

HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION Nos.42551 of 2022 and 16065 of 2023

COMMON ORDER:

These petitions are filed claiming same relief by different petitioners, but the issue involved in these petitions is one and the same. Therefore, I am of the view that it is appropriate to decide these petitions by common order.

The writ petitions are filed under Article 226 of the Constitution of India seeking to declare the action of the respondents in retiring the petitioners from service at the age of sixty 60 years without allowing them to remain in service till they attain the age of superannuation of 62 years, as arbitrary, illegal, unjust, discriminatory, contrary to the Provisions of the A.P.Public Employment (Regulation of Age of Superannuation) Act, 1984 as amended from time to time including Act 4 of 2022 and G.O.Ms.No.15 Finance Department dt.31.1.2022 and in violation of Articles 14 and 16 of the Constitution of India and consequently hold that the petitioners are entitled to be continued in service upto the age of sixty two (62) years with all consequential benefits in accordance with law.

The brief facts of the present cases are that the petitioners are working in different organizations and they are

entitled to continue in service till they attain the age of superannuation of 62 years of age.

As per Section 3 of the A.P.Public Employment (Regulation of Age of Superannuation) Act, 1984 (for short 'Act 23 of 1984) as amended by Act 3 of 1985, age of superannuation of a Government Employee, not being a Workman and not belonging to Last Grade Service is 58 years. Meanwhile, the age of superannuation was reduced to 55 years. Later, the same was enhanced to 58 years by virtue of amendment to Section 3 of the Act in the year 1985. Earlier in the year 1984 i.e. on 29.10.1984, the Organizations have amended Service Rules duly raising the age of superannuation to that of 58 years. This would establish that the Organizations are following and adopting the age of superannuation as applicable to the Government Employees.

The age of superannuation of 58 years has been enhanced to 60 years by the Government of Andhra Pradesh by bringing an Amendment to Act 23 of 1984. The same has been approved by the A.P. Legislature also in June 2014. The Amendment Act No.4 of 2014 was ordered to be published in

the A.P. Gazette vide G.O.Ms.No.63, Law (F) Department, Dated: 27.6.2014 and is accordingly published. With effect from 02.06.2014, because of the bifurcation of two States viz. the State of Andhra Pradesh and the State of Telangana started functioning separately and that the petitioners herein belong to State of Andhra Pradesh and they are working in the office of the respondents – Organizations located in the Territory of the State of Andhra Pradesh. Dehors the above amendment, Sub-Section (2) of Section-3 of the Act is also applicable to the employees belonging to the Last Grade Service who shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years.

Even otherwise the Government of Andhra Pradesh took a decision to continue the employees who are working as on 02.06.2014 upto the age of 60 years and accordingly an Amendment was issued to Act 23 of 1984 as stated above. The Organizations were permitted to extend the enhanced age of superannuation age of 60 years to the employees of the Organizations, who are in service as on 01.06.2014. Thereafter, Government issued G.O.Ms.No.15 Finance (HR.IV-FR&LR) Department dated 31.01.2022 enhancing superannuation age

from 60 to 62 years. In spite of the same, the respondents are adopting selective method of enhancement of superannuation age of 62 years contrary to the provisions contained in the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 and also the Amended Act 4 of 2022.

The action of the respondents in retiring the petitioners from service on the purported ground that the amended provision has not been extended to the employees of the respondents – Organizations is quite erroneous. The age of superannuation has been enhanced keeping in view the significant improvement in the average life expectancy. The Government has also taken note of the report of the World Health Organization indicating that life expectancy in the year 2009 was 68 years while it was 65 years in India.

The said action of the respondents is wholly arbitrary, unjust, discriminatory, contrary to the statutory prescription stipulated in Act 23 of 1984 as amended in June, 2014 and was further amended by an Act 4 of 2022 and in violation of Articles 14 and 16 of the Constitution of India. Respondents are Government undertakings and are instrumentalities of "State"

as defined under Article 12 of the Constitution of India. The employees of the Organizations are in Public Employment as contemplated under Act 23 of 1984. The Respondents ought to have made applicable the amended provisions to the Employees working in the respondents – Organizations instead of excluding their cases by way of Clarification issued in Circular Memo.No. 1813129/Fin01-HR/212/2022-HR-IV, dated 23.9.2022. It is settled law that a Memo cannot take away the effect of a benefit conferred under a Statute. The clarification as contained in Circular Memo dated 23.9.2022 is vitiated in law. The intendment and objective of the Act cannot be stultified by way of clarifications. By virtue of the impugned clarification an artificial distinction is sought to be made among similarly placed employees without any legal or valid justification. The Government is adopting selective method in extending the enhanced age of superannuation of 62 years as is evident from G.O.Ms.No.15, Finance Department., dated 31.1.2022 and the impugned orders of retirement are illegal, arbitrary, unjust and in violation of Articles 14 and 16 of the Constitution of India and also in violation of principles of natural justice.

