P.Venugopal vs Union Of India on 8 May, 2008

Author: Tarun Chatterjee

Bench: Harjit Singh Bedi, Tarun Chatterjee

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.656 OF 2007

P.VENUGOPAL ...Petitioner

VERSUS

UNION OF INDIA ...Respondent

J U D G M E N T

TARUN CHATTERJEE,J.

1. In this writ application under Article 32 of the Constitution moved at the instance of Dr.P.Venugopal, a renowned and internationally famed Cardio Vascular Surgeon, calls in question the constitutional validity of the proviso to sub-section (1A) of Section 11 of the All India Institute of Medical Sciences (Amendment) Act, 2007.

2. The writ petitioner was admittedly the Director of All India Institute of Medical Sciences (in short the "AIIMS") immediately prior to the commencement of the added provisions and by virtue of the legislative command contained in the added provision he had been made to demit his office as Director of the said Institute from the date of coming into force of this added provision.

3. The writ petitioner claims and it does not appear to be disputed that he was a Gold Medalist in his batch of MBBS, passed out from the AIIMS itself and thereafter he acquired qualification of MS and MCH in cardio vascular surgery and that he served the Institute for about three/four decades with honesty and respect without any blemish. It is also not in dispute that the writ petitioner was to complete his five-year term in the Office of the Director on 2nd of July, 2008, but due to this added provision in the Act, had to suffer a pre-mature termination and consequent removal from the office of the Director on 30th of November, 2007. It is alleged that this adverse affectation has been brought about directly by the added provision.

4. In the Statement of Objects and Reasons of the Amendment Act of 1987 being Act XXX of 1987, as stated herein above, AIIMS and the Post Graduate Institute of Medical Education and Research, Chandigarh, are statutory autonomous bodies wholly financed by the Government of India. Sub-Section (2) of Section 3 of the All India Institute of Medical Sciences Act, 1956, provides for the incorporation of the Institute and declares "that the Institute shall be a body corporate by the name aforesaid having perpetual succession and a common seal with a power to acquire, hold and dispose of property, both moveable and immoveable, and to contract, and shall by the said name sue and be sued". Section 5 of the Parent Act declares "that the Institute shall be an Institute of National Importance." Section 4 of the Act deals with the composition of the Institute and the Director of the Institute has been made an Ex- officio Member of the Institute and under sub- section 2 of Section 6, he is to continue as such so long as he holds office in virtue of which, he is such a Member. The Act provides for Constitution of a Governing Body by the Institute from amongst its members in such manner as may be prescribed by the Regulations to exercise such power and discharge such functions as the Institute may, by Regulation, make in this behalf confer or impose upon it. Under Regulation 25, the Institute is required to carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration under the Act. Section 26 deals with the dispute between the Institute and the Central Government in the matter of exercise of its power and discharge of its function under the Act and makes the decision of the Central Government final. Thus the Act designed the Institute to be an autonomous statutory body of national importance subject to limited control in respect of specified matters. Sub-section (1A) with its proviso added to Section 11 of the AIIMS (Amendment) Act, 2007 reads as follows:-

> (1A) - The Director shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

Provided that any person holding office as a Director immediately before the commencement of the All India Institute of Medical Sciences and the Post-Graduate Institute of Medical Education and Research (Amendment) Act, 2007, shall in so far as his appointment is inconsistent with the provisions of this sub-

section, cease to hold office on such commencement as such Director and shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of his office or of any contract of service....."

5. As noted herein earlier in this writ petition, the challenge has been confined only to the proviso of the added sub-section (1A) of Section 11 of the Act. Mr.Arun Jaitley, learned senior counsel appearing on behalf of the writ petitioner submitted at the first instance that the provisions, no doubt, acquire their operational significance from the added sub- section but manifestly, it makes a significant departure from the substantive part and proceeds to deal only with the particular Director holding office immediately prior to its coming into force and is not concerned with any other officer or member of the Institute, nor to any other person who may be coming to hold the same office of Director in future.

6. We have carefully examined the proviso to the added sub-section (1A) to Section 11 of the Act. Reading the proviso in the manner as aforesaid, the writ petitioner has challenged its constitutional validity mainly on the following grounds:

(i) The proviso is patently a single-man legislation and intended to affect the writ petitioner only and none else thus introduces a "naked discrimination" to deprive the writ petitioner of the constitutional protection under Article 14 of the Constitution.

(ii) The writ petitioner has been singled out to be deprived of the two protective conditions in respect of curtailment of his tenure. The benefit of notice and justifiable reasons being the two such conditions will continue to be available to all future Directors but the proviso makes them non-available to the writ petitioner being the Director presently in office and requires him to move out of the office under the legislative command.

(iii) In the facts and circumstances of the case and in view of the pending proceedings with different orders passed therein, such calculated steps to force the writ petitioner out of his office offend the constitutional scheme envisaging fair, reasonable and equal treatment on the part of the State in its dealing with the individual in general and with people in public employment in particular.

(iv) The writ petitioner claims the protection of Articles 14 and 16 of the Constitution of India.

