

CASE NO.:
Appeal (civil) 2414 of 2006

PETITIONER:
I.I.T. Kanpur

RESPONDENT:
Umesh Chandra & Ors.

DATE OF JUDGMENT: 02/05/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Civil) No.4078 of 2006]

S.B. SINHA, J :

Leave granted.

The First Respondent was appointed as a Junior Pilot Instructor (Glider) pursuant to an advertisement issued in the year 1979 being Advertisement No.14/1979. The Indian Institute of Technology, Kanpur, (hereinafter referred to as 'the Institute') is a body corporate in terms of the provisions of the Institutes of Technology Act, 1961 (hereinafter referred to as 'the Act'). It is an institute of national importance. It has its own Board of Directors. Its functions are laid down in Section 13 of the Act. The Board of Governors is responsible for general superintendence, directions and control of the affairs of the Institute. It is also entitled to take decisions on questions of policy relating to administration and working of the Institute. Section 27 of the Act contemplates framing of statutes providing for the matters enumerated in Section 26 thereof, providing for classification, method of employment and determination of the terms and conditions of service of teachers and other staff of the Institute. In terms of Statute 11 of the Indian Institute of Technology, Kanpur Statutes (for short, 'the Statutes'), members of the staff are classified in three categories, namely, Academic, Technical and Administrative.

The First Respondent herein applied for his appointment as Junior Pilot Instructor in response to the advertisement No.14/1979 and was called for an interview before a Selection Committee constituted under Statute 12(3)(e) of the Statutes. He was appointed on contract basis. It is not in dispute that later on also an advertisement was issued for the post of Junior Pilot Instructor on regular basis wherefor also the First Respondent applied for and was selected by a Selection Committee constituted under Statute 2(3)(e) of the Statute. He later on was appointed to the post of Senior Pilot Instructor by a Selection Committee similarly constituted. While the First Respondent was appointed as a Senior Pilot Instructor (Glider) in terms of an offer of appointment made on 24.06.1986, it was, inter alia, stated that the age of superannuation would be 60 years. According to the appellant, the post of Senior Pilot Instructor was classified as technical. Sl. Nos. 18, 19 and 20 of the Recruitment Qualification for Group-A Officers (Academic, Administrative and Technical) of the Institute read as under :

"

Sl.
No.
Designation and
Pay Scale
Qualifications
Classification

Selection
Committee
as per
Statute
18

Chief Pilot
Instructor
(Rs.1500-2000)
Appropriate
DGCA

Licence
Technical
12(3)(e)

19.
Sr. Pilot
Instructor
(Rs.1100-1600)

-do-
-do-

12(3)(e)
20.

Pilot Instructor
(Rs.700-1300)

-do-
-do-

12(3)(e)

"

A Selection Committee was constituted in terms of the Statute 12 (3) (e) of the said Statutes for interview in the post of Chief Pilot Instructor and one Shri H.S. Agnihotri was recommended therefor.

It is not in dispute that the First Respondent made a representation for up-gradation of his scale of pay from Rs.14,300-400-18300 to Rs.16,400-450-20,000 which was approved by the Board having regard to the unique post held by him. A clarification was also issued by the Ministry of Human Resources Development on 12.06.2000 stating that the categories of employees should be classified as academic as per the Statutes and treated at par with teachers having the age of retirement on attaining the age of superannuation with effect from 31.08.1998. Whereas the age of superannuation of the academic staff was fixed at 62 years, the age of superannuation of technical, administrative and other staff in terms of the Statutes was specified as 60 years.

The First Respondent by a letter dated 05.05.2005 was informed by the appellant herein that he would reach the age of superannuation on the expiry of 31.01.2006, pursuant where to he submitted a representation on 08.06.2005 asserting that as the post of Senior Pilot Instructor held by him was an academic post, his age of superannuation should be treated as 62 years. The Director of the Institute with a view to go into the said question, constituted a committee on 21.11.2005. However, before a decision on the said issue could be taken, a writ petition was filed by him before the Allahabad High Court. During the pendency of the said petition, the Committee opined that since the First Respondent did not belong to the academic category, his age of superannuation would be 60 years, and not 62 years. The said writ petition in view of the said order was suitably amended by the First Respondent.

By reason of the impugned judgment, the High Court allowed the said writ petition holding that the First Respondent belonged to the academic category. The appellant is, thus, before us.

