

(2004) 10 AHC CK 0152

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50667 of 2002

R.B. Dixit

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Institutes of Technology Act, 1961 — Section 13(2)

Citation : (2005) 6 AWC 5410 : (2005) 1 UPLBEC 83

Hon'ble Judges : M. Katju, Acting C.J.; Sunil Ambwani, J; K.N. Ojha, J

Bench : Full Bench

Advocate : Yatindra, for the Appellant; B.N. Singh, Yashwant Verma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, A.C.J., Sunil Ambwani and K.N. Ojha, JJ.—Heard learned Counsel for the parties.

2. The controversy in this case is whether the retirement age of an employee of the Indian Institute of Technology, Kanpur is 60 years or 62 years.

3. Learned Counsel for the petitioner Sri Yatindra has invited our attention to a Division Bench decision of this Court in Civil Misc. Writ Petition No. 54346 of 2000, Raja Ram Verma v. Union of India, decided on 10.7.2002 vide Annexure 13 to the writ petition. We have carefully perused the aforesaid decision in Raja Ram Verma's case (supra) and we respectfully disagree with the same. Section 13(2) of the Indian Institute of Technology Act, 1961 states "Subject to the provisions of the Act and Statutes, all appointments to post under the Institute shall ordinarily be made on probation for a period of one year after which period the appointee if confirmed shall continue to hold his office subject to the provisions of the Act and the Statutes, till the end of the month in which he attains the age of 60 years."

4. The Division Bench in Raja Ram Verma's case (supra) held that the age of

retirement of an employee of the Indian Institute of Technology, Kanpur has been increased to 62 years in view of certain Government letters dated 31.8.1998 Annexure-2 to the writ petition and also letter dated 30.3.1999 Annexure-5 to the writ petition. In our opinion the aforesaid letters do not amount to statutory provisions nor are they pieces of delegated legislation.

5. It may be mentioned that Section 13(2) of the Indian Institute of Technology Act states that the age of retirement of an employee in the Indian Institute of Technology will be sixty years but this is subject to the provisions of the Act and Statutes. There is no provision in the Act which provides a different retirement age nor has any statute made under the Act provided for a different retirement age. Mere letters written by the Central Government do not amount to a provision in the Act or the Statutes.

6. We have held in *Smart Chip v. State of UP* 2002 (49) ALR 419, that in every legal system there is a hierarchy of norms as noted by the eminent jurist Kelson in his *Pure Theory of Law*. In the Indian Legal System this hierarchy is as follows :

1. The Constitution.

2. Statutory law, which may either be made by the Parliament or by the State legislature.

3. Delegated legislation, which may be either in the form of Rules, Regulations or Statutes made under the Act.

4. Executive instructions or Government Orders.

7. In the above hierarchy if there is conflict between a higher law and a lower law then the higher law will prevail. The executive instructions are part of the fourth layer in the hierarchy, which is at the lowest level, whereas an Act is part of the second layer and the Statutes made under the Act are delegated legislation and hence part of the third layer. The letters dated 31.8.1998 and 30.3.1999 are only executive instructions and hence they belong to the fourth layer. Hence they are neither Act nor Statutes. Hence in our opinion the age of retirement of an employee of the Indian Institute of technology is 60 years and not 62 years vide Section 13(2). We, therefore, respectfully disagree with the decision in *Raja Ram Verma's* case.

8. The judgment in *Raja Ram Verma's* case (*supra*) is hereby overruled. The writ petition is consequently dismissed.