

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2019

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.11805 of 2011 and
M.P.No.2 of 2011

Dr.B.Johnson Christdoss

... Petitioner

Vs.

1. The Government of India,
Rep by Secretary to Government,
Ministry of Human Resources Development,
Department of Education,
Sastri Bhawan,
New Delhi.
2. The Director,
Department of Education, Technical Section,
Ministry of Human Resources Development,
Government of India,
New Delhi.
3. The University Grants Commission,
Bahadur Shah Zafar Marg.,
New Delhi 110 002,
Rep by its Secretary.
4. The Indian Institute of Technology,
Rep. by its Registrar,
I.I.T. Campus,
Chennai 600 036.
5. The Assistant Registrar (Admn.),
The Indian Institute of Technology,
I.I.T. Campus,
Chennai 600 036.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent herein in F.No.41-1/2010-TS.1 dated 23.07.2010 and the proceedings in F.No.Admn.I/A2/2010/1435 dated 26.08.2010 of the fifth respondent herein and quash the same and consequently direct the

respondents herein to permit the petitioner to continue in service as Asst. Physical Education Officer (Senior Scale) of Indian Institute of Technology, Chennai, till he completes the age of 62 years.

For Petitioner : Mr.ARL.Sundaresan (SC) for
Mrs.AL.Ganthimathi

For Respondents : Mr.V.Athikesavan,
CGSC for R1 & R2

: Mr.P.R.Gopinath for R3

: Mr.Karthick Mukundan for R4 & R5

O R D E R

The present writ petition has been filed to call for the records of the second respondent herein in F.No.41-1/2010-TS.1 dated 23.07.2010 and the proceedings in F.No.Admn.I/A2/2010/1435 dated 26.08.2010 of the fifth respondent herein and quash the same and consequently direct the respondents herein to permit the petitioner to continue in service as Assistant Physical Education Officer (Senior Scale) of Indian Institute of Technology, Chennai, till he completes the age of 62 years.

2. The petitioner is a retired Assistant Physical Education Officer (Senior Scale) in the Indian Institute of Technology (IIT), IIT Campus, Chennai, the fourth respondent herein. He was originally appointed in IIT, Madras, as Physical Training Instructor on 05.01.1979 with the qualification of B.A. and B.P.Ed. Subsequently, in 1985 itself he acquired M.P.Ed., Ph.D. qualification. After serving for about 17 years, he was designated as Assistant Physical Education Officer (Senior Scale) in the pay scale of Rs.10,000-325-15,200/-.

3. Originally, the retirement age as per the statute governing the service conditions of the employee of IIT, was 60 years of age. In 1999, certain instructions were issued by the Government of India, increasing the retirement age of teachers working in the Centrally Funded Technical Institutions which included IIT, from 60 to 62 years with effect from 31.07.1998. This position was reiterated by the second respondent vide letter dated 31.08.1998. While increasing the age of retirement from 60 to 62, in respect of all staffs of the Centrally Funded Technical Institutions, however, for some reasons, the retirement age of the petitioner cadre in the fourth respondent Institution remained unchanged being 60 years.

4. In the above circumstances, based on the representations, a number of correspondence exchanged between the second respondent and other officials concerned. It was confirmed that the age of retirement of the teaching staff including the Indian Institute of Technology, was 62 years as per the revised instructions. This confirmation came in several letters in 2008 & 2009. Eventually, a letter was issued that, for certain categories of post in IIT, the enhanced age of superannuation of 62 years will take effect from the date of issue of the order on 16.09.2009.

5. According to the petitioner, in IIT there is no designation of Director of Physical Education and the highest post that is available in the Physical Education Department in the fourth respondent, is the Assistant Physical Education Officer (Senior scale). The petitioner was working in the said post. According to the petitioner, the designation of Director of Physical Education is not available in the IIT, in view of the designation of Director of IIT who is the head of the Institution and in order to avoid confusion, the designation in respect of the Physical Education Department was different. Since the petitioner has been left out for being considered for the enhanced age of retirement of 62 years, he has been making several representations stating that he being a part of the teaching staff, has to be considered on par with other staffs in the matter of retirement age.