(v) In the factual context of the case, there has been a violation of the orders issued in favour of the writ petitioner passed by the

learned Single Judge of the High Court of Delhi in W.P.No.10687/2006 in connection with interim applications CMP

NOs.8169/2006 and 12471/2006 and by the Division Bench in W.P.)No.8485/2006 and LPA NOs.2045-46/2006.

7. It is true that in establishments like AIIMS, there is an age of superannuation governing the length of service of its officers and employees. Such age of superannuation may be suitably altered by way of reducing the age so as to affect even the serving employees under appropriate circumstances and no exception can be taken to such course of action. Similarly under the Service Rules, there may be provision for extension of service after the attainment of the age of superannuation and it is well settled that in the event of refusal by an employer to grant an extension, the employee cannot justifiably claim to be deprived of any right or privilege. The view taken is that the employer has a discretion to grant or not to grant such extension having regard to the interest of the employer or the establishment. This view is expressed by this Court in the Case of State Bank of Bikaner and Jaipur and Ors. vs. Jag Mohan Lal (AIR 1989 SC 75). In this case, at para 12, this Court observed as follows :

> "The Bank has no obligation to extend the services of all officers even if they are found suitable in every respect. The interest of the Bank is the primary consideration for giving extension of service. With due regard to exigencies of service, the Bank in one year may give extension to all suitable retiring officers. In another year, it may give extension to some and not to all. In a subsequent year, it may not give extension to any one of the officers. The Bank may have a lot of fresh recruits in one year. The Bank may not need the services of all retired persons in another year. The Bank may have lesser workload in a succeeding year. The retiring persons cannot in any year demand that "extension to all or none". If we concede that right to retiring persons, then the very purpose of giving extension in the interest of the Bank would be defeated. We are, therefore, of opinion that there is no scope for complaining arbitrariness in the matter of giving extension of service to retiring persons."

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8. In the instant case, the material facts and circumstances bring into focus other consideration. In the case of the writ petitioner, a Division Bench of the Delhi High Court by its judgment and order dated 29th of March, 2007 (Pages 119 to 181 of Volume I of Writ Petition No.656 of 2007) has considered the right of the writ petitioner to hold the office of the Director for five years from the age of 61 years to 66 years. There can be no dispute with regard to the contentions raised by Mr. K. A. Parasaran, learned senior counsel appearing for the respondent, that a person appointed in Government service acquires a status and his service conditions will be determined by the Service Rules or Statutory Rules and not by the contrary or inconsistent terms of the contract, and such terms and conditions of service may be unilaterally altered by the Government. This view has been

candidly expressed in paragraph 6 of a decision of this Court, namely, Roshan Lal Tandon vs. Union of India and Anr. (AIR 1967 SC 1889) which, in our view, should be required to be reproduced. Accordingly, we reproduce para 6 of the aforesaid decision which is as under :

> "We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follow :
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> "So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has been fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter

> within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status."

9. Similarly in N.Lakshmana Rao and Ors vs. State of Karnataka and Ors. (1976) 2 SCC 502 in paras 20 and 21, it was observed as follows :-

> "As a result of the exercise of option by the teachers of the local bodies they became Government servants. The term that the service conditions would not be varied to their disadvantage would mean that they would be like all other Government servants subject to Article 310(1) of the Constitution. This could mean that under the law these teachers would be entitled to continue in service up to the age of superannuation. The exercise of option does not mean that there was a contract whereby a limitation was put on prescribing an age of superannuation. It has been held by this Court that prescribing an age of superannuation does not amount to an action under Article 311 of the Constitution. Article 309 confers legislative power to provide conditions of service. The Legislature can regulate conditions of service by Law which can impair conditions or terms of service.
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> This Court in Roshan Lal Tandon v. Union of India said that there is no vested contractual right in regard to the terms of service. The legal position of a Government servant is one of status than of contract. The duties of status are fixed by law. The terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee."

10. A further decision relied upon in this connection by Mr.Parasaran, learned senior counsel appearing for the respondent, is the decision of this Court reported in Union of India and Anr. vs. Dr.S.Baliar Singh, [(1998) 2 SCC 208], particularly learned senior counsel has relied on paragraph 12 of the said decision in support of his contention. Relying on this decision of this Court, it was contended that the rules which were in force on the date of retirement would govern the employee concerned. On this aspect of the matter, there cannot be any dispute as such aspect is well settled by a series of decisions of this Court as referred to herein above. But the problem arises when the constitutional validity of the statutory provisions is called in question on the ground of violation of fundamental rights. A person entering into a Government service is no doubt liable to be dealt with by the relevant Act or the Rules but it ceases to be so in the event of his success in challenging the constitutional validity of the same. A Government servant entering into a Government service does not forego his fundamental rights. On the other hand, because of his status as a person in public employment, he acquires additional rights constitutionally protected. The State or other public authorities are not, therefore, entitled to make and impose laws governing the service conditions of an employee which manifestly deprive him of the privileges of that status. A person in public employment is endowed with a status not merely subjecting him to liabilities and obligation but also protecting him against any arbitrary, unreasonable and unequal treatment. Such a person is also entitled to constitutional remedies whether under Article 32 or under Article 226 of the

Constitution. The next contention on behalf of the respondent is that the constitutionality of law cannot be judged on the basis of its peculiar operation in special or individual cases and it must be judged on the basis of its ordinary effect and use of operation. It was pointed out that a few freak instances of hardship may arise at a time or at different times but the same cannot invalidate the order or the policy. In this connection, Mr.Parasaran, learned senior counsel appearing on behalf of the respondent, had placed reliance on a decision of the Federal Court reported in AIR 1939 Federal Court P.1 (Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act,1938.)

