

The High Court Of Madhya Pradesh

Writ Petition No.3694/2019

ASHUTOSH PANDEY

Vs

THE MANAGING DIRECTOR, MPRTC & OTHERS

Writ Petition No.5786/2019

SURESHCHAND SHARMA

Vs

TRANSPORT DEPARTMENT & OTHERS

Writ Petition No.7785/2019

AJAY KUMAR BAJPAI

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.8891/2019

RAJJU PRASAD SAHU

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.9480/2019

DEVESH KUMAR PANDEY

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.9848/2019

RAM SEWAK TIWARI

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.10609/2019

LOKENDRA SINGH

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.11102/2019

SUKHRAM SINGH

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.11103/2019

ARVIND KUMAR SAINI

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.12133/2019

LAVKUSH PRASAD PANDEY

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.15085/2019

OM PRAKASH TIWARI

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.17741/2019

NAND KISHORE MISHRA

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.20133/2019

LALTA PRASAD SHUKLA

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.21857/2019

VYAS MUNI CHATURVEDI

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.25193/2019

RAM BAHADUR VERMA

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.25736/2019**PRAKASH SHARMA**

Vs

THE STATE OF M.P. & OTHERS

**Present: Hon'ble Shri Ajay Kumar Mittal, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla,
Judge.**

Shri Smt. Vibha Pathak, Shri Ajay Pratap Singh, Shri Ashok K. Gupta, Shri Sanjay Kumar Verma and Shri Rajendra Nath Roy, learned counsel for the petitioners.

Shri P. K. Mishra, learned Counsel for the M.P. State Road Transport Corporation.

Shri H. S. Chhabra, learned Govt. Advocate for the respondents/ State.

Whether approved for reporting ?	Yes
Law laid down	<i>The Circulars, amendment in the Fundamental Rules regarding age of superannuation of State Government employees are not ipso facto applicable to the employees of the Corporation. The fixation of age of superannuation is within the domain of the employer and the Rule Making Authority.</i>
Significant paragraph Nos.	Para No. 12 & 13

O R D E R**(JABALPUR DATED 25-02-2020)****Per: Shri Vijay Kumar Shukla, J.**

Regard being had to the similitude of the issue involved in the bunch of petitions, they are being decided by the common order. For the sake of convenience the facts are noted from W.P. No.3694/2019 - Ashutosh Pandey & 2 others Vs. The Managing Director, M.P. Road Transport Corporation and others.

2. The petitioners who are working on different posts like Personal Assistant (Junior Stenographer), Supervisor and Conductor in the M.P. Road Transport Corporation (hereinafter referred in short as 'MPRTC'), have challenged the orders of the respondents retiring them on the completion of the age of 58 years instead of 60 years and further it has been claimed that the age of superannuation should be treated as 62 years in the light of the recent amendment by the State Government in respect of the Government servants. The following reliefs have been claimed :-

“A. Issue writ in the nature of certiorari and they may kindly the impugned order dated 7.5.2018 (Annexure P/1, P/2 and P/3) be quashed.

B. That the respondents be directed to comply the order of Apex Court dated 5.2.2019 (Ann. P/6) and till then the petitioner be continued in service.

C. Any other relief which this Hon'ble Court deems fit and proper including the cost of the petition looking to the facts and circumstances of the case may be granted in the interest of justice.”

3. The petitioners are employees of MPRTC. The said Corporation is an independent Autonomous body constituted under

the Road Transport Corporation Act, 1950. It is undertaking of the State of Madhya Pradesh and is governed by its own Rules and Regulations.

4. Before adverting to the principle issue regarding fixation of age of superannuation, it is apt to mention that the Corporation has stated in the reply that it has sustained heavy losses and situation has reached to the extent whereby the corporation is unable to pay salary of the employees for months together as such it has resulted into multifarious litigation. The State Government considering the financial status of the Corporation has resolved to close down the Corporation. In view of the decision made by the State Government to close down the Corporation, a scheme dated 01.07.2005 known as "Voluntary Retirement Scheme, 2005" was launched wherein application had been invited for option to be submitted during the period from 01.07.2005 to 01.08.2005. The purpose of the scheme was to provide financial help and also rehabilitation to those employees who were proposed to be terminated due to closer of the Corporation and financial crisis. The scheme was extended from 12.10.2006 to 28.10.2006. About 90% to 95% of the employees of the Corporation opted under the scheme and retired from service. The Corporation is in winding up process and since there was no source of income, all the property of the Corporation was seized and attached with the State Government or to Finance Company or Bank. At present near about 2% - 3% employees are working in the department. It is

axiomatic that the financial condition of the Corporation is stringent.

