
(2003) 03 AP CK 0084

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25286 of 2002

P. Doki

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

All India Institute of Medical Sciences Rules, 1958 — Rule 7(4)

Citation : (2003) 3 ALD 245 : (2003) 2 ALT 636

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : S. Ramachandra Rao, for the Appellant; T. Surya Karan Reddy, for Respondent Nos. 1 to 3 and V. Ravinder Rao, for the Respondent

Final Decision : Dismissed

Judgement

Goda Raghuram, J.—The petitioner was the Director (Finance) employed with the Rashtriya Ispat Nigam Limited, Visakhapatnam Steel Plant, Visakhapatnam (RINL). The 3rd respondent in proceedings bearing reference No. 1(10)/95-VSP, dated 18.12.2002 intimated that the extension of tenure of the petitioner was not approved by the President and that as a consequence the petitioner be relieved from the post immediately. A copy of this intimation was also marked to the 4th respondent. Consequently the 4th respondent by proceedings dated 19.12.2002 relieved the petitioner from the post. The petitioner has challenged these proceedings.

2. According to the petitioner, after considerable years of vast and varied experience in several public sector organisations like the Fertilizer Corporation of India, Bharat Heavy Plates and Vessels Ltd., and Hindustan Petroleum Corporation Ltd., he joined the RINL in 1982 as a Deputy Chief Finance Manager. He earned several promotions.

The undisputed and apparent factual scenario :

(A) By the notification dated 15.10.1996 of the 1st respondent the petitioner,

who was working as an Executive Director (Finance) in the RINL, was appointed as a Director (Commercial), with immediate effect, for a period of five years or till the date of his superannuation, whichever is earlier. The petitioner assumed charge of the post on 17.10.1996. In terms of the order of appointment the petitioner's tenure stands determined by 16.10.2001, on completion of the five year term (being the earlier event in the spectrum of his tenure). The age of superannuation, inter alia, in respect of the post of Director (Commercial) as on the date of the notification i.e., 15.10.1996, was 58 years.

(B) By an order dated 20.1.1997 the petitioner was appointed as a Director (Finance). This order was issued pursuant to a need for reallocation of work among the functional Directors of RINL, consequent upon the appointment of the then incumbent of the post of Director (Finance) as Director (Finance) in the Coal India Limited. The order dated 20.1.1997 directed that the petitioner would continue as Director (Commercial) in addition to his duties. The petitioner assumed charge of the post of Director (Finance) on 27.1.1997.

(C) By the office memorandum No. 18(6)/ 98-GM/GL/005, dated 30.5.1998 of the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, the age of retirement of Board Level employees in Central Public Sector Enterprises was raised from 58 years to 60 years. Resultantly the Central Government decided to issue guidelines for extension of tenure of existing incumbents of Board Level posts in the Central Public Sector Enterprises. The decisions contained in memo dated 30.5.98, read as under:

"Age of retirement of board level appointees in Central PSEs -raising from 58 to 60 years.

The undersigned is directed to say that the Government has decided to enhance the age of retirement for board level appointees of Central PSEs in the manner mentioned below:-

(a) The age of retirement of board level appointees in PSEs will be 60 years with effect from date of issue of this O.M.

(b) This will not apply to those who are on extension beyond 58 years on the date of issue of this O.M. They will retire upon expiry of the extension.

(c) Those existing incumbents who have not completed 58 years or 5 years" tenure, may continued upto 60 years or completion of 5 years" tenure, whichever is earlier. Orders may be issued by the Ministries concerned with reference to ACC.

(d) Where existing incumbents complete 5 years" tenure and there is a need to continue their service up to 60 years, reference will first have to be made to PESB on a case by case basis for assessment of their performance and thereafter approval of ACC obtained as per usual procedure.

(e) If as a consequence of (c) above, an existing incumbent completes 5 years"

tenure before 31st August, 1998 and it is considered necessary to continue his service, the administrative Ministry/ Department with the approval of the Minister concerned may grant extension of tenure up to three months pending completion of the procedures as prescribed in (d) above.