11. While examining the legality of Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, Justice Sulaiman, as His Lordship then was, in a concurring judgment referred to the observations of Lord Herschell in Attorney General for Canada vs. Attorney General for Ontario (1898) A C 700 to the following effect:-

> "The Supreme Legislative power in relation to any subject matter is always capable of abuse, but it is not to be assumed that it will be improperly used, if it is, the only remedy is an appeal to those by whom the Legislature is elected." (See AIR 1939 PC 1 at page 30.

12. Reliance can also be placed in this connection on the case of R.S.Joshi, Sales Tax Officer, Gujarat and Ors. vs. Ajit Mills Ltd. and Anr. [(1977) 4 SCC 98]. Mr.Parasaran, learned senior counsel had also relied on another decision reported in Tamilnadu Education Department Ministerial and General Subordinate Services Association and Ors. vs. State of Tamil Nadu and Ors. [(1980)3 SCC 97]. Reliance was also placed by the learned senior counsel for the respondent on the decision in the matter of State of Himachal Pradesh and Anr. vs. Kailash Chand Mahajan and Ors. (1992 Suppl.2 SCC 351) and Virender Singh Hooda and Ors. vs. State of Haryana and Anr.(2004) 12 SCC

588.

13. On a close examination of the aforesaid decisions, it appears that the questions involved in the aforesaid decisions were significantly different. So far as AIR 1939 (Federal Court page 1) is concerned, the question of constitutional invalidity, as in the present case, was not in issue. In R.S.Joshi's case, the law in question did not lack in generality in respect of its operation. But exception was sought to be taken on the basis of the hardship or injustice in particular cases. So far as 1980 (3) SCC 197 (Tamilnadu Education Department case) is concerned, the law was general in its operation and freak instances of hardship were held not relevant to determine its validity.

14. So far as the last decision of this Court, as referred to by Mr. Parasaran, namely, State of Himachal Pradesh vs. Kailash Chand Mahajan (1992 Supp.2 SCC 351) is concerned, the impugned law in the decision being the Ordinance of 1990 was a law of general application and it applied not only to the Chairman-cum-Managing Director of Himachal Pradesh State Electricity Board, but also to all members of the Electricity Board. This Court, accordingly, held that this was not a one-man legislation and consequently upheld it on merit. Therefore, the respective contentions are to be examined in the context of the Constitutional Scheme of India having a written constitution with guaranteed fundamental rights. In India, under Article 13(2) of the Constitution "the State shall not

make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this Clause shall, to the extent of the contravention, be void." Thus in India, a law cannot be accepted merely because it purports to be a law falling within the legislative field of the maker thereof. Each such provision of law is required to stand the test of Article 13(2) of the Constitution and survive.

15. Mr.Arun Jaitley, learned senior counsel appearing on behalf of the writ petitioner laid stress on the following three judgments of this Court. The first decision is the case of Ram Prasad Narayan Sahi and Anr. vs. The State of Bihar and Ors. (AIR 1953 SC 215). Mr.Jaitley had drawn our attention to a passage of this judgment rendered by the former Chief Justice of this Court, Justice Patanjali Sastri, in which the Chief Justice, after referring to the facts of the earlier case of Ameerunissa Begum and Ors. vs. Mahboob Begum and Ors. (AIR 1953 SC 91), in which the Legislature intervened in a private dispute in respect of succession to an estate,observed:-

"Legislation based upon mismanagement or other misconduct as the differentia and made applicable to a specified individual or corporate body is not far removed from the notorious parliamentary procedure formerly employed in Britain of punishing individual delinquents by passing bills of attainder, and should not, I think, receive judicial encouragement." (See Page 217 of this decision).

16. Chief Justice Patanjali Sastri further referred to his own dissenting judgment in Charanjit Lal Chowdhury vs. Union of India and Ors. (AIR 1951 SC 41) and observed that similar view was taken in Ameerunnissa Begum's case (Supra). The former Chief Justice Patanjali Sastri, in the same decision proceeded to observe :

> "Whenever, then, a section of the people in a locality, in assertion of an adverse claim, disturb a person in the quiet enjoyment of his property, the Bihar Government would seem to think that it is not necessary for the police to step in to protect him in his enjoyment until he is evicted in due course of law, but the Legislature could intervene by making a "Law" to oust the person from his possession. Legislation such as we have now before us is calculated to draw the vitality from the Rules of Law which our Constitution so unmistakably proclaims, and it is to be hoped that the democratic process in the country will not function along these lines."

