DR. L.P. AGARWAL

v.

UNION OF INDIA AND ORS.

[KULDIP SINGH AND DR. A.S. ANAND, JJ.]

JULY 21, 1992

Civil Service—All India Institute of Medical Sciences Regulations, 1958—Regulations 30(2), 30(3) 35 read with Rule 56(i) of the Fundamental Rules—Post of Director, AIIMS—Tenure post—"Tenure"—Construction —Retirement before completion of tenure—Legality of.

The appellant was appointed as Director, AIIMS, with effect from 18.2.1979 for a period of five years or till he attained the age of 62 years whichever was earlier. With effect from 19.2.1980 he was confirmed in the said post.

On 24.11.1980 the appellant was prematurely retired from service in public interest by giving him three months pay and allowances, in lieu of notice.

The appellant challenged the order of the Institute-Body filing a writ petition under Article 226 of the Constitution of India before the High Court.

The respondents contended before the High Court that the appellant was retired under Regulation 30(3) of the All India Institute of Medical Sciences Regulations, 1958 in public interest after he attained the age of 55 years; that Fundamental Rule 56(j) was also applicable to the AIIMS employees by virtue of Regulation 35 of the Regulations; that even if Regulation 30(3) was not attracted, the Institute had the power to prematurely retire the appellant, in public interest, under Fundamental Rule 56(j); and that despite the fact that the appellant was on a tenure post there was no bar to prematurely retire him by invoking either Regulation 30(3) of Fundamental Rule 56(j).

The appellant on the other hand contended before the High Court that the post of Director of the AIIMS is a tenure post under the Recruitment Rules of the Institute and he was appointed to the said post by way

A of direct recruitment; that his tenure could not be cut short by bringing in the concept of superannuation or premature retirement which was alien to a tenure post.

The High Court dismissed the writ petition, against which the present appeal by special leave was filed before this Court.

B

The appellant reiterated the contentions made by him before the High Court, in this appeal.

On the question, "whether the incumbent of the post of Director, C AIIMS could be pematurely retired before the completion of his tenure?" Allowing the appeal of the employee-doctor, this Court,

HELD 1.01. 'Tenure' means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes D to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. [577F]

E 1.02. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service-conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under proviso to Regulation 30(2) of the All India Institute of F Medical Sciences Regulations, 1958 only shows that no employee of the AIIMS can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute-Services. [577C]

1.03. Simply because the appointment order of the appellant mentions that "he is appointed for a period of five years or till he attains the G age of 62 years", the appointment does not cease to be a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. Can such person be retired prematurely curtailing his tenure of five years? Obviously not. The appointment of the appellant was on a five years tenure but it could be curtailed in the event H of his attaining the age of 62 years before completing the said tenure. The

High Court failed to appreciate the simple alphabet of the service jurisprudence. [577D-E] A

1.04. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not therefore have been prematurely retired and that too without being put on any notice whatsoever. [577G-H] B

1.05 Since the appellant has since attained the age of 62 years, there is no question of reinstating him in the office of the Director of the AIIMS. He shall, however, be entitled to his salary less the non practising allowance, for the period from December 1, 1981 to January 21, 1984. [578D] C

Dr. Bool Chand **v.** *The Chancellor, Kurukshetra University,* **[1968] 1 S.C.R. 434 and** *Dr. D.C. Saxena* **v.** *State of Haryana,* **[1987] 3 S.C.R. 346, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 227 of 1982. D

WITH

C.M.P No. 7004/85, I.A. No. 1/91.

From the Judgment and Order dated 7.12.81 of the Delhi High Court in C.W.No. 1673 of 1980. E

Appellant-In-Person.

J.D.Jain, A.K.Ganguli, Ms. Indira Sawhney, C.V. Subba Rao and A.Mariaputham for the Respondents. F

The Judgment of the Court was delivered by

KULDIP SINGH, J. Dr. L.P. Agarwal was appointed as Director, All India Institute of Medical Sciences, New Delhi (AIIMS) with effect from February 18, 1979. The appointment order dated April 6, 1979 stated that he was appointed as Director "for a period of five years, or till he attains the age of 62 years, whichever is earlier". He was confirmed in the said post with effect from February 19, 1980. By an order dated November 24, 1980 he was retired from service, in the public interest, with immediate effect, by giving him three months pay and allowances, in lieu of notice. G H

A The Recruitment Rules governing the post of Director provide direct recruitment as the only method of recruitment to the said post. The post of Director, under the Rules, is a tenure post for five years inclusive of one year probation.

