(2000) 09 DEL CK 0138

In the Delhi High Court

Case No : Civil Writ No. 7652 of 1999

Jaideep Singh (Prof.) and another — APPELLANT

Vs

Indian Institute of Public Administration and another — RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2000) 09 DEL CK 0138

Hon'ble Judges : Devinder Gupta, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : Dr. Surat Singh, for the Appellant; Ms. Swaran Mahajan, Ms. A. Mahajan and Mr. Jayant Bhushan, for the Respondent

Judgement

Devinder Gupta. J.

1. Indian Institute of Public Administration is a Society registered under the Societies Registration Act (Act No.21 of 1860). It was established in 1954. Its objectives, inter alia, are to promote and provide for the study of Public Administration and economic and political science with special reference to Public Administration and the machinery of Government and for educational purposes incidental thereto; to undertake, organise and facilitate study courses, conferences, and lectures and research in matters relating to public administration and the machinery of Government; to under take and provide for the publication of a journal and of research papers and books to impart training in and promote study of public administration. It is governed by its objectives as contained in Memorandum of Association and Rules and bye laws as framed and adopted by its Executive Council in the General Body.

2. The petitioners are two senior faculty members of respondent No.1 society. In this writ petition filed under Article 226 of the Constitution of India, they have made grievances that the appointment of Shri M.C. Gupta as Director of the Institute is irregular and illegal and so the extension granted to him in the meeting of the Executive Council held on 25.10.1999; that accounts of the

Institute are not being submitted for audit to Comptroller and Auditor General of India; considerable amount is being spent on maintenance of cars etc. and only a petty amount is spent on research activities; certain bye laws have not been updated since 1987 and seniority list of professors is not available and that the funds allocated for National Centre for Disaster Management have been diverted for constructing the lift for the first floor and second floor whereas the Centre for National Disaster Management is located on the ground floor of the building. Consequently, direction has been sought for quashing the extension granted to respondent No.2; for directing the respondents to comply with Rules and Regulations in the matters of employment of Director of the Institute; for directing the respondents to produce accounts before the Comptroller and Auditor General of India and for directing the appointment of a Committee to examine the administrative and financial functioning of the Institute.

3. It is alleged by the petitioners that the Institute had a very healthy functioning till March, 1997. There were certain norms for selection of the Director of the Institute. Date of expiration of the term of serving Director used to be intimated to the Executive Council well in advance and a Selection Committee used to be constituted to search for a worthwhile candidate and to prepare a panel of suitable candidates. Recommendation of the Selection Committee used to be placed before the Executive Council and thereafter the Executive Council used to select the most suited candidate for the post. Terms and conditions used to be made very clear by the Executive Council. But this practice was given a go by in the manner of selection and appointment of Shri M.C. Gupta in March, 1997.

4. The petitioners have alleged that only on 21.3.1997 the Executive Council was informed about the expiry of the tenure of the earlier incumbent and on the same day Selection Committee was constituted. No panel was prepared. Name of Shri M.C. Gupta was approved on the same day and he was asked to join on 1.4.1997. No terms and conditions were recorded till 1.12.1999 and that too only after the petitioners raised this issue and pointed out that the term of Shri M.C. Gupta was expiring on 31.3.2000. In a remarkably hasty and hurried manner and without putting the item of extension on the agenda, without considering any other candidate and without specifying any terms and conditions, two years extension was granted to Shri M.C. Gupta on 29.10.1999. The petitioners claim that this action of the respondent Institute is in total violation of the office Memorandum issued by the Department of Personnel and Training on 18.5.1997. There is a complete ban imposed on extension of service beyond the age of superannuating. Shri M.C. Gupta completed the age of superannuation of 58 years in February, 1997 and he joined the Institute as a Director for a term of 3 years ending 31.3.2000. As he had already got extension being reemployed after attaining the age of 58 years, which term expired on 31.3.2000, it was totally illegal to grant him any further extension. However, the respondent Institute on 29.10.1999 took a decision to grant extension to Shri M.C. Gupta for two years. While taking decision on 29.10.1999 to grant extension to Shri M.C. Gupta, no action was taken to select suitable successor well in advance. For the meeting of

the Executive Committee held on 29.10.1999 an item was not put on the agenda. There was no justification in pushing through this matter for grant of extension with such haste when already five months were available for selecting a new Director. The manner in which the extension has been pushed through is evidence of malafides on the part of Shri S.B. Chavan, Chairman of the Institute. Thus there are allegations of malafide against Shri S.B.Chavan in granting extension to Shri M.C. Gupta. In addition to this, it has been alleged that there are certain serious irregularities going on in the Institute. There is no up dated bye laws of the respondent Institute since 3.7.1987. There is no seniority list of the faculty of the respondent. Accounts are not being submitted and funds are being diverted for purposes other than the purposes of the Institute.

