

(2013) 07 KL CK 0199

In the High Court Of Kerala

Case No : W.A. No. 766 of 2013 in W.P. (C) 5025 of 2011 With W.P. (C) 31533 of 2012. (Against the Order/judgment In W.P. (C) 5025 of 2011 of High Court of Kerala)

Abraham Kuruvilla

APPELLANT

Vs

Sree Chitra Tirunal Institute for Medical Sciences and Technology

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Citation : (2013) 4 KHC 40

Hon'ble Judges : Dr. Manjula Chellur, CJ. and Mr. K. Vinod Chandran, J.

Bench : Division Bench

Advocate : Sri. T. R. Ravi, Standing Counsel, Sree Chitra Tirunal Institute, for the Respondent No. 1; Sri. P. Parameswaran Nair, Assistant Solicitor General of India, for the Respondent No. 3; N. Nandakumara Menon, Senior Advocate, for the Petitioner; Sri. K.R.B. Kaimal, Sr. Advocate, Sri. B. Unnikrishna Kaimal and D. Anil Kumar, Advocates, for the Petitioner; Sri. P. Santhosh Kumar (Panampalli Nagar) and Sri. K.P. Chandrasekhar, Advocates, for the Respondent No. 5

Final Decision : Disposed Off

Judgement

Dr. Manjula Chellur, C.J. - Appellant in W.A.No.766 of 2013 was the writ petitioner before the learned Single Judge. He approached the learned Single Judge challenging appointment of the fifth respondent to the post of Director of the Sree Chitra Tirunal Institute for Medical Sciences and Technology, Thiruvananthapuram (hereinafter referred to as "the Institute").

2. The undisputed facts placed before the Court, in brief, are as under: The writ petitioner was an Additional Professor in the service of the Institute, who was also one of the aspirants for the post of Director of the Institute in pursuance of Exhibit P1 notification. The fifth respondent initially was appointed as Lecturer in Neurology in the Institute and worked between 22.10.1979 and 4.3.1980 and suppressing this fact, he secured employment as Lecturer in Neurology in the Post Graduate Institute of Medical Education and Research, Chandigarh. In spite

of pointing out this fact by the appellant before the selection and appointment process of the fifth respondent, the authorities concerned did not take into consideration such challenge. According to them, Rule 14(a) of the Service and Personnel Conduct Rules of the Institute (hereinafter referred to as "the Rules") was also ignored while reserving lien of the fifth respondent on his appointment as Director. Contrary to this Rule, Exhibit P5 appointment order of the fifth respondent indicated that the fifth respondent will continue to have a lien as Professor in the Department of Neurology. This has adversely affected the prospects of appellant/writ petitioner in getting appointment as Director and also his right to be considered for appointment as Professor of Neurology. When a representation was forwarded to the authorities seeking suspension of the lien of the fifth respondent as Professor followed by another representation, no action was taken, therefore, he had no other remedy other than approaching this court. Other allegations of drawing allowance at the highest rate without owning a car which is unbecoming of a Professor to continue as Director was also raised in the Writ Petition.

3. It was brought on record that the appointment to the post of Director of the Institute was included as item No.6 of the agenda when meeting of the Institute Body was held on 20.7.2009. The Vice Chancellor, University of Kerala Dr. A. Jayakrishnan, who also happens to be a member of the Institute Body, asked for the list of candidates, who had applied, the list of candidates short-listed, the list of candidates interviewed and the list of candidates recommended for the appointment in the order of priority by the Selection Committee. The outgoing Director remarked that such informations could not be disclosed in the meeting and suggested that Dr. Harigopal, representative of Secretary, DST would send those documents to the Vice Chancellor. According to them, such documents were not made available to Dr. A. Jayakrishnan. The contention of the appellant is that awarding a five year term to the first rank candidate, i.e., Prof. Radhakrishnan was also objected to by Dr. A. Jayakrishnan on the ground that Prof. K. Radhakrishnan would exceed the age of superannuation of 65 years, if a five year term is awarded and his appointment has to be for five years or upto 65 years, whichever is earlier, since the existing Personnel and Conduct Rules of the Institute do not permit any one to continue as Director beyond 65 years. The said remark was ignored and the same was not even placed in the minutes presented. According to the appellant, majority of the members of the Institute Body had undue interest in the fifth respondent, therefore, in spite of the fact that the age of superannuation for administrative and other staff is 60 years and the age of superannuation of the members of the faculty in the grade of Professor or Scientist/Engineer-G is 65 years, the fifth respondent was appointed who was 61 years and was granted a five year term of appointment. This would result in continuation as Director beyond 65 years, the maximum age of superannuation provided under the existing Rules. Therefore, the fifth respondent could neither have the lien in the Department of Neurology as a Professor nor continue as Director beyond 65 years, is the contention.