17. In Ameerunnissa Begum's case (Supra), the former Chief Justice of India, Mr. Justice Bijon Kumar Mukherjee, as His Lordship then was, also applied the principles laid down in the case of Ram Prasad Narayan Sahi's case (Supra) and at page 220 observed as follows:-

> "What the legislature has done is to single out these two individuals and deny them the right which every Indian citizen possesses to have his rights adjudicated upon by a judicial tribunal in accordance with law which applied to his case. The meanest of citizens has a right of access to a court of law for the redress of his just grievances and it is from his right that the appellants have been deprived, by this Act. It is impossible to conceive of a worse form of discrimination than the one which differentiates a

> particular individual from all his fellow subjects and visits him with a disability which is not imposed upon anybody else and against which even the right of complaint is taken away. The learned attorney general who placed his case with his usual fairness and ability, could not put forward any convincing or satisfactory reason upon which this legislation could be justified." (See Page 220 of this decision).

18. The observation made by His Lordship in the aforesaid decision is also material and therefore we reproduce the same:

> "It is true that the presumption is in favour of the constitutionality of a legislative enactment and it has to be presumed that a legislature understands and correctly appreciates the needs of its own people. But when on the face of a statute, there is no classification at all and no attempt has been made to select any individual or group with reference to any differentiating attribute peculiar to that individual or group and not possessed by others, this presumption is of little or no assistance to the State."

19. Let us now look into the facts of the case in hand. In the instant case it was submitted that the impugned proviso was manifestly designed to apply and was in fact applied only against the writ petitioner and was not intended to and could not apply even, in principle or otherwise, to anybody else because there was only one AIIMS in the country, there was only one Director of the AIIMS on the date of commencement of the Amending Act, and there could be none else who could conceivably be effected by its operation. It is claimed that reference to a similar proviso introduced in the PGI Chandigarh Act, 1956, is somewhat misleading as the term of appointment of the present Director of PGI Chandigarh was only upto the age of 68 years and accordingly there was no question under the PGI Chandigarh Act as the proviso is affecting the present incumbent or his successor.

20. It was further submitted on behalf of the writ petitioner that the proviso itself declares that "any person holding office as a Director immediately before the commencement of the All India Institute of Medical Sciences and the Post Graduate Institute of Medial Education and Research (Amendment) Act of 2007 shall in so far as his appointment is inconsistent with the provisions of this sub- section ceases to hold office on such commencement as such Director and shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of his office or of any contract of service." (Emphasis supplied)

21. This submission, as advanced by Mr.Jaitley, learned senior counsel appearing on behalf of the writ petitioner, in our view, has merit that the impugned proviso does not at all deal with the alteration of the age of superannuation. On the contrary, it really modifies the initial appointment on the ground of alleged inconsistency with a subsequent enactment and makes him entitled to compensation for premature termination of his office. To equate the impugned proviso with the simple alteration of the age of superannuation is to ignore the clear language of the proviso itself. The proviso brings about a premature termination and provides for compensation. A superannuation in usual course gives rise to ordinary retiral benefits and not to any compensation. Again it is impossible to ignore the force in the submission of Mr.Jaitley, learned senior counsel appearing on behalf of the writ petitioner, that a person is being singled out for premature

termination without any question of his being justifiably treated as a Member of a separate and distinct class on any rational basis, any question of intelligible differentia having a nexus to the object of classification cannot arise. It was contended by Mr.Jaitley that in reality there is no legislation in respect of any class but there is legislation in respect of an individual, a living human being requiring him to move out of office. The Delhi High Court in its judgment dated 29th of March, 2007 has held that the writ petitioner was entitled to continue as a Director upto 2nd of July, 2008 and issued a Writ of Mandamus that premature termination could only be made for justifiable reasons and in compliance with the principles of natural justice. By a Writ in the nature of Prohibition issued by the High Court, the respondent was prohibited from implementing any adverse decision against the writ petitioner without giving him a period of two weeks for approaching the High Court. It would be appropriate at this stage to refer to the Statement of Objects and Reasons of the Amendment Act of 2007. It declares that with a view to comply with the directions of the High Court of Delhi in the judgment dated 29th of March, 2007, the amendments are being introduced. It is difficult to conceive how the amendments are in compliance or in consonance with the directions of the High Court. On behalf of the writ petitioner, it was contended and not without reason, that the amendments were made precisely to frustrate the judgment of the High Court reducing his search for justice to an exercise in futility.

22. It appears that the direction No.13 in the judgment of the Delhi High Court was not confined or related to the particular case of the writ petitioner as regards his right to continue as a Director until he attains the age of 66 years, i.e., upto 2nd of July, 2008. It was otherwise and independently upheld in the same judgment. It is also true that the impugned proviso does not lay down any policy or principle at all, but deals only with the case of the writ petitioner and seeks to affect him in isolation. After the order of the Delhi High Court dated 29th of November, 2002, in Health India (Registered) vs. Union of India and Ors. [102 (2003) Delhi Law Times 19], the writ petitioner was appointed with the approval of the ACC as the Director at the age of 61 years on 3rd of July, 2003 for a term of five years expiring on 2nd of July, 2008, i.e., on attainment of the age of 66 years. Shri R.L.Malhotra, Under Secretary to the Government of India, in fact, by a letter to the Director, All India Institute of Medical Sciences, Ansari Nagar, New Delhi, conveyed the approval of the Appointments Committee of the Cabinet for appointment of Prof. P.Venugopal as Director, All India Institute of Medical Sciences, New Delhi in the pay scale of Rs.26,000/- with Non- Practicing Allowance for a period of five years from the date he assumes charge of the post and until further orders. He will also continue as Professor in the Department of Cardiovascular and Thoracic Surgery, AIIMS, New Delhi. The appointment of the Director, PGI, Chandigarh, was restricted upto the age of 62 years and his appointment does not bear any comparison with the instant case.

