

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.34276 of 2003

R.Gunasekaran

... Petitioner

Vs.

1.Union of India,
Rep. By the Secretary,
Ministry of Human Resources Development,
Department of Secondary and Higher Education,
Shastri Bhavan, New Delhi.

2.The Director,
National Institute of Technology,
Tiruchirapalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorari to call for the records of the Director, National Institute of Technology, Tiruchirapalli, the second respondent herein, connected with his proceedings No.A3/469/2003, dated 05.09.2003 and to quash the same.

For Petitioner :Mr.C.K.Chandrasekaran for G.Bharadwaj
For R1 :Mr.Su.Srinivasan,
Asst. Solicitor General of India
For R2 :Mr.S.Dhayaleswaran
for Mr.Sri Balaji

ORDER

By the impugned order dated 05.09.2003, the petitioner was directed to retire from service on attaining the age of 58 years as per the then existing service Rules. Aggrieved against the same, the petitioner has filed the present writ petition with a prayer to quash the same, on the ground that the Government of India, vide notification dated 28.07.2003, has declared the Regional Engineering

College, Trichy, as National Institute of Technology, Trichy, with Deemed University status and thereafter, by another communication dated 12.11.2003, the age of superannuation of the staffs has been fixed as 60 years. Therefore, it is the contention of the petitioner that he should have been allowed to retire on reaching the age of 60 years.

2. It is further contended by the learned counsel for the petitioner that originally, he joined as Attender in the Regional Engineering College, Trichy, on 01.10.1996, and thereafter, he was promoted as Mechanic 'A'(SG) in the Department of Civil Engineering. Pursuant to the take over by the Central Government, he became employee of the National Institute of Technology, Trichy, with effect from 14.05.2003. Therefore, upon take over by the Central Government, he should have been allowed to continue his service till the age of 60 years, he contended.

3. It is the contention of the learned counsel appearing for the second respondent that though the Central Government, by communication dated 12.11.2003, increased the age of superannuation to 60 years from 58 years to all the employees working in National Institute of Technology, as per the Clause 5 of the above said communication, the date of retirement shall come into effect from the month in which it is adopted by the Board of Governors (BoGs) of the respective National Institute of Technologies (NITs). In this case, the Board of Governors met on 10.01.2004 and thereby decided to implement the above said memorandum with effect from 01.01.2004. Therefore, the Director has passed the impugned order dated 05.09.2003 retiring the petitioner from service on attaining the age of 58 years as per the then existing rules. Thus, it is contended, the petitioner cannot avail the benefits of the new services rules, especially when the Clause 5 of the memorandum dated 12.11.2003 categorically states that this provision of retirement shall come into effect from the month in which it is adopted by the Board Governors of the respective NITs.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. Given the facts and circumstances of the case, it is more appropriate to extract the memorandum dated 12.11.2003 of the Government of India, which dealt with the age of retirement of the non-teaching staff. Clause 2 to 5, which are relevant for this case, reads as follows:

"2. Retirement on Superannuation.--
After careful consideration of the existing provisions relating to retirement on superannuation in various NITs, it has been

decided with the approval of the competent authority that henceforth the non-teaching staff of all NITs shall be allowed to serve up to the age of 60 years subject to their fulfilling the following terms and conditions.

3.(i) Provision of Screening.--A Screening Committee shall be constituted to assess the suitability of all non-teaching employees for their further continuation in service beyond 58 years of age.

(ii) Composition of the Screening Committee.--The Screening Committee for the purpose shall consist of such members as form part of the Departmental Promotion Committee (DPC) constituted for regular promotion for the respective category of posts as well as one representative each from the Ministry of HRD and that of the IIT of the region in which the NIT is located. The Director and the Registrar of the Institute concerned shall remain personally responsible for the authenticity of data furnished to the Screening Committee and BOG in this regard.

(iii) Schedule for Screening.--To ensure timely processing of such cases for extension in the age of retirement, the meeting of the Screening Committee shall be held at least twice in a year preferably in the month of April and October every year so that all the cases of the non-teaching staff who are to complete 58 years of age in next cycle of the year are considered in the meeting. Cycle of the year for this purpose would mean that the meeting to be held in say October 2003 should consider cases pertaining to months of April, 2004 to September, 2004 while the meeting to be held in April 2004 are to consider cases pertaining to the months of October 2004 to March 2005 and likewise. This procedure shall be followed across all NITs including in those NITs where the existing age of retirement for non-teaching is already 60 years of age. However, such employees as have less than six months of service before their superannuation from the date of issue of this order shall be exempted from the purview of screening procedure.