5. Though the Director of the Institute is imp leaded as respondent No.2, Shri M.C. Gupta has not been imp leaded separately as a respondent. The Institute through its Chairman and the Registrar of the Institute are imp leaded as respondents 1 and 3 respectively.

6. The respondents have opposed the petition. Respondents 1 to 3 filed a joint reply on the affidavit of Dr. S.N. Suri, Registrar of the Institute. After the reply affidavit had been filed, an additional affidavit was also filed by Shri S.B. Chavan, Chairman of the Institute. Supplementary reply of respondents 1 to 3 filed on the affidavit of Dr. S.N. Suri, Registrar, was permitted to be taken on the record. Respondent No.4, Union of India, filed separate reply on the affidavit of Shri Sukar Singh, Under Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension.

7. It is stated by respondent No.4 in the reply affidavit that respondent No.1 Institute is an autonomous body registered under the Societies Registration Act and is governed by its own rules and bye laws. The Institute receives an annual maintenance grant in aid and is substantially funded by the Government. Copies of its annual report containing audited statement of accounts and balance sheet are regularly laid on the Tables of the Lok Sabha and the Rajya Sabha every year. It is stated that appointment of the Director of the Institute is made by its Executive Council in terms of Rule 12 of the Rules. Respondent No.4 has no role to play in the procedure for appointment of or grant of extension of appointment of the Director of the Institute. It is specifically stated that general instructions regarding reemployment or grant of extension in employment as contained in office memorandum issued by Union of India on 18.5.1997 have no application in the matter of reemployment/extension of service of officers of autonomous bodies where initial appointment has not been made with the approval of Central Government/President/Appointment Committee of Cabinet. It is stated that initial appointment of Shri M.C. Gupta, as Director of the Institute was not made with the approval of the Central Government or Appointment Committee of Cabinet. The decision contained in Office Memorandum dated 1.12.1983 or instructions contained in Office Memorandum dated 13.5.1988 are not applicable. It is stated that the said Memorandums are applicable only to Central Government

employees and not to the employees of autonomous bodies.

8. Respondents 1 to 3 in their reply affidavit have challenged the locus standi of the petitioners to file the writ petition as public interest litigation. It is stated that the present petition is motivated with mala fide intention and has been filed by the petitioners out of pique and to wreak vengeance against Shri M.C. Gupta.

9. In addition to challenging the locus standi of the petitioners and stating that the petition is motivated with malafide, allegations made in the petition have been refuted on all counts by respondents 1 to 3. It is stated that Union of India has no role to play in the procedure for appointment/extension of appointment of the Director of the Institute. In the case of Shri P.R. Dubhashi, a request had been sent to the Government of India to spare Shri Dubhashi to take over as Director, since Shri Dubhashi was a serving officer. No such consent or concurrence of the Government of India is required in the matter of appointment of Director of the Institute or granting extension. The Institute is duly competent to make appointment of Director, which power is vested in the Executive Council in accordance with Rule 12 of the Memorandum of Association and Rules of the Institute. Shri M.C. Gupta had retired from service when his appointment was made by the Executive Council. Due procedure was followed in making appointment and granting extension. Decisions to make appointment and grant extension were taken by the Executive Council unanimously. The Executive Council in its meeting on 30.5.1996 had authorised the Chairman of the Institute to constitute a Search Committee. The Chairman constituted the Search Committee on the recommendations of the Chairman Standing Committee and the same was reported to the Executive Council in its meeting held on 10.9.1996. The constitution of the Search Committee was duly approved by the Executive Council. Petitioner No.1 was a member of the Executive Council during the relevant period and he was present in the meeting of the Executive Council held on 30.5.1996 and 10.9.1996. The Search Committee was comprised of Prof. M.V. Mathur, a noted Educationist and Former Vice Chancellor, Rajasthan University; Shri T.N. Chaturvedi, I.A.S. (Retd.) and Member of Rajya Sabha; Dr. V. Subramanian, I.A.S. (Retd,) and former Minister of Maharash tra State; Prof. Y.K. Alagh, Former Vice Chancellor, JNU and the then Union Minister of State for Planning and Programme Implementation and Prof. T.N. Kapoor, an Eminent Educationist and the then Vice Chancellor of Punjab University. The Committee also associated Shri G.C.L. Joneja, IAS (Retd,), Former Chief Secretary to the Government of Orissa and Secretary to the Government of India. The Search Committee considered the credentials of the candidates and held personal meetings with the shortlisted candidates.

