

IN THE HIGH COURT OF MADHYA PRADESHAT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV

ON THE 14th OF MARCH, 2022

WRIT APPEAL No.19 of 2022

Between:-

**BHOPAL COOPERATIVE CENTRAL BANK,
24-25, NEW MARKET T.T.NAGAR,
BHOPAL, THROUGH ITS AUTHORIZED
OFFICER/ OIC, SHRI J.S.MALVIYA S/O
LATE SHRI C.S.MALVIYA, AGED ABOUT
56 YEARS, R/O 57, NAGESH COLONY
KARNOD BHOPAL, DISTRICT BHOPAL
(M.P.).**

.....APPELLANT

(BY SHRI ANKIT AGRAWAL - ADVOCATE)

AND

- 1. NARAYAN SINGH SOLANKI S/O SHRI
BHAGWAT SINGH SOLANKI AGED
ABOUT 65 YEARS, OCCUPATION
RETIRED PEON, BHOPAL COOPERATIVE
CENTRAL BANK BRANCH NAZIRABAD
R/O H.NO.118, BEHIND GOVT. GIRLS
SCHOOL, NAZIRABAD, TEHSIL
BERASIYA, DISTRICT BHOPAL (M.P.).**
- 2. STATE OF MADHYA PRADESH THROUGH
SECRETARY, COOPERATIVE
DEPARTMENT, VALLABH BHAWAN
BHOPAL,M.P.**

3. **THE COMMISSIONER CUM REGISTRAR,
COOPERATIVE SOCIETY,
VINDHYACHAL BHAWAN BHOPAL (M.P.)**

...RESPONDENTS

*(BY SHRI ASHISH ANAND BARNAD - ADDITIONAL
ADVOCATE GENERAL AND SHRI SUYASH THAKUR –
GOVERNMENT ADVOCATE FOR RESPONDENTS NO.2 AND
3.)*

*This appeal coming on for admission this day, Hon'ble Shri
Justice Purushaindra Kumar Kaurav, passed the following:*

ORDER

This *intra* Court appeal takes exception to order dated 11.11.2021, passed by the learned Single Judge in Writ Petition No. 15467 of 2016, whereby, petition filed by respondent No.1 has been allowed.

2. The brief facts of the case are that the respondent No.1 was working as Peon with the appellant-Bank, namely, Bhopal Cooperative Central Bank. Vide order dated 29.07.2015 (Annexure P/3), he was directed to be superannuated w.e.f. 31.07.2015 presuming the age of superannuation as 60 years. After his superannuation, he made several representations requesting the appellant-Bank to reinstate him upto the age of 62 years on the basis of the decision taken by the Registrar of Cooperative Societies directing enhancement of the age of Class-IV employees of the District Central Cooperative Bank from 60 years to 62

years. Since nothing was done, therefore, he filed a petition before this court which has been allowed by the impugned order, against which, the appellant-Bank has filed the instant writ appeal.

3. Learned counsel appearing for the appellant-Bank has submitted that the learned Single Judge has erred in passing the impugned order by ignoring the fact that the appellant-Bank had adopted the resolution for enhancement of the age of Class-IV employees in its meeting dated 08.09.2015 and the respondent No.1 stood retired on 31.07.2015, therefore, he has no right to continue upto the age of 62 years. He also submitted that the learned Single Judge has further erred while directing the appellant-Bank to grant all consequential benefits including the payment of salary etc. for the period upto the age of 62 years.

4. We have heard the learned counsel for the appellant at length and perused the record.

5. From perusal of the record, it is apparent that in exercise of powers conferred under Section 55(1) of the M.P. Cooperative Societies Act, 1960 (for short "Act of 1960"), the Joint Registrar Cooperative Societies Madhya Pradesh has passed an order dated 31.03.2012 (Annexure P-1), whereby, the age of superannuation of Class-IV

employees i.e Supervisor, Daftari, jamadar, Peon, Farrash, Sweeper and Chowkidar working in District Cooperative Central Bank has been enhanced from 60 to 62 years by amending Rule No.71.1.1 of the Service Rules dated 03.01.2014 of the District Co-operative Central Bank. The said amendment was substituted vide order dated 30.02.2015 (Annexure P-2) which reads as under :-

