THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION Nos.8660, 10465, 8665, 8659, 11191, 11040, 10438, 10436, 10411, 11752, 11836, 10257, 8656, 8654, 8648, 8647, 10494 OF 2023

COMMON ORDER:

1. All these writ petitions are filed questioning the action of the respondents, claiming the relief to extend the benefit of enhancement of age of superannuation from 60 to 62 years; send proposals to the higher authorities for enhancing the service regulation; reinduct the petitioners into service till they complete the age of 62 years.

2. All these seventeen writ petitions are filed under Article 226 of the Constitution of India by different petitioners, claiming identical relief, as such, I find it expedient to decide all the writ petitions by common order, since the issue involved in all the writ petitions is one and the same.

3. The petitioners worked in various capacities in APSPDCL/APEPDCL/CPDCL/APGENCO. They were informed that they are due to retire from service consequent upon attaining the age of superannuation i.e., 60 years. In the light of retirement notice given to the petitioners, some of the employees have already retired from service and few of them are yet to retire from service on attaining the age of superannuation i.e., 60 years.

4. The petitioners submits that, Andhra Pradesh Public Employment (Regulation of age of Superannuation) (Amendment) Ordinance, 2002

was published in the Andhra Pradesh Gazette Part IV-B Extraordinary on 31.01.2022 by way of Ordinance No.1 of 2022 wherein, the age of superannuation was enhanced from 60 to 62 years vide G.O.Ms.No.15 Finance (HR.IV-FR&LR), dated 31.01.2022.

5. The petitioners submits that, in pursuance of the provisions of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014 (Act No.4/2014), orders were issued in G.O.Ms.No.147 Finance (HRM IV) Department, dated 30.06.2014, enhancing the age of superannuation from 58 years to 60 years to the State Government employees. Subsequently, vide G.O.Ms.No.102 Finance (HR.IV-FR) Department, dated 27.06.2017, permission was accorded, enhancing the age of superannuation of employees from 58 years to 60 years, working in the institutions listed in Schedules IX and X of A.P. Re-organization Act, 2014, subject to the condition that specific decision to enhance the age of superannuation from 58 to 60 years to their employees shall be taken by the Board of Directors/Management Committees, taking into consideration their financial position and genuineness of their need to enhance the age of superannuation.

6. Thereafter, the Andhra Pradesh Southern Power Distribution Company Limited as per G.O.Ms.No.102 (HR.IV-FR) Department, dated

27.06.2017, issued orders enhancing the age of superannuation from 58 years to 60 years to its employees, vide S.O.O. (CGM-HRD) Ms.No.585, dated 29.06.2017.

7. The petitioners submits that policies of the Government issued from time to time on different counts for the State Government employees viz., House Rent Allowance, City Compensatory Allowance, Allowances of Additional Quantum of pension/family penstion to those pensioners/family pensioners etc., have been adopted by the respondents/institutions/companies. By virtue of enhancing the age from 58 years to 60 years, the employees are being continued till completion of 60 years.

8. While the things stood thus, the State Government further enhanced the age of superannuation of its employees from 60 years to 62 years by making an Ordinance, duly giving effect from 01.01.2022. It is the contention of the petitioners that such enhancement of age from 60 years to 62 years was arbitrarily and discriminatively not extended to the employees of the institutions/Public Sector Undertakings listed under Schedules IX and X of the A.P. Re-organisation Act, 2014. It is contended that APSPDCL/APEPDCL/CPDCL/APGENCO did not initiate any kind of affirmative steps to send proposal to the State Government requesting to enhance the age of superannuation of its employees from 60 to 62 years.

Due to this reason, many of the employees were forced to retire immediately after completion of 60 years of service and some of them have already retired, thereby putting the employees to severe and irreparable loss. The inaction on the part of the APSPDCL/APEPDCL/CPDCL/APGENCO in not sending proposals, seeking permission to enhance the age of superannuation from 60 to 62 years is illegal, arbitrary discriminative and violative of Articles, 14, 16 and 21 of the Constitution of India, the same is challenged in the present writ petition.

9. On behalf of the respondents no counter-affidavit has been filed.

10. Learned counsel for the petitioners would submit that the APSPDCL/APEPDCL/CPDCL/APGENCO ought to have sent proposals to the State Government for enhancement of age of superannuation from 60 to 62 years as was done earlier. The respondents-APSPDCL/APEPDCL/CPDCL/APGENCO ought to have amended the Service Rules and Regulations, enabling the employees to continue in service till they attain the age of 62 years. Learned counsel would further contend that initially, enhancement of age was extended to the employees who belong to the Public Sector Undertakings of the State Government, but the same was not done now, and without getting this benefit, many employees got retired from service.

11. Learned counsel for the petitioners would further submit that petitioners are working in APSPDCL/APEPDCL/CPDCL/APGENCO which are Public Sector Undertakings as defined under Article 12 of the Constitution of India. He submits that pursuant to (Amendment) Act No.4 of 2022 to Act No.23 of 1984, respondents/APSPDCL/ APEPDCL/CPDCL/APGENCO ought to have addressed a letter(s) to the higher authorities requesting to enhance the age of superannuation in respect of its employees on a par with the State Government employees whose age of superannuation was enhanced from 60 years to 62 years.