4. As against this, the contention of the first respondent-Institute is as under: The appointment to the post of Director has to be made in accordance with Rule 7(ii) of the Rules. As per the same, a Selection Committee constituted by the Central Government has to recommend the person to the post of Director. The Institute Body, being the appointing authority, appointed the fifth respondent Dr. K. Radhakrishnan as Director of the Institute and the same was communicated by Exhibit P5. They denied the allegation of lack of integrity. According to them, it is unfounded and baseless. It is further stated, for a short span of four months between 22.10.1979 and 4.3.1980 alone he worked in the Institute as Lecturer. The competent authority, who made the selection as well as the appointment, has taken into consideration all complaints and disposed of the same on merits. Therefore, there is no justification in the allegation that the representations given by the appellant were not taken note of. So far as the minutes are concerned, they contend that only final decisions are recorded as minutes, unless any member specifically desires to record such dissenting note. Since all the members agreed upon the decision, the note has no significance and does not affect the final decision. So far as the tenure of the Director, he is appointed on a five year tenure basis and the retirement age prescribed for other staff is irrelevant. The fifth respondent is a renowned Neurologist in a very important specialised area of Neurology and he was appointed for a period of five years while he was holding the post of Head of Department and Senior Grade Professor of Neurology. In the larger public interest, the appointing authority felt appropriate to allow him to continue to extend his expertise to the needy suffering patients. To cope up with the workload, ad hoc appointments are also made against the post of Professor to ensure that patient care is not affected in any manner. The rights of anyone including the appellant is not affected with the appointment of the fifth respondent as his ranking is first. As the post of Professor is a direct recruitment open selection post, the appellant or any other candidate, who is eligible, can apply for the said post when it is notified. So long as the fifth respondent continues as Director with a lien as Professor, no vacancy is available.

5. So far as the counter affidavit of the fifth respondent, after referring to Rule 7(ii) of the Rules, he contends that the Committee constituted under the Rules has recommended his name and accordingly, he is appointed with effect from 1.8.2009. All the complaints were looked into by the authority concerned before the selection process itself. He denies working simultaneously at the Institute in question and also at Chandigarh. After resigning his post as Lecturer in the Institute, he joined back as ad hoc Lecturer on 10.3.1980 at Chandigarh. According to him, his appointment is on a five year tenure basis while he was holding the post of Head of the Department and Senior Grade Professor of Neurology. According to him, his appointment as Director with a lien in the department has not affected the prospects of any one including the appellant. He further denies drawing of any conveyance allowance, which is not admissible to him. According to him, after furnishing certificates to the Institute, whatever

amount admissible to him alone was paid as conveyance allowance. With these averments, he has sought for dismissal of the Writ Petition.

6. The learned Single Judge, after taking into consideration the relevant facts, was of the opinion that going by Section 11(1) of the Sree Chitra Tirunal Institute for Medical Sciences and Technology, Trivandrum, Act, 1980 (hereinafter referred to as "the Act") read with Rule 7(ii) of the Rules framed thereunder, clause 8 of Exhibit P13 (Office Memorandum) does not cover the manner in which the selection has to be made to the post of Director. The first contention that the Appointment Committee of the Cabinet has to approve the selection was not accepted.

