

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

Writ Petition No.15691 of 2018

Amiruddin Akolawala
Vs.
State of M.P., and others

Shri M.M.Bohra, Advocate for the petitioner.

Shri Vinay Gandhi, Government Advocate for the respondent
No.1/State

Shri Kamlesh Mandloi, Advocate for the respondents No.2 and 3.

WHETHER APPROVED FOR REPORTING: YES

Law Laid Down:

(1) Age of superannuation of employees of employees of respondent/Corporation: Whether 60 years or 62 years?

(2) Madhya Pradesh Warehousing Corporation is incorporated under the Central Act of the Warehousing Corporations Act, 1962.

Section 42 provides that the Warehousing Corporation may, with the previous sanction of the appropriate Government by notification in the official Gazette, make regulations not inconsistent with the Act and the rules made there under to provide for all matters for which provisions is necessary or expedient for the purposes of giving effect to the provisions of the Act.

Sub-section (2) provides that in particular and without prejudice to the generality of the foregoing power, such regulations may provide for Clause (a) is relevant and the same reads as under:

“(a) the conditions of service of and remuneration payable to the officers and other employees of a Warehousing Corporation.”

(3) Regulation 13 of the Madhya Pradesh State Warehousing Corporation Staff Regulations 1962 deals with age of superannuation/retirement.

(4) The amended regulation 13 deals with age of retirement of the Officers and employees of the Corporation consistent with the State Government Officers and employees. There is nothing on record to suggest that the regulation 13 after the year 1979 has further been amended or modified. The regulation 13 makes it

amply clear that the policies of the State Government as in force from time to time in respect of the age of superannuation/retirement shall be applicable to the Corporation's employees. Therefore, the rules and regulations of the Sate Government from time to time in that behalf are applicable by way of reference. In other words, the changes from time to time in the service rules of the State Government related to age of superannuation/retirement shall have application to the employees of the Corporation.

- (5) The age of superannuation of Class-III employees of the Corporation shall be 62 years in view of Madhya Pradesh Ordinance No.4 of 2018 published in the Madhya Pradesh Gazette on 31/03/2018 (Annexure P/2) followed by the amendment in the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhyadesh, 2018 has increased the age of superannuation/retirement from 60 years to 62 years of the State Government Officers and employees.

Significant paragraphs: 1, 3 to 5, 8 and 10

Writ petition allowed

Reserved on: 14/03/2019

ORDER
(12/ 04/2019)

Rohit Arya, J

Petitioner while serving as Sub Engineer (Executive), Madhya Pradesh Warehousing & Logistics Corporation was served with a notice/order dated 21/06/2018 (Annexure P/5) with the communication that he shall attain the age of superannuation, i.e., 60 years on 31/07/2018 (date of birth 03/07/1958).

Petitioner filed a representation dated 11/07/2018 (Annexure P/6) *inter alia* contending that in view of regulation 13 of the Madhya Pradesh Warehousing Corporation Staff Regulations 1962 (for short, 'the Regulations 1962), the date of retirement shall be 62 years in the light of the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhyadesh, 2018 published in Madhya Pradesh Gazette (Madhya Pradesh Ordinance No.4 of 2018) on 31/03/2018 (Annexure P/2) by which amendment incorporated in section 2 of Principal Act, in rule 56 of the Fundamental Rules for the words "sixty years" occurring twice, the words "sixty two years" shall be substituted by the Government of Madhya Pradesh. The representation did not receive consideration paving way for the petitioner to approach this Court

under Article 226 of the Constitution of India.

Thereafter, the petitioner was superannuated and relieved on 31/07/2018 (Annexure P/8).

2. This Court has passed an order on 30/07/2018. The relevant portion thereof reads as under:

“However, the question of parity with the employees in the matter of age of retirement or superannuation referable to the resolution of the Board dated 05/03/1979 shall be dealt with on its own merits at the time of final hearing of the writ petition. In the event the petitioner is found entitled to any monetary benefits accrued to him on the post of Sub Engineer, the same stands protected as if the petitioner continued in service upto 62 years of age.”

3. Before advertng to the submissions advanced by rival parties, it is apposite to state facts directly involved over the controversy of age of retirement, i.e., whether '60 years' or '62 years' of Class-III employees of the Madhya Pradesh Warehousing & Logistics Corporation (for short 'the Corporation').