B The question for our consideration is whether the incumbent of the post of Director, AIIMS can be prematurely retired before the completion of his tenure ? In other words whether the service law concept of "premature retirement in public interest" is applicable to a tenure post filled by way of direct recruitment.

C Dr. L.P. Agarwal entered the service of the AIIMS as a Professor of Ophthalmology on February 23, 1959 at the age of 37 years. He was appointed Dean of the AIIMS on November 19, 1977 being the senior-most member of the staff. He was also appointed Chief Organiser of Dr. Rajendra Prasad Eye Centre in the AIIMS. The post of the Director of D the AIIMS fell vacant in November, 1978 and nominations of suitable candidates were invited from all the Vice-Chancellors of the Indian Universities and also from Institutions of Medical Education and Medical Research in the Country. The Special Selection Committee met on February 7, 1979 and recommended the name of Dr. L.P. Agarwal for E appointment as Director. The recommendation was accepted by the Institute-Body and was approved by the Government of India. The then president of the AIIMS, thereupon issued the memorandum dated April 6, 1979 appointing Dr. L.P. Agarwal as Director of the AIIMS with effect from February 18, 1979, the date from which he was officiating as Director. The said memorandum reads as under :-

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"All India Institute of Medial Sciences"
Ansari Nagar
New Delhi-10016.

6th April, 1979

G

Subject : Appointment of Director and Professor of Ophthalmology of AIIMS, New Delhi.

MEMORANDUM

H With the approval of the Central Government as conveyed by

its letter No. V.16012/38/78-ME (PG) dated 4.4.1979, Dr. L.P. Agarwal, Chief Organiser & Professor of Ophthalmology, Dr. R.P. Centre for Ophthalmic Sciences, New Delhi, is hereby appointed as Director & Professor of Ophthalmology, All India Institute of Medical Sciences, New Delhi, with effect from 18.2.1979, for a period of five years, or till he attains the age of 62 years, whichever is earlier.

He will be paid remuneration at the rate of Rs. 3,500 per month (fixed) with effect from the date aforesaid mentioned.

Sd/- Dr. M.M.S. Sidhu
President All India Institute of Medical Sciences,
Ansari Nagar, New Delhi- 29"

According to Dr. Agarwal he was congratulated by the Institute-Body and also by the President of the AIIMS for doing effective and efficient work during the period of probation. He earned excellent report for the year 1979-80. He was confirmed in the post of the Director of the AIIMS with effect from February 19, 1980 by a resolution of the Institute-Body passed in the meeting held on February 14, 1980. The confirmation order dated February 15, 1980 reads as under :-

"Dr. M.M.S.SIDHU,
M.P. PRESIDENT

ALL INDIA INSTITUTE OF MEDICAL SCIENCES,
ANSARI NAGAR, NEW DELHI- 16

15th February, 1980

MEMORADUM

Subject : Confirmation of Prof.L.P. Agarwal, Director, AIIMS, New Delhi..

On satisfactory completion of usual probationary period, the Institute at their meeting held on 14th February, 1980 has approved the confirmation of Dr. L.P. Agarwal in the post of Director of the All India Institute of Medical Sciences, w.e.f. 19.2.80 (Forenoon). Accordingly, Dr. L.P. Agarwal is con-

A firmed in the post of Director, AIIMS w.e.f. 19.2.1980 (Forenoon).

The other conditions of his service shall remain unaltered.

Sd/- M.M.S. Sidhu
B PRESIDENT
15.2.1980"

Unfortunately for Dr. L.P.Agarwal, the Institute-Body in its meeting held on November 24, 1980 decided to prematurely retire him from service. The resolution is reproduced hereunder :-
C

"RESOLUTION

The Institute resolves, in the public interest, to retire Dr. L.P. Agarwal, Director, All India Institute of Medical Sciences, New Delhi, with immediate effect, by giving him three months' pay
D and allowances, in lieu of notice".

Dr. L.P. Agarwal challenged the above quoted resolution of the Institute-Body by way of a writ petition under Article 226 of the Constitution of India before Delhi High Court on several grounds. On the basis of
E the rival contentions of the parties, the High Court formulated the following points for its consideration:-

1. Who was the appointing authority of the petitioner and in consequence the authority who could compulsorily retire the petitioner when the compulsory retirement is not by way of a
F penalty imposed after disciplinary action ?

2. Whether the prior approval of the Central Government was necessary to compulsorily retire the Director of the Institute.