5. Counsel for the petitioners urged that as per the recommendations of 5th Central Pay Commission (CPC), the petitioners are entitled for the enhanced age of superannuation. It was contended that the Apex Court in its order dated 5.2.2019 passed in ***Special Leave to Appeal (C) No.(s) 32869/2017 and SLP (C) No.32870/2017 (Rajya Parivahan Karmchari Mahasangh Vs. M.P. Road Transport Corporation and others)*** directed the State Government and the MPRTC to take a decision regarding extension of benefit of the 5th Pay Commission. The petitioners have also placed reliance on a Circular dated 27.04.2018 issued by the Finance Department of the State of M.P., whereby the age of superannuation has been enhanced from 60 to 62 years in respect of the employees working in the Corporation/ Board of the State of Madhya Pradesh. Support was also gathered from the judgment of learned Single Judge in ***W.P. No.15991/2018 (Amirruddin Akolawal Vs. Department of Food & Supplies and others)***. It was next contended that the Service Regulations framed by the Corporation would not apply to them.

6. Combatting the aforesaid submissions, learned counsel for the respondents/ Corporation submitted that the services of the Corporation employees were not absorbed in the State

Government and they are still governed by the Regulation 59 of the Service Regulation framed in exercise of the powers under the Road Transport Act, 1950. The issue regarding the age of superannuation in respect of the employees of the Corporation is no longer res integra in view of decision of the Division Bench in **W.A. No.246/2013 (Heera Singh Narwariya Vs. State of M.P. & Others)** decided on 16.12.2013 and in the number of other writ petitions bearing **W.P. No.2659/2013 - Heera Singh Narwariya Vs. State of M.P. And others** decided on 25.4.2013; **W.P. No.2767/2015 - Gangaram and others Vs. The State of M.P. and others** decided on 21.1.2016 and **W.P. No.4339/2016 - Shrikant Tiwari Vs. State of M.P. and others** decided on 1.4.2016.

7. We have heard learned counsel for the parties. There is no document on record to show that the services of the petitioners have been absorbed in the Government service. The services of the petitioners who are employees of the Corporation are governed by the Regulations framed under the Road Transport Act, 1959. Rule 59 of the Service Regulation which reads as under :-

“Employees of State Transport are liable to compulsory retirement on the date of their completion of Fifty Eight years of the age unless specifically permitted by the Corporation to continue in service for a specified period thereafter, but he must not be retained after the age of 60 years, without the sanction of State Government.

Provided that Class IV employees will normally be retired on the date of their completion of 60 years of age."

8. Adverting to the case law on the subject in ***Heera Singh Narwariya Vs. State of M.P. And others - W.P. No.2659/2013*** (supra), a case referring to the judgment in ***S. P. Dubey Vs. M.P. R.T.C.*** reported in ***(1991)1 MPJR 327*** it has been held that the Circular dated 28.5.1989 addressed by the Finance Department to all the departments would not apply to the employees of the Corporation. There was no material to show that the amendment by the State of Madhya Pradesh in F.R.56 relating to the age of superannuation of Government servants is applicable to the employees of MPRTC. Further a Division Bench of this Court in the case of ***Heera Singh Narwariya Vs. State of M.P. & Others*** (WA No.246/2013) (supra) in its judgment dated 16.12.2013, after taking into consideration the Service Regulation No.59 held that from the aforesaid provision it is clear that the employee could be retired after attaining the age of 58 years. However, the Corporation had the option to retain an employee upto the age of 60 years but no vested right is created in favour of an employee of the Corporation to continue upto 60 years.

9. In the case of ***Gangaram Rao and others Vs. State of M.P. And others (W.P. No.2767/2015(s))***, this Court held that the amendment in the Employees Industrial Employment (Standing Orders) Rules, 1963 providing age of superannuation to be 60

years would have no applicability to the employees of the Corporation in view of the proviso of the aforesaid amendment as it shall not apply to the employees of the Corporation, Board and Undertakings of the State Government. The same view was followed in Single Bench decision in ***Shrikant Tiwari Vs. State of M.P. (W.P. No.4339/2016)*** (supra).