10. Respondents 1 to 3 further stated that petitioner No. 2 was a Member of the Executive Council at the relevant time from October, 1996 to October, 1998. Recommendations of the Search Committee were announced in the meeting of the Executive Council held on 21.3.1997. The name of Shri M.C. Gupta alone was recommended for appointment as Director. No panel was suggested by the

Search Committee as alleged by the petitioners. The recommendation of the Search Committee was unanimously approved by the Executive Council in its meeting held on 21.3.1997 and the Executive Council decided to appoint Shri M.C. Gupta as Director. Petitioner No.2 also is a party to the said decisions of the Executive Council. In para 6 of the supplementary affidavit, respondents 1 to 3 have disclosed full details of the processes involved and adopted for the selection and appointment of Shri M.C. Gupta, as Director. As regards grant of extension to Shri M.C. Gupta, it is stated that the office memorandums relied upon by the petitioners are not at all relevant and are not applicable. The office memorandum clearly indicates that the same pertains only to such Autonomous Bodies and Public Sector Undertakings where initial appointments were made with the approval of the Appointment Committee of Cabinet constituted by the Government of India. It is not so in the case of appointment of Director in the Institute. The Executive Council, which is the Competent Authority, recognising the contributions of Shri M.C. Gupta in the all round development of the Institute in terms of academic achievements, development of infrastructure and for improved financial position in its meeting held on 29.10.1999 took a decision to grant him extension for a further period of two years on the same terms and conditions. The allegation that the decision was taken hastily and in violation of the rules and regulations has been specifically denied by the respondents.

11. With regard to the rest of the grievances made by the petitioners, it is stated that the accounts of the Institute are audited every year by its statutory Auditors and in a block of 2 years, every alternate year by the Director General Audit, Central Revenues (for short "DGACR"). The statutory audit is conducted by a nationally reputed firm of Chartered Accountants, who were duly appointed by the General Body of the Institute on the recommendations of the Executive Council. Audited accounts and balance sheet are first approved by the Executive Council and later adopted by the General Body at the Annual General Meeting every year. It is stated that the Institute has been bringing out its Annual Reports regularly without fail on the direction of the Department of Personnel and Training. Copies of the Annual Report containing audited statement of accounts and balance sheet are submitted to the Government who also cause it to be laid on the Table of the Lok Sabha and the Rajya Sabha. The respondents have appended to their reply a statement containing the dates of Annual General Meeting held for the past 10 years in which audited accounts and the balance sheet were duly adopted. The details of audit conducted by the DGACR during the last 10 years have also been furnished by respondents 1 to 3. It is stated that in the Annual General Meeting held on 26.10.1996 the accounts for the year 1995-96 were adopted without any amendment. Likewise on 25.10.1997 accounts for the year 1996-97 were adopted without any change. Petitioner No.2 was a Member of the Executive Council from November, 1996 to October, 1998. He had received a copy of the agenda of the meeting of the Executive Council held on 24.10.1997 in which accounts for the year 1996-97 were approved. Both the petitioners being Members of the Institute have received copies of Annual

Reports of all the years since the date of their admission as members. Petitioner No.2 was present in the Annual General Body Meetings on 26.10.1996 and 25.10.1997 in which the accounts were passed.

