

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO

**Writ Petition No.4861 of 2018 along with
W.P.Nos. 4900, 4903, 4904, 4909 & 4911 of 2018; 44704 of 2017, 4959
of 2018, 19363 of 2021, 31992 & 32001 of 2022**

W.P. No.4861 of 2018

Sri Puvvada Venkata Mohana Murali Krishna Murthy,
S/o Venkateswarlu, aged about 59 years,
Occ: Rtd. Employee, R/o D. No.10-996B,
Rama Lakshamma Street, Markapuram,
Prakasam District, Andhra Pradesh and others.

... Petitioners

Versus

The State of Andhra Pradesh,
Rep. by its Special Chief Secretary,
Agriculture and Cooperation Department,
Secretariat, Velagapudi, Guntur District and others.

...Respondents

Mr. P. Veera Reddy, Senior Counsel, a/w Mr. Syed Arif Basha, Counsel
for the petitioners.

Government Pleader for Agriculture & Cooperation, Counsel for
respondent Nos.1 & 2.

Ms. K. N. Vijaya Lakshmi, Standing Counsel for respondent Nos.3 & 4.

DATE : .05.2024

Per DHIRAJ SINGH THAKUR, CJ:

We propose to decide this batch of petitions by way of a common
judgment and order in view of the fact that similar questions of fact and

law arise in this set of cases. For purposes of reference, facts as contained in W.P. No.4861 of 2018 shall be referred to.

2. The petitioners all were employees of the Prakasam District Cooperative Central Bank Limited, who retired at the age of 58 years having attained the age of superannuation and retired by the year 2017. The case of the petitioners is that they ought to have been retired on attaining the age of 60 years. With a view to support this fact, the petitioners stated that the Andhra Pradesh Legislature enacted the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014, (for short, 'Act No.4 of 2014') whereby in Section 3(1), the following sub-section was substituted.

“(1) Every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.”

3. It would not be out of place to reproduce hereinbelow the definition of 'Government employee' under the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 (for short, 'Act No.23 of 1984), which reads as under:

“(3) “Government employee” includes all categories of officers and employees referred to in sub-section (2) of section 1”.

4. Sub-section (2) of Section 1 further envisages as:

“(2) It shall apply to—

- (i) persons appointed to public services and posts in connection with the affairs of the State;
- (ii) officers and other employees working in any local authority, whose salaries and allowances are paid out of the Consolidated Fund of the State;
- (iii) persons appointed to the Secretariat staff of the Houses of the State Legislature; and
- (iv) every other officer or employee whose conditions of service are regulated by rules framed under the proviso to article 309 of the Constitution of India immediately before the commencement of this Act, other than the village officers and law officers; whether appointed before or after the commencement of this Act.”

5. The Government of Andhra Pradesh issued G.O.Ms.No.147, dated 30.06.2014, providing instructions for implementation of the Act No.4 of 2014 reiterating the fact that the provisions of the Act No.4 of 2014 was applicable only to the categories mentioned therein and none else. Subsequently, G.O.Ms.No.112, dated 18.06.2016, was issued whereby it was envisaged that the enhancement of age of superannuation would not be made applicable to the employees of the Public Sector Undertakings and Institutions listed in the IX and X Schedules of the Andhra Pradesh Reorganisation Act, 2014 (for short, ‘the Reorganisation Act’) until the matter of division of assets and liabilities of the institutions between the states of Andhra Pradesh and Telangana was settled and the allotment of the employees between the two states was finalized for those public section undertakings and institutions.

6. It appears that the decision taken by the Government of Andhra Pradesh enhancing the age of superannuation of employees of public sector undertakings under the administrative control of the Government from 58 to 60 years was kept in abeyance till such time as a policy was formulated in that regard. The G.O.Ms.No.112 came to be challenged in **G. Rama Mohan Rao v. Government of Andhra Pradesh**¹, which was disposed of by virtue of judgment and order, dated 07.03.2017, wherein it was held that the earlier Government Orders were issued by the Government of Andhra Pradesh without the legal entities amending their rules and regulations and bye-laws governing the age of superannuation and without the prior approval of the sole or majority shareholder i.e., the State Government. It was held:

“192.... It is only if the request of these Companies/Corporations/Societies, for amendment of its byelaws/rules and regulations, are approved by the State Government, and the rules/byelaws/regulations are amended thereafter in accordance with law, would their employees then be governed by the enhanced age of superannuation prescribed under the Rules/bye-laws.”

