Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 302 OF 2020

Dr. Nishigandha Ramchandra Naik
Indian inhabitant of Mumbai,
residing at 9, Shiv Smriti, 51,
Jaiprakash Nagar, Goregaon (East),
Mumbai – 400 063. ..Petitioner

vs.

1. State of Maharashtra
through Principal Secretary,
Medical Education and Drugs Department
Mantralaya, having his office at Gokuldas
Tejpal Hospital Complex, 9th floor,
Lokmanya Tilak Marg, Mumbai 400 002.

2. Haffkine Institute for Training Research
and Testing, duly registered under the
provisions of Societies Registration Act,
1860 having its office at Acharya Donde
Marg, Parel, Mumbai – 400 012. ..Respondents

…........

Dr. Abhinav Chandrachud a/w. Mr. Amogh Singh, Ms. Jayshri Manjrekar and Ms.Sonali Gargade i/b Solicis Lex for the Petitioner.
Ms. P.H. Kantharia, Government Pleader a/w Mr.Himanshu Takke-AGP for Respondent No.1 - State.
Mr.Vishwajeet Sawant, Sr. Counsel a/w Ms.Tanaya Patankar i/b Ms. Nutan Patankar for Respondent No.2.

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CORAM	**:**	**NITIN JAMDAR & M.S.KARNIK, JJ.**
RESERVED ON	**:**	**25 FEBRUARY 2020**
PRONOUNCED ON	**:**	**6 MARCH 2020**

JUDGMENT (PER M.S. KARNIK, J.) :-

. Rule. Rule is made returnable forthwith by consent of the parties. Learned Counsel waives service for Respondents.

2. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the Petitioner is seeking a declaration that the Recruitment Rules, 2015 of the Respondent No. 2 - Haffkine Institute for Training Research and Testing (hereinafter referred to as "the Institute" for short) are binding on the Respondent No. 1 – State of Maharashtra. As a consequence of this declaration, the Petitioner prays that the age of superannuation of the Petitioner for the post of 'Assistant Director' would be 62 years and not 58 years as is being applied in the Petitioner's case. The Petitioner prays for setting aside the letter dated 30 January 2020 of Respondent No.1 rejecting the request for change in retirement age of Assistant Director's post from 58 years to 62 years.

The brief facts are thus :

3. The Petitioner possesses Post Graduate degree in M.Sc. (Microbiology) and Doctoral Degree of Ph.D. in Applied Biology. She is a Young Scientist Awardee of Indian National Science Academy. The Petitioner has a post-doctoral experience for two years as an Awardee of Long Term Overseas Fellowship of the Department of Biotechnology, Government of India for the first year and as an Awardee of Marie Curie Fellowship for the second year which was awarded jointly by European Commission and Department of Science and Technology, Government of India. The Petitioner has more than thirty years of research work experience that includes academia as well as industry. Her work is published in international journals and has several international patents to her credit. She has been felicitated by national and international awards. She has worked in the field of cancer cell biology, imaging and pre-clinical drug discovery. The Petitioner's research is focused on cell motility related signal transduction events and development of therapeutic approaches for cancer, especially chronic myeloid leukemia, breast cancer, gliablastoma and neural stem cells. She is also involved in research on tuberculosis, venom and anti-venom. She is working as Principal Investigator on the projects to establish "National Venom Research Centre" and "Regional Coordination Centre for Prevention and Control of Zoonotic Diseases" which are funded by Ministry of

Health & Family Welfare, Government of India. During the period from 1988-2007, she was associated with Cancer Research Institute of the Tata Memorial Centre Mumbai as Scientific Officer. For the period 2007 till 2013 the Petitioner was associated with Piramal Enterprises Ltd. Mumbai as Senior Group Leader and Head of Imaging & Cancer Biology Section.