Mr. Gopal Subramaniam, the learned Additional Solicitor General appearing on behalf of the appellant, would urge that having regard to the

fact that the appellant and for that matter other persons holding the post of Senior Pilot Instructor had all along been treated to be a technical staff, and having been selected by a Selection Committee in terms of Statute 12(3)(e) of the Statute, the High Court had committed a serious error in arriving at its decision. It was further submitted that the First Respondent was appointed mainly in the Gliding and Soaring Centre at IIT, which was established to provide for an informal recreational avenue to the members thereof in adventure sports and other aviation sports like Aero-modeling club. Glider flying, according to the learned counsel, is in no manner connected with the academic activities of the Department of Aeronautical Engineering or any other department of the Institute. The High Court, it was urged, committed a serious error in arriving at a finding that the First Respondent belonged to the academic category, inter alia, on the basis of : (i) application form; (ii) fitment of scale; (iii) brochure used by the IIT; and (iv) a decision of the House Allotment Committee.

It was further contended that the resolution of the Board dated 23/24.05.1988, in terms whereof the post of Senior Pilot Instructor was classified as technical having not been challenged, the impugned judgment of the High Court cannot be sustained. It was furthermore urged that the conclusion of the High Court that gliding cannot be considered distinct from the academic course or learning under Aerospace Engineering was not correct having regard to the fact that as per Statute 4(2)(a), it was within the exclusive domain of the Senate of IIT to frame and revise curricula and syllabi for the courses of studies for the various departments of the Institute.

Mr. P.N. Mishra, the learned Senior Counsel appearing on behalf of the Respondent, on the other hand, submitted that the Selection Committees are not strictly constituted for the purpose of selection of academic or technical category of staff. Different Selection Committees are constituted for selection to different categories of posts which in effect and substance does not relate to the selection of academic or technical staff.

Our attention in this behalf has been drawn to various documents whereupon the High Court placed strong reliance.

The general educational qualifications of the First Respondent is said to be intermediate. In the advertisement No.DE-9/85, the qualifications and experience for holding the post of Senior Pilot Instructor were stated as under :

"SENIOR PILOT INSTRUCTOR \026 (1 Post) :

PAY SCLAE : Rs.1100-50-1600
QUALIFICATIONS : Candidate should hold Glider Pilot's License with open rating upto 600 kg.; and Instructors rating; should hold an Aerotow rating; should have minimum of 6000 launches of gliding with 300 hrs.; of flight time and out of which at least 200 hrs. should be instructional flying. Age limit below 42 years on 1.1.1985. Desirable that the applicant has done at least 1000 launches in the proceeding year and should have sent at least 5 trainees solo.

EXPERIENCE : Candidates should have ability to conduct flights for academic programme of the department; to hold ab initio and advanced instructional flying to the members of the Gliding Soaring Centre; to carry out test flights of proto-type glides and to discharge various related administrative duties for running the Centre. Persons with higher category of flying licensees and experience

will be given preference."

From a perusal of the said advertisement, it would appear that no general qualification was fixed therefor. A person having no educational qualification as such but having the requisite certificate could have been appointed as Senior Pilot Instructor. We have noticed hereinbefore that there exists a dispute as to whether gliding is a part of the curriculum and syllabus of the Institute or not. The experience of the candidate requisite for holding the post of Senior Pilot Instructor no doubt provides that the candidate should have ability to conduct flights for academic programme but the same also provides that he should be able to discharge various related administrative duties for running the centre. The term "academic programme" does not, in our opinion, necessarily mean that he should be able to take part in the academic activities of the institute.

From the said advertisement itself no inference can be drawn that the said post was for appointment in the academic category or for technical category of the staff. We have, however, noticed that what was emphasized was the flying licence and experience.

So far as the courses of studies are concerned, we may notice that under the heading 'AE-422' (Experiments in Flight Mechanics), it is stated :

"AE 422 : EXPERIMENTS IN FLIGHT MECHANICS
L-T-P-D(C)

Prereq. AE 321, AE 322

1-0-3/2-0(2) Introduction to flight testing, instrumentation, techniques and data reduction methods, calibration of flight and special flight test instrument. Evaluation of glider drag polar. Evaluation of cruise and climb performance of a small airplane. Determination of static and maneuver stability and control characteristics. Observations of airplane dynamic modes and stall characteristics. Introduction to GPS based navigation. Introduction to auto-pilot."

It has, however, not been placed before us as to whether the First Respondent was entrusted with any such academic duties.

Statute 11 of the Statutes provides for classification of the members of the staff of the Institute. Those employees who were to be classified within the academic category included : Director, Deputy Director, Professor, Associate Professor, Assistant Professor, Lecturer, Workshop Superintendent, Associate Lecturer, Assistant Lecturer/Instructor, Scientific Officer, Research Assistant, Librarian, Deputy Librarian and such other academic posts as may be decided by the Board; whereas the technical staff included Farm Superintendent, Foreman, Supervisor (Workshop), Mechanic, Farm Overseer, Horticultural Assistant, Technical Assistant, Draftsman, Physical Training Instructor and such other technical posts as may be decided by the Board.