कार्यालय आयुक्त सहकारिता एवं पंजीयक सहकारी
संस्थाएँ मध्यप्रदेश

विंध्याचल भवन भोपाल

क्रमांक/साख/विधि/2015/272 भोपाल, दिनांक 30/01/2015

आदेश

मध्य प्रदेश सहकारी सोसाईटी अधिनियम 1960 की धारा 55 की उपधारा (1) के अन्तर्गत प्रदत्त शक्तियों का उपयोग करते हुए मैं जे0पी0 गुप्ता, अपर पंजीयक, सहकारी संस्थाएँ, म0प्र0 प्रदेश के जिला सहाकारी केन्द्रीय बैंकों के सेवानियम दिनांक 03.01.2014 के नियम क्रमांक 71.1.1 "बैंक का प्रत्येक सेवायुक्त उस माह की, जिसमे वह 60/62 वर्ष की आयु प्राप्त कर लें, अंतिम तारीख के अपरान्ह में सेवा निवृत्त हो जाएगा। परन्तु यह कि ऐसा बैंक सेवायुक्त, जिसकी जन्म तारीख किसी माह की पहली तारीख है, 60/62 वर्ष की आयु प्राप्त करने पर पूर्ववर्ती माह की अंतिम

तारीख के अपरान्ह में सेवा से निवृत्त हो जाएगा।” के स्थान पर निम्नानुसार शब्दावली प्रतिस्थापित करता हूँ

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“बैंक का प्रत्येक सेवायुक्त उस माह की, जिसमें वह 60 वर्ष की आयु प्राप्त कर लें, अंतिम तारीख के अपरान्ह में सेवा निवृत्त हो जाएगा। परन्तु यह कि ऐसा बैंक सेवायुक्त, जिसकी जन्म तारीख किसी माह की पहली तारीख है, 60 वर्ष की आयु प्राप्त करने पर पूर्ववर्ती माह की अंतिम तारीख के अपरान्ह में सेवा से निवृत्त हो जाएगा। परन्तु बैंक के सपोर्ट स्टाफ—दफ्तरी, जमादार, वाहनचालक, भृत्य, चौकीदार पदों पर कार्यरत कर्मचारियों की अधिवार्षिकी आयु 62 वर्ष होगी, अर्थात् ये 62 वर्ष की आयु पूर्ण करने पर सेवानिवृत्त होंगे।”

यह आदेश आज दिनांक 30.01.2015 को मेरे हस्ताक्षर एवं पदमुद्रा से जारी किये जाते हैं।

(आयुक्त सहकारिता द्वारा अनुमोदित)

(जे०पी०गुप्ता)

अपर पंजीयक

सहकारी संस्थायें, म०प्र०

6. A perusal of the provision of Section 55 of the Act of 1960 clearly shows that the rules governing the terms and conditions of employment in

a Society or class of Societies can be framed by the Registrar. It further shows that the Society or class of Societies to which such terms and conditions of employment are applicable are under an obligation to comply with the order which may be passed by the Registrar in this behalf. In the instant case, admittedly, the order passed by the Registrar substituting Rule 71.1.1 of the Service Rules has not been challenged by any one and, the appellant is not in a position to challenge the authority of the Registrar in passing the aforesaid order. Once the Registrar framed the Rules governing the terms and conditions of employment in a Society or class of Societies, the concerned Society or its employee is under an obligation to comply with the same. Therefore, the resolution of the appellant-Bank dated 08.09.2015 cannot defer the enforceability of the amended Rules with effect from the date on which such a Rule has been framed by the Registrar. In other words, the right of the respondent to continue in employment till 62 years of age accrued on 03.01.2014 when applicable rule was amended enhancing the age of superannuation. The mere fact that the appellant bank passed a resolution to apply the amended Rule subsequently i.e., on 08.09.2015, could not defeat the right of the respondent to retire at the age of 62 years. Hence, the argument made by the learned counsel for the appellant is not acceptable.

7. Having held that the respondent No.1 was legally entitled to continue in service upto the age of 62 years and he was ready and willing to work upto the age of 62 years, the learned Single Judge was right in directing payment of consequential benefits to the respondent No.1.

8. In view of the aforesaid, we do not find any merit in the instant writ appeal. The same is accordingly dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDR KUMAR KAURAV)
JUDGE

MKL.