4. In the year 2013, the Respondent No.2 – Institute issued a Notification that the posts in Group "A" and "B" category will be filled on contract basis and invited applications by its advertisement dated 5 February 2013. The Petitioner was interviewed on 12 February 2013. The Petitioner was selected and appointed as an "Assistant Director" as per office Order No.43 of 2013 dated 1 April 2013 on the recommendation of Selection Committed appointed for the interview on contract basis for a period of one year from 1 April 2013 to 31 March 2014. Thereafter, by an order dated 6 May 2014, the Petitioner was again appointed as an Assistant Director on contract basis for a further period of 1 year from 15 April 2014 to 14 April 2015.

5. On 26 March 2015, an advertisement was published by the Institute for the recruitment of Group "A" and "B" posts of Assistant Director, Senior Scientific Officer, Scientific Secretary, Librarian and Scientific Officer (handicap), etc. on regular basis.

The Selection Committee on the basis of the interview recommended the Petitioner for an appointment as Assistant Director.

6. On 13/04/2015, the petitioner was appointed as an Assistant Director on permanent basis.

7. The Petitioner made an application to the University of Mumbai for transferring her recognition as Post Graduate for M.Sc. and Ph.D. in the subject of Applied Biology from Piramal Enterprises to the Respondent No. - Institute. The university of Mumbai transferred the recognition on 06/04/2017.

8. The Petitioner was given additional charge for post of Director in the Institution with effect from 6 April 2017. At this juncture itself it would be pertinent to refer to Writ Petition No. 2906 of 2018 filed by Shramik Utkarsh Sabha and others which is since disposed of by this Court vide order dated 31 July 2019. The Petition was filed challenging the amendments to the recruitment rules for the post Director of the Respondent No.2 - Institute. Even the appointment of the Petitioner as Assistant Director was challenged. This Court was pleased to set aside the amendments in the recruitment rules to the post of Director pursuant to the government's sanction dated 23 March 2018 and adoption by

Council under its resolution dated 24 April 2018. As a consequence, initiation of the selection process for post of Director on the basis of these Rules was also set aside. The reference to this aspect is necessitated because this was one of the contention of learned Counsel for the Petitioner that having regard to the observations made by this Court in paragraph 19 of its order in Writ Petition No. 2906 of 2018, it is the Governing Council which has powers to regulate the appointment of the staff of the Institute other than the Director. Inviting our attention to the observations made that the Institute was dependent on the government sanctioning the amendments in the Rules as regards 'Directors' post, learned Counsel would submit that insofar as prescribing the age of retirement of 'Assistant Director' is concerned, it is not necessary to seek approval of the Government.

9. It is the Petitioner's case that on 8 January 2020, the Petitioner had discussed with Joint Secretary, Medical Education and Drugs Department, G.T.Hospital Complex, Mumbai in respect of the errors/mistakes in the employment status of the Petitioner. The Petitioner had forwarded the minutes of the 49th Governing Council meeting in which retiring age was changed from 58 years to 62 years as regards the post of Assistant Director. The Petitioner also vide her letter dated 10 January 2020 forwarded the minutes passed in the 49th Governing Council

meeting held on 3 October 2011 and 51st Governing Council meeting approving the enhancement of retiring age for the post of Assistant Director from 58 years to 62 years.

10. The Petitioner being Director and In-Charge had by her letter dated 9 January 2020 intimated to the Assistant Director of Ayurveda, Konkan Bhavan, CBD Belapur that there are mistakes in the software of Ayurveda in respect of the employment status of the Respondent No.2's employees. It was pointed out by her that in the on-line status in the software, so far as the Petitioner is concerned, the Employee Type is shown as non teaching, the date of joining as 1 April 2013 and date of service of expiry as 31 January 2020. A request was made for carrying out necessary corrections in the software. In that she requested that her employee type be shown as teaching, the date of joining as 12 May 2015 and date of service of expiry be shown as 31 January 2024.