7. The aforesaid judgment and order, dated 07.03.2017, passed in **G. Rama Mohan Rao (supra)** came to be challenged before the Apex Court in **A. Veerraju and Ors v. The State of Andhra Pradesh**² wherein by an interim order, dated 27.04.2017, the superannuation of the case of those

¹ (2017) SCC OnLine Hyd 54

² SLP (C) No.13623 of 2017

teachers, who had attained the age of 58 years in the Society 'Gurukulam' was deferred. Needless to say that the A.P. State Tribunal Welfare Residential Educational Institutions Society (Gurukulam) was a wholly Government owned Society, which was reflected in Schedule X of the Reorganisation Act.

8. Subsequently, in the case of **K. Ananda Rao v. S. S. Rawat, IAS and Ors**³ where the petitioners claimed that they were similarly situate as petitioners in SLP(C) No.13623 of 2017, the Supreme Court while granting interim relief ordered as under:

“3. We also make it clear that this order will apply to all similarly situated employees under the respondent- institutions whether they are the petitioners before this Court or not and, therefore, those similarly situated persons need not travel to this Court.”

9. It appears that during the pendency of the aforementioned SLPs, the Government issued G.O.Ms. No.102, dated 27.06.2017, enhancing the age of superannuation of employees working in the institutions listed in IX and X Schedules of the Reorganisation Act. Subsequently, the Government issued another Government Order bearing G.O.Ms.No.138, dated 08.08.2017, amending G.O.Ms.No.102 to make it retrospective in its operation with effect from 02.06.2014 and ordered that the employees working in the Companies/Corporations/Societies included in the

³ (2019) 13 SCC 24

Schedules IX and X of the Reorganisation Act shall not be superannuated only on the ground of attainment of 58 years of age and that if such an employee was superannuated on that ground, he or she would be reinstated and continued up to the age of 60 years. The aforementioned Government Order bearing G.O.Ms.No.138, having been brought to the notice of the Apex Court, the following order came to be passed:

“8. Be that as it may, learned counsel appearing for the State of Andhra Pradesh has today brought to our notice an order dated 08.08.2017 issued by the Government of Andhra Pradesh whereby such employees have been granted the benefit of continuance up to 60 years of age. It has been ordered that the “said order dated 8.8.2017 shall come into force with effect from 02.06.2014”.

9. In that view of the matter, we do not think it necessary to retain these appeals in this Court any further. The stand of the Government is very clear. The Government Order dated 08.08.2017 permitting the employees to continue up to the age of 60 years has come into effect with effect from 2.6.2014. Therefore, all employees who have superannuated on account of attainment of age of 58 years on 02.06.2014 or thereafter are entitled to the protection of their service up to 60 years of age and naturally to all consequential benefits arising therefrom.”

10. The petitioners herein, in the meantime, had approached the Bank for purposes of seeking an enhancement in their age of superannuation from 58 to 60 purportedly based upon the Act No.4 of 2014. The Bank by virtue of its decision, dated 29.06.2017, resolved to enhance the age of superannuation of employees working in the Bank from 58 to 60 years

from the month of June, 2017 onwards. Representations filed by the petitioners to give the benefit of enhancement of the age of superannuation retrospectively came to be rejected on the ground that the financial situation of the Bank was not such as would warrant the enhancement in the age of superannuation with effect from 02.06.2014 in terms of G.O.Ms.No.138.

11. In the present writ petition, the petitioners challenge the action of the Bank in not enhancing the age of superannuation from 58 to 60 retrospectively with effect from 02.06.2014 as was done in the case of institutions falling in Schedules IX and X of the Reorganisation Act by virtue of G.O.Ms.No.138. It is stated that the refusal of the Bank to grant such a retrospective benefit was arbitrary, illegal, unjust and discriminatory. Apart from this, it was urged that the Bank was discriminating between those, who retired post 02.06.2014 and those who are working as on 30.06.2017 and that the decision to enhance the age of superannuation only from the month of June, 2017 onwards was irrational.

12. It was urged by learned counsel for the petitioners that since the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'APCS Act') was silent regarding the age of superannuation and that reference regarding the age of superannuation was only made in Rule 28(6) of the

Andhra Pradesh Cooperative Societies Rules, 1964 (for short, 'APCS Rules), therefore, the policy as laid down in the Act No.4 of 2014 was required to be followed. It was further urged that Section 115(D) of the APCS Act did not empower the Board of Management of the Bank to enhance the retirement age and that the decision had to be taken by the Government. It was sought to be urged that Section 115(D)(2)(iv) of the APCS Act although covered the matters of personnel policy, staffing, recruitment etc., but would not cover the matter of superannuation, which was covered under Section 28(6) of the APCS Rules.

13. It was urged that G.O.Ms.No.102 came to be issued on 27.06.2017 only pursuant to the order of the Hon'ble Supreme Court in the aforementioned SLPs and in particular the order, dated 05.05.2017, therefore, it was sought to be urged that the case of the petitioners could not have been ignored for grant of similar relief to the petitioners.