6. At this, the competent authority has informed the petitioner that by clarification dated 23.07.2010, it was mentioned that the superannuation for the post of Physical Educational Personnels of IIT as 62 years, will be applicable only for those who are in the pay band of Rs.37,400-67,000/- with grade pay of Rs.10,000/-, subject to the possessing qualification as prescribed by the University Grants Commission. The clarification dated 23.07.2010 has been sent to all the Directors of the Institute of Technology and on the basis of such clarification, the fifth respondent has issued a letter on 26.08.2010, rejecting the request of the petitioner for enhancement of the age of superannuation as 62 years. The said rejection has been put of challenge in the present writ petition.

7. The learned senior counsel appearing for the petitioner would submit that when the teaching staff of the Centrally Funded Technical Institutions which include the IIT, whose age has been increased for the purpose of superannuation as 62 years, the petitioner being one of the teaching staff in the

Physical Education Department, ought to have been considered for retirement at the age of 62 years. The clarification issued by the Director /the second respondent on 23.07.2010 cannot alter the original instructions issued in 1998 by the Government, enhancing the age of superannuation of the teaching staff in the Centrally Funded Technical Institutions. According to the learned senior counsel, the clarification goes beyond the scope of original instructions. Therefore, the same cannot be countenanced in law.

8. The learned senior counsel would further submit that the highest post in the Physical Education Department in the IIT, Madras, is the post held by the petitioner which is designated as Assistant Physical Education Officer (Senior Scale). In which case, the petitioner ought to have been granted the benefit of higher age for superannuation. Merely because the designation was different, the petitioner cannot be denied the benefit. Moreover, the learned senior counsel would submit that the qualification and the minimum pay band prescribed for grant of benefit of enhanced retirement age, is invalid, since no such condition was prescribed in the original instruction which enhanced the age of retirement. The petitioner having rendered more than 17 years of service and having worked in the senior scale which was holding the highest position in the Physical Education Department, he ought to have been treated on par with other teaching staffs. He cannot be singled out for a discriminatory treatment in the matter of application of retirement age. Therefore, he would submit that the clarification order dated 23.07.2010 as well as the rejection order dated 26.08.2010, are liable to be interfered with as the same cannot stand the test of judicial scrutiny.

9. Per contra, the learned counsel for the fourth respondent would submit that the writ petition as it is, is not maintainable for the simple reason that the petitioner has not chosen to challenge the amendment made in the statute applicable to IIT, Madras, extending the benefit of higher age of superannuation by Resolution No.1 of 2011, in respect of the post of Registrar, Librarian and other category of Personnels and for Physical Educational personnels who are in the pay scale of Rs.37,400-67,000/- with a grade pay of Rs.10,000/-. The Board of Governors and the visitor of Institution viz., the Hon'ble President of India has approved the proposal of amendment to the statute of IIT, revising the age of superannuation of Director, faculty and non-faculty Personnels of IIT. In the absence of challenge to the amended statute, merely challenging the rejection order by the fifth respondent is not maintainable, since the right or liability of the petitioner will flow from the provisions of the statute applicable to the service conditions of the employees of the IIT.

10. The learned counsel for the fourth respondent would further submit that the post of Assistant Physical Education Officer has been classified as technical staff under Clause 11 of IIT statute and it was not considered as a teaching staff at all. According to him, the nomenclature used for the grant of benefit of higher retirement age, was with reference to the Director of Physical Education which post was not available in IIT, Madras. In any event, originally the increase of age of retirement was intended to utilize the service of the teaching staff for a longer period in academic interest. Therefore, such benefit originally conceived, was not extended to the technical staff like the Physical Education Department, wherein the petitioner had worked.

11. In any event, the learned counsel for the fourth respondent would submit that when the statute of IIT, Madras, was amended by the inclusion of certain non-teaching categories like the Registrar, Librarian and also the Physical Educational Personnels, the minimum qualification in respect of the pay scale /pay band of 37,400-67,000/-with grade pay of Rs.10,000/- as prescribed for becoming eligible to avail the enhanced age of retirement, since the petitioner has not fulfilled the requirement as per the amended statute, he was rightly denied the benefit of higher age of retirement and therefore, the fifth respondent rejected his claim. Therefore, the writ petition lacks merits and substance and is liable to be dismissed.