The Warehousing Corporations Act, 1962 (Act 58 of 1962) was enacted by the Union Legislature; parliament to provide for incorporation and regulation of Corporations for the purpose of warehousing of agricultural produce and certain other commodities and for matters connected therewith. The Act extends to whole of India except the State of Jammu and Kashmir. Section 2 – Definitions: clause (b) defined “appropriate Government”; means in relation to the Central Warehousing Corporation, the Central Government, and in relation to a State Warehousing Corporation, the State Government;

Under Chapter III provisions are made related to State Warehousing Corporations. Section 18(1) provides that the State Government may by notification in the official Gazette and with the approval of the Central Warehousing Corporation (established under section 3 of the Act) establish a Warehousing Corporation for the State under such name as may be specified in the notification.

Under section 18(2) of the Central Act, a State Warehousing Corporation established under sub-section (1) shall be a body corporate by the name notified under that sub-section, having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract, and may, by the said name, sue and be sued.

Chapter V, Miscellaneous – section 41 (1) provides the power to make rules. The appropriate Government may, by notification in the

official Gazette, make rules to carry out the purposes of the Act. Sub-section (2) provides the subjects in connection with the rules may be framed.

Section 42 provides that the Warehousing Corporation may, with the previous sanction of the appropriate Government by notification in the official Gazette, make regulations not inconsistent with the Act and the rules made there under to provide for all matters for which provisions is necessary or expedient for the purposes of giving effect to the provisions of the Act.

Sub-section (2) provides that in particular and without prejudice to the generality of the foregoing power, such regulations may provide for Clause (a) is relevant and the same reads as under:

“(a) the conditions of service of and remuneration payable to the officers and other employees of a Warehousing Corporation.”

Madhya Pradesh State Warehousing Corporation Staff Regulations 1962 (Regulations Governing Recruitment and Promotion of the Employees of M.P.State Warehousing Corporation) was framed under the aforesaid provisions of the Act. Clause 13 deals with superannuation. The relevant portion reads as under:

“13. Superannuation on Attaining the Age of [55] years

“Every employee shall retire on attaining the age of [fifty five years]* provided that the appointing authority in the case of class 1 officers and the Executive Committee in the case of others may, in the interest of the Corporation, extend the period of service of an employee beyond the age of superannuation for such period as may be considered necessary. Provided further that nothing in this regulation shall be deemed to affect the powers of the Corporation to employ any person above the age of [55] years on contract, in which case the appointing Authority in the case of Class 1 officers and the Executive Committee subject to ratification by the Board of Directors in the case of others, shall be competent to make such appointment.”

(Emphasis supplied)

referable to para (4) of the counter-affidavit and Annexure R/2-2

It appears that it has undergone amendment consequent upon resolution of the Board of Directors of the Corporation dated 05/03/1979 with the approval of the State Government as required under section 42 of the Act. The amended portion of the regulation

reads as under:

“Compulsory Retirement Age Rules, 1967, Amended Rules, 1972 as framed by the State Government and the State Government policies as in force from time to time in respect of the age of superannuation/ retirement shall be applicable to the corporation's employees.”

(Emphasis supplied)

4. Learned counsel for the petitioner contends that in view of the aforementioned amended regulation 13, the policies of the State Government as in force from time to time in respect of the age of superannuation/retirement shall be applicable to employees of the Corporation.

As the State Government by the Madhya Pradesh Ordinance No.4 of 2018 published in the Madhya Pradesh Gazette on 31/03/2018 (Annexure P/2) followed by the amendment in the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhyadesh, 2018, the age of retirement is increased from sixty years to sixty two years to the State Government officers and employees, the petitioner, since was in service on the date of publication of the aforesaid Ordinance in the official Gazette was entitled to continue in service upto the age of 62 years. Instead, he has been arbitrarily retired on attaining the age of 60 years on 31/07/2018 vide Annexure P/8 contrary to the regulation 13. It is further submitted that the amended regulation dated 05/03/1979 of the Corporation has neither been deleted nor modified nor amended till date. As such, the impugned direction of premature retirement tantamounts to illegal termination of service and, therefore, the same cannot be sustained in the eyes of law. Petitioner is entitled for salary, continuity of service for all purposes and compensation during the intervening period, viz., from 31/07/2018 till attaining the age of superannuation on 31/07/2020 in the light of the order passed by this Court on 30/07/2018 (supra).