Added vide OM No. 18(6)/98-GM dated 17.8.1998 (Please see item No. 4: at page 14)

2. All the administrative Ministries/ Departments are requested to take necessary action to implement the above decisions."

(D) To effectuate the decision in Clause (c) of the above memo, by an office order of the 1st respondent dated 4.8.1998, the tenure of the petitioner in the post of Director (Finance) was extended for a period of 5 years from the date of appointment or till he attains the age of 60 years, whichever is earlier.

(E) In view of the decision in Clause (d) of the memo dated 30.5.1998 and as the petitioner would complete his 5 year tenure on 16.10.2001, the need to continue his service till he attains the age of 60 years was required to be assessed by the Public Enterprises Selection Board (PESB) in the first instance and for approval thereafter by the Appointments Committee of the Cabinet (ACC). Accordingly the petitioner's name was placed before the PESB for consideration. The PESB by its communication dated 10.10.2001 called the petitioner to attend the meeting of the PESB on 29.10.2001 so as to enable assessment of his suitability for continuance as Director (Finance) till he attains the age of superannuation i.e., 30.6.2003.

(F) The PESB considered the petitioner's case and recommended extension of his tenure beyond 10.10.2001 till 30.6.2003 subject to outcome of major disciplinary proceedings against him consequent on the advice in this regard by the Central Vigilance Commission (CVC). However, pursuant to the instructions of the 1st respondent contained in its letter dated 15.10.2001, the RINL by an office order dated 16.10.2001 permitted the petitioner to continue in the post till 16.10.2001 or until further orders, whichever is earlier.

(G) By a further office order of the RINL dated 15.1.2002 issued pursuant to instructions of the 1st respondent contained in its letter dated 15.1.2002, the petitioner was permitted to continue in his post for a further period of 3 months with effect from 16.1.2002. Again pursuant to the 1st respondent's instructions contained in its letter dated 8.2.2002 an office order dated 19.2.2002 was issued by the RINL intimating that the 1st respondent approved the extension of tenure of the petitioner in his post for a period of three months till 16.4.2002 or until further orders, whichever is earlier. In a letter dated 16.4.2002 the 1st respondent conveyed its approval for another extension for the petitioner for a further period of 3 months till 16.7.2002 or until further orders, whichever is earlier, which was communicated to the petitioner by the office order of the RINL dated 16.4.2002. The 1st respondent in its letter dated 11.7.2002 conveyed its approval for yet another extension to the petitioner for a period of 3 months till

16.10.2002 or until further orders, whichever is earlier. This was communicated to the petitioner by the office order dated 11.7.2002. The 1st respondent by its order 17.10.2002 intimated the 4th respondent that the petitioner may be permitted to continue in his present post till a final decision in the matter is taken by the ACC or until further orders, whichever is earlier.

(H) Eventually by the order dated 18.12.2002 of the 3rd respondent the disapproval of the President to the extension of the petitioner's tenure in his present post beyond 25.11.2002, was conveyed duly directing his relief from the post with immediate effect. The 4th respondent by the office order dated 19.12.2002, on the basis of the above communication of the 3rd respondent, relieved the petitioner with effect from 19.12.2002 F.N.

3. Heard the learned Senior Counsel Mr. S. Ramachandra Rao for the petitioner, Sri T. Suryakaran Reddy, learned Senior Standing Counsel for Central Government for respondent Nos. 1 to 3 and Sri V. Ravinder Rao, learned Counsel for the 4th respondent.

4. The petitioner assails the order impugned, declining extension of his tenure on the following grounds, in brief:

(a) In view of the Office Memorandum dated 30-5-1998 raising the age of retirement of Board Level Appointees of Central PSEs from 58 to 60 years, the petitioner's legitimate expectation to continue till he attains his age of superannuation, is irrationally frustrated by the impugned order.