4. Consideration by BOG.--The

recommendation of the Screening Committee shall be placed before Board of Governors (BOGs) of the respective NITs which shall take a final view in this regard. Only those employees whose names are approved by the BOG shall be allowed to serve up to the age of 60 years while the remaining such employees shall retire at the age of 58 years of age.

5. Date of Effect.--This provision of retirement shall come into effect from the month in which it is adopted by the Board of Governors (BOGs) of the respective NITs."

Clause 4 of the above said memorandum clearly depicts that the recommendation of the Screening Committee shall be placed before the Board of Governors, who, in turn, approve the eligible person to serve up to the age of 60 years. Clause 5 says that the date of retirement shall come into effect from the month in which it is adopted by the Board of Governors of the respective NITs. In the case on hand, when the Government of India, vide notification dated 28.07.2003, took over the erstwhile Regional Engineering College, Trichy, the petitioner was admittedly in service with less than six months of service, but, unfortunately, due to the condition mentioned in Clause 5 of the said memorandum dated 12.11.2003 as stated supra, the petitioner was not eligible to continue his service till 60 years, as the Board of Governors, in its meeting held on 10.01.2004, resolved to implement the above said memorandum with effect from 01.01.2004. Unfortunately, the petitioner had attained the age of 58 years on 10.11.2003 itself and therefore, he was allowed to retire from service on 30.11.2003 by the second respondent as per the then existing rules. Thus, the prayer of the petitioner to allow him to continue his service, in the light of enhancement of the age of retirement for non-teaching staff of the NITs from 58 years 60 years, cannot be sustained. Therefore, the writ petition fails and the same is dismissed as devoid of any merit. No Costs.

Sd/-

Assistant Registrar

/ True copy /
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Sub Assistant Registrar

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To

1.The Secretary,
Ministry of Human Resources Development,
Department of Secondary and Higher Education,
Shastri Bhavan, New Delhi.

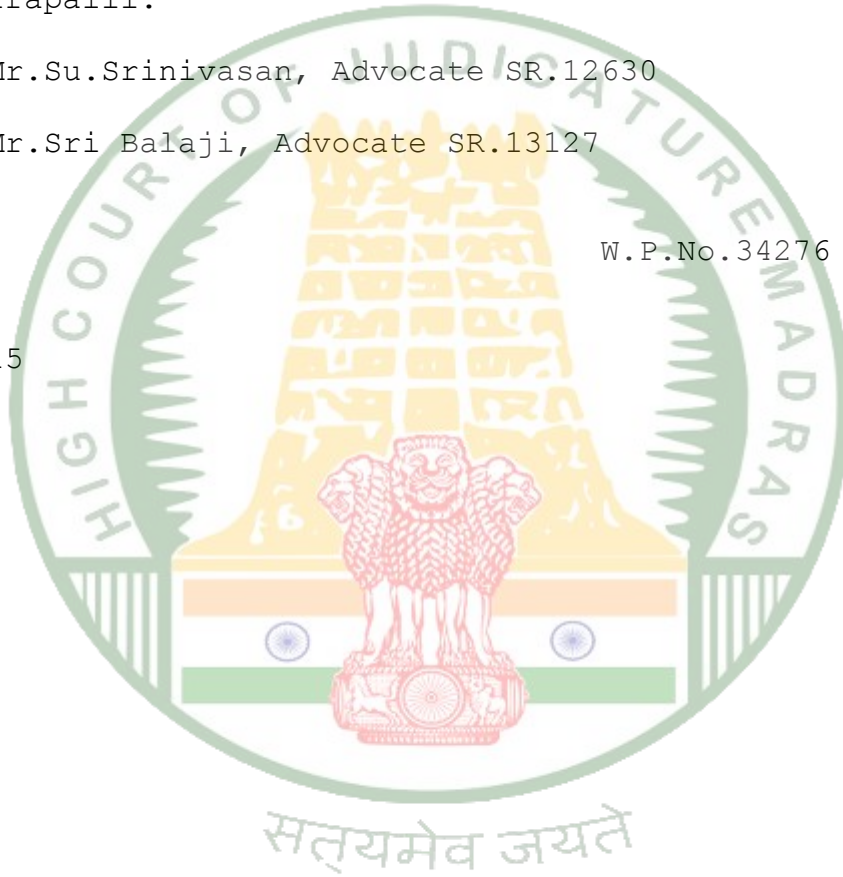
2.The Director,
National Institute of Technology,
Tiruchirapalli.

+1 cc to Mr.Su.Srinivasan, Advocate SR.12630

+1 cc to Mr.Sri Balaji, Advocate SR.13127

W.P.No.34276 of 2003

KM(CO)
JK 25/03/15



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