5. *Per contra*, learned counsel for the respondent/Corporation opposes the writ petition with the contention that the Board of Directors of the Corporation are required to pass a resolution for determining the age of superannuation of the officers/employees under regulation 13 in the context of adoption/decision of the State Government to increase the retirement age of the employees and officers from 60 years to 62 years. In the absence of such change/increase by way of resolution as regards age of retirement, the same do not automatically apply to officers/employees of the Corporation under regulation 13 of the

Regulations 1962.

On 27/08/1998, the Board of Directors had passed resolution No.126.05 increasing the age of retirement of officers and employees of the Corporation, three officers, namely; H.A.Kagaji, Manager (Accounts), R.B.Joshi, Deputy Manager (Employees) and Suresh Saxena, Public Relations Officer named therein at par with the State Government from 58 years to 60 years. Vide resolution dated 05/02/2000, item No.130.20 the age of retirement of officers Class II and Class-III employees has been reduced from 60 years to 58 years but, its implementation was deferred for a future date and the same was made applicable vide resolution No.131.05 dated 15/03/2000 with effect from 01/06/2000.

Vide resolution No.6 dated 25/08/2008 the Board of Directors regard being had to the financial implications, the age of retirement for Class I, Class II officers and Class III employees fixed as 60 years and Class-IV employees 62 years.

Besides, learned counsel referring to the letter of the Finance Department, State of Madhya Pradesh dated 27/04/2018 (Annexure P/3) submits that the amendment in the age of retirement as notified by the State Government does not automatically apply to the respondent/Corporation and the Corporation is required to take a decision in that behalf looking to the exigency of services and the financial condition of the Corporation with the approval of the General Administration Department, Government of Madhya Pradesh.

6. Heard.

7. The sole controversy revolves around amended regulation 13 of the Regulations in the matter of date of retirement of Class-III employee of the Corporation.

8. From narration of facts (supra), it is clear that the regulation 13 of the Regulations 1962 has been framed and amended under section 42 of the Act with the prior approval of the State Government. There is nothing on record to suggest that the regulation 13 after the year 1979 has further been amended or modified. The regulation 13 makes it amply clear that the policies of the State Government as in force from time to time in respect of the age of superannuation/retirement shall be applicable to the Corporation's employees. Therefore, the rules and regulations of the State Government from time to time in that behalf are applicable by way of reference. In other words, the

changes from time to time in the service rules of the State Government related to age of superannuation/retirement shall have application to the employees of the Corporation by virtue of amended regulation 13 of the Regulations, 1962.

The State Government has promulgated ordinance to increase the age of retirement to the Class-I, Class-II officers and Class-III employees from 60 years to 62 years. Hence, by virtue of application of the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhyadesh, 2018 published in Madhya Pradesh Gazette (Madhya Pradesh Ordinance No.4 of 2018) on 31/03/2018 (Annexure P/2) by which amendment incorporated in section 2 of Principal Act, in rule 56 of the Fundamental Rules for the words "sixty years" occurring twice, the words "sixty two years" shall be substituted by the Government of Madhya Pradesh thereunder shall apply on all fours to the facts of the instant case.

The contention of learned counsel for the respondents that unless, Board of Directors passes a resolution under section 42 of the Act to increase the age of retirement, the Ordinance dated 31/03/2018 issued by the State Government (supra) shall not have any application to the officers and employees of the Corporation, in the opinion of this Court, is of no consequence in the teeth of the fact that amended resolution 13 is in existence since the year 1979. Hence, there is no requirement of resolution of the Board of Directors afresh. Even otherwise, the resolutions passed by the Board of Directors in the past are in conformity with the age of superannuation/retirement of the State Government employees. Besides, reference to letter of the Finance Department, State of Madhya Pradesh (Annexure P/3) cannot be pressed into service in view of the amended regulation 13 of the Regulations, 1962.