(b) The Central Bureau of Investigation (C.B.I.) conducted a preliminary enquiry into certain alleged irregularities, but found no criminal intention on his part. The C.B.I., nevertheless, recommended initiation of a regular departmental action against him for alleged procedural irregularities. Based on the said report, charges were framed against the petitioner by a Memo dated 4-9-2002, despite the report of the C.B.I, being as early as in June, 2001. The charges were denied by the petitioner's explanation dated 30-9-2002. The departmental action by the issuance of a charge memo was initiated and belatedly, solely with the mala fide intent of the 1st respondent to deny the petitioner his legitimate chances for extension of his tenure till he completes the age of superannuation of 60 years.

(c) The favourable recommendation of the PESB for extension of the petitioner's tenure was withheld and not acted upon on account of the inordinate delay of the 1st respondent in initiating the disciplinary action against him and for want of clearance from the Central Vigilance Commission (C.V.C.), and

(d) Pendency of disciplinary proceedings not being a bar for considering the petitioner's case for extension of tenure, the impugned order is arbitrary and discriminatory.

5. The 1st respondent has filed a counter-affidavit admitting the facts relating to the petitioner's initial appointment as Director (Commercial) by the notification dated 15-10-1996, the extension of his tenure from time to time, the facts

relating to the disapproval by the President to extend the petitioner's tenure beyond 25-11-2002 and the petitioner's relief from his post with effect from 19-12-2002. The 1st respondent states further that the PESB considered the petitioner's case and recommended for extension of tenure beyond 16-10-2001 till 30-6-2003 but subject to the outcome of the C.V.C's advice regarding initiation of major penalty proceedings against him. Meanwhile, it is stated, the disciplinary authority, the President, pursuant to the advice of C.V.C, initiated disciplinary action against the petitioner by framing charges by the Memorandum dated 04-09-2002, to which, the petitioner submitted his explanation on 30-9-2002. The counter denies the allegation that the disciplinary proceedings were initiated only to deprive the petitioner of his office. With regard to the alleged delay in initiating the disciplinary proceedings, the counter states, after receipt of the report of the C.B.I, in June, 2001, the matter was examined by the Ministry of Steel and forwarded to the C.V.C. for it's advice, on 31-7-2001. On 3-10-2001, the C.V.C. raised certain queries, which were answered by the Ministry on 27-2-2002. On 31-7-2002, the C.V.C. advised the Ministry of Steel to initiate major penalty proceedings against the petitioner. In the circumstances, the 1st respondent contends, the time lag in issuance of the charge memo is occasioned due to administrative reasons and since the facts relating to the alleged charges are of a complicated nature requiring minute scrutiny by officials at various levels before enumerating specific charges against the petitioner. The exercise of initiating disciplinary proceedings is bona fide and is not intended to frustrate the petitioner's claims for extension of his tenure, is the assertion. The 1st respondent further states that the A.C.C. considered the recommendations of the PESB for extension of tenure of the petitioner, keeping in view the comments of the Ministry as well as the vigilance status, including the charges framed against the petitioner, apart from additional complaints. Eventually, the A.C.C. decided on denial of extension of tenure to the petitioner with effect from 25-11-2002 and this was communicated to the Ministry by proceedings dated 28-11-2002. The 1st respondent contends that the petitioner's tenure of office was over by 16-10-2001 on his completing five years from the date of the order of his initial appointment. Further extension of appointment is, in fact, but a fresh appointment, is the contention. Pending consideration of the petitioner's case by the A.C.C., the petitioner was granted four extensions of tenure. As per the operative guidelines, the record of the petitioner pertaining to his tenure in the previous six (6) years, as Director in RINL, was considered by the A.C.C., which finally decided not to grant him extension beyond 25-11-2002, The 1st respondent in addition pleads that the fact that no charges were framed at the time when the PESB considered the case of the petitioner does not in any way circumscribe the discretion and power of the A.C.C. to consider the petitioner's antecedents including the charges framed against him, which was the status when ACC actually took up the petitioner's case for consideration. Thus, though no specific charges were framed against the petitioner by the time the PESB considered his case for extension of tenure and consequently recommended his case for such extension, but subject to the outcome of the C.V.C., the A.C.C. was