23. The learned Single Judge of the Delhi High Court in the writ Petition being W.P.[C] No.10687/2006 on 7th of July, 2006, inter alia, observed that "the petitioner has not been given any notice and according to him his tenure of five years could not be curtailed on the grounds which are not justifiable..."and then proceeded to injunct the respondent against premature termination of the term of the writ petitioner. The learned Single Judge reiterated and re-emphasized the prohibition against the respondent by subsequent order dated 18th of October, 2006 (See Pages 89-118 of Vol.1)

24. The Division Bench of the Delhi High Court by its judgment dated 29th of March, 2007 has rendered an effective and binding determination of the right of the writ petitioner to continue as Director for five years upto 2nd of July, 2008. In the said judgment (at P.127 of Vol.I), the learned Judge of the High Court has referred to the AIIMS Regulations and particularly to Clause 5 thereof which provides for fixed tenure of five years for the Member of the Governing Body as the Director being full fledged Member of the Governing Body and not an Ex-officio Member and was entitled to the benefit of his tenure as a Member, and could not justifiably be deprived of the same. The writ petitioner is, however, being singled out and treated differently from other Members of the Governing Body. In this connection, reference can be made to Sections 4, 6 and 10 of the AIIMS Act, 1956 which are relevant for our purpose. Accordingly, we quote relevant provisions as indicated herein above:-

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Section   4       -    Composition            of   the
      Institute -
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The Institute shall consist of the following members, namely :-

(a) the Vice-Chancellor of the Delhi University, ex-officio;

(b) the Director General of Health Services, Government of India, ex officio;

(c) the Director of the Institute, ex officio;

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(d)   two   representatives    of   the
      Central    Government    to    be
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nominated by that Government, one from the Ministry of Finance and one from the Ministry of Education;

(e) five persons of whom one shall be a non-medical scientist representing the Indian Science Congress Association, to be nominated by the Central Government;

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(f)   four    representatives    of    the
      medical    faculties    of    Indian
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Universities to be nominated by the Central Government in the manner prescribed by rules; and

(g) three members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Council of States.

Section 6 - Term of office of, and vacancies among, members -

(1) Save as otherwise provided in the section, the term of office of a member shall be five years from the date of his nomination or election:

Provided that the term of office of a member elected under clause (g) of section 4 shall come to an end as soon as he [becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States or] ceases to be a member of the House from which he was elected.

(2) The term of office of an ex officio member shall continue so long as he holds the office in virtue of which he is such a member.

(3) The term of office of a member nominated or elected to fill a casual vacancy shall continue for the remainder of the term of the member in whose place he is nominated or elected.

(4) An outgoing member shall, unless the Central Government otherwise directs, continue in office until another person is nominated or elected as a member in his place.

(5) An outgoing member shall be eligible for re-nomination or re-

election.

(6) A member may resign his office by writing under his hand addressed to the Central Government but he shall continue in office until his resignation is accepted by that Government.

(7) The manner of filing vacancies among members shall be such as may be prescribed by rules.

Section 10 - Governing Body and other Committees of the Institute _ (1) There shall be a Governing Body of the Institute which shall be constituted by the Institute from among its members in such manner as may be prescribed by regulations.

(2) The Governing Body shall be the executive committee of the Institute and shall exercise such powers and discharge such functions as the Institute may,

by regulations made in this

behalf, confer or impose upon it. (3) The President of the Institute shall be the Chairman of the Governing Body and as Chairman thereof shall exercise such powers and discharge such functions as may be prescribed by regulations.

(4) The procedure to be followed in the exercise of its powers and discharge of its functions by the Governing Body, and the term of office of, and the manner of filling vacancies among, the members of the Governing Body shall be such as may be prescribed by regulations.

(5) Subject to such control and restrictions as may be prescribed by rules, the Institute may constitute as many standing committees and as many ad hoc committees as it thinks fit for exercising any power or discharging any function of the Institute or for inquiring into or reporting or advising upon, any matter which the Institute may refer to them.

(6) A standing committee shall consist exclusively of members of the Institute; but an ad hoc committee may include persons who are not members of the Institute but the number of such persons shall not exceed one half of its total membership.

(7) The Chairman and members of the Governing body and the Chairman and members of a standing committee or an ad hoc committee shall receive such allowances, if any, as may be prescribed by regulations."