12. The respondents in their reply have also stated that respondent No.2 has already constituted a Committee headed by Professor S.S. Singh, Professor of Justice and Administration at the Institute for updating the Service Bye laws of the Institute. The Committee is likely to complete the task shortly. As regards seniority list, it is stated that the seniority list of faculty members is being maintained. A revised tentative list has recently been circulated to all the faculty members for information and inviting objections. It was necessitated on account of addition of new faculty members and retirement of some of them. It is also stated that Service Bye laws of the Institute adequately provide for the grievance redressal mechanism. There are as many as 9 Separate Committees for running the affairs of the Institute. There is no financial irregularities in the Institute. Finances are clearly and democratically accounted for. It has been denied that considerable amount was spent for maintenance of cars and a meager amount was spent on research activities of the Institute. Details have been furnished by respondents 1 to 3 in their affidavit. The total amount actually incurred on research during the last three years exceeded Rs. 32,00,000/-. In addition, expenditure incurred on consultancy assignments which also involve a lot of applied research exceeded Rs. 75,00,000/-. It has also been stated that the petitioners themselves have not availed of any research funds in the last three years and more. Petitioner No.1 has not taken up any research project for the last decade and petitioner No.2 in the last 5 years. Actual expenditure incurred under the head "Motor Car Expenses" for the years 1996-97, 1997-98 and 1998-99 was to the tune of Rs. 1.02 lakhs, Rs. 1.46 lakhs and Rs. 2.17 lakhs respectively. Allegations of diversion of funds have also been denied stating:-

"That a NCDM complex is being constructed on the 2nd floor with financial assistance from the Ministry of Agriculture, and the NCDM staff presently accommodated on the ground floor would move to the 2nd floor once the complex is completed. Even otherwise, the faculty members assigned with NCDM are located on the 1st and 2nd floors. It may be further submitted that the NCDM infrastructure is being used for the activities of the Institute and vice versa. Being Government Funds, (flowing from the Ministry of Agriculture) no diversion or misappropriation of funds is involved as it was done with the approval of the IIPA Executive Council and the Advisory Committee of NCDM. The contention of the petitioners of having made "several representations" in this regard is false and baseless and no such representations from the petitioners were received by the Institute."

13. Narration of the aforementioned would suggest that the main grievance of the petitioners is as regards the irregularity/illegality in appointing Shri M.C. Gupta, as Director of the Institute and in hastily granting to him extension of two years. In so far as initial appointment is concerned, it will not be appropriate for

us to go into the legality of the same after the lapse of more than three years especially when the petitioners could have agitated the same earlier. Petitioner No.1 being a Member of the Faculty had been attending the meetings and the fact that no objection was raised would suggest that he had no grievance at all. In case the petitioners had any grievance, no reason is assigned by them for not raising such grievance at an early stage. Having failed to do so, we cannot permit them to challenge the appointment at this distance of time. Moreover, the appointment of Director is governed solely by the Rules of the institute contained in Memorandum of Association and Rules. Rule 12 authorises the Executive Council to make appointment of the Director and it says that his term of office and other conditions of service shall be such as may be prescribed. The word "prescribed" has been defined in Rule 1(h) to mean prescribed by bye law made by the Executive Council. Admittedly, no separate bye laws have been framed by the Executive Council. However, the Executive Council itself laid down the terms and conditions of Shri M.C. Gupta. The fact that the terms and conditions were not laid down simultaneously while making appointment also will make no difference and will not nullify the appointment. Rules do not envisage laying down of terms and conditions of service simultaneously with the appointment. We have also noticed that Shri M.C. Gupta was appointed after considering and accepting the recommendation of the Search Committee. It has also been noticed that the decision to appoint Shri M.C. Gupta was a unanimous decision of the Executive Council. The petitioners could not show that Shri M.C. Gupta was ineligible or disqualified for appointment as Director or that any statutory provision was violated in the matter of his appointment.

14. It is the stand of respondent No. 4 that the office memorandums relied upon by the petitioners are not applicable to the respondent Institute. Office Memorandum dated 18.5.1977 issued by the Ministry of Personnel and Training contains instructions regarding the grant of extension of service/reemployment to Central Government Employees. The office memorandum dated 12.8.1983 states that the procedure for extension of service and reemployment laid down in the memorandum dated 18.5.1977 shall ipso facto apply in the cases of extension of service/reemployment of officers of the Public Sector Undertakings/ Autonomous Bodies where initial appointment has been made with the approval of the Appointments Committee of the Cabinet (for short "ACC"). It is the admitted case that initial appointment of Shri M.C. Gupta was not made with the approval of the ACC. The petitioners also have no case that the initial appointment of Shri M.C. Gupta as Director required approval of the A.C.C. Hence the procedure prescribed in the Office Memorandum No. 26011/1/77-Estt. (B) dated 18.5.1997 of the Department of Personnel and Administrative Reforms, Government of India and later clarified in the same Department''s Office Memorandum No. 26012/16/83 dated 1.12.1983, was not applicable to the intention of appointment of Shri M.C. Gupta as Director of the Institute, which is admittedly an Autonomous Body. For convenience, the above mentioned Office Memorandum dated 1.12.1983 is extracted hereunder:-