7. Regarding the second contention that he was simultaneously working at Chandigarh and also in the Institute, Exhibit P9 was referred to wherein a case report authored by four persons including the fifth respondent was shown as Lecturer in Neurology. The same was received for publication on 17.12.1979. However, it came to be published in 1980 as seen at the top of the page of the journal itself. Therefore, it would only indicate when the case report was received for publication which does not mean the fifth respondent was working at the relevant point of time as Lecturer in Neurology on 17.12.1979 at that Institute. This date, according to the learned Judge, definitely does not indicate he was working under Chandigarh Institute and also the respondent Institute simultaneously. In the absence of material other than Exhibit P9, one cannot conclude that the fifth respondent was simultaneously working at Chandigarh and also the second respondent Institute and that he concealed this fact when he joined at Chandigarh. Then coming to the issue of exercise of lien, the learned Judge opined, it is purely a matter of choice of the Selection Committee to permit him to exercise the lien. The learned Judge opines, prominent professionals like the fifth respondent necessarily must be given a lien to the parent post and if not, possibility of those experts not accepting the Directorship cannot be overlooked. Therefore, having regard to the lien of the services of the professionals, if the Selection Committee or other appointing committee allows the candidate to exercise a lien in respect of his post, it cannot be faulted.

8. Regarding the claim of false conveyance allowance also the learned Judge, based on the factual material, opined that clerical mistakes in the certificate should not be an obstacle to continue him in the post of Director. With these observations, he dismissed the Writ Petition having found no merit in the contentions.

9. Aggrieved by the same, the Writ Appeal is filed contending that none of the grounds raised by the appellant were taken into consideration and according to them, the appellant again reiterated his contention that the Appointment Committee of the Cabinet has to approve the appointment of the fifth respondent to the post of Director, which is a Chief Executive post. Therefore, Exhibit P5 appointment suffers from serious lacuna, hence his appointment is illegal. He further contends that the learned Judge extracted clause (vii) of Exhibit P13

instead of clause (viii), therefore, the opinion of the learned Judge was misguided. Pointing out that none of the provisions of the Act and the Rules prescribes term of appointment of Director, even though the Institute Body followed the term of appointment of other similar Institutes like All India Institute of Medical Sciences, but the wordings in the appointment letter are not properly mentioned indicating that the appointment is for a period of 5 years or till attaining the age of superannuation whichever is earlier. Though the term is for five years, no date on which the fifth respondent has to superannuate is mentioned. All these were not at all considered by the learned Single Judge, is the contention.

10. When the Writ Appeal came up for consideration, it was brought to our notice that a public interest litigation, W.P(C). No.31533 of 2012 is filed by one Dr.Arun Kumar Gupta, who was also earlier working in the very same respondent Institute and who also was an aspirant to the post of Director of the Institute. In other words, the appellant in the Writ Appeal and this writ petitioner also applied to the post of Director along with others including the fifth respondent, when the earlier Director's tenure came to an end. The relief in the Writ Petition indicates appointment of the fifth respondent as Director to be bad for want of approval of the Appointment Committee of the Cabinet and so also clearance of vigilance angle. He also contends that the appointment order issued by the Institute in favour of the fifth respondent is illegal, as the appointment is for a five year term and the age of superannuation is 65 years as per the Service and Personnel Conduct Rules. Hence, the appointment order for a period of five years is in violation of Central Government Rules governing the superannuation as also concealment of fact of working simultaneously at two places which would reflect on the conduct of the fifth respondent.

11. The writ petitioner also refers to claiming higher rate of conveyance allowance without any basis. He further alleges that there is financial misappropriation amounting to lakhs of rupees by the fifth respondent from an organisation, namely, Epilepsy Self Group registered in 1998 without any institutional or governmental knowledge. According to him, in spite of putting all these facts in the representation made to the Secretary, Department of Science and Technology with a copy to the Appointment Committee of the Cabinet (ACC), represented by the Prime Minister of India, no action whatsoever came to be taken, therefore, he is before this Court in the public interest litigation. According to him, the appointment of the fifth respondent as Director is to be held as illegal for non compliance of the relevant Rules in the matter of appointment violating the procedural obligations, therefore, he has sought for writ of quo-warranto holding that the fifth respondent has no authority to continue in the post as Director of the Institute. He also seeks a declaration that the appointment of the fifth respondent at Exhibit P1 is illegal and unsustainable, apart from seeking quashing of Exhibit P1.