3. Whether the Director of the Institute and for the matter of
G that the petitioner could be compulsorily retired under Regulation 30 (3) ? Alternatively, whether compulsory retirement is permissible under F.R. 56(j) read with Regulation 35 ? If so, what would be the effect of the stand of the contesting respondents that the petitioner was compulsorily retired by virtue of
H the provisions of Regulations 30(3).

4. Whether the provisions of Regulation 30(3) or alternatively of F.R. 56(j) would apply to a tenure post and, particularly, to the tenure post to which the petitioner was appointed ? A

5. Whether the resolution to compulsorily retired the petitioner was properly and legally moved at the meeting of the Institute Body held on November 24, 1980 ? B

6. Whether the decision to compulsorily retire the petitioner was arrived at by considering relevant material germane to the issue of compulsory retirement ?

7. Whether the decision to compulsorily retire the petitioner is vitiated by *mala fides* and amounts to arbitrary exercise of power. C

8. Whether the petitioner, even if it is held that he has been validly compulsorily retired from the post of Director, continues to hold the post of a Professor of Ophthalmology in the Institute." D

A Division Bench of the Delhi High Court by its judgment dated December 7, 1981 rejected all the contentions raised by the petitioner and decided all the points against him. The writ petition was dismissed leaving the parties to bear their own respective costs. This appeal by way of special leave is against the judgment of the Division Bench of the Delhi High Court. E

The appellant contended before the High Court and reiterated in the special leave petition before this Court that he was appointed by the Janta Government and after the change of the Government he was removed from the post of Director on the ground that he had close links with the Janta party, Shri C.B. Gupta and Shri Raj Narain. He alleged *mala fide* against the then Health Minister and various other authorities. As mentioned above, the High Court rejected all the contentions raised by the appellant including the challenge based on legal and factual *mala fide.* F G

It is not necessary for us to go into the various points formulated and decided by the High Court as we are of the view that the appellant must succeed on the sole question which we have posed in the beginning of this judgment. H

Regulation 30 of the All India Institute of Medical Sciences Regulations, 1958 (Regulations) which deals with superannuation and pre-mature retirement reads as under :-

"30 (1) The age of superannuation of the employees of the Institute other than members of the teaching faculty and class IV employees shall be 58 years. Provided that the non-faculty employees may be granted extension of service or re-employment upto the age of 60 years under very special circumstances for reasons to be recorded in writing on the merits of each such case and subject to physical fitness and continued efficiency of the employee concerned.

(2) the age of superannuation of the members of the teaching faculty and class IV employees shall be 60 years. Provided that the services of the members of the teaching faculty may be retained upto the age of 62 years in cases of persons who are exceptionally talented for reasons to be recorded in writing on the merits of each such case and subject to physical fitness and continued efficiency of the person concerned.

3. Notwithstanding anything in sub-regulations (1) and (2), the appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any employee of the Institute by giving him notice of not less than three months in writing or three month's pay and allowance in lieu of such notice :

(i) if he is a Group A or Group B service or post and had entered the service of the Institute before attaining the age of thirty five years; after he has attained the age of fifty years; and

(ii) in any other case, after he has attained the age of fifty-five years : Provided that nothing in this sub-regulation shall apply to an employee in Group D service or post who entered service on or before the 1.12.62.

(4) *** *** ***

EXPLANATION :

> In this regulation the expression member of the teaching faculty, means "Professors, Associate Professors, Assistant Professors and Lecturers" and such other employees of the Institution as may be declared to be member of teaching faculty by the Central Government. "

Regulation 35 of the Regulations which provides for other conditions of service is reproduced as under :-

> "35. In respect of matters not provided of in these regulations, the rules as applicable to Central Government Servants regarding the general conditions of service, pay, allowances including travelling and daily allowances, leave salary, joining time, foreign service terms etc., and orders and decisions issued in this regard by the Central Government from time to time shall apply *mutatis mutandis* to the employees of the Institute."

The respondents argued before the High Court that the appellant was retired by the AIIMS under Regulation 30(3) of the Regulations in public interest after he attained the age of 55 years. It was further contended that fundamental Rule 56(j) was also applicable to the AIIMS employees by virtue of Regulation 35 of the Regulations. It was argued that even if Regulation 30(3) was not attracted the Institute had the power to prematurely retire the appellant, in public interest, under fundamental Rule 56(j) applicable to the Central Government employees. It was contended that despite the fact that the appellant was on a tenure post there was no bar to prematurely retire him by invoking either Regulation 30(3) or fundamental Rule 56(j).

The appellant on the other hand contended before the High Court and reiterated the same before us that the post of Director of the AIIMS is a tenure post under the Recruitment Rules of the Institute and he was appointed to the said post by way of direct recruitment. According to him his tenure could not be cut short by bringing in the concept of superannuation or premature retirement which is allien to a tenure post.

