

HIGH COURT OF MADHYA PRADESH : JABALPUR

W. A. No.546/2006

Anand Kumar Dubey

Vs.

Jabalpur Co-operative Milk Producers Union Ltd.

W.A. No.1688/2007

R. N. Pandey

Vs.

Jabalpur Co-operative Milk Producers Union Ltd., Jabalpur
and another

Coram :

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice Sanjay Yadav, J.

Whether approved for reporting ? - Yes.

Shri D. K. Dixit, counsel for the appellants
Shri Anoop Nair, counsel for the respondents

J U D G M E N T (Oral)
(5.11.2015)

Per: A. M. Khanwilkar, Chief Justice

These writ appeals take exception to the decisions of the learned Single Judge of this Court dated 3.8.2006 and 17.9.2007 in Writ Petition No.14672/2005(S) and Writ Petition No.12064/2007(S) respectively. Those writ petitions were filed

under Article 226 of the Constitution of India to challenge the orders dated 7.10.2005 (Annexure P-14) and dated 30.6.2007 (Annexure P-6) in the respective petitions. By those orders the appellants were ordered to be superannuated on reaching the age of 58 years w.e.f. 30.11.2005 and 31.10.2007 respectively.

02. According to the appellants, they were working in the Agriculture and Dairy Development Department, Government of M.P. before joining the post of Promotion Organiser in Respondent No.1 Milk Producers Union. From the record, however, it is indisputable that the appointment of the appellants in Respondent No.1 Dugdh Sangh was by way of absorption in services of Dugdh Sangh. Once the appellants have been absorbed in the Dugdh Sangh on 12.12.1980, any amendment regarding the age of superannuation effected in respect of Service Rules/Regulations governing the services in the Agriculture and Dairy Development Department, Government of M.P., will be of no avail to the appellants. This is the view taken by the learned Single Judge.

03. The correctness of this view is put in issue, essentially, by relying on the decision of the Supreme Court in

the case of **The State of Mysore Vs. H. Papamanna Gowda and another** reported in **AIR 1971 SC 191**.

04. Having considered the rival submissions, we find no reason to depart from the conclusion reached by the learned Single Judge. The learned Single Judge has justly opined that on and from 12.12.1980, the appellants ceased to be in the service of Agriculture and Dairy Development Department, Government of M.P., having been absorbed in Respondent No.1 Dugdh Sangh. The change of age of superannuation with regard to the services in the Agriculture and Dairy Development Department, Government of M.P. After 12.12.1980, can be of no avail to the appellants. If any change was to be made by the respondent No.1 after the appellants were absorbed in the Dugdh Sangh, in particular, by lowering the age of superannuation, than the age of superannuation specified for the services in the Agriculture and Dairy Development Department, Government of M.P. as on 12.12.1980, the appellants could successfully challenge the same being detrimental to their service condition. Indisputably, that condition of service of the appellants whilst they were absorbed in Respondent No.1 Dugdh Sangh has not been

lowered by the respondent No.1. Notably, the service condition on which the appellants were absorbed in the services of Respondent No.1 Dugdh Sangh has not been questioned by the appellants. The appellants acquiesced of the said condition. Since 12.12.1980, the appellants were no more in service of the Agriculture and Dairy Development Department, Government of M.P. Hence, it is not open to the appellants to rely on the age of superannuation specified thereafter in relation to the services in the Agriculture and Dairy Development Department, Government of M.P. This aspect has been considered by the Division Bench of our High Court in W.A. No.464/2007 decided on 4.7.2008.

05. As regards the Supreme Court decision, the fact situation in the said case was different. In that, the grievance of the respondents in the said matter was that the transfer and posting of the respondents in terms of the subsequent enactment after they were already appointed in 1959 as an Agriculture Demonstrator in the Mysore Civil Service amounted to his removal from civil post and that was detrimental. That is not the question posed in the present appeals. In the present appeals, the limited grievance is about

the lesser age of superannuation specified by the respondent No.1 Sangh, as compared to the superannuation age specified by the Agriculture and Dairy Development Department, Government of M.P. after 12.12.1980.

06. As aforesaid, once the appellants have been absorbed in the services of respondent No.1 Sangh and the appellants having acquiesced of the service conditions in vogue at the time of absorption, cannot be heard to complain about the age of superannuation governing the services in Respondent No.1 Dugdh Sangh. We, therefore, find no merits in these appeals.

07. At this stage, we are informed that because of the interim relief granted by this Court, the appellants were continued in service until they attained the age of 60 years. They worked during the said period for which have received salary/emoluments. However, after demitting the office in the years 2007 and 2009 respectively, the appellants are yet to receive their retiral benefits.

08. The Respondent No.1 Dugdh Sangh must process the said proposal for releasing the retiral benefits of the concerned appellant, as may be payable in terms of extant

Regulations and Rules in that behalf. That shall be done expeditiously and preferably within three months from today, if already not paid. Further, for computing the period of service rendered for the purpose of determining the retiral benefits, since the specified age of superannuation is 58 years, the Respondent No.1 must process the proposal on that basis and two years of additional services rendered, need not be taken into account for that purpose; nor the Respondent No.1 should initiate any action against the appellants for recovery of salary/emoluments paid to them for additional two years of service.

09. As regards other reliefs are concerned, counsel for Respondent No.1 submits that if the appellants are entitled for any retiral benefit or any other benefits during permissible service period, will be extended to the appellants. If the appellants or similarly placed persons are aggrieved by such determination, will be free to question the correctness thereof by way of appropriate proceedings.

10. The writ appeals are **disposed of** accordingly.

(A.M. Khanwilkar)
Chief Justice

(Sanjay Yadav)
Judge