11. It is thus the case of the Petitioner, that in the software, date of retirement is wrongly shown as 31 January 2020 instead of 31 January 2024. It is the Petitioner's case that the rules have been suitably amended changing the retirement age of the Assistant Director from 58th years to 62 years as reflected in the 49th Governing Council meeting, and that 51st Governing Council meeting which has approved this change. Learned Counsel for the Petitioner would invite our attention to the Recruitment Rules,

2015 incorporating this change of recruitment age as 62 years for Assistant Director's post.

12. Aggrieved by the act on the part of the Respondents in proposing retirement of the Petitioner at the age of 58 years the present Petition is filed. When the matter was listed for admission and the prayer for grant of interim relief was under consideration, this Court by order dated 30 January 2020 refused to grant any interim relief, however, acceded to Petitioner's request for final disposal at an early date. During the pendency of this Petition, Respondent No.1 – State of Maharashtra issued a letter dated 30 January 2020 stating that request for change in the retirement age of the Director, Deputy Director and Assistant Director of Respondent No.2 to 65, 62 and 62 respectively was disallowed. This letter dated 30 January 2020 is also under challenge.

13. It is the contention of the learned Counsel for the Petitioner that the Respondent No.2 is an autonomous body being a Society registered as per Societies Registration Act 1860. The service conditions are governed by the Memorandum of Association. According to him by Government Resolution dated 26 November 1973, Respondent No.2 became an autonomous institution. Respondent No.2 is having its own bye-laws for regulating its day to day affairs. Learned Counsel invited our attention to the Memorandum of Association and the rules and

regulations which are annexed to the Petition. He invited our attention to clause 39 of the rules and regulation which provide for powers and duties of the Governing Council. He relied on clause 39(2)(b) which provides that the Governing Council shall have power to sanction the posts and appoint officers (other than the Director of the Society) and employees in its office or offices and factory and regulate the terms and conditions of their services.

14. Learned Counsel would then invite our attention to the Recruitment Rules of 2015 as approved by Governing Council on 27 June 2013 and as modified by Governing Council at its meeting on 4 March 2015. It is pointed out that insofar as Assistant Director is concerned, clause 7 provides that age of the retirement for the Assistant Director who is recognized Post Graduate teacher and guide shall be 62 years and while Assistant Director who is not recognized Post Graduate teacher and guide shall retire on the completion of 58 years. Learned Counsel would thus contend that Recruitment Rules of 2015 having come into force, for regulating the age of the retirement of Assistant Director, the approval of the State Government is not necessary. He would submit that as the Governing Council of Respondent No.2 at its 49^{th} & 51^{st} meeting had given approval to the rules, the Petitioner is entitled to continue in employment till she attains the age of 62 years. In this submission, the Respondent No.2 being an autonomous body and when the Memorandum of Association

confers power on the Governing Council to regulate the condition of services of Assistant Director, upon increasing the age of retirement as 62 years, it is an erroneous action on part of the Respondent in retiring the Petitioner at the age of 58 years only because her employment details are wrongly recorded in the software. Furthermore in his submission, the State Government has no role to play in the matter of increase in age as Rules do not contemplate approval by the State Government for increasing the age from 58 years to 62 years.

15. Learned Counsel would submit that whenever the approval of the State Government is required, the rules specifically provides thus. It is therefore his contention that so far as regulating terms and conditions of the services of officers (others than directors of the Society), it is the domain of Respondent No.2 to regulate the age of retirement and State Government has no concern with the same. The State Government cannot interfere with this regulatory power of the Institution. He further submits that it is a settled principle of law that if law requires something to be done in a particular manner, then it has to be done in that manner only and in no other way. According to him clause 39(2)(b) specifically says that except the post of Director, the Governing Council shall have power to regulate the terms and conditions of the services of the officers on the establishment of the Institution.

In his submission, approval of the State Government is needed only for directors post and in such other matters specifically provided for.