The High Court rejected the contention of the appellant on the following reasoning :-

> "Though the Director's post is mentioned as a tenure post in

A the amended schedule to the recruitment rules relied upon (and at this stage we make no comment as to whether the said rules are statutory), the petitioner's appointment itself was for a period of 5 years or the date when he attains the age of 62 years, whichever is earlier.....In our view, reading the order of appointment of the petitioner the concept of superannuation B is to be clearly found to be existing. The order of appointment does not state that the petitioner was being appointed Director for a period of 5 years or on a tenure of 5 years. The tenure mentioned in the appointment order is 5 years or attainment of the age of 62 years, whichever is earlier. The age of 62 years C mentioned in the appointment order is obviously in consequence of the proviso to Regulation 30(2) which permits the normal age of superannuation to the extended from 60 years to 62 years for members of the teaching faculty in cases of persons who are exceptionally talented, subject of course to D their physical fitness and continued efficiency. The petitioner cannot be heard to say that he was appointed for a tenure of 5 years. The post may or may not be tenure post what is relevant is the terms on which the petitioner was appointed.....We now turn to the argument regarding what the petitioner claims to be a statutory rules which respondents 1 to 3 say is not a E statutory rule. We need not express any firm opinion as to whether the rule relied upon is or is not statutory. The Schedule relied upon is of the Recruitment Rules. It states that the post of the Director is as Class I post to be filled direct recruitment. The upper age limit for the post is 50 years and the tenure is F 5 years inclusive of one year probation. As the Supreme Court had held in *Dr. Bool Chand's* case the tenure of 5 years fixed by the rules is a limitation placed upon the appointing authority and does not create an indefeasible right in the person appointed as Director to a five year term. In any case, as we have held earlier, the petitioner is bound by the terms of his own G appointment which was to the effect that the tenure was to be of five years or till the petitioner attained the age of 62 years whichever was earlier. Indeed, the manner in which the appointment order is worded makes it clear that the appointing authority was conscious of the limitation placed upon it that

H

the tenure should not be more than 5 years. That is why it fixed the maximum period of tenure at 5 years or till the petitioner attained the age of 62 years, whichever expired earlier". A

We have given our thoughtful consideration to the reasoning and the conclusions reached the High Court. We are not inclined to agree with the same. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service-conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under Proviso to Regulation 30(2) of the Regulations only shows that no employee of the AIIMS can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute-Services. We do not agree that simply because the appointment order of the appellant mentions that "he is appointed for a period of five years or till he attains the age of 62 years", the appointment ceases to be to a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. Can such person be retired prematurely curtailing his tenure of five years? Obviously not. The appointment of the appellant was on a Five Years Tenure but it could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. The High Court failed to appreciate the simple alphabet of the service jurisprudence. The High Court's reasoning is against the clear and unambiguous language of the Recruitment Rules. The said rules provide "Tenure means for five years inclusive of one year probation" and the post is to be filled "by direct recruitment". Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant. The High Court fell into error in reading "the concept of superannuation" in the said order. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not therefore have been prematurely retired and that too without being put on any notice whatsoever. Under what circumstances can an B C D E F G H

A appointment for a tenure be cut short is not a matter which requires our immediate consideration in this case because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only. This Court's judgment in *Dr. Bool Chand,* v. *The Chancellor, Kurukshetra University,* [1968] 1. S.C.R. 434 relied upon by the High Court is not on the joint involved in this case. In that case the tenure of Dr. Bool Chand was curtailed as he was found unfit to continue as Vice-Chancellor having regard to his antecedents which were not disclosed by him at the time of his appointment as Vice-Chancellor. Similarly the judgment in *Dr. D.C. Saxena* v. *State of Haryana,* [1987] 3 S.C.R. 346 has no relevance to the facts of this case.

We, therefore, allow the appeal with costs, set aside the judgment of the High Court, allow the writ petition of the appellant and quash the resolution of the Institute-Body dated November 24, 1980 and the consequent order retiring the appellant. Since the appellant has already attained the age of 62 years, there is no question of reinstating him in the office of the Director of the AIIMS. He shall, however, be entitled to his salary less the non-practising allowance, for the period from December 1, 1981 to January 21, 1984. Respondents 1 and 2 are directed to pay the arrears of the salary to the appellant within three months from today. The appellant shall also be entitled to 12% interest on the said arrears. We quantify the costs as Rs. 10,000.

V.P.R. Appeal allowed.