

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.38362 of 2005
and W.M.P.No.41050 of 2005

M.Kaliyamoorthy

... Petitioner

vs.

1. The Board of Governors of National Institute of Technology, Trichy, rep. by its Chairman, R.Seshasayee, Managing Director, Ashok Leyland Ltd, 19, Rajaji Salai, Chennai - 600 001.
 2. The Director, National Institute of Technology, Tiruchirapalli - 625 015.
 3. The Screening Committee, National Institute of Technology, Tiruchirapalli - 625 015.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the 2nd Respondent's proceedings in Rc.No.133/A2/2004 dated 13.10.2005 and quash the same and direct the Respondents 1 and 2 to consider the Petitioner's representations dated 28.10.2005 and 04.11.2005, respectively, and to extend the service of the Petitioner beyond 30.11.2005 and upto the age of 60 years.

For Petitioner : Mr.Alagu Gowtham
for Mr.M.Muthappan

For Respondents 1 to 3 : Mr.K.Srinivasa Murthy,
Sr. Central Govt. Standing Counsel

O R D E R

Petitioner has come up with the present Writ Petition seeking to quash the proceedings dated 13.10.2005 passed by the 2nd Respondent vide Rc.No.133/A2/2004 and for a consequential direction to the Respondents 1 and 2 to consider his representations dated 28.10.2005 and 04.11.2005, and to extend his service beyond 30.11.2005 and upto the age of 60 years.

2. According to the Petitioner, he entered the services of the 2nd Respondent/National Institute of Technology, Trichy, as Guard-cum-Helper on 05.05.1982. In respect of superannuation of teaching and non-teaching staff, the 1st Respondent issued a Memorandum dated 12.11.2003 that, the faculty (Teaching staff) of National Institute of Technology shall be allowed to serve upto the age of 62 years and no further extension of service shall be given thereafter. Whereas, the non-teaching staff of all NITs shall be allowed to serve upto the age of 60 years subject to the condition that their further continuation in service beyond 58 years of age shall be subject to the approval of Board of Governors, based on the recommendation of the Screening Committee constituted to assess the suitability of the employee.

3. As per Office Memorandum issued by the Central Government, the composition of the Screening Committee is as follows:

"3(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."

4. It is the contention of the Petitioner that, the said Memorandum is much discriminating from teaching staff of the same Institute, as in other Institutes like IIT, the age of retirement of non-teaching staff is uniformly 60 years and they need not appear before any Screening Committee.

5. It is further stated by the Petitioner that, during the assessment of extension of service by the Screening Committee, his Annual Confidential Report was called for from the Head of Department and he learnt that, the former Director-Incharge had obtained a revised adverse Report about him and consequently, the Screening Committee declined to recommend for extension of service and the same was approved by the Board of Governors in the meeting held on 30.10.2005. Consequently, the 2nd Respondent allowed the Petitioner to retire from service w.e.f. 30.11.2005 vide proceedings in Rc.No.133/A2/2004, dated 13.10.2005. Pursuant thereto, the Petitioner made representations to the Respondents on 28.10.2005 and 04.11.2005, to permit him to continue in

service upto the age of 60 years. As no order has been passed, the Petitioner has come up with the present Writ Petition.

6. Learned counsel for the Petitioner submitted that, the retirement age of 58 years has to be exercised in an amicable manner and that, the Petitioner has every right to continue in service till the age of 60 years, unless and otherwise, the Respondent/Institute establishes that, the Petitioner is not healthy or did not pass Departmental Examination, if any, or has any black mark in his service. It is his contention that, the Report of the Screening Committee has not been communicated to the Petitioner, in order to put forth his objections on the Screening Committee's views, which amounts to clear violation of the principles of natural justice.

7. In reply, learned counsel appearing for the Respondents contended that, the High Court cannot convert itself into an Administrative Authority to decide as to whether a person should continue beyond the age of 58 years in service. Even assuming for the sake of argument that, the Petitioner is healthy and no complaint is made against him, it is left to the discretion of the Screening Committee to recommend him to continue in service beyond 58 years.

8. In support of his stand, learned counsel appearing for the Respondents relied on an Apex Court decision in the case of State Bank of Bikaner & Jaipur vs. Jag Mohan Lal (1989 Supp (1) SCC 221). In the said case, on refusal of the Appellant Bank to grant extension to the Respondent therein upon his completion of 58 years of age, the Respondent moved the High Court under Article 226 of the Constitution of India. The Single Judge refused to grant the relief, whereas, the Division Bench, in the Appeal, interfered with the exercise of discretion of the Bank on the ground of non-application of mind and on collateral and arbitrary grounds. The Bank had sought to justify its decision before the Apex Court on the ground that, extension was not desirable in their interest, as provided in the proviso to Regulation 19(1) of State Bank of Bikaner & Jaipur (Officers') Service Regulations, 1979 and the Apex Court allowed the Appeal filed by the Bank. For better appreciation, relevant portion of the said judgment reads thus:

"9. It seems to us that the High Court has misconstrued the legal right claimed by the respondent. The right to get extension of service beyond the age of superannuation has received consideration of this Court in several cases. In State of Assam v. Basanta Kumar Das [(1973) 1 SCC 461 : 1973 SCC (L&S) 239 : (1973) 3 SCR 158] . after reviewing almost all the earlier decisions [Kailash Chandra v. Union of

India [(1962) 1 SCR 374 : AIR 1961 SC 1346 : (1961) 2 LLJ 639] ; B.N. Mishra v. State of U. P. [(1965) 1 SCR 693 : AIR 1965 SC 1567 : (1966) 1 LLJ 45] and State of Assam v. Premadhar [(1970) 2 SCC 211 : (1971) 1 SCR 503]], this Court said: (SCR p. 165 : SCC p. 467, paras 16 and 18)

"A government servant has no right to continue in service beyond the age of superannuation and if he is retained beyond that age it is only in exercise of the discretion of the Government....