25. Keeping the provisions, as noted herein above, in our mind, we now proceed to take up the question in hand. The tenure of the writ petitioner as a Director to act as a Member of the Governing Body is for five years which expires on 2nd of July, 2008 on the basis of his initial appointment and, therefore, it is not in dispute that it was a tenure appointment which could not be otherwise dealt with. It was seriously contended by Mr.Parasaran, learned senior counsel appearing on behalf of the respondent, that reliance on the Delhi High Court's judgment and orders particularly those of the learned Single Judge dated 7th of July, 2006 and 18th of October, 2006 and the order dated 29th of March, 2007 of the Division Bench was wholly misconceived as the two orders of the Single Judge were interim orders and the special leave petition against the orders of the Division Bench was pending before this Court. It was also contended by Mr.Parasaran, learned senior counsel for the respondent that the writ petition filed by the writ petitioner in the Delhi High Court is still pending before the learned Single Judge and therefore, it was pointed out on behalf of the respondent that in such view of the matter, no reliance could be placed upon the decision in Madan Mohan Pathak and Anr. vs. Union of India and Ors. [(1978) 2 SCC 50] and in the case of A.V.Nachane and Anr. vs. Union of India and Anr. [(1982)1 SCC 205]. It is true that respondent has, no doubt, raised the plea that the judgment of the Division Bench is under challenge before this Court and, therefore, it has not yet attained the kind of finality which was there in Madan Mohan Pathak's case. In Madan Mohan Pathak's case (Supra), the question of finality was taken into consideration only for the purpose of enforceability of the direction of the Calcutta High Court in respect of payment of bonus under the settlement of Class III and Class IV employees and it was held that irrespective of the question of Constitutionality of the Amendment Act, the Calcutta High Court judgment operating

inter parties and becoming final was enforceable. In this connection, Para 8 of the decision in Madan Mohan Pathak's case is important for the purpose of the present case. Accordingly, we reproduce the said paragraph which runs as under :-

> "It is significant to note that there was no reference to the judgment of the Calcutta High Court in the Statement of Objects and Reasons, nor any non-obstante clause referring to a judgment of a court in Section 3 of the impugned Act. The attention of Parliament does not appear to have been drawn to the fact that the Calcutta High Court has already issued a writ of Mandamus commanding the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March, 1976. It appears that unfortunately the judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of that judgment. Section 3 of the impugned Act provided that the provisions of the Settlement in so far as they relate to payment of annual cash bonus to Class III and Class IV employees shall not have any force or effect and shall not be deemed to have had any force or effect from 1st April, 1975. But the writ of Mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March, 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year 1st April, 1975 to 31st March, 1976 was concerned, it became crystallised in the judgment and thereafter they became entitled to enforce the writ of Mandamus granted by the judgment and not any right to annual cash bonus under the settlement. This right under the judgment was not sought to be taken away by the impugned Act. The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus to Class III and Class IV employees for the year 1st April, 1975 to 31st March, 1976 in obedience to the writ of Mandamus. The error committed by the Life Insurance Corporation was that it withdrew the Letters Patent Appeal and allowed the judgment of the learned Single Judge to become final. By the time the Letters Patent Appeal came up for hearing, the impugned Act had already come into force and the Life Insurance Corporation could, therefore, have successfully contended in the Letters Patent Appeal that, since the Settlement, in as far as it provided for payment of annual cash bonus, was annihilated by the impugned Act with effect from 1st April, 1975, Class III and Class IV employees were not entitled to annual cash bonus for the year 1st April, 1975 to 31st March, 1976 and hence no writ of Mandamus could issue directing the Life Insurance Corporation to make payment of such bonus. If such contention had been raised, there is little doubt, subject of course to any constitutional challenge to the validity of the impugned Act, that the judgment of the learned Single Judge would have been upturned and the Writ petition dismissed. But on account of some inexplicable reason, which is difficult to appreciate, the Life Insurance Corporation did not press the Letters Patent Appeal and the result was that the judgment of the learned Single Judge granting writ of Mandamus became final and binding on the parties. It is difficult to see how in these circumstances the Life Insurance Corporation could claim to be absolved from the obligation imposed by the judgment

to carry out the Writ of Mandamus by relying on the impugned Act."

26. Mr. Justice P.N. Bhagwati, former Chief Justice of India in that decision at Para 8 pointed out that Life Insurance Corporation (Modification and Settlement) Act, 1976 was enacted apparently in ignorance of the Calcutta High Court judgment and the attention of the Parliament was not drawn to that judgment at all. It was also pointed out in that decision at para 8 that there was no reference to the said judgment in the Statement of Objects and Reasons nor any non-obstante clause incorporating in Section 3 of the impugned Act in that case to override the judgment. This Court has been moved by the respondent in the writ application challenging the propriety of certain directions issued by the Delhi High Court requiring the respondent to take approval of ACC for any adverse decision against the writ petitioner and for giving the writ petitioner two weeks' time against any such adverse decision. This Court has, however, declined to pass any interim order in the SLP filed by the respondent. Therefore, the interim order or final order of the Delhi High Court would remain binding upon the parties for the time being and they cannot be ignored or disregarded unless they are modified or leave is granted to take any step contrary thereto. It may not be out of place to mention that the SLP of the respondent indicates that the term of office of five years of the writ petitioner as Director was not really in dispute. In the Statement of Objects and Reasons of the Act introducing the impugned proviso, it is stated that the same is being introduced with a view to comply with the direction of the High Court in the judgment and order dated 29th of March, 2007. It, however, appears that the Division Bench of the Delhi High Court has determined the question of tenure of the writ petitioner to be five years and there are writs in the nature of Mandamus and Prohibition issued by the Delhi High Court directing the right of the writ petitioner indicated in the respective orders. As in Madan Mohan Pathak's case(para 8), as quoted herein above, in the instant case also the Parliament does not seem to have been apprised about the pendency of the proceedings before the Delhi High Court and this Court and declaration made and directions issued by the Delhi High Court at different stages. In the impugned amendment, there is no non-obstante clause. The impugned amendment introducing the proviso, therefore, cannot be treated to be a validating Act. This Court in the case of Dr.L.P.Agarwal vs. Union of India and Ors. [(1992) 3 SCC 526 (Para 16)] observed as follows :-