well within it's power to consider the entire record while taking a decision regarding continuance of the petitioner's tenure. The 1st respondent also takes the stance that the petitioner has no legal claim to continue in the post after the expiry of his tenure on 16-10-2001. Any fresh appointment needs to be approved by the President and as the ACC did not approve the petitioner's case for such appointment on a fresh tenure and for rational reasons, the petitioner is not entitled to any relief.

6. The 4th respondent has also filed a counter-affidavit contending that pursuant to the communication from the 3rd respondent by the proceedings dated 18-12-2002 intimating the decision of the President not to grant the extension of tenure to the petitioner and directing his relief from the post immediately, the answering respondent has, by the order dated 19-12-2002, relieved the petitioner from the post of Director (Finance) with effect from 19-12-2002 Forenoon.

7. During the course of hearing, on 26.2.2003 apropos the complaint by the petitioner that the ACC did not have the benefit of considering the recommendations of the PESB (recommending extension of the petitioner's tenure up to 30.6.2003 - the date on which he attains the age of superannuation of 60 years) or the benefit of the CVC's recommendations (to the effect that there was no material to justify the petitioner's prosecution for the allegations levelled against him), this Court directed the 1st respondent to produce the file relating to the consideration of the petitioner's case by the ACC. The relevant file was produced for the perusal of this Court on 13.3.2003. The file has been perused by this Court and this Court is satisfied that all relevant material was available to the ACC for its consideration of the petitioner's case for extension of his tenure.

8. Sri S. Ramachandra Rao, learned Counsel for the petitioner incidentally urged that the petitioner was discriminated against. In specie the complaint in this regard is that a similarly circumstanced candidate Mr. S.K.S. Narayan, Director (Commercial), against whom too an enquiry was launched on charges of premature failure of Coke Oven Battery, was continued in service despite the pendency of an inquiry against him, while notwithstanding the delay in initiation of inquiry, submission of the petitioner's defence statement denying the charges, not only was a charge-sheet issued but the incidents were reckoned for denying him an extension of tenure. This contention has been pleaded in the affidavit filed in support of an interim application WPMP No. 3255 of 2003. The 1st respondent has filed a counter affidavit to this interim application wherein it is asserted that Mr. S.K.S Narayan was also granted ad hoc extension till 4.6.2003 or appropriate orders of the ACC or further orders, whichever is earlier. Similar extension of tenure was also granted to the petitioner pending consideration of his case for extension of tenure by the ACC. In view of the above, the petitioner's complaint regarding the discriminatory treatment vis-a-vis Mr. S.K.S Narayan, is seen to be misconceived.

9. Another contention of the petitioner is that despite the preliminary report from the C.B.I, in June 2001, there was a delay in the initiation of departmental inquiry, which was initiated by the issuance of charge-memo dated 4.9.2002, nearly 17 months after the CBI report. Such a delayed initiation of the departmental proceedings caused prejudice to the petitioner. Pendency of inquiry is no bar for consideration of his case for extension of tenure particularly in view of the delay in the initiation of the departmental proceedings, is the plea of the petitioner.

10. In support of this plea reliance is placed on a few decisions. In *The State of Madhya Pradesh Vs. Bani Singh and another*, , an IPS Officer of Madhya Pradesh cadre challenged the initiation of departmental inquiry against him by issuance of a charge-memo dated 22.4.1987 in respect of certain incidents of the year 1975-76, before the Jabalpur Bench of the Central Administrative Tribunal. The Tribunal quashed the charge-memo on the ground of an inordinate delay of 12 years in the initiation of departmental proceedings. On appeal, the Supreme Court declined to interfere with the order of the Tribunal. The Supreme Court held that there was no satisfactory explanation forth coming from the administration for the inordinate delay in issuing the charge-memo and also concluded on facts that it would be unfair to permit the departmental inquiry to be proceeded with at that distance of time.