12. The Institute and the fifth respondent have filed their objections on similar

lines as already indicated while referring to the counter affidavit filed by them in the Writ Petition. Therefore, there is no need to repeat the same. The petitioner has filed reply affidavit and additional reply affidavit along with several documents apart from referring to various enactments. We have gone through the records.

13. It is not in dispute that the Sree Chitra Tirunal Institute for Medical Sciences and Technology, Trivandrum came into existence by Act 52 of 1980 declaring the Sree Chitra Tirunal Medical Centre Society for Advanced Studies in Specialities, Trivandrum, in the State of Kerala, to be recognised as an Institution of national importance. The said Act also provides how it is incorporated and other related matters. It is very clear from this enactment that the objects of the Act was to take the institution to a higher pedestal as an institution of national importance. As per Section 3(b) of the Act, the word "Director" defines as Director of the Institute. The composition of the "Institute Body" is at Section 5 of the Act, which consists of Vice-Chancellor of the Kerala University, ex officio; the Director-General of Health Services, ex officio; the Director, ex officio; four members to be nominated by the Central government to represent respectively the Departments or, as the case may be, Ministries of that government dealing with Science and Technology, Health, Finance and Education; two members to be nominated by the State of Kerala to represent respectively the departments or, as the case may be, Ministries of that Government dealing with Planning, Science and Technology and Health, three Scientists of whom two shall be medical Scientists and one shall be a social Scientist, to be nominated by the Central government as per the Rules prescription; three Scientists representing engineering and technology to be nominated by the Central Government in the manner prescribed by rules; the Head of the Biomedical Wing of the Institute, ex officio, three representative of the medical faculties of Indian Universities to be nominated by the Central Government in the manner prescribed by Rules; and lastly, three members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Council of States. The composition of the Institute clearly indicates, the people occupying responsible and high places in the relevant fields and departments representing various institutions are brought into the body, as the aim of the Act was to raise the institution to the status of national importance. Section 11 of the Act deals with the staff of the institute. Section 11(1) of the Act reads as under:

"11. (1) There shall be a chief executive officer of the Institute who shall be designated as the Director of the Institute and shall, subject to such rules as may be made in this behalf, be appointed by the Institute:

Provided that the first Director of the Institute shall be appointed by the Central Government."

14. Sub-section (1) of Section 11 of the Act says, the Institute shall have Chief Executive Officer of the Institute, who shall be designated as the Director of the

Institute and shall, subject to such rules as may be made in this behalf, be appointed by the Institute. Proviso to Section 11(1) clearly indicates that the first Director of the Institute shall be appointed by the Central Government. It would mean, all the appointments to the post of Director subsequent to the first Director has to be made by the Institute as per the Rules prescribed or made in that behalf.

15. Section 25 of the Act clearly indicates that the Central Government has control over the Institute as the Institute is under an obligation to carry out the directions issued by the Central Government from time to time for efficient and effective administration of the Act. Section 31 of the Act deals with power to make Rules to carry out the purposes of the Act. Section 31(2) of the Act indicates matters for which Rules have to be provided. Section 31(2)(f) also refers to appointment of Director under Sub-section (1) of Section 11 of the Act. It also refers to various other aspects with which we are not concerned in the present litigation. Section 32 of the Act refers to power to make regulations authorising the Institute to make regulations consistent with the Acts and Rules with the prior approval of the Central Government.

16. Regulations have to be made in respect of several aspects. Sub-sections (f) and (g) of Section 32(1) of the Act are relevant which read as under:

"(f) the procedure to be followed by the Governing Body and standing and ad hoc committees in the conduct of their business, exercise of their powers and discharge of their functions under section 10;

(g) the powers and functions to be exercised and discharged by the Director under sub-section (3) of Section 11."