14. The stand of the respondents, as was urged by Mr. C. Sumon, learned counsel appearing for respondent Nos.1 and 2, was that the petitioners are not entitled to the benefit of the Act of 4 of 2014 inasmuch as the petitioners were not Government employees as defined in Sub-section (2) of Section 1 of the Act No.23 of 1984. It was urged that the said Act was not applicable to the employees of the public enterprises and autonomous institutions. It was stated that the petitioners were

employees working in the cooperative credit societies, which were autonomous in their functioning and that having considered the issue of enhancement in the age of superannuation, the Bank had taken a conscious decision to enhance the age of superannuation of their employees from 58 to 60 with effect from June, 2017. It was further urged that fixation of the age of superannuation was in the nature of a policy decision and there was nothing perverse about increasing the age of superannuation with effect from June, 2017 and that being a policy decision, ordinarily, the same could not be interfered by this Court in exercise of its extraordinary jurisdiction except on the grounds of arbitrariness or unreasonableness.

15. It was stated that Chapter XIII-B of the APCS Act was a special provision applicable to the Cooperative Credit Societies, which, among others, introduced Section 115D (2) providing autonomy to the Cooperative Credit Societies. It was also stated that Section 115D was an overriding provision, which prevailed over Rule 28(6) of the APCS Rules. For facility of reference, Section 115D (2) envisages as under:

“(2) The Co-operative Credit Society shall have autonomy in all financial and internal administrative matters, subject to the guidelines of Reserve Bank of India/ National Bank for Agriculture and Rural Development in the following areas:-

- (i) Interest rates on deposits and loans,
- (ii) Borrowing and investments,
- (iii) Loan policies and individual loan decisions

(iv) Personnel policy, staffing, recruitment, posting, and compensation to staff, and

(v) Internal control systems, appointment of Auditors and compensation for the audit.”

16. Heard learned counsel for the parties.

17. The history of litigation discussed in the previous paragraphs would show that the same was initiated at the behest of employees, who had attained the age of superannuation i.e., 58 years having worked in the institutions listed in IX and X Schedule of the Reorganisation Act. The judgment and order, dated 07.03.2017, passed in the case of **G. Rama Mohan Rao (supra)** held that the rules and regulations by which the petitioners in those petitions were governed, stipulated 58 years as the age of retirement and that the employees could not claim any right to continue in service beyond the said period till the amendment of its rules, regulations and bye-laws, which are approved by the State Government and the bye-laws amended accordingly. It ordered the Government of Andhra Pradesh to consider the proposals submitted by each of these Corporations, Societies and Companies for enhancement of the age of superannuation from 58 to 60 years in accordance with law. It was only thereafter that G.O.Ms.No.102 came to be passed on 27.06.2017 giving in-principle approval for enhancement of the age of superannuation of employees working in the institutions listed in IX and X Schedule subject to the condition that the decision to enhance the superannuation age

from 58 to 60 years would be taken by the Board of Directors/Managing Committees of those legal entities and further that the orders would come into force prospectively from the date of issuance of the orders by the competent authority after the amendment of the relevant regulations/byelaws.

18. Subsequently, however, by virtue of the interim orders passed by the Hon'ble Supreme Court, G.O.Ms.No.138, dated 08.08.2017, came to be issued giving retrospective effect with effect from 02.06.2014. Apart from this, the said G.O.Ms.No.138 also envisaged that the employees working in the entities mentioned in Schedule IX and X of the Reorganisation Act would not be superannuated only on the ground of attainment of 58 years of age.

19. Admittedly, the petitioners are not working in the institutions, which find mention either in Schedule IX or X of the Reorganisation Act. The orders passed by the Hon'ble Supreme Court in the batch petitions decided on 09.08.2017, in our opinion, would not apply to entities, which otherwise did not find a mention in the said Schedules IX and X. The argument that the official respondents were under an obligation to give effect to the orders of the Hon'ble Supreme Court and more particularly in terms of the order, dated 05.05.2017, in our opinion, has no basis.

20. The next issue that falls for our consideration is whether the petitioners, who are the employees of a corporate body like a Cooperative Bank can claim to have been discriminated as against the Government employees or for that matter, the employees working for entities listed under Schedule IX and X of the Reorganisation Act.