11. In *State of Punjab and Ors. v. Chaman Lal Goyal* (1995) 2 SCC 507, the Supreme Court was considering a Civil Appeal against the order of the Punjab and Haryana High Court which quashed a memo of charges communicated to the respondent-writ petitioner and an order appointing an Enquiry Officer to inquire into those charges. The High Court had also directed the State of Punjab and its authorities, to consider the case of the writ petitioner for promotion. On facts - in respect of an incident on the intervening night of 1st and 2nd January, 1987, which occurred in Nabha High Security Jail, a charge-memo was issued against the petitioner - the Superintendent of the Jail at the time of incident, on 9.7.1992. The High Court quashed the memo of charges holding that the delay of 5 1/2 years in serving the charge memo caused prejudice to the writ petitioner, there being no acceptable explanation for such inordinate delay. The High Court also recorded that the Sub-Divisional Magistrate had exonerated the writ petitioner of any responsibility and culpability, in the report dated 26.1.1987, despite which the Government kept quiet for a number of years and initiated the departmental enquiry in 1992. The Supreme Court disagreed with the conclusions of the High Court that the report of the Sub-Divisional Magistrate exonerated the petitioner of any responsibility or culpability. Considering the aspect whether the delay in the initiation of the departmental inquiry disables the conduct of such proceedings in certain cases, the Supreme Court held-

"9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such

disciplinary proceeding must be conducted soon after the irregularities and committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the Court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the Court has to indulge in a process of balancing."

12. On the facts of the case before it the Supreme Court however came to the conclusion that the quashing of charges and of the order appointing an Enquiry Officer was not warranted in the facts and circumstances of the case and that the inquiry which had proceeded to a large extent should be allowed to be completed. The Court however directed that the writ petitioner should be considered for promotion without reference to or taking into consideration the charges or the pendency of inquiry and if he is found fit, he should be promoted. While issuing this direction the Court recorded that the directions were being made in the particular facts and circumstances of the case though the Court recorded, it was aware that the rules and practice normally followed in such case may be different. The Court however observed that any promotion made pending the inquiry would be subject to review after conclusion of the inquiry and in the light of the findings thereat.

13. In *State of Andhra Pradesh Vs. N. Radhakishan*, , the Supreme Court was considering a Civil Appeal against the judgment of the A.P. Administrative Tribunal whereby the Tribunal directed that the petitioner be promoted as the Director of Town and Country Planning in an existing vacancy in spite of charge-memos dated 31.7.1995, 27.10.1995 and 1.6.1996, if he was otherwise eligible. The Supreme Court while dismissing the appeal confirming the orders of the Tribunal reiterated the principle that normally disciplinary proceedings should be allowed to take their course as per the relevant rules and that delay would cause prejudice to the charged officer unless it could be shown that he is to be blamed for the delay or there is proper explanation for the delay in the initiation. The Court reiterated that ultimately it is for the Court to balance the two diverse considerations and in considering whether the delay vitiates the disciplinary proceedings the Court has to consider the nature of the charges, its complexity and the reasons for the delay.

14. In the case on hand it is seen and as is stated in the counter-affidavit too, that after the report of the CBI in June 2001 the matter was examined by the Ministry of Steel and forwarded to the CVC for its advice on 31.7.2001. On

