any benefit of the order of relaxation has been given to Dr. Jai Dev Wig and Dr. M.S. Sekhon by the concerned authority, such benefit shall not be withdrawn from them. No order as to costs.