> "We have given our thoughtful consideration to the reasoning and the conclusions reached by the High Court. We are not inclined to agree with the same. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service-conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under Proviso to Regulation 30(2) of the Regulations only shows that no employee of the AIIMS can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute-Services. We do not agree that simply because the appointment order of the appellant mentions that "he is appointed for a period of five years or till he attains the age of 62 years", the appointment ceases to be to a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. Can such person be retired prematurely curtailing his tenure of five years?

Obviously not. The appointment of the appellant was on a Five Years Tenure but it could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. The High Court failed to appreciate the simple alphabet of the service jurisprudence. The High Court's reasoning is against the clear and unambiguous language of the Recruitment Rules. The said rules provide "Tenure for five years inclusive of one year probation" and the post is to be filled "by direct recruitment". 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. The appellant could not therefore have been prematurely retired and that too without being put on any notice whatsoever. Under what circumstances can an appointment for a tenure be cut short is not a matter which requires our immediate consideration in this case because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only. This court's judgment in Dr. Bool Chand v. The Chancellor Kurukshetra University relied upon by the High Court is not on the point involved in this case. In that case the tenure of Dr. Bool Chand was curtailed as he was found unfit to continue as Vice-Chancellor having regard to his antecedents which were not disclosed by him at the time of his appointment as Vice-Chancellor. Similarly the judgment in Dr. D.C. Saxena v. State of Haryana has no relevance to the facts of this case".

27. From the above quotation, as made in para 16 of the said decision of this Court, it is evident that this Court has laid down that the term of 5 years for a Director of AIIMS is a permanent term. Service Conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise at all. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. The appointment is for a tenure to which principle of superannuation does not apply. "Tenure" means a term during which the 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 post begins when he joins and it comes to an end on the completion of tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. It was in 1958 that AIIMS had framed its regulations under Section 29 of the Act. Regulation 30-A was brought into AIIMS Regulation by an amendment dated 25th of July, 1981 notified in the Gazette on 10th of October, 1981 coming into force w.e.f. 1st of August, 1981. The provision of Regulation 30-A was very much in existence when this court had decided the case of Dr.L.P.Agarwal on 21st of July, 1992. It is the same provision of Regulation 30-A which was brought into force w.e.f. 1st of August, 1981 in the AIIMS Regulations and had been re-numbered as Regulation 31, when the AIIMS 1958 Regulations had been substituted by AIIMS Regulations, 1999. Therefore, it is incorrect on the part of the respondent to contend that Regulation 31 was introduced in the AIIMS Regulations only after the judgment of this Court in Dr. L.P.Agarwal's case.

28. This question was specifically deliberated upon by Justice Kuldip Singh, as His Lordship then was, in Dr.L.P.Agarwal's case and a question was formulated on this aspect at page 530 of the said decision. After formulating the aforesaid question, a submission on behalf of the respondent was also considered by this Court in the aforesaid decision at paragraph 13 page 532 of the said decision which is as follows:-

> "The respondent argued before the High Court that the appellant was retired by the AIIMS under Regulation 30(3) of the Regulations in public interest after he attained the age of 55 years.
>
> It was further contended that fundamental Rule 56(j) was also
>
> applicable to the AIIMS employees by virtue of Regulation 35 of the Regulations. It was argued that even if Regulation 30(3) was not attracted the Institute had the power to prematurely retire the appellant, in public interest, under fundamental Rule 56(j) applicable to the Central Government employees. It was contended that despite the fact that the appellant was on a tenure post there was no bar to prematurely retire him by invoking either Regulation 30(3) or Fundamental Rule 56(j).
>
> 29. After formulating the question and after considering the submission made on behalf of the parties, this Court in that decision at para 16 of page 531 concluded in the following manner:-
>
> "We have given our thoughtful consideration to the reasoning and the conclusions reached by the High Court. We are not inclined to agree with the same. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service-conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under Proviso to Regulation 30(2) of the Regulations only shows that no employee of the AIIMS can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute-Services. We do not agree that simply because the appointment order of the appellant mentions that "he is appointed for a period of five years or till he attains the age of 62 years", the appointment ceases to be to a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. Can such person be retired prematurely curtailing his tenure of five years?