3.10.2001 the CVC raised certain queries which were answered by the Ministry on 27.2.2002. On 31.7.2002 the CVC advised the Ministry of Steel to initiate major penalty proceedings against the petitioner and thereafter the charge-memo was issued on 4.9.2002 to which the petitioner submitted his explanation on 30.9.2002. The counter affidavit asserts that the time lag in initiation of disciplinary proceedings from June 2001 had occurred on account of the administrative processing of the matter between various official levels and on account of the charges being in respect of a complicated fact situation requiring minute scrutiny by the officials at various levels before the specific charges are enumerated. It must be noticed that the petitioner is holding a sensitive office in the higher echelons of a public sector enterprise. He is holding the post of Director (Finance and Commercial). Having regard to the sensitivity of the office he holds and the complex and technical nature of the fact situation on the basis of which the charges are alleged (as apparent from a perusal of the charge memo dated 4.9.2002) and in view of the fairly persistent processing of the matter at various levels as apparent from the dates on which various authorities are seen to have gone into the matter (as stated in the counter-affidavit) in the considered view of this Court, no rational inference of inordinate or inexplicable delay in the initiation of inquiry proceedings, is warranted. The contentions of the petitioner in this regard are seen to be misconceived and are accordingly rejected.

15. Further the cases relied upon by the petitioner pertain to situations where a legitimate right to consideration for promotion or career advancement was in issue. It is in such fact context that the Courts have, after recording a satisfaction of undue and unexplained delay in initiation of departmental proceedings, issued directions for consideration of their cases for promotion and without reference to the pendency of inquiry or charges.

16. In the case on hand as this Court is satisfied that there was no undue delay and the short time gap between June, 2001 and September 2002 has been adequately explained, and in further view of the fact that the petitioner's tenure of appointment had expired on 16.10.2001 and his further appointment on tenure was conditional upon a rational satisfaction of the competent authority as to the petitioner's character and antecedents, this Court is unable to persuade itself to accede to the petitioner's plea that a direction be issued to the respondents to consider extension of his tenure without reference to the pendency of the disciplinary proceedings. The charges as alleged are also grave in the context of the position the petitioner was holding as a Director (Finance). Considerations of public interest prohibit issue of Mandamus of the nature sought by the petitioner. *Salus, populi est suprema lex* [welfare of the inhabitants is the underlying principle of the legal policy], *jura publica anteferenda privatis* [public rights are to be preferred to private] and *interest reipublicae ne maleficia remaneant impunita* [it concerns the State that evil deeds shall not remain unpunished] are well accepted maxims enunciating principles which are invariably followed in statutory interpretation and adjudication. These principles

have been integrated into the rich tapestry of our public law jurisprudence as well.

17. On behalf of the respondents Sri Suryakaran Reddy, learned Senior Standing Counsel for the Central Government urged that the petitioner's appointment was a tenure appointment which stood determined on 16.10.2001 on completion of his tenure and that thereafter he was continued on short-term extensions issued on six occasions and pending consideration of his case by the ACC for extension of tenure. Consequent on the refusal by the ACC to extend his tenure, the petitioner was disengaged on 19.12.2002 pursuant to the order dated 18.12.2002 conveying the disapproval of the President to extend the petitioner's tenure. The petitioner has neither a right nor a legitimate expectation for appointment afresh on a tenure basis. Alternatively it is contended, the case of the petitioner for extension of tenure was considered by the ACC the competent authority rationally and therefore the denial of extension/appointment on tenure is vitiated by no infirmity warranting interference.

18. A "tenure" signifies the period for which an incumbent of an office holds it. A fortiori, a tenure depends upon the terms and conditions of appointment. Often the service rules governing different services refer to certain categories or classes of posts indicating inter alia the tenure characteristics of the posts. For instance FR 9(22) defines a "permanent post" as a post carrying a definite rate of pay sanctioned without limit of time. A person appointed to such permanent post is therefore entitled to hold that post indefinitely unless under the rules or other terms and conditions of appointment, the unlimited duration is limited by a terminus as for instance reflected in the age of superannuation. Resultantly, in such a situation, the tenure of a public servant appointed to such a "permanent post" would be the period between the date of his appointment and the date of his specified age of superannuation.