"No. 26012/16/83-Estt. (A)

Government of India/Bharat Sarkar

Ministry of Home Affairs/Grih Mantralaya

Department of Personal and Administrative Reforms

(Karmik Aur Prashasnik Sudhar Vibhag)

New Delhi, the 1.12.1983.

OFFICE MEMORANDUM

Subject: Grant of extension/reemployment to Central Government Employees beyond the age of superannuation regarding.

The undersigned is directed to invite the attention of the Ministry of Finance etc. to the instructions contained in this Department''s O.M. No. 26011/1/77-Estt.(B) dated the 18th May, 1977 which stipulate that the extension/reemployment of Central Government officers beyond the age of their superannuation should be resorted to as very rarely and in really exceptional circumstances purely in the public interest. The aforesaid O.M. also provides that the proposals for the grant of extension of service, reemployment of Central Government employees in posts, the initial appointment to which require the approval of the Appointments Committee of the Cabinet should be first discussed with the Cabinet Secretary before their formal submission to the Appointments Committee of the Cabinet.

2. The question as to whether the above procedure should also be followed while considering the proposal for grant of extension/reemployment in service beyond the age of superannuation in the posts of functional Director/Chairman and Managing Directors of Public Sector Undertakings/Autonomous bodies, the initial appointment to which requires the approval of the Appointment committee of the Cabinet has been engaging the attention of the Government for some time. It has now been decided that the procedure as laid down in the aforesaid O.M. dated 18th May, 1977 shall ipso facto also apply in case of extension in service/ reemployment of officers of the Public Sector Undertakings/Autonomous Bodies where initial appoint has been made with the approval of the A.C.C.

3. Attention in this regard is also invited to the directive of the Prime Minister regarding the need to eschew the tendency of granting extension in service/ reemployment to superannuated persons which were communicated to all Ministries/Departments to Government of India vide this Department/s D.D. letter No. 27(5) EO-(ACC) dated the 2nd February, 1983 and O.M. No. 27(5)-EO 983(ACC) dated the 23rd July, 1983 (copies enclosed) with the request that the policy/directions contained therein should be rigidly followed by all Ministries/ Departments while considering the proposals for the grant of extension in service/ reemployment to the Central Government employees as well as to the officers of the Public Sector Undertakings/Autonomous Bodies.

Sd/-

(Miss S. Trikha)

Deputy Secretary to the Govt. of India."

15. The petitioners have not pointed out any rule or regulation, which requires approval of the A.C.C. for appointment as Director of the Insti- tute. Hence the initial appointment of Shri M.C. Gupta as Director cannot be challenged on the ground that approval of A.C.C. was not obtained. There has been no irregularity or illegality in granting extension to him since no approval of A.C.C. was required at the stage of grant of extension. Moreover, the Executive Council was duly competent to grant extension, which in its meeting held on 29.10.1999 took a conscious and unanimous decision after considering the contribution made by him in the development of the Institute and in recognition of his service to the Institute. The mere fact that this item was not on the Agenda will also not make any difference. No rule has been shown to us, which indicates that the Executive Council could not have taken this item on 29.10.1999 under "Any other item". Challenge by the petitioners to the grant of extension is misconceived.

16. There is also no force in the other grievances made by the petitioners since it has been made clear by the respondents that the accounts are being audited regularly by the Director General Audit Central Revenues and are also being sent regularly on the advice of the Department of Personnel and Training to the Comptroller and Auditor General and are ultimately laid on the Tables of the Lok Sabha and the Rajya Sabha.

17. We are not commenting upon the conduct of the petitioners in having filed this petition despite the allegation of respondents 1 to 3 in their counter affidavit that sensing impending disciplinary proceedings against them, the petitioners filed the present petition due to personal vengeance. Any observation made by us is likely to prejudice them in such disciplinary proceedings, if any.

18. We find no merit in the petition, which is hereby dismissed.

C.M. 3957/2000

Dismissed as infructuous.