12. Learned counsel for the petitioners would further submit that as per Section 1 (2) of Act No.23 of 1984, a person who is appointed to Public Services in connection with the affairs of the State is termed as "an employee of the Government" and his service conditions should be reckoned on a par with the State Government employees. Learned counsel for the petitioners would strenuously contend that the petitioners herein who are the employees of APSPDCL/APEPDCL/CPDCL/APGENCO are rendering their services in connection with the affairs of the State, as such the petitioners herein also falls within the definition of Section 1 (2) of Act No.23 of 1984, thereby their services were entitled for enhancement of age of superannuation from 60 years to 62 years.

13. On the other hand, learned Standing Counsel for Corporation submits that the respondent addressed letters dated 27.04.2022, 09.05.2022, wherein APSPDCL/APEPDCL/CPDCL/APGENCO rejected the proposal for enhancement of retirement age, in view of the present day technology of SAP, IT and as many core activities are running in automation and according to them enhancement of age results in financial burden to the Corporation.

14. Learned Standing Counsel would further submit that, in **The Managing Director vs. C.Chandrasekhar Reddy[1],** the Division Bench of this Court upheld the contention of the Corporation while setting aside the impugned order therein of the learned Single Judge, in which the age of superannuation was enhanced from 60 to 62 years. He further submits that the service of the petitioners cannot be equated with the services of the State Government employees and Act No.4 of 2022 is not at all applicable to the petitioners herein.

15. The learned Standing Counsel would further submit that steps are taken by the individual employer and the employees are not entitled for enhancement of age of superannuation from 60 to 62 years. He also points out that the Service Rules of the Corporation Employees were also misinterpreted and those Service Rules does not come under the purview

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[1] W.A.No.1033 of 2022 and batch, dated 05.05.2023

of Service Rules made under Article 301 of the Constitution of India. Learned Standing Counsel would rely upon the judgement of the Hon'ble Division Bench in **The Managing Director vs. C.Chandrasekhar Reddy,** (referred supra) wherein it is held as follows:

> *"22. Thereafter, after considering the submissions made the Division Bench came to the following among other conclusions:*
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> > *"37. .... It is only if the 1984 and the 2014 State Act are held applicable to employees of public sector undertakings, can it be held that they are entitled to continue in service till they reach the age of superannuation of 60 years. As employees of public sector undertakings are not persons appointed to public services and posts in connection with the affairs of the State, they are not governed by the provisions of the 1984 Act as amended by the 2014 State Act. While it is open to the Board of Directors/Managing Committees of each of these Corporations/Companies/Societies, in accordance with the provisions of the enactment by which they are governed and the Articles of Association/bye-laws which 13 are applicable to them, to adopt the provisions of the 1984 Act and the 2014 State Act, and make them applicable to their employees by amending their rules and regulations, it is only thereafter can employees of these undertakings claim the right to continue in service upto the enhanced age of superannuation of 60 years.*
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> > *42. As employees of Public Sector Undertakings and Government servants constitute two different and distinct classes, neither do the conditions of service prescribed for government servants automatically apply to employees of Public Sector Undertakings, nor does the plea of discrimination, or of violation of Article 14, merit acceptance. The contention that the Government cannot apply different yardsticks is therefore not tenable. While several of these corporate bodies appear to have adopted the 1984 Act, they are required to also adopt the 2014 State Act, and amend the rules and bye-laws, governing the age of superannuation of its employees, accordingly. It is only if the rules, governing the age of superannuation, are amended as prescribed under the applicable bye-laws/Articles of association would the employees of these corporate bodies then be entitled to claim the benefit of the enhanced age of superannuation.*
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> > *44. The Companies/Corporations/Societies, listed in the IX Schedule to the 2014 Central Act, are distinct legal entities and are neither departments, nor form part, of the State Government. The Board of Directors/Managing Committees of each of these legal entities govern each of these entities subject only to the provisions of the Companies Act, the Memorandum of Association and the Articles of Association in so far as Companies/Corporations are concerned, and the byelaws and the provisions of the Act whereunder the 14 Societies were constituted in so far as Societies are concerned. The control exercised by the State Government, over such Companies/Societies, is as its shareholder, and in terms of the relevant enactments and the Articles of Association of*

> *each of these Companies, and the bye-laws of each of these Societies. Neither the 1984 Act, nor the Rules made by the Government for its employees under the proviso to Article 309 of the Constitution of India, automatically apply to these Corporations/Companies/Societies.*
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> *xxx*
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> *xxx*
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> *192. The earlier G.Os were issued by the Government of A.P. without these legal entities amending its rules/regulations/bye-laws, governing the age of superannuation and without the prior approval of the sole/majority shareholder i.e., the State Government as required under the Articles of Association/byelaws of these legal entities. As the Rules and Regulations, by which the petitioners are governed, stipulate 58 years as the age of retirement, these employees cannot claim any right to continue in service till they attain the age of 60 years. 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."*

