

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No.	WP. No.3178/17
Parties Name	Satyanarayan Pandey Vs. The State of M.P. & Others
Case No.	WP. No.3194/17
Parties Name	Krishna Pratap Singh Vs. The State of M.P. & Others
Case No.	WP. No.3303/17
Parties Name	Mathura Prasad Dubey Vs. The State of M.P. & Others
Case No.	WP. No.4417/17
Parties Name	Muratlal Vishwakarma Vs. The State of M.P. & Others
Date of Judgment	31/07/17
Bench Constituted	Single Bench
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsels for parties	Petitioner: Shri Aditya Ahiwasi, Advocate in WP. No.3178/17 Shri Rajneesh Gupta, Advocate in WP. No.3194/17 Shri Monesh Sahu, Advocate in WP. No.3303/17 and Shri Manoj Chandurkar, Advocate in WP. No.4417/17 Respondents: Shri Pradeep Sahu, Panel Lawyer
Law laid down	The statutory rules can be annulled or canceled by adopting the same procedure by which rules were brought into force. Rules cannot be supplanted or canceled by issuing executive instructions. In the event of conflict between a general or a special provision, the special provision must prevail.
Significant paragraph numbers	Para No. 7 & 8.

(Order)
31-07-2017

Regard being had to the similitude of the questions involved, on the joint request of the parties, the matters were analogously heard and decided by this common order.

2. Facts are taken from WP. No.3178/17. The petitioner was appointed on the post of Chowkidar-cum-Pump Attendant on 20-03-1982 on daily rated basis. It is submitted that the said post is a Class-IV post. As per M.P. Daily Wages Employees (Conditions of Service) Rules, 2013 (in short called as “Rules of 2013”), the age of retirement of Class-IV employees is prescribed as 62 years. The said statutory Rules of 2013 were sought to be nullified by issuing an executive instructions dated 07-10-2016. In Clause 5 of this circular (Annexure P/1) , it is mentioned that the Rules of 2013 are cancelled. It is common ground taken by the petitioners that a statutory rule cannot be cancelled by issuing executive instructions.

3. Learned counsel for the petitioner produced the recent circular of GAD No.सौ 5-1-2013-1-3 dated 03-05-2017 whereby the government after taking into account the Rules of 2013 decided to continue the same provision regarding the age of retirement of daily rated employees. On the strength of aforesaid, it is submitted that the decision of department in retiring the petitioners, Class IV employees, at the age of 60 years is bad in law and they are entitled to continue upto 62 years of age.

4. *Per contra*, the respondents have filed their return and contended that the Rules of 2013 are repealed by State Government by exercising powers under proviso to Article 309 of the Constitution by notification dated 02-02-2017 (Annexure R/2). In view of this statutory notification, the petitioners are not entitled to continue till 62 years of age. Reliance is placed on another notification dated 28-06-2014.

5. No other point is pressed by the parties.

6. I have heard the parties at length and perused the record.

7. Rule 6 of Rules of 2013 provides that the daily rated employees working against Class-III post will retire on attaining the age of 60 years whereas such employees working against Class-IV or its equivalent shall retire on attaining the age of 62 years. The said rules are admittedly introduced in exercise of powers under proviso to Article 309 of the Constitution. The rules are therefore, statutory in nature. The said rules were sought to be cancelled by executive instruction dated 07-10-2016 (Annexure P/1). This is trite law that no executive instruction can supplant or override a statutory rule. A executive instruction, at best, can supplement the statutory rule. Thus, I find force in the contention of petitioners that the action of the government in cancelling the Rules of 2013 by issuing executive instructions cannot be countenanced.

8. In the return, the respondents have contended that by another notification dated 02-02-2017, the Rules of 2013 were repealed. However, no such notification is placed on record. Indeed, a different amendment dated 28-06-2014 is placed on record by which an amendment in the M.P. Industrial Employment (Standing Order) Rules, 1963 was introduced. The amendment in the rules w.e.f. 28-06-2014 is general in nature whereas the Rules of 2013 are statutory and specific in nature. Putting it differently, the Rules of 2013 (Annexure P/4) are specifically made for daily rated employees working in various departments of the State Government whereas the amendment in Standing Order is general in nature. This is equally settled that in case of conflict between a general or a special provision, the special provision must prevail. For this reason also, the petitioners' services must be governed by the Rules of 2013. Apart from this, by executive instructions dated 03-05-2017, the government has restored the age of superannuation of Class-IV employees upto 62 years. The relevant portion of said provision reads as under:-

“1. अधिवार्षिकीय आयु—

सामान्य प्रशासन विभाग के आदेश क्रमांक सी-5-1-2012-1-3, दिनांक 09 नवम्बर, 2012 द्वारा तृतीय एवं चतुर्थ श्रेणी तथा इनके समकक्ष पदों पर दैनिक वेतन पर नियोजित व्यक्तियों से काम लेने की अधिकतम आयु-सीमा क्रमशः 60 एवं 62 वर्ष निर्धारित की गई है। यह व्यवस्था निरन्तर यथावत् है। अतः यह सुनिश्चित किया जाय कि तृतीय श्रेणी के पदों पर कार्यरत दैनिक वेतन भोगी 60 वर्ष तथा चतुर्थ श्रेणी के पदों पर कार्यरत दैनिक वेतन भोगी 62 वर्ष की आयु पूर्ण होने पर सेवा निवृत्त होंगे।”

9. For these cumulative reasons, in my view, the action of respondents in retiring the petitioners/Class IV employees at the age of 62 years is bad in law. Resultantly, impugned orders in these batch of petitions whereby the Class-IV employees were sought to be retired at the age of 60 years are set aside. The petitioners shall be permitted to continue in employment upto the age of 62 years.

10. The petitions are allowed. No cost.

(Sujoy Paul)
Judge