For appointment to a post, a Selection Committee indisputably is required to be constituted. The First Respondent before the High Court, inter alia, contended that the Selection Committee was constituted in terms of Statute 12(3)(b) of the Statutes for the posts of Assistant Professor, Senior Scientific Officer and Lecturer. However, before us, the learned counsel agreed that Statute 12(3)(e) shall apply in the instant case.

The First Respondent in his writ petition asserted :

"That in pursuance to aforesaid interview letter the petitioner appeared in the interview held on 21.02.1986.

the said interview was conducted by a selection committee constituted in accordance with Statute 12(3)(b) of the Statute. The said selection committee was headed by the Director as its Chairman and also included the Head of the Department as a member. Apart from the aforesaid there also included an expert."

Mr. Mishra, however, submitted that Statute 12 of the Statutes does not provide for constitution of the Selection Committee separately for the academic staff and technical staff. Our attention in this behalf was drawn to Statute 12(3)(c) of the Statutes in terms whereof a Selection Committee is to be constituted for the posts of Librarian and Workshop Superintendent etc.; whereas in terms of Statute 12(3)(b) a Selection Committee is to be constituted for the posts of Registrar and Assistant Registrar etc.

It was urged that it is only the posts which are not covered by the provisions contained in Statutes 12(3)(a) to 12(3)(d), would be covered by Statute 12(3)(e) and not the posts of technical staff exclusively.

Apart from the fact that the said contention has not been advanced before the High Court, we may notice that academic staff having been defined, normally, the appointment of academic staff is covered by sub-clauses (a), (b), (bb) and (c). Clause (d) of Statute 12(3) applies only to the administrative staff, namely, Registrar or Assistant Registrar etc who do not fall in the category of either academic staff or technical staff. Thus, sub-clauses (a) to (e) of Statute 12(3) being applicable to the academic staff and clause (d) thereof being applicable to the administrative staff, clause (e), therefore, ordinarily would apply only to the technical staff. It is only from that angle that the fact that for all the posts which the appellant had been holding as also for the post of Chief Pilot Instructor, constitution of the Selection Committee is in terms of sub-clause (e), assumes significance.

A distinction which may be noticed is that even for the selection for the posts of Workshop Superintendent or Librarian, an expert on the subject is to be a member of the Selection Committee, whereas in the case falling under sub-clause (e), even a Registrar who belongs to the administrative category, can be a member of the Selection Committee. It is not expected that for selecting a member of the academic staff, the Registrar would be included in the Selection Committee.

It is worth-mentioning that for selection of the academic staff, an expert nominated by the Senate is a member of the Selection Committee. Such requirement does not exist for selection of a member of the technical staff.

So far as the representation of the First Respondent as regards pay scale is concerned, we may notice the resolution of the Committee constituted for consideration of the request of the First Respondent dated 29.03.2000 which reads as under :-

"The Committee was advised that "Capt. Umesh Chandra, Senior Pilot Instructor, Department of Aerospace Engineering has made a requested dated March 29, 2000 (placed at AP 18 of BSC agenda) for upgradation of his pay scale from existing scale from existing scale of Rs.14300-400-18300 to the scale of Rs.16400-450-20000."

The Committee noted that Capt. Chandra had joined the Institute service on 18.1.1980 as a Junior Pilot Instructor. He was selected to the post of Senior Pilot Instructor with effect from May 22, 1986. Since then he had had no opportunity for assessment/upgradation though he has completed more than 8 years on the post

like other Group 'A' Officers especially non-academic officers for whom a career advancement scheme has been approved by the Board in its 1996/3rd meeting held on 26.09.1996.

The Committee was further advised that the position of Senior Pilot Instructor was unique to IIT Kanpur and such a post was not available in any other IIT. The Committee also noted that there is no ladder of promotion for him although he has been working as Senior Pilot Instructor with effect from May 22, 1986.

The committee also noted that there is no assessment/upgradation scheme available to academic staff of the kind.

In view of the above facts, the Committee recommended that Capt. Umesh Chandra be given one time personal assessment to move from the existing scale to the scale of Rs.16400-450-20000 as a special case.

The Committee further recommended that since the Board had approved a one time Personal Promotion scheme for non academic staff with effect from 26.9.1996, he could at the most be considered for assessment promotion with effect from the said date and the assessment exercise be carried out by constituting appropriate statutory selection committee."

[Emphasis supplied]

Our attention has also been drawn to an Office Order dated 19.04.1999, in terms whereof the pay scale of the Senior Pilot Instructor was revised from Rs.4100-125-4650-150-56300 to Rs.14300-400-18300.

Emphasis has been laid on two factors by Mr. Mishra. Firstly, in the second paragraph of the recommendation, the Committee noticed that whereas the other non-academic officers had an avenue for assessment/upgradation, the First Respondent did not have the same. Such assessment/upgradation was available also for the non-academic staff. The very fact that the Committee took into consideration that the case of the appellant was an unique one and as there was no ladder for promotion for him which facilities were otherwise available to the academic staff and non-academic staff, the representation as regard scale of pay having regard to the unique position was considered on the premise that no such post was available. The same, in our opinion cannot be said to have any bearing whatsoever for determination of the question as to whether the respondent belonged to the academic category or not.