The fact that certain persons were found fit to be continued in service does not mean that others who were not so found fit had been discriminated against. Otherwise the whole idea of continuing only efficient people in service even after they had completed 55 years becomes only meaningless."

11. Look at the language of the proviso and the purpose underlying it. The Bank may in its discretion extend the service of any officer. On what ground? For what purpose? That has been also made clear in the proviso itself. It states "should such extension be deemed desirable in the interest of the Bank". The sole purpose of giving extension of service is, therefore, to promote the interest of the Bank and not to confer any benefit on the retiring officers. Incidentally the extension may benefit retired officials. But it is incorrect to state that it is a conferment of benefit or privilege on officers. The officers upon attaining the age of superannuation or putting the required number of years of service do not earn that benefit or privilege. The High Court has completely misunderstood the nature of right and purpose of the proviso. The proviso preserves discretion to the Bank. It is a discretion available with every employer, every management, State or otherwise. If the Bank considers that the service of an officer is desirable in the interest of the Bank, it may allow him to continue in service beyond the age of superannuation. If the Bank considers that the service of an officer is not required beyond superannuation, it is an end of the

matter. It is no reflection on the officer.
It carries no stigma."

9. Heard the learned counsel on either side and perused the material documents available on record.

10. In the case on hand, the Petitioner has made representations to the Respondents on 28.10.2005 and 04.11.2005, while he was in service, seeking extension of service beyond 58 years. He was allowed to retire from service on 30.11.2005 and immediately after his retirement, he filed the present Writ Petition. It is seen that, the Screening Committee has declined to recommend the Petitioner's name for extension of service beyond 58 years. In the case of State Bank of Bikaner & Jaipur vs. Jag Mohan Lal (cited supra), the Apex Court has clearly held that, if the Bank considers that, the service of an Officer is desirable in the interest of the Bank, it may allow him to continue in service beyond the age of superannuation and that, if the Bank considers that, the service of an Officer is not required beyond superannuation, it is an end of the matter.

11. In view of the ratio laid down in the decision cited supra, this Court is of the view that, the proceedings of the 2nd Respondent herein cannot be interfered with by this Court, unless and otherwise, it is an arbitrary one. This Court cannot act as an Administrative Authority of the Respondents and direct them to permit the Petitioner to continue in service till 60 years and pay him salary for the extended period of two years. As held by the Apex Court, it is the discretion of the employer to allow an employee to continue in service beyond the age of superannuation. I find much force in the contentions of the learned counsel appearing for the Respondents.

Accordingly, the Writ Petition stands dismissed, as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CJ Conf)

//True copy//

Sub Assistant Registrar

(aeb/jas)

To:

1. The Director,
National Institute of Technology,
Tiruchirapalli - 625 015.

2. The Screening Committee,
National Institute of Technology,
Tiruchirapalli - 625 015.

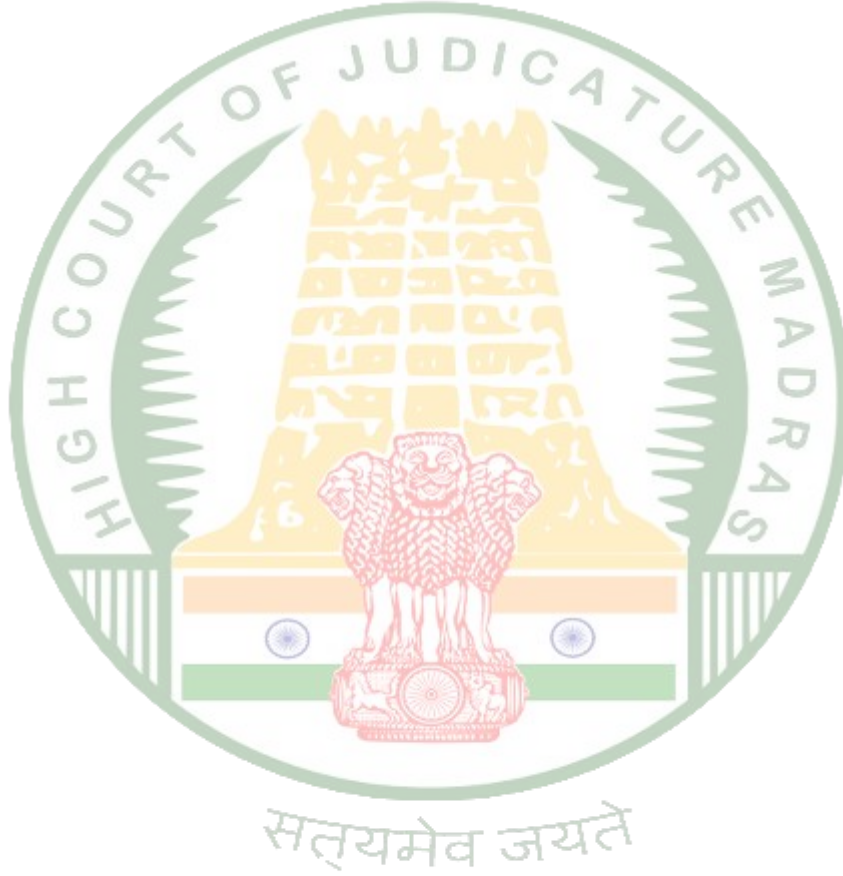
+1cc to Mr.M.Muthappan, Advocate SR.No.30658

W.P.No.38362 of 2005

and

W.M.P.No.41050 of 2005

GP (CO)
GMY (18/11/2020)



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