17. By notification dated 28.5.1981, rules came to be made, which came into force from the date of publication in the official gazette. Rule 7 is regarding creation of posts and appointments and Rule 7(ii) refers to appointment to the post of Director. Rule 7(i) and (ii) reads as under:

"7. Creation of posts and appointments thereto.- (i) The Institute may create posts, subject to specific provision in the approved budget, classify them into grades and specify their designations provided that any general revision of pay scales, allowances and service benefits shall be effected by the Institute only with the prior approval of the Central Government.

(ii) Appointment to the post of Director shall be made by the Institute on the basis of the recommendations of a Selection Committee constituted by the Central Government consisting of the Secretary, Department of Science and Technology of Government of India as Chairman, the Director-General of Indian Council of Medical Research, the President of the National Academy of Medical Sciences and the President of the Institution of Engineers (India) as members."

Regulations also came to be made by notification dated 23.6.1981 which covers various matters. So far as the controversy before us, Regulations 28 and 30 are

relevant, which read as under:

"28. Qualifications for various posts in the instt.- Age, experience qualifications, scale of pay and other details of posts under the Institute shall be prescribed by the Governing Body keeping in view the qualification and experience as prevalent for similar or comparable posts in Central Government Institutions.

xxx xxx xxx

30. Continuance in force of existing conditions of service.- The tenure, remuneration, terms and conditions of service including leave, pension, gratuity, provident fund and other matters as applicable to the officers and employees of Sree Chitra Tirunal Medical Centre Society for Advanced Studies in Specialities, Trivandrum immediately before the commencement of the Act, shall continue to be in force until amended, altered or repealed in accordance with the Act."

18. Reading of Regulation 30, it is explicitly clear that the existing conditions of service would continue until amended, altered or repealed in accordance with the Act. Regulation 28 authorises the Governing Body to determine age, experience, qualification, scale of pay and other details of various posts under the Institute keeping in view the qualification and experience prescribed in other similar or comparable posts in the Central Government institutions.

19. Exhibit P1 in W(C).No.5025 of 2011 is the notification for the post of Director. Apart from mentioning qualifications and experience, age limit is shown as 60 years. So far as the qualification and experience of the 5th respondent, there is no challenge that he lacks any of the requirements indicated in the notification invited for these post of Director. So far as the age and qualification, the note says, they are relaxable in exceptional cases. The source of power so far as qualifications, experience and age limit is referable to Regulation 28, which authorises the governing body to prescribe age, experience, qualifications, scale of pay and other details of posts under the Institute. The relaxation in exceptional cases is indicated in the notification itself while inviting applications by the Institute. The age limit of 60 years was not even questioned either by the appellant in the Writ Appeal or by the writ petitioner in the public interest litigation at the time of issuance of this notification. We say so because both were aspirants to the post and participated without demur. Only after selection process is completed and when the 5th respondent was appointed, the appellant challenged the selection on several grounds.

20. The main contention seems to be that totally ignoring the office memorandum dated 3.7.2006, the appointment of the fifth respondent as Director came to be made without prior approval of the Appointment Committee of the Cabinet. For this contention they rely on the Office Memorandum shown as Exhibit P2 in the Writ Petition. Items (i) and (viii) of the Office Memorandum are relied upon so far as the contention of approval of the Appointment Committee of the Cabinet. Item (i) of the Office Memorandum reads as under:

"(i) All appointments of Chief Executives, carrying the scale of pay of Rs.18400-22400/- and above, in Central autonomous institutions, that are wholly or substantially funded by the Central Government, should come under the purview of the ACC. This would apply to the appointments of officers (and not non-officials and public figures) and would include posts, which combine the functions of the Chief Executive and Chairman."

It refers to scale of pay of the Chief Executives in the Central autonomous institutions that are wholly or substantially funded by the Central Government and it further says, they should come under the purview of the Appointment Committee of the Cabinet. It also indicates, it applies to the appointment of officers, which combine the functions of Chief Executive and Chairman. Therefore, the stand of the appellant seems to be that the post of Chief Executive, who happens to be the Director as indicated in the Act pertaining to the Institute comes under the purview of the Appointment Committee of the Cabinet, therefore, approval of the Appointment Committee of the Cabinet is required for such appointment.