16. Drawing our attention to the recruitment rules regulating the recruitment to the post of Assistant Director, learned Counsel for the Petitioner pointed out that the Governing Council on 4 March 2015 amended the rules and prescribed the age of retirement for Assistant Director who is a recognized Post Graduate teacher and guide to be 62 years. The learned Counsel for the Petitioner would further submit that the Petitioner is a recognized Post Graduate teacher and guide and therefore according to him, the Petitioner is entitled to continue till she attains the age of 62 years. Learned Counsel would submit that even if the Petitioner is allowed to continue till the age of 62 years, it will not have any financial implications as in any case the Institute has to appoint an Assistant Director and will be required to pay the salary to the incumbent occupying the post.

17. Learned counsel for the Petitioner relied upon the following decisions in support of his contentions :-

1. Union of India Vs Shiv Dayal Soin & Sons (P) Ltd. & Ors. (2003 4 SCC 695).

2. State of Bihar (Now State of Jarkhand) through the

Sub Divisional Officer Vs Tata Iron And Steel Company Limited ({2019} 7 SCC 99).

3. Kishorbhai Khamanchand Goyal Vs State of Gujarat & Anr. ({2003} 12 SCC 274).

4. Harinarayan G. Bajaj Vs Rajesh Meghani & Anr. ({2005} 10 SCC 660).

5. State of Tamilnadu represented by Secretary to Government (Home) Vs Promod Kumar, IPS & Anr. ({2018} 17 SCC 677).

6. M. Aamira Fathima & Others Vs Annamalai University & Others ({2018} 9 SCC 171).

7. M/s. Elson Machines Pvt. Ltd. Vs Collector of Central Excise ({1989} Supp (1) SCC 671).

8. B.S. Minhas Vs Indian Statistical Institute & Others ({1983} 4 SCC 582).

9. S. Vijayan Nair Vs State of Kerala (2013 SCC Online Ker 8299).

18. An affidavit-in-reply has been filed on behalf of the Respondent No.2. It is the case of Respondent No.2 that for increase in the age of retirement for any post in the Institute, the approval of the State Government is necessary as the Institute receives grant-in-aid from Government of Maharashtra. The Institute being an aided Institute, the salaries of the staff/ employees are paid from the government grants and therefore any

change/ increase in age of retirement from a post has financial implications and consequently on the grant. 100% salary grant is received from the State Governing for all posts in the Institute.

19. Learned Senior Counsel submitted that in respect of all government aided entities it is a norm that any decision inconsistent with the law/rules and regulations of the government should not be taken without approval of the concerned administrative and finance department. He therefore would submit that permission/sanction of the government will be required if the retirement age for any post in the Institute is to be increased. For this, he would rely upon the circular issued by the State Government dated 14 November 2014.

20. Learned Senior Counsel would further submit that age of superannuation in the Institute for the post of Director, Deputy Director/, Assistant Director is 58 years and same has not been amended as alleged. Learned Senior Counsel would further submit that the Petitioner is misleading by referring to the minutes of the 49th and 51st meeting, when in fact the minutes of the 52nd meeting of the Governing Council held on 21 January 2014 would reveal that it was unanimously approved that the terms and conditions of the service of the employees of the Institute would be followed in accordance with the government terms and conditions since the recruitment rules (amended in the 49th

meeting) as approved in the 51st meeting was not proper. It is thus submitted that the resolution passed in the 52nd meeting of the Governing Council invalidates/ nullifies the decision taken in the 49th meeting.

21. Learned Senior Counsel would further submit that the Petitioner was always aware that her date of retirement is 31st January 2020 and to demonstrate this, he has invited our attention to the handwritten form filled up at the time of appointment where she herself acknowledged the date of retirement as 31 January 2020. Even seniority lists prepared from 2016 till 2018 would reveal that the date of the retirement of the Petitioner is shown as 31 January 2020. He would further submit that seniority lists for 2017-18 were prepared by the Petitioner herself. For the year 2019, however, the Petitioner while preparing the seniority list, changed her date of retirement to 31 January 2024. He would further submit that it is only at the fag end of the tenure when she was about to retire, Petitioner has raised this issue.

