

(2011) 12 AHC CK 0063
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 70881 of 2011

Ramesh Chandra Yagik

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Citation : (2012) 2 ADJ 299 : (2012) 132 FLR 982

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Sudhir Agarwal, J.—Heard learned counsel for the petitioner, learned Standing Counsel for respondent Nos. 1 and 3 as well as Sri Ashok Kumar Lal, Advocate for respondent No. 2.

2. It is not in dispute that under statutory rules the age of retirement is 58 years. Statutory rules do not contain provision permitting any re-appointment or re-employment on the post concerned after the incumbent has attained age of superannuation and is liable to retire. When the age of retirement is provided in statutory rules, the incumbent after attaining the said age cease to continue by operation of law and it would not depend upon volition of any of the parties.

3. Learned counsel for the petitioner drew my attention to a Government Order dated 30.7.2008 which says that concerned co-operative societies may reappoint a Secretary after age of retirement for a further period of two years in case the Committee of Management so resolved.

4. However, learned counsel for the petitioner could not show that said Government order is referable to any statutory provision and will have the overriding effect on statutory provision. It is well settled that the statutory rules cannot be modified or amended by executive orders. The law in this regard is well settled and for ready reference the following authorities of Apex Court may be referred: Indra Sawhney and Others v. Union of India and Others 1992

(Suppl) 3 SCC 217; Chandraprakash Madhavrao Dadwa and Others Vs. Union of India and Others, ; K. Kuppusamy and Another Vs. State of T.N. and Others, and Laxman Dundappa Dhamanekar and Another Vs. Management of Vishwa Bharata Seva Samiti and Another, . When something is required to be done in a particular manner the same cannot be circumvented by twisting the things.

5. In my view, once a person has attained age of superannuation prescribed in the statute, he would cease to function and shall have no right to hold the office by operation of law. He would become disentitled to hold the same office again thereafter unless permitted by statute. This is a mandate of statute and it cannot be arrested, restricted or twisted in any manner particularly by issuing an executive order which would be in the teeth of statutory rules.

6. It may be considered from another angle. A re-appointment or re-employment, in any case, envisaged within itself appointment. When an appointment is to be made all eligibility conditions prescribed in statute which include age at the time of recruitment and appointment would also be attracted. These provisions cannot be ignored or given a go bye taking recourse to an executive order. If an executive order in such circumstances is given effect to, it would amount to violate statutory rules which is not permissible. In my view, services which are governed by statutory rules and contain provision for an age of retirement, no re-appointment, re-employment or re-engagement in whatever terms it is called can be made after age of retirement unless such power is provided in the statute, otherwise it would be illegal.

7. I, therefore, find no reason to interfere with the impugned orders.

8. Dismissed.