21. Then coming to item (viii) of the Office Memorandum, as it is clearly indicated that wherever specific statute indicates how an appointment has to be done, it has to be done on the basis of statutory provisions and all other appointments to the post of Chief Executive with the pay scale of 18400-22400/- and above requires the approval of Central Government will be within the purview of the Appointment Committee of the Cabinet. Item (viii) of the Office Memorandum reads as under:

"(viii) All appointments, which are covered by specific statutes, are to be carried out, on the basis of the statutory provisions. Wherever the statutes provide for an appointment, to the post, with the approval of the "Central Government", the appointment to the posts of Chief Executives, of the pay scale of Rs.18400-22400/- and above, will be within the purview of the ACC. In cases of statutes, which do not lay down the manner of recruitment, appropriate rules may be framed, under these statutes, for such recruitments, in such a way that they are in harmony with the extant orders of the ACC."

The first sentence of item (viii) clearly indicates that wherever a statutory provision is made for the appointment of a particular post, it has to be based on the statutory provision. Therefore, reading of items (i) and (viii), it is clear that if a provision exists in the statute for the appointment to a particular post, it has to be strictly adhered to and the executive posts which require approval of the Central Government with a particular pay scale and above, will come within the purview of the Appointment Committee of the Cabinet.

22. One has to now see whether there is a provision in the Statute how a Director, who happens to be the Chief Executive of the Institute is appointed. Appointment to the post of Director is provided under the statute and Rules as indicated above, which clearly indicate, it has to be made by the Institute, on the

basis of the recommendations of the Selection Committee constituted by the Central Government consisting of representatives of several departments and other institutions. In the present case, both the writ petitioners have not raised any challenge so far as constitution of the Selection Committee by the Central Government consisting of representatives of several departments referred to under Rule 7(ii). It is also clearly indicated in the counter affidavit of the Institute, who were the members of the Selection Committee which has to recommend the candidates for the post of Director. They have clearly stated that the Selection Committee was constituted to recommend the names of candidates to the post of Director of the Institute as stipulated in Rule 7(ii). On the recommendations of the Selection Committee constituted by the Central Government with the various representatives, the Institute Body being the appointing authority, has appointed the fifth respondent Dr. K. Radhakrishnan as the Director and the same was communicated to him.

23. Neither Rule 7(i) nor Rule 7(ii), indicates appointment to the post of Director, requires approval of either Central Government or the Appointment Committee of the Cabinet in this regard. Therefore, mere mentioning of a particular post with a particular scale coming under the purview of the Appointment Committee of the Cabinet cannot be equated with a mandate that prior clearance by the Appointment Committee of the Cabinet is a condition precedent for the appointment to the post of Director. Even otherwise, the Office Memorandum clearly indicates in the first sentence of item (viii) that if a statute prescribes how a Director has to be appointed, it has to be done in accordance with the provisions. It is also pertinent that there are instances in which the Office Memorandum at Exhibit P2 refers to specific approval by the ACC and clauses (i) and (viii) only refer to the post being under the purview of the ACC. The Rules made under the Act clearly indicates how appointment of a Director has to be made, therefore, we are of the opinion, the contention of the writ petitioner before the learned Single Judge as also before us that prior approval of the Appointment Committee of the Cabinet is required, has no legs to stand, therefore, we reject the same as untenable.