22. We have heard learned Counsel for the Petitioner. We have heard learned Senior Counsel for Respondent No.2. We have also heard learned Government Pleader for the State. The State Government has supported the stand of Respondent No.2. We have also gone through the copy of the Petition, annextures, affidavit in replies, additional affidavit of the Petitioner and

relevant pleadings.

23. The Petitioner was appointed as a full time Assistant Director with Respondent No.2 on 13 April 2015. It is the case of the Petitioner that clause 39(2)(b) of Rules & Regulations confers powers on the Governing Council to sanction posts and appoint officers (other than the Director of the Society) and employees in its office or office and factory and regulate the terms and conditions of their services. Clause 39(2)(b) does not find the mention of the words "subject to the prior approval of the State Government". Wherever prior approval of the Government is required, the clauses specifically provide for the same. On the other hand, it is the case of Respondents that for increase in the age of retirement in any post which receives grant-in-aid, approval of State Government is necessary considering the financial implications.

24. To appreciate the controversy, it would be pertinent to refer to the relevant provisions of Rules and Regulations of the Respondent No.2-Institution, more particularly, Clause 39(1) and 39(2) . The relevant portion of which reads thus :-

> *"39. (1) The business and affairs of the Society shall be carried on and managed by the Governing Council who may pay all expenses incurred in promoting and registering as a Society and may exercise all such powers*

and authorities of the Society as are not by any statute or by these Rules specifically required to be exercised by the Society in a general meeting.

(2) Without prejudice to the generality of sub-rule (1) above, the Governing Council shall have the following power, namely :-

(a) to manage all the affairs and funds of the Society;

(b) <u>to sanction posts and appoint officers (other than the Director of the Society) and employees in its office or offices and factory and regulate the terms and conditions of their services ;</u>

(c) to acquire by purchase, gift, exchange, lease, hire or otherwise, however, from Government and other public bodies or private individuals movable or immovable properties or other funds together with any attendant obligations and engagements not inconsistent with the objects of the Society and the provisions of the rules ;

(d) to sell, mortgage, charge, lease, exchange and otherwise transfer or dispose of any movable or immovable property of the Society, provided that no immovable property of the Society shall be sold without the prior approval in writing of the Government ;

(e) <u>with prior consent in writing of the Government to borrow</u> or raise moneys which may be required for the purposes of the Society upon bonds, debentures, promissory notes or other obligations, or securities of the Society or by mortgage, charge, hypothecation or pledge of any movable or immovable properties of the Society and <u>on such terms and conditions as the Government may sanction ;</u>

(f) --------"

(emphasis supplied by us)

25. It would be also pertinent to make a reference to the relevant portion of the Rules regulating recruitment to the post of an Assistant Director in the various departments of Haffkine Institute for Training, Research and Testing (Recruitment Rules, 2011). Clause 7 as amended by Governing Council on 4 March 2015 reads thus :-

> *"7. The age of retirement for Assistant Director who is a recognised Post Graduate teacher & guide shall be 62 years & while the Assistant Director who is not recognised Post Graduate teacher & guide shall retire on completion of 58 years."*

26. No doubt provisions of Clause 39(2)(b) do not contain the words "with the prior approval of the government". The question therefore that arises for consideration is whether mere omission of the words "with prior approval of the government" would confer absolute discretion on the Governing Council to increase retirement age of the Assistant Director *dehors* the other relevant circumstances brought on record. In our opinion, mere omission of the words "with the prior approval of the government" in clause 39(2)(b) would not by itself be sufficient to hold that the government has no role in the matter of grant of approval to increase in the age of the retirement of the Assistant Director. The said clause cannot be read in isolation and ignoring the other circumstances governing the employment of the Petitioner and for the reasons hereinafter stated.