23. Pursuant to this decision of the Division Bench two G.Os., were issued viz., G.O.Ms.No.112 dated 18.06.2016 and 15 G.O.Ms.No.102, dated 27.06.2017. In G.O. Ms.No.102, dated 27.06.2017, in paragraph 4 the following is stated: "4. Government after careful examination of the matter hereby accord to give in principle approval to enhance the age of superannuation of employees working in the institutions listed in IX and X Schedule Institutions subject to the following conditions: 1. The specific decision to enhance the superannuation age from 58 to 60 years to their employees shall be taken by the Board of Directors/Managing Committees of these legal entities. 2. While doing so, these Institutions shall take into consideration their financial position and genuineness of their need to enhance the age of superannuation. 3. In case of Residential Education Societies, the decision should be based on the genuineness of their need and assessment of performance of these societies."

36. According to the learned counsel for the respondents, the Act is incorporated into the service of the rules. Therefore, the writ petitioner is entitled to the relief. On the other hand it is contended that there is merely a reference to the Act No.23 of 1984 and it is not incorporated.

40. This Court also finds that in the counter affidavit filed the respondent No.1 had clearly specified that they had sought a clarification from the Government of Andhra Pradesh, whether the enhancement of age from 60 to 62 would apply to corporations, associations, societies etc., on 14.02.2022. In the counter, it is clearly mentioned that the writ petition is also premature till the Government takes a decision on the matter. Even in the past it is stated that the Government issued separate orders for corporations and the societies for enhancement of age. Therefore, it is stated that the petitioner's case will be considered on similar lines once the decision of the Government was obtained. The learned Advocate General submitted that this decision is spelt out by the memo, dated 23.09.2022, which clearly states G.O.Ms.No.15 is applicable to the employees, who are described in Section 1(2) of the Act only. It is also clarified by the Government that certain PSUs, Corporations etc., have enhanced the age to 62 without necessary approval and sanction and therefore, remedial action is to be taken by the very disciplinary action against this respondent."

16. The learned Government Pleader for Services-I appearing for the respondents would submit that, such policy matter of enhancement of age of superannuation has to be undertaken by the Board of Directors or Management Committees of the legal entities and while doing so, the Institutions/Public Sector Undertakings shall take into consideration their financial position and genuineness of their need to enhance the age of superannuation to its employees. Moreover, such decision should be based on the genuineness of the need and assessment of performance of the employees in the institution. Without considering all these aspects, the Court cannot straightaway issue a direction enhancing the age of the petitioners from 60 years to 62 years and requested to dismiss the writ petition.

17. Heard learned counsel for the petitioners, learned Government Pleader for Services-I and learned Standing Counsel for APSPDCL/APEPDCL/CPDCL/APGENCO and perused the material available on record.

18. It is a fact that the petitioners were employed in APSPDCL/APEPDCL/CPDCL/APGENCO and retired/due to retire upon attaining the age of superannuation of 60 years. The primary contention is that when APSPDCL/APEPDCL/CPDCL/APGENCO are adopting all the policies of the State Government which are applicable to the State

Government employees viz., HRA, CCA, etc,, the present benefit of enhancement of age of superannuation from 60 to 62 years ought to have been taken up by APSPDCL/ APEPDCL/CPDCL/APGENCO.

19. This Court finds that the learned Standing Counsel had clearly specified that they had sought a clarification from the Government of Andhra Pradesh as to whether enhancement of age from 60 to 62 years would apply to Corporations, Public Sector Undertakings and institutions listed under Schedules IX and X of the Andhra Pradesh Reorganisation Act, 2014. The present batch of writ petitions are also premature till the Government takes a decision on the matter. Even, in the past, it is stated that the Government issued supporting orders for Corporations/Societies for enhancement of age. Therefore, the petitioners' case will be considered on similar lines once the decision of the Government is obtained. It was also clarified by the Government that certain PSUs, Corporation have enhanced the age of superannuation to 62 years without getting necessary approval and sanction and therefore remedial action has to be taken by the very disciplinary authority. In **The Managing Director vs. C.Chandrasekhar Reddy,** (referred supra) the Division Bench of this Court had set aside the orders of the learned Single Judge on the ground that writ of Mandamus cannot be issued in

the circumstances of this nature, as there is no right to the writ petitioners to seek the relief.

20. Hence, following the judgement of the Hon'ble Division Bench of this Court in **The Managing Director vs. C.Chandrasekhar Reddy,** (referred supra) it is for APSPDCL/APEPDCL/CPDCL/APGENCO to take a policy decision by passing Board Resolution and addressing the same to the State Government in respect of enhancement of age of superannuation from 60 to 62 years on par with the employees of State Government.

21. In the result, the writ petitions are dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

JUSTICE VENKATESWARLU NIMMAGADDA

Date: 22.06.2023

SP/SSN

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THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

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