24. Then coming to prescribing age, as already stated, Regulation 28 empowers the Governing Body to prescribe age, experience, scale of pay and other details of posts. At Exhibit P1 notification, the minimum age prescribed is 60, which is relaxable. This power of the Governing Body cannot be found fault with, as there is clear indication as early as the date of notification. Neither in the Statute nor in the Rules, nor in the Regulations, the age of superannuation of the Director is prescribed. Apparently, Regulation 30 refers to continuation of existing conditions of service till they are amended, altered or repealed in accordance with the Act. The existing Rules are placed as part of the records in the present public interest litigation as Exhibit P11. It refers to categories of staff. The first item is academic pattern, in which Director is the highest academic staff. Second item refers to administrative staff. Here also Director is the highest administrative staff. This could be because a Professor can be a Director, therefore, if the Professor is

appointed as the Director of the Institute, he becomes the highest ranking academician among the academic staff. So also in the administrative wing he becomes the highest ranking officer under the administrative staff pattern. Exhibit P12 is the Service and Personnel Conduct Rules of the Sree Chitra Tirunal Institute for Medical Sciences and Technology. Rule 22 of the said Rules refers to age of superannuation of members of faculty and other administrative staff, which reads as under:

"22. Retirement

a. The age of superannuation shall be 65 years for those members of the faculty who have reached the grade of Professor or Scientist/Engineer G before completing 60 years of age (Ref: Order No.P & A I/X/20/SCTIMST/2009 dated 24.4.2009) and 60 years for administrative and other staff in service. The date of retirement shall be the last day of the month in which the employee attains the age of superannuation.

b. An employee may also be retired: i. On his being declared medically unfit for service by a Medical Board to be constituted by the Appointing Authority in this behalf.

Note:- The medical board should consist of :

1. A specialist in the field
2. A general Physician not below the rank of Civil Surgeon Gr.II/Asst.Professor in Medicine.
3. A General Surgeon not below the rank of Civil Surgeon Gr.II/Asst.Professor in surgery.

ii. On the imposition of the penalty of compulsory retirement."

25. Placing reliance on Rule 22 quoted above, the contention of the appellant in W.A.No.766 of 2013 and the writ petitioner in W.P(C).No.31533 of 2012 seems to be that a Director cannot continue as Chief Executive of administrative staff once he completes the age of 60 years.

26. By virtue of Regulation 28, qualification for various posts in the Institute has to be on par with the qualification and experience as prevalent for similar or comparable posts in Central Government Institutions. Though this specifically did not refer to tenure of office of the Director, it refers to qualification and experience prevalent for similar or comparable posts in other institutions in the aegis of the Central Government. Regulation 30 specifically in unequivocal terms provides that the existing Rules regarding tenure etc. are applicable till such amendment, alteration or repeal is brought in accordance with the Act. Neither under the Act nor under the Rules, nor under the regulations specific tenure of the Director is forthcoming. Similarly, age limit is also not mentioned anywhere. By virtue of Regulation 28, there can be relaxation of age and qualification for various posts in the Institute. Apparently, Dr. K. Radhakrishnan, who was

appointed as Director, was aged 61 years at the time of his appointment in 2009. The tenure in the appointment letter is for a period of five years and it does not provide any provision similar to the post of Director in other Central Government Institutes that the tenure of office is for five years or the age of superannuation, whichever is earlier. As a matter of fact, at the time of selection, one Dr. A. Jayakrishnan did raise such objection, but majority decision was otherwise. In the absence of any specific tenure in the provisions, when Regulation 30 is applicable to the service conditions including the tenure of the staff, we have to refer to service conditions so far as the superannuation of the Director is also concerned. None of the provisions indicate that tenure of the Director is the prerogative of the appointing authority. The appointing authority cannot usurp the powers of the rule/regulation making authority. Therefore, the tenure of office has to be in accordance with the Rules. Sixty five years is prescribed as the age of superannuation for those faculty members who reached the grade of Professor or Scientist/Engineer-G before completing 60 years of age and 60 years is the age of superannuation for other academic and administrative staff in service. The date of retirement shall be the last date of the month in which the employee attains the age of superannuation. So far as the present Director, being a Professor and Head of the Department of Neurology, he was selected as the Director with a lien in the Department. He being the Head of the academic staff, can continue till the age of 65 and as he was discharging the duties of Director and Professor, age of superannuation, at no stretch of imagination, can go beyond the age of 65 years. However, if the age of 65 years is in the midst of a month, retirement shall be the last day of the month.