27. It was vehemently submitted by learned Counsel for the Petitioner that Governing Council in its 51st meeting has approved the increase in age of the retirement to 58 years to 62 years for the post of Assistant Director. It is however, pertinent to note that the decision of the Governing Council in its 49th meeting as approved in the 51st meeting has not been implemented. It cannot be lost sight of the fact that admittedly the Institute is aided Institute receiving aid from the Government. The salaries of the staff/ employees are paid from the government grants. The Institute receives 100% salary grant from the State Government in respect of salaries for all posts in the Institute. The learned Counsel for the Respondent No.2 stated that as salaries are paid from the government grants, any change / any increase in the age of the retirement for a post has financial implications and consequently on the grant. In our opinion, Respondent No.2 is justified in relying upon clause 19 of the circular dated 14 November 2014 issued by the Finance Department, Government of Maharashtra to all government aided entities which makes it abundantly clear that any decision inconsistent with the law/ rules and regulations of the government should not be taken without approval of the concerned administrative and Finance Department. Thus, State Government is not unjustified in its stand that permission/sanction of the government will be required if the retirement age for any post in the Institute is to be increased.

28. At this juncture it needs to be stated and as record would reveal that even Respondent No.2 – Institute has correctly understood this position. We note that the resolution dated 3 October 2011 of the Governing Council in its 49th meeting records that the said decision should be sent to the State Government for further action. Accordingly, resolution of the Governing Council in relation to the increase in age of retirement of various posts was forwarded to the State Government vide its letter dated 28 December 2011 for its approval. No doubt that decision of the Governing Council in 49th meeting to increase the age of retirement of Assistant Director from 58 to 62 years was approved by the Governing Council in its 51st meeting, but as per the own showing of the Institute, the same was never implemented.

29. It is material on note that the Governing Council in 52nd meeting held on 21 January 2014 has unanimously approved that the terms and conditions of the services of employees of the Institute will be followed in accordance with the government terms and conditions since the recruitment rules (amended in the 49th meeting) as approved in the 51st meeting were not proper. There is thus substance in the stand of the Respondent No.2 that resolution passed in the 52nd meeting of the Governing Council invalidates / nullifies the decision taken in 49th meeting thereby

keeping retirment age of the Director, Deputy Director, Assistant Director of the Institute as 58 years.

30. That the Respondent No.2 was well aware about getting approval of the State Government is further fortified by another circumstance. It has come on record that the decision of the Governing Council meeting held on 23 June 2009 to apply the pay scale recommended by 6th Pay Commission was stayed by the Government since the same was taken without seeking approval of the Government before making the 6th Pay Commission applicable to the Institute. A fresh proposal was directed to be submitted which was then approved by the State Government and excess payment was directed to be recovered from the concerned employees. We may also note that even in the minutes of the 49th meeting of the Governing Council there is a direction to place this decision regarding increase in the age of retirement of Scientist, Director, Deputy Director before the State Government. So far as approval in 51st meeting is concerned, the ex-Director of the Institute vide letter dated 1 June 2016 to the Government has questioned of validity / suitability of the amendment and sought clarification and guidelines from the Government regarding increase in the age of retirement from 58 to 65 for the Directors post and 62 for the Deputy Director and Assistant Directors post.

31. Considering that Institute receives 100% salary grants and that the Institute has itself taken a decision in the 52nd meeting of the Governing Council held on 21 January 2014 that the terms and conditions of the services of the employees of the Institute would be followed in accordance with the government terms and conditions, it would be impermissible for the Petitioner to base her claim only on the recruitment rules (amended in the 49th meeting) as approved in the 51st meeting. The Petitioner is not justified in relying upon the amendment to the increase in the age of the retirement approved by the Governing Council in the 51st meeting in support of her case.

