

SUPREME COURT OF INDIA

Indian Institute of Technology

Vs.

M.S.Bidarkundi

C.A.Nos.4625-4626 of 2005

(R.V.Raveendran J.)

02.07.2008

ORDER

1. The respondents joined the services of the appellant-Indian institute of Technology ('the Institute', for short) as Junior/Senior Research Assistants (Academic Cadre), Junior/Senior Technical Assistants (Technical Cadre) and Research Scholars. As they were stagnating for long without promotional opportunities, the Institute promoted them to supernumerary posts of Laboratory Superintendents with pay scales equivalent to that of Lecturers. As the Laboratory Superintendents were not extended the benefits that were extended to academic staff, the respondents filed WP No.1757 of 1988 seeking a direction to the Institute to classify them as academic staff.

2. During the pendency of the said petition, the age of superannuation of employees of the Institute which was originally 60 years, was increased as 62 years in respect of academic staff (scientific design staff and others), personnel of Registry (Registrar, Deputy Registrar and Assistant Registrar), Library (Librarian, Deputy Librarian, Assistant Librarian) and Physical Education (Group 'A') who were on the roll of the Institute as on 31.8.1998, vide Resolution of Board of Governors dated 15.6.1999, pursuant to Government of India's directive dated 31.8.1998. As the Laboratory Superintendents were not being categorized either as academic staff or as personnel of Registry, Library or Physical Education, they were not extended the benefit of the increased age of superannuation. Therefore, they filed another Writ Petition No.922 of 2000, seeking a declaration that they are entitled to the benefit of the enhanced age of superannuation (62 years) as per the Government of India's directive dated 31.8.1998 and subsequent clarifications.

Alternatively, they sought quashing of the said directive dated 31.8.1998 and the consequential resolution of the Institute dated 15.6.1999, if they were to be construed as ignoring the Laboratory Superintendents as a class from coverage.

3. The High Court disposed of the said two writ petitions by a common order dated 7.7.2004. It held that on account of passage of time, the issues raised in WP No.1757 of 1988 had become academic and consequently disposed of the said writ petition, as no relief was

required to be granted to the writ petitioners in that petition. In so far as WP No.922 of 2000, the High Court declared that the respondents are eligible for the increased age of superannuation of 62 years as per the Government of India's directive dated 31.8.1998 and subsequent clarifications.

“The High Court also issued a direction to the Institute to implement the said GOI directive dated 31.8.1998 and its clarifications and apply to the respondents, the increased age of superannuation of 62 years. A further direction was issued to the Government of India to release necessary grants to the Institute to enable the Institute to pay the arrears of salary and other consequential benefits to the respondents herein within four months. A direction was issued to the Institute to pay the respondents, on release of grant by the Government of India, within four weeks of such release. The Court further directed that if the respondents were entitled to be reinstated as a consequence the Institute should either reinstate them or give the monetary benefits upto the age of superannuation.”

4. The said order of the High Court is challenged by the Institute. The Institute contends that classification of posts is the function of the Board of Governors of the Institute under Statute 11 of the Institute with reference to the functions or duties discharged by the holders of such posts, and the court could not have taken over the said function and classify the posts of Laboratory Superintendents or any other posts as academic or otherwise. It is also submitted that while extending a benefit, it is not necessary to extend the benefit to all the employees at the same point of time and it is possible for the employer to make dissimilar provision with regard to different groups of employees and that would not amount to discrimination. Reliance is placed on decisions of this Court in *Ajoy Kumar Banerjee vs. Union of India & Ors.*¹, and *IIT, Kanpur vs. Umesh Chandra*².

5. We have considered the rival submissions. It is clear from the decision in *Umesh Chandra* (supra) that classification of posts is the function of the Board of Governors. If the Statute requires classification and Board of Governors fails to discharge that function, the appropriate course for the court is to direct the Board of Governors to discharge its duty and not take upon itself the said function.

6. Statute 11 requires that all employees of the Institute, except those paid from contingencies, shall have to be classified into three groups : (a) academic staff, (b) technical staff, (c) administrative and other staff. Statute 11 also enumerates the several posts which fall under the said three categories. The said statute also contemplates the Board classifying any other posts as either academic, technical or administrative posts, by appropriate resolution. In these cases, the posts in which the respondents were earlier employed fell either under the category of academic staff (that is, the posts of Junior/Senior Research Assistants and Research Scholars) or under technical staff (that is, the posts of Junior/Senior Technical Assistants). All the respondents were promoted as Laboratory Superintendents which were supernumerary posts and not cadre posts, purely as a measure of relief from stagnation. The Board has not chosen to classify the posts of Laboratory Superintendents as either academic, technical or administrative, as required by Statute No.11, as they are

supernumerary posts. In the absence of classification of Laboratory Superintendents by the Institute under any of the specified categories, and as the said posts are considered as supernumerary posts, the classification which applied to them prior to their promotion will continue to apply to them. That is, those respondents who were earlier holding the posts of Junior/Senior Research Assistants, and Research Scholars will be continued to be classified as academic staff and those who were earlier holding the posts of Junior/Senior Technical Assistants will be continued to be classified as technical staff, until the Board of Governors of the Institute assigns a classification to the post of Laboratory Superintendent. We are therefore of the view that until the post of Laboratory Superintendent is classified, the respondents should be treated as continuing to belong to the category to which they belonged before promotion to the supernumerary post of Laboratory Superintendent. We are also of the view, to avoid confusion and uncertainty, the Board of Governors of the Institute should classify the post of Laboratory Superintendent under Statute No.11, by taking note of relevant factors including the duties discharged by them.

7. We therefore allow these appeals and issue the following directions in place of the directions issued by the High Court:

“(a) Such of those respondents, who were academic staff before their promotion as Laboratory Superintendents shall be considered as academic staff for the purpose of extension of benefit of enhanced age of superannuation;

(b) Such of those respondents who were technical staff before their promotion as Laboratory Superintendents will be continued to be considered as technical staff for the purpose of considering whether they are entitled to the benefit of enhanced age of superannuation.

(c) The respondents shall extend reliefs consequent to such classification, to the appellants found eligible within three months.

(d) The Board of Governors of the Institute shall classify the post of Laboratory Superintendent under Statute 11 within four months from today. While doing so, they may consider the representations of the respondents, for appropriate classification.

(e) Parties to bear their respective costs.”

¹1984 (3) SCC 127

²2006 (5) SCC 664