27. The objective with which the Institute was formed as indicated supra was to upgrade it as an Institution of national importance. That being the object and the purpose for which the enactment came into force and the Institute is functioning as such, it is unfortunate that the tenure of the Director of the Institute is nowhere mentioned, though the Director is the Chief Executive of the Institute. On account of vacuum in the provisions, we are faced with the present situation which is an embarrassment to the Director, who happens to be a noted Professor in Neurology. If care was taken to provide proper provisions for the tenure of the Director, this embarrassment could have been avoided. It is high time the authorities concerned paid attention to that effect and do the needful.

28. So far as the contention that it has to be with the approval of the Appointment Committee of the Cabinet, we are not inclined to accept the contentions raised in this behalf for our reasoning supra. So far as the complaints against the Director, none of them seems to be correct as indicated in the judgment of the learned Single Judge. So far as providing lien in the parent department also, if the appointing authority felt so and as a policy decision it was just and proper in the facts and circumstances, we restrain ourselves in interfering with the said policy decision.

29. However, so far as the age of superannuation of the Director, the present

Director cannot discharge the functions beyond the age of superannuation of 65 years provided for Professors. In that view of the matter, the Writ Appeal deserves to be allowed in part.

30. Then coming to the public interest litigation, the writ petitioner was also a competitor for the post of Director and he did apply along with the present Director to the said post in response to the notification inviting applications. After selection was made public, he did not chose to challenge the said selection and the appointment like the appellant in the appeal, who was also an aspirant to the post of Director. He kept quiet for three years. After resigning from the respondent-Institute, he joined NIMHANS, Bengaluru. After lapse of 3? years, he has come up with this Writ Petition seeking writ of quo warranto contending that the appointment of the Director is against the statute. The averments in the reply affidavits filed to the counter affidavits of the respondents clearly indicate his personal vendetta against the person, who is appointed as Director. Again and again same allegations are made against the said person. We are of the opinion, the writ petitioner, who was not a successful candidate in the selection to the post of Director, under the guise of quo warranto, is before us.

31. Learned Senior Counsel arguing for the writ petitioner relies upon the judgment in the case of (Rajesh Awasthi v. Nand Lal Gaiswal [JT 2012(11) SC 1]) to contend that if the challenge to the appointment is on the ground of non compliance of provisions of law with delay in approaching the Court, such delay would not come in the way of writ of quo warranto. While placing reliance on (The University of Mysore v. C.D.Govinda Rao and another (AIR 1965 SC 491)), Their Lordships opined that a citizen can claim a writ of quo warranto and he stands in a position of a relator and he need not have any special interest or personal interest. In the supplementing judgment it was held, delay and laches do not constitute any impediment to deal with the lis on merits in such cases. As a matter of fact, in the leading judgment of the same Bench it was noticed that the locus standi of the first respondent or the delay in approaching the Court was not seriously questioned or urged before them. Therefore, this is not a binding precedent. In any event, delay would be an issue to be considered on the circumstances of each case and in a limited aspect so would be the issue of locus standi. In the cited judgment of Rajesh Awasthi (Supra), the writ petitioner was the General Secretary of Jal Vidyut Unit (a union of workers) and the appointment was to the post of Chairperson of Electricity Regulatory Commission. In the instant case the writ petitioner and the fifth respondent, against whom quo warranto is sought, were working in the same institute and together participated in the selection process to the post of Director. The writ petitioner failed and left the institution and challenges the appointment after three-and-a-half years; purportedly in public interest. He was not a person thoroughly unaware of the statute, rules and regulations pertaining to the institute. He waited for three-and-a-half years for public interest to suddenly dawn on him. On facts, it is clear that the writ petitioner has approached the Court with personal vendetta and he is bent upon tarnishing the image of the

Director on some ground or the other which we cannot but deprecate.

In that view of the matter, we are of the opinion, such a personal vendetta cannot be allowed to be adjudicated in a public interest litigation. Therefore, the said Writ Petition has to fail and the same is dismissed. Accordingly, the Writ Appeal is allowed in part holding that the appointment of the Director is in accordance with the procedure contemplated, but, however, he cannot hold the office of the Director beyond the age of 65 years.