21. In the instant case, the petitioners can certainly be not called as Government employees, as they do not fall within the definition of 'Government employees' as defined under the Act No.23 of 1984. If that be so, it is no longer *res integra* that employees of corporate bodies cannot demand as a matter of right to be treated similarly as employees of the State Government. In the case of **State of H.P. v. Rajesh Chander Sood**⁴, the Apex Court held:

"90.... The State Government has a master-servant relationship with the civil servants of the State, whilst it has no such direct or indirect nexus with the employees of corporate bodies. The State Government may legitimately choose to extend different rights in terms of pay-scales and retiral benefits to civil servants. It may disagree, to extend the same benefits to employees of corporate bodies. The State Government would be well within its right, to deny similar benefits to employees of corporate bodies, which are financially unviable, or if their activities have resulted in financial losses. It is common knowledge, that when pay-scales are periodically reviewed for civil servants, they do not automatically become applicable to employees of corporate bodies, which are wholly financed by the Government. And similarly, not even to employees of Government companies. Likewise, there cannot be parity with Government employees, in

⁴ 2016 (10) SCC 77

respect of allowances. So also, of retiral benefits. The claim for parity with Government employees is therefore wholly misconceived...”

22. The next issue that arises for consideration is whether the petitioners can claim discrimination between the employees of those entities, which are listed under Schedule IX and X of the Reorganisation Act and the petitioners, who are employees of a Cooperative Credit Society.

23. We intend to agree with learned counsel for the respondents that Section 115D of the APCS Act, which is a special provision applicable to Cooperative Credit Societies, which was incorporated in Chapter XIII-B by the Act No.16 of 2007, does give autonomy to such cooperative credit societies, among others, as regards personnel policy, staffing, recruitment, posting and compensation to staff. Not only this, even Rule 28 of the APCS Rules was amended in 2019 by inserting Rule 28(7), which reads as under:

“(7). The Cooperative Credit Societies mentioned in Section 115-C & D of the Andhra Pradesh Co-operative Societies Act, 1964 are exempted from Rule 28(6) and may frame such bye-laws/special bye-laws of service regulations of the Cooperative Credit Societies. Every paid servant and officer of that Society shall retire from service on attaining such age that is not in excess of the subsisting rules governing the age of superannuation of the Government employees.”

24. Reference to Section 115D of the APCS Act would show that while it envisages autonomy for cooperative credit societies, the said autonomy

is subject to the guidelines of the Reserve Bank of India/National Bank for Agriculture and Rural Development (NABARD). The NABARD in its HR policy guidelines in 2009, which are reproduced by the petitioners themselves in para No.43 of the rejoinder-affidavit filed by the petitioners, laid out as under:

“... Cooperative credit entities have been provided autonomy in all internal administrative matters especially personnel policy, staffing, recruitment, posting and compensation to staff, etc. Retirement and the age thereof being an administrative matter, a decision has to be taken by the Board of the respective bank keeping in view provisions of the Bye-laws & Cooperative Societies Act as well as profitability, financial strength and repaying capacity thereof.”

25. What flows from the aforementioned discussion is that if the NABARD as the regulatory authority, as also Section 115D of the APCS Act and Rule 28(7) of the APCS Rules envisages complete autonomy, among others, in the matters of internal administration, then the decision to increase the age of superannuation would perhaps not lie with the Government but independently with the Credit Cooperative Society of which the petitioners were employees.

26. The decision taken by the Government for those entities, which find a mention in Schedule IX and X, would not bind the district cooperative central banks, which are cooperative credit societies, who are independently required to take a call considering various factors including their financial capacity for purposes of determining as to whether there

should be an extension in the age of superannuation and if at all from which date. In our opinion, the decision taken by the DCCB is in the nature of a policy decision.

27. In regard to the fixation of the cut-off date regarding the age of superannuation, the Supreme Court in **New Okhla Industrial Development Authority (NOIDA) v. B.D. Singhal**⁵ held:

“24. Whether the decision to increase the age of superannuation should date back to the resolution passed by NOIDA or should be made effective from the date of the approval by the State government was a matter for the State government to decide. Ultimately, in drawing every cut-off, some employees would stand on one side of the line while the others would be positioned otherwise. This element of hardship cannot be a ground for the High Court to hold that the decision was arbitrary. When the State government originally decided to increase the age of superannuation of its own employees from fifty- eight to sixty years on 28 November 2001, it had left the public sector corporations to take a decision based on the financial impact which would result if they were to increase the age of superannuation for their own employees.”

28. Even in the present case, the decision to increase the age of superannuation from a prospective date i.e., June, 2017 has also been taken after taking into consideration the benefit of enhancement of superannuation from 58 to 60 years as also considering the financial impact on account of salary and other benefits, which the Bank would have to pay in view of such an increase. The decision taken by the Bank

⁵ 2021 SCC OnLine SC 466

cannot be said to be arbitrary or perverse or unreasonable as to become unsustainable. Therefore, we find no merit in the present writ petitions, which are accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

R. RAGHUNANDAN RAO, J

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**HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
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