19. In Parshotam Lal Dhingra Vs. Union of India (UOI), , and Union of India and Another Vs. Tulsiram Patel and Others, , the Supreme Court has defined tenure as meaning the period for which an incumbent of office j holds it. The nature of a tenure post and the rights and limitations inherent in a tenure appointment fell for consideration and analysis of the Supreme Court in Dr. L.P. Agrawal Vs. Union of India and others, . In that case Dr. Aganval entered the service of AIIMS as Professor of Ophthalmology in 1959. Consequent on the arisal of a vacancy in the post of Director in November 1978 and pursuant to the recommendation of the Special Selection Committee which was approved by the Government of India, by the memorandum dated 6.4.1979 Dr. Aganval was appointed as the Director of AIIMS with effect from 18.2.1979 the date with effect from which he was officiating as such. The appointment was "with effect from 18.2.1979, for a period of 5 years, or till he attains the age of 62 years, whichever is earlier." On satisfactory completion of the probation period, at the meeting of the Institute on 14.2.1980 the appointment of Dr. Aganval as Director was confirmed with effect from 19.2.1980. However at the meeting of the Institute held on 24.11.1980 it

was decided to prematurely retire him from service. Dr. Aganval challenged the order retiring him from service in public interest by way of a writ petition in the Delhi High Court. The writ petition was dismissed by the Delhi High Court and Dr. Aganval carried the matter by way of civil appeal to the Supreme Court. The Supreme Court reversed the decision of the Delhi High Court, allowed the appeal and quashed the resolution of the Institute dated 24.11.1980 and the consequent order retiring Dr. Aganval. As he had attained the age of 62 years by the time of the decision of the Supreme Court, the Court declined the benefit of reinstatement to office, but acceded to grant of the other benefits for the period 1.12.1981 to 21.1.1984, as well as the arrears of salary. Considering the aspect as to the nature of tenure appointment, the Supreme Court observed that under the recruitment rules of the Institute the post of Director of AIIMS is a tenure post to be filled up by direct recruitment. In the circumstances, held the Supreme Court, the question of superannuating or prematurely retiring the incumbent of the post does not arise. The Court held that the appointment of Dr. Agarwal was for a 5 year tenure which could be curtailed in the event of attaining 62 years, before completing the said tenure. Elucidating the meaning of "tenure" the Supreme Court held-

"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."

20. In Dr. L.M. Nath Vs. Dr. S.K. Kacker and Others, , the question whether the holder of a tenure post had a right to continue after the expiry of the period of tenure and in the absence of an order expressly extending the same, fell for consideration. Dr. Kacker was appointed on selection as Director of AIIMS on 15.10.1990 for a terms of 5 years and took charge of the post on the same day. In terms of the order of appointment his tenure of office expired on 14.10.1995. On 5.6.1995 the Institute constituted a Selection Committee to set in motion the process of selection of Director. Dr. Kacker submitted a representation for consideration of his case for re-appointment. It was decided that no extension as Director could be made and that Dr. Kacker's case should be considered along with others for fresh appointment as Director. The process of selection was not proceeded to its logical end in view of an interdictory order issued by the Delhi High Court in another writ petition. Consequent on the stalemate the President of the Institute exercising the available power under Rule 7(4) of the All India Institute of Medical Sciences Rules, 1958 appointed Prof. LM. Nath "to look after the functions of the Director of AIIMS with effect from FN of 15.10.1995 for a

period not exceeding six months or till such time a new Director is appointed." Dr. Nath assumed charge of the post on 15.10.1995 and continued to function. Aggrieved by the appointment of Dr. Nath, Dr. Kacker filed a writ petition in the Delhi High Court challenging the letter dated 15.10.95 and the resolution dated 5.6.1995 of the Institute and seeking a direction that he be appointed as the officiating Director. The High Court restrained the AIIMS from giving effect to or implementing the order asking Dr. Nath to look after the functions of the Director. Assailing this interim order, Dr. Nath approached the Supreme Court. The Supreme Court on an analysis of the factual situation concluded that the interference by the High Court was unwarranted. The Apex Court held that the appointment of Dr. Kacker as Director came to an end on 14.10.95 on conclusion of the tenure of his appointment. As there was no order expressly extending his tenure, Dr. Kacker had no right to continue thereafter, concluded the Court. As the Institute rejected the claims of Dr. Kacker for re-appointment, he was not entitled to be continued even on an officiating basis as the Director, reasoned the Court. The appointment of Dr. Nath to look after the functions of the Director by the Institute was upheld and the appeal allowed.