The aforesaid view is fortified by the judgment of Hon'ble Supreme Court in the case of **Harwindra Kumar Vs. Chief Engineer, Karmik and others, 2005 AIR SCW 5995**. Relevant paragraphs 8 and 9 is quoted below:

"8. From the aforesaid provisions, it would be clear that the appointed date for the purposes of the Act was 18th June, 1975 when the Nigam was established and under Section 37 of the Act, conditions of service of the appellants/petitioners who were employed in the Local Self Engineering Department of the Government of Uttar Pradesh before the appointed date, were continued to remain the same as they were before the appointed date unless and until the same are altered by the Nigam under the provisions of the Act. Section 97 confers power upon the Nigam with the previous approval of the State

Government to frame Regulations in relation to service conditions of employees of the Nigam and acting thereunder, Regulations were framed by the Nigam in the year 1978, Regulation 31 whereof provides that service conditions of the employees of the Nigam shall be governed by such rules, regulations and orders which are applicable to other serving government servants functioning in the State of Uttar Pradesh. Thus, from a bare reading of Section 37 and Regulation 31, it would be clear that the service conditions of the employees of the Nigam would be the same as are applicable to the employees of the State Government under the Rules, Regulations and Orders applicable to such government servants so long the same are not altered by the Nigam in accordance with the provisions of the Act. If Regulations would not have been framed, the Nigam had residuary power under Section 15(1) of the Act whereby under general power it could change the service conditions and the same could remain operative so long regulations were not framed but in the present case, regulations were already framed in the year 1978 specifically providing in Regulation 31 that the conditions of service of the employees of the Nigam shall be governed by the Rules, Regulations and Orders governing the conditions of service of government servants which would not only mean then in existence but any amendment made therein as neither in Section 37 nor in Regulation 31, it has been mentioned that the Rules then in existence shall only apply. After the amendment made in Rule 56(a) of the Rules by the State Government and thereby enhancing the age of superannuation of government servants from 58 years to 60 years, the same would equally apply to the employees of the Nigam and in case the State Government as well as the Nigam intended that the same would not be applicable, the only option with it was to make suitable amendment in Regulation 31 of the Regulations after taking previous approval of the State Government and by simply issuing direction by the State Government purporting to act under Section 89 of the Act and thereupon taking administrative decision by the Nigam under Section 15 of the Act in relation to age of the employees would not tantamount to amending Regulation 31 of the Regulations.

9. Reference in this connection may be made to a decision of this Court in the case of **V.T.Khanzode and others Vs. Reserve Bank of India and another AIR 1982 SUPREME COURT 917**. In that case, under Section 58(1) of the Reserve Bank of India Act, powers were conferred upon the Central Board of Directors of the Bank to make regulations in order to provide for all matters for which provision was necessary or convenient for the purpose of giving effect to the provisions of the Act which section in the opinion of their Lordships included the power to frame regulation in relation to service conditions of the bank staff. In that case, instead of framing regulations, the bank issued administrative circulars in relation to service conditions of the staff acting under Section 7(2) of the Reserve Bank of India Act which was a general

power conferred upon the bank like Section 15(1) of the present Act. It was laid down that "there is no doubt that a statutory corporation can do only such acts as are authorized by the statute creating it and that, the powers of such a corporation cannot extend beyond what the statute provides expressly or by necessary implication." It was further laid down that "so long as staff regulations are not framed under Section 58(1), it is open to the Central Board to issue administrative circulars regulating the service conditions of the staff, in the exercise of power conferred by Section 7(2) of the Act." As in the said case, no regulation was at all framed under Section 58 of the Reserve Bank of India Act, as such, the administrative circulars issued by the Central Board of Directors of the Bank under Section 7(2) of the Reserve Bank of India Act in relation to service conditions were held to be in consonance with law and not invalid."

9. The judgments cited by learned counsel for the respondents; **Life Insurance Corporation of India and others Vs. Krishna Murarilal Asthana and another (2016) 6 SCC 515**, and Division Bench of this Court in **W.A.No.1667/2018 Parikshit Singh Vs. The State of Madhya Pradesh and others decided on 30/11/2018** are of no assistance to the respondents being distinguishable on facts.

10. Consequently, writ petition is allowed. The impugned orders dated 21/06/2018 (Annexure P/5) sofar as it relates to petitioner and communication dated 31/07/2018 (Annexure P/8) retiring him at the age of 60 years are quashed.

In the back drop of the interim order dated 30/07/2018, it is held that the petitioner is entitled for all service benefits including monetary benefits accrued to him on the post of Sub Engineer (Executive) treating him in continuous service upto 62 years of age.

(Rohit Arya)
Judge
12-04-2019

b/-