Our attention has also been drawn to the fact that the name of the respondent appears in the scale of pay issued by the officers of the faculty. Again, the same, in our opinion, is not decisive. It is one thing to say that the matter relating to scale of pay etc. had been considered by one department having regard to the administrative exigency, but the same would not necessarily lead to a conclusion that the First Respondent belonged to the academic category.

Emphasis has again been laid on the issuance of the application form for use of the candidate which was meant for academic appointment. The said form was issued in 1985, i.e., much before different superannuation age was prescribed for the academic and non-academic staff. As indicated hereinbefore, for administrative convenience, the matter might have been dealt with by the academic department but unless a person comes within the purview of the definition of 'academic member' in terms of the statute, he would not be entitled to the benefit thereof.

The High Court in its judgment observed :

"(vi) It is also worthwhile to note that in the list prepared by the Chairman, House Allotment Committee as can be seen from notices (Annexures 15, 16 & 17) to the writ petition), his name finds place amongst those who belong to Academic Category. Even in Brochure, Annexure-22 and websites for the year 2005, Annexures \026 23 and 24 to the writ petition, his name is included in the list of Academic Staff."

As regard the functions of the First Respondent, the appellant has categorically stated :

"The services of the petitioner were utilized mainly in the Gliding and Soaring Centre at the respondent Institute which is established to provide an informal recreational avenue to the members of the Gliding and Soaring Centre in adventure sports and other aviation sports like Aero-modeling club etc. The membership of the Centre aforementioned is available not only to the students and staff of the respondent Institute but also to the public at large subject to their fulfilling certain conditions in this regard.

5. That it is specifically stated and clarified that gliding or for that matter glider flying is in no manner connected with academic activities of the department of Aerospace Engineering or any other department of the Institute.

6. That after joining the centre aforementioned the petitioner was designated as Secretary of the Gliding and Soaring Centre since 1981 for overseeing the activities of the Centre. In this connection, he was also paid the special allowance of Rs.100/- per month w.e.f. 01.04.1981. A copy of the letter of the respondent Institute dated 21.08.1982 is being filed herewith and is marked as Annexure CA 1 to this affidavit. Subsequently, the petitioner was appointed as Junior Pilot Instructor (Gliding) w.e.f. 05.01.1983 after being selected by the selection committee constituted under the provisions of the Institute of Technology Act, 1961.

7. That, thereafter, the petitioner upon selection was appointed as Senior Pilot Instructor w.e.f. 24.06.1986. This order of appointment (Annexure 4 to the writ petition) itself mentioned the age of retirement of the petitioner as 60 years.

It is pertinent to state here that post of Senior Pilot Instructor was not classified either by the Statutes or the Board of Governors until the year 1988. Statute 11 of the Statutes of the respondent Institute sets out the various posts in the Institute which are categorized as academic, technical and administrative. It further empowers the Board of the Institute to classify such other posts as academic, technical, administrative as may be decided by it. The Board of Governors in its 1988/3rd meeting held on 23/24 May, 1988 is being filed herewith and is marked as Annexure CA- II

to this affidavit."

Thus, the main function of the First Respondent was for providing an informal recreational avenue to the members of the Gliding and Soaring Centre in adventure sports and other aviation sport like Aero-modeling.

The classification in terms of the provisions of the Act was required to be done in terms of the provisions of the Statutes. The Selection Committee constituted under Statute 12(3)(e) for appointing the appellant and other persons in the same department would clearly go to show that the First Respondent was covered under the category of technical staff. He furthermore, according to the appellant, was appointed mainly in the Gliding and Soaring Centre at IIT, Kanpur, to provide an informal recreational avenue to the members of the Gliding and Soaring Centre in adventure sports and other aviation sports in Aero-modeling club.

The High Court failed to consider the specific stand taken by the appellant in this behalf. The High Court has further failed to notice that the post of Instructor specified in Statute 11 is compared to the post of Assistant Lecturer; whereas the post of Senior Pilot Instructor is comparable to the post of Senior Physical Instructor as mentioned in Statute 11(b). In terms of Statute 4(2)(a) it was within the exclusive domain of the Senate of IIT to frame and revise curricula and syllabi for the courses of studies for the various departments of the Institute. Thus, in this behalf the conclusion arrived at by the High Court that the gliding cannot be separated or kept aloof from the academic course or learning under Aerospace Engineering may not be entirely correct. The High Court furthermore failed to notice that in terms of Resolution dated 23/24.05.1988, the post of Senior Pilot Instructor was classified as a technical post.

For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. The writ petition filed by the respondent in the High Court is dismissed. No costs.