21. Nature of tenure appointment again came up for consideration of the Supreme Court in *Ram Nayan Shukla v. District Basic Education Officer and Ors.* 1999 SCC 631. The appellant before the Supreme Court was appointed as a teacher in a junior school initially on 1.4.1974. He was appointed at various periods for different tenures, the last being for the period 1.7.1977 till 30.6.1978. On commencement of the next academic session in July 1978 he reported to the school but was not allowed to join. He instituted a complaint before the District Basic Education Officer, who directed the appellant to join the school in October 1978. Despite the direction, he was not permitted to join the school. He thereupon approached the Allahabad High Court. Before the Court the management of the school urged that the service of the appellant stood terminated on 31.5.1978 for non-compliance with certain directions given by the management. The High Court concluded that the order of termination allegedly made on 31.5.1978 was invalid as the prior approval of the competent authority as required by the governing service rules was not obtained. While granting relief however, the High Court concluded that as the period of appointment on tenure was only up to 30.6.1978, he would be entitled to salary only till that date and had no right to hold the post thereafter nor could an order of reinstatement be issued in the circumstances. The Supreme Court while dismissing the appeal against the judgment of the Allahabad High Court concluded that in view of the fixed period appointment of the appellant which stood determined on the expiry of tenure as intimated in the letter of appointment i.e., 30.6.1978, in terms and conditions of the letter of appointment, no right accrued to the appellant to continue in service beyond 30.6.1978. Affirming the reasons and conclusions of the Allahabad High Court the appeal was dismissed.

22. The empirical principles governing a tenure appointment and the precedents analysed supra applied to the facts of the case on hand, clearly ordain the

conclusion that with the expiry of petitioner's tenure of appointment by 16.10.2001 he had no right to continue thereafter absent an expressed order extending his tenure or appointing him afresh on a fresh tenure of office. The petitioner was granted short time extensions of tenure, already adverted to herein before. By the order of the 1st respondent 17.10.2002 the 4th respondent was intimated that the petitioner may be permitted to continue in his present post till a final decision in the matter is taken by the ACC or until further orders, whichever is earlier. The tenure of office of the petitioner was thus dependent upon further orders or a final decision on the petitioner's tenure to be taken by the ACC, whichever was the earlier event. Thereafter by the order dated 18.12.2002, the 3rd respondent conveyed the disapproval of the President to the extension of petitioner's tenure, in his present post, beyond 25.11.2002. Consequent on the above order, the 4th respondent by the office order dated 19.12.2002 relieved the petitioner on the said date.

23. In the facts and circumstances of this case, the petitioner is seen to have no entitlement to continue in office till 30.6.2003 the date on which he attains the age of 60 years. The appointment was a tenure appointment which initially stood determined on 16.10.2001 on completion of the tenure he was entitled to apropos appointment notification dated 15.10.1996 in effectuation of which he assumed charge of the post on 17.10.1996. All further extensions of tenure granted to the petitioner also stood determined by 25.11.2002, the date with effect from which there is no extant order permitting his continuance in service and after which date there was no approval of the President for his continuance. It is also seen that the decision of the ACC disapproving the extension of tenure of the petitioner was after consideration of all relevant material and was not vitiated by any infirmity such as non-consideration of relevant material or for extraneous considerations. In the totality of circumstances, this Court is satisfied that the relief of the petitioner, from service, with effect from 19-12-2002 consequent on the decision of the ACC and the order of the 3rd respondent dated 18-12-2002, is impeccable and invites no interference by this Court.

24. The writ petition is without merits and is accordingly dismissed. In the facts and circumstances of the case however, there shall be no order as to costs.