32. It is also pertinent to note that at the time when the Petitioner was appointed on 13 April 2015, the Petitioner herself had filled up a handwritten form in which she had written and acknowledged the date of retirement to be 31 January 2020. Even the seniority list of 2016 till 2018, of which seniority lists of 2017 & 2018 were prepared by the Petitioner herself, reveals that the date of appointment of the Petitioner as 12 May 2015 and her date of retirement as 31 February 2020. It is only when the Petitioner was made in-charge Director in the year 2019, her date of retirement is changed to 31 January 2024. In respect of the seniority list of the year 2020, the Petitioner not only reflected her date of retirement as 31 January 2024, but also changed the date

of retirement of the Director – Dr. Shashikant Prabhakar Vaidya for the first time from 31 January 2023 to 31 March 2027.

33. We have therefore no hesitation in accepting the stand of Respondent No.2 that it is at the very fag end of the Petitioner's tenure when she was about to retire, the Petitioner has sought to raise this issue. We do not find any error in the approach of the State Government in that the State Government by its letter dated 30 January 2020 has conveyed to the Director of the Respondent No.2 its decision rejecting the proposal for increasing the age of retirement for the posts of Director, Deputy Director and Assistant Director. It has even been the consistent stand of the Respondent No.2 throughout that approval and sanction of the State Government is required for any increase in the age of the retirement. The resolution of the Governing Council in its 49th meeting and subsequent approval in the 51st meeting to increase the age of the retirement of Assistant Director to 62 years is of no consequence as immediately thereafter in the 52nd meeting, the Institute has unanimously approved that the terms and condition of the services of the employees of the Institute would be followed in accordance with the government terms and conditions since recruitment rules as approved in the 51st meeting was not proper. Thus resolution passed in the 52nd meeting of the Governing Council virtually invalidates/nullifies the decision taken in 49th meeting thereby maintaining the retirement age of the Director,

Deputy Director and Assistant Director of the Institute as 58 years.

34. Learned Counsel for the Petitioner has relied upon various decisions of the Hon'ble Supreme Court mentioned in paragraph 17 hereinabove in support of his propositions that

(a) if law requires something to be done in a particular manner then it has to be done in that particular manner only and in no other way;

(b) the bye-laws framed under the Statute would have the force of law and therefore in the present case it is the Memorandum of Association and rules and regulations as amended that would have the force of law;

(c) There can be no estoppel against the law. Merely because the Institute has sought approval of the proposal to increase the age of the retirement from the State Government does not estop the Institute to increase the retirement age as the Memorandum of Association specifically confers power on the Governing Council to regulate the terms and conditions of the services in the post of Assistant Director.

35. The legal principles enunciated are well settled by the Hon'ble Supreme Court. However, the same will not apply to the facts of the present case, as though the Memorandum of

Association provides for power to the Governing Council for regulating the terms and conditions of service in the post of Assistant Director, the same cannot be read in isolation, oblivious to the fact that Institute receives 100% salary grant-in-aid and that increase in the retirement age would have financial implications on the salary grant. Further, as we have discussed earlier the Institute unanimously approved that the terms and conditions of the service of the employees of the Institute would be followed in accordance with the government terms and conditions. Even the approval granted to the increase in retirement age in the 51st meeting has been held to be improper by the Institute itself in the resolution passed in 52nd meeting of the Governing Council.

36. In this light of the matter and having regard to the fact that Respondent No.2 - Institute receives 100% salary grants from the Government and considering that increase in the age of the retirement will have financial implications, further that the Institute on its own showing was always aware of the position that approval /sanction of the Government is needed for any increase in the age of the retirement, we see no reason to fault the decision of the Institute & the Government to retire the Petitioner at the age of 58 years.

37. In the light of the view that we have taken, it is not

necessary for us to go into the other contention raised by learned Counsel for the Petitioner that the Petitioner possesses the requisite qualifications to continue till 62 years of age.

38. Consequently, we find no merit in this Petition. The Writ Petition is dismissed with no order as to costs. Rule is discharged.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**

Urmila P. Ingle Digitally signed by Urmila P. Ingle Date: 2020.03.12 10:53:40 +0530