Obviously not. The appointment of the appellant was on a Five Years Tenure but it could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. The High Court failed to appreciate the simple alphabet of the service jurisprudence. The High Court's reasoning is against the clear and unambiguous language of the Recruitment Rules. The said rules provide "Tenure for five years inclusive of one year probation" and the post is to be filled "by direct recruitment". 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. The appellant could not therefore have been prematurely retired and that too without being put on any notice whatsoever. Under what circumstances can an appointment for a tenure be cut short is not a matter which requires our immediate consideration in this case because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only. This court's judgment in Dr. Bool Chand v. The Chancellor Kurukshetra University relied upon by the High Court is not on the point involved in this case. In that case the tenure of Dr. Bool Chand was curtailed as he was found unfit to continue as Vice-Chancellor having regard to his antecedents which were not disclosed by him at the time of his appointment as Vice-Chancellor. Similarly the judgment in Dr. D.C. Saxena v. State of Haryana has no relevance to the facts of this case".

30. From the aforesaid discussion, the principle of law stipulated by this Court that curtailment of the term of five years can only be made for justifiable reasons and compliance with principles of natural justice for premature termination of the term of a Director of AIIMS - squarely applied also to the case of the writ petitioner as well and will also apply to any future Director of AIIMS. Thus there was never any permissibility for any artificial and impermissible classification between the writ petitioner on the one hand and any future Director of AIIMS on the other when it relates to the premature termination of the term of office of the Director. Such an impermissible over classification through a one man legislation clearly falls foul of Article 14 of the Constitution being an apparent case of "naked discrimination" in our democratic civilized society governed by Rule of Law and renders the impugned proviso as void, ab initio and unconstitutional.

31. Such being our discussion and conclusion, on the constitutionality of the proviso to Section 11A, we must, therefore, come to this conclusion without any hesitation in mind, that the instant case is squarely covered by the principles of law laid down by this Court in the various pronouncements as noted herein above including in the case of D.S.Reddy vs. Chancellor, Osmania University and Ors. [1967 (2) SCR 214). In the case of D.S.Reddy (supra), the facts of that case are somewhat similar to that of the writ petitioner. In that decision, D.S.Reddy was already a Vice- Chancellor for the past seven years and had not challenged the fixation of term from five years to three years. He was aggrieved by the second amendment in the University Act whereby Section 13A was introduced to make the provision of Section 12(2) providing for inquiry by an Hon. Judge of High Court/Supreme Court and hearing before premature termination of the term of the Vice-Chancellor inapplicable to the incumbent to the office of the Vice-Chancellor on the commencement of the 2nd Amendment. The core contention of D.S.Reddy was that this amendment was only for his removal and therefore was a case of "naked discrimination" as it also deprived the protection of Section 12(2) to him when Section 12(2) was applicable to all other Vice-Chancellors and there being no distinction in this regard between the Vice-Chancellor in office and the Vice-Chancellors to be appointed. In that situation, the plea of the respondent-Government was that the provision similar to Section 13A was

also incorporated in two other enactments relating to Andhra University and Shri Venkateswara and was, therefore, not a one man legislation. It was further contended by the State that it was always open and permissible to the State Legislature to treat the Vice-Chancellor in office as a class in itself and make provisions in that regard. All the contentions on behalf of the State Government were rejected by the Constitution Bench judgment of this Court in the case of D.S.Reddy (supra) and it was held that it was a clear case of "naked discrimination" for removal of one man and by depriving him of the protection under Section 12(2) of the Act without there being any rationality of creating a classification between the Vice-Chancellor in office and the Vice-Chancellor to be appointed in future. It was further held in the case of D.S.Reddy that such a classification was not founded on an intelligible differentia and was held to be violative of Article 14 of the Constitution of India. Accordingly, the provision of Section 13A was held to be ultra vires and unconstitutional and hit by Article 14 of the Constitution. Similarly in the present case, the impugned proviso to Section 11(1A) itself states that it is carrying out premature termination of the tenure of the writ petitioner. It is also admitted that such a premature termination is without following the safeguards of justifiable reasons and notice. It is thus a case similar to the case of D.S.Reddy and other decisions cited above that the impugned legislation is hit by Article 14 as it creates an unreasonable classification between the writ petitioner and the future Directors and deprives the writ petitioner of the principles of natural justice without there being any intelligible differentia.

32. In view of our discussion made hereinabove and for the reasons aforesaid, we are of the view that this writ petition is covered by the decisions of this Court in the case of D.S.Reddy and L.P.Agarwal and the impugned proviso to Section 11A of the AIIMS Act is, therefore, hit by Article 14 of the Constitution. Accordingly, we hold that the proviso is ultra vires and unconstitutional and accordingly it is struck down. The writ petition under Article 32 of the Constitution is allowed. In view of our order passed in the writ petition, the writ petitioner shall serve the nation for some more period, i.e., upto 2nd of July, 2008. We direct the AIIMS Authorities to restore the writ petitioner in his office as Director of AIIMS till his period comes to an end on 2nd of July, 2008. The writ petitioner is also entitled to his pay and other emoluments as he was getting before premature termination of his office from the date of his order of termination. Considering the facts and circumstances of the present case, there will be no order as to costs.

.....J. [TARUN CHATTERJEE] New Delhi: .....J. May 8, 2008 [HARJIT SINGH BEDI]