10. In the case of ***Jagmohan Sharma Vs. State of M.P. and another*** (W.P. No.15971/2015(s)) (supra) a Coordinate Bench after taking into consideration the amendment made in the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 and the amendment incorporated in the proviso to serial No. 14A of Annexure appended to Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 held that the amendment in the age of retirement shall not apply to the employees of the Corporation, Board and Undertakings of the State Government. The relevant part of the order reads as under :-

“The context is that the State of M. P. in exercise of the powers conferred by sub-Section (1) and (2) “No.4(E) 1 2001 A-XVI. In exercise of the powers conferred by sub-section (1) and (2) of Section 21 of the Madhya Pradesh Industrial Employment (Standing Orders Act, 1961 (No.26 of 1961), the State Government incorporated amendment in the Madhya Pradesh Industrial Employment (Standing Orders) Rules 1963, in the following terms:

“In the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 in

the Annexure, in serial number 14-A, the words “An employee shall retire from the service of the employer on the date he attains the age of 58 years. He may, however, be retained in service by the employer after the date of attaining the age of 58 year if his services are necessary in the interest of the undertaking.” shall be replaced by the words” “An employee shall retire from the service of the employer on the date he attains the age of 60 years, and in the first proviso the words “if the age of retirement is not less than 58 years” shall be replaced by the words “if the age of retirement is not less than 60 years” and at the end of this proviso the words **“provided further that this amendment shall not apply to the employees of Corporations, Boards and Undertakings of the State Government” shall be added .”**

Evidently, employees of Corporation, Board and undertakings of the State Government stood excluded from the amendment. In other words the enhanced age of retirement was not extended.

Later on on the basis of the queries sought for by certain establishment as to whether the enhanced age is to be incorporated in award, agreement or settlement, the State Government further issued a notification on 30.12.2014 published in the Madhya Pradesh Gazette and incorporated new provision in Rule 8 in the following terms-

“Provided that where the Government has made any amendments in the Standard Standing Orders the same shall be deemed to be duly

incorporated in any award agreement or settlement and in the certified amendments to the Standing Orders applicable to an undertaking.”

Careful reading of this newly added proviso makes it clear that the amendment incorporated vide notification dated 28.6.2014 will also apply in “award, agreement or settlement and in certified amendments to the standing orders applicable to an undertakings.” The insertion of this proviso; however, does not supersede the amendment incorporated in the proviso to serial No.14 A of Annexure appended to Madhya Pradesh Industrial Employment (Standing Orders) Rules 1963 which stipulates that the amendment (as to the age of retirement) shall not apply to the employees of Corporation, Boards and Undertakings of the State Government.

These facts distinguishes the case at hand from that of Iqbal Hussain V. The Madhya Pradesh Road Transport Corporation :Writ Petition No.5478/2014(s) decided on 12.5.2015 wherein the said amendment has not been taken into consideration.

Having thus considered since no relief can be granted to the petitioner petition fails and is **dismissed**.No costs.”

11. The Circular dated 27.4.2018 also does not render any help to the case of the petitioners. The said Circular is issued by the Finance Department enhancing the age of superannuation from 60

to 62 years in respect of the employees of the Corporation and Board, leaving it on the discretion of the Corporation/ Board to take a decision in respect of the age of superannuation by incorporating it in the Service Rules/ Regulations keeping in view the financial status of the Corporation/ Board. It is clearly mentioned that those Corporation/ Board of the State of Madhya Pradesh which are already closed or which are under liquidation, the age of superannuation shall not be increased. As noticed herein before, the financial condition of the Corporation was stringent and therefore, a decision was taken to close down the same.

12. Apart from this, the fixation of age of superannuation is within the domain of the employer. In ***B. Bharat Kumar and others Vs. Osmania University and others*** reported in ***(2007)11 SCC 58***, the Apex Court held that in respect of the fixation of age of superannuation, it is a policy decision and the same is within the wisdom of the Rule Making Authority and the judicial review in such administrative action is not called for. Further similar view has been reiterated in ***Nagaland Senior Government Employees Welfare Association and others Vs. State of Nagaland and others*** reported in ***(2010)7 SCC 643***.

13. The Circulars and amendment in the Fundamental Rules and *Madhya Pradesh Ardhavarshiki Ayu Adhiniyam* enhancing the age of superannuation of the Government Servants are not *ipso facto* applicable to the employees of the Corporation. There is no material to establish that the petitioners have been absorbed in

the Government service. Hence, they cannot claim equality with the Government employees in respect of age of superannuation. The Corporation has not adopted the Circular or amendment made in the Fundamental Rules regarding age of superannuation of the State Government employees.

14. In view of the aforesaid, there is no merit in these writ petitions. All the writ petitions fails and are hereby **dismissed**.

(AJAY KUMAR MITTAL)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
J U D G E