12. The learned counsel appearing for the other respondents are also heard and made their submissions in explaining their respective position and in substance, they all argued that the petitioner is not entitled to grant of benefit of higher age of retirement, in view of the decision taken by the Government of India and also by the fourth respondent and other respondents.

13. Heard the learned senior counsel for the petitioner and the learned counsel appearing for the respondents.

14. As rightly contended by the learned counsel for the fourth respondent that the writ petition as it is, is not maintainable for the simple reason that when an amendment was brought to Statue No.11, governing the service conditions of the staff of the IIT and the same having been approved by the Board of Governors as well as the Hon'ble President of India, being the visitor of the Institution. In the absence of challenge to the statue, the writ petition deserves to be dismissed as not maintainable.

15. Even otherwise, on merits, when a particular qualification and eligibility has been prescribed for grant of benefit of higher age of retirement viz., 62 years, unless the staff possess such eligibility and qualification, he/she cannot claim for such benefit. In the instant case, admittedly, the petitioner was not in the pay band of Rs.37,400-67,000/- with grade pay of Rs.10,000/-. Further, he was not working as a Director of Physical Education as he was only working as Senior Scale Assistant Physical Education Officer. Therefore, in all fours, he is not entitled to the benefit of higher age of retirement.

16. The contention of the petitioner that, because there was a post of Director of IIT in existence, the petitioner was designated as Assistant Physical Education Officer, is not worthy of serious consideration for the simple reason that the petitioner admittedly was in the lower pay band and with lower grade pay and therefore, his designation was relatable to the pay band in which he was placed. In the absence of availability of the post of Director of Physical Education in the required pay band and grade pay, the petitioner or any one could not claim for the benefit of higher retirement age.

17. Although originally the enhanced retirement age was conceived for the purpose of utilizing the service of the teaching staff for more years in over all academic interest in the Centrally Funded Technical Institutions, over a period of time, it was extended to certain categories of staff with certain conditions like the qualification, eligibility and the pay band with grade pay. Unless such prescription of condition is unconstitutional or unacceptable in legal parlance, the same cannot be questioned by the petitioner successfully. In fact, it is also averred in the counter affidavit filed on behalf of the fourth respondent that the designation of Assistant Physical Education Officer (Senior Scale) was not equivalent to that of Director of Physical Education. Further, the petitioner also cannot claim such benefit as a matter of right, since he was only categorized as a technical and non-teaching staff. Therefore, he cannot seek any parity in treatment or he cannot complain any discrimination by the respondents.

18. The extension of the benefit of higher age of retirement to the non-teaching staff is a matter of concession and such concession could be available to the petitioner, only if the petitioner satisfies all the qualification requirement which are prescribed for such entitlement. In this case, admittedly, the petitioner did not meet the requirement and the requirement in the opinion of this Court is per se valid, in tune with the policy of the Government as well as the Institution.

19. For the above said reasons, this Court finds that the petitioner has not made out a case for grant of relief. Hence, the present writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Secretary to Government of India,
Ministry of Human Resources Development,
Department of Education,
Sastri Bhawan, New Delhi.
2. The Director,
Department of Education, Technical Section,
Ministry of Human Resources Development,
Government of India, New Delhi.
3. The Secretary,
The University Grants Commission,
Bahadur Shah Zafar Marg.,
New Delhi 110 002,
4. The Registrar,
The Indian Institute of Technology,
I.I.T. Campus,
Chennai 600 036.
5. The Assistant Registrar (Admn.),
The Indian Institute of Technology,
I.I.T. Campus,
Chennai 600 036.

+1 cc to Mr.P.R.Gopinathan, Advocate, S.R.No.14540
+1 cc to Mr.Karthik Mukundan, Advocate, S.R.No.14477
+1 cc to M/s.AL.Gandhimathi, Advocate, S.R.No.14383

W.P.No.11805 of 2011

SV(CO)
SSM(29/03/2019) .