When the respondents – Organizations are adopting and following general legislation governing the age of superannuation of the employees, there is no justification in according discriminatory treatment to similarly situated employees offending the provisions of Article 14 of the Constitution of India which enshrines the concept of equality. Dealing with a similar situation, where differential grant of benefits came up for consideration, the Hon'ble Apex Court in “**State of Karnataka Vs. Karnataka State Patels Sangha**”¹ observed that when two clear class of persons are similarly situated, then one cannot be discriminated. In “**Osmania University Vs. V.S.Muthurangam**”², the Hon'ble Apex Court held that when the age of the teaching staff of the University has been enhanced to 60 years the age of superannuation of the non teaching staff should also be changed in the similar manner in order to bring parity in the service conditions of the salaried staff of the University.

In view of the amendment to Act 23 of 1984 in June 2014 read with further amendment Act 4 of 2022 and the provisions of Section 3(2) of the Act, the petitioners are entitled to be

¹ (2007) 4 SCC 207

² AIR 1997 SC 2758

continued in service upto 62 years with all consequential benefits. The Respondents – Organizations, which are Government undertakings, are bound by the statutory provisions and it has no power to deviate from the policy of the Government, much less from the legislative enactment. The respondents have no right to act in violation of the statutory prescription and cannot retire the petitioners from service at the age of 60 years. The respondents cannot act mechanically without reference to the latest amendment to Act 23 of 1984 and Section 3(2) read with an Amended Act 4 of 2022. Challenging the action of the respondents, the petitioners filed the present writ petitions along with interlocutory application seeking a direction to the respondents to continue them in service by suspending the impugned clarification issued in Circular Memo No.1813129/FIN01-HR/212-HR-IV dated 23.09.2022.

When these writ petitions came up for admission, this Court granted interim order in W.P.No.16065 of 2023

Respondents filed counter affidavits in these writ petitions, contending that the then District Collector

Ananthapuramu also absorbed certain corporation employees into Government Departments. But on an objection raised by the District of Treasuries and Account., A.P., that absorption of Corporation employees is prohibited by Act 14/1997, the Government issued orders to cancel such absorption orders and accordingly their absorption orders were cancelled. As such it does not give strength to the case of the petitioners. The service of the employees surrendered to Surplus Man Power Pool was utilized in the needy Departments and they were not absorbed into those Government Departments. As such their joining reports will be naturally accepted, which are not gave any rights of regular employees. Therefore, the employees working in different Organizations do not fall under the category of Government employees and even their salaries are paid from the revenue of the Organization and not from the consolidated fund of State.

It is further contended that the Division Bench of this Court in W.A.No.1033 of 2022 and batch held that Act 23 of 1984 is not applicable to the employees working under various Organizations and state undertakings and as such they cannot claim enhancement of retirement age to 62 years as a matter of

right. Earlier 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 Schedule Institutions from 58 to 60. Paragraph No.4 of the said G.O.Ms.No.102 is as follows:

“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.”

It is further contended that in view of the common order passed by the Division Bench of this Court in W.A.No.1033 of 2022 and batch, the petitioners herein are not entitled for enhancement of retirement age from 60 to 62 years as Act 23 of 1984 do not apply to them and they do not fall under the

category of a Government employee. In view of the clarification issued by the Government of Andhra Pradesh vide circular memo dated 23.09.2022, the petitioners are entitled to continue in service only up to 60 years as the said circular memo specifically states that the amendment made under Act 4 of 2022 does not apply to the public sector undertakings and Government Organizations.

It is further contended that as many Organizations are adopting the enhancement of retirement age from 60 to 62 years without permission from the Government, the Government has issued a circular dated 23.09.2022 clarifying that the enhancement of retirement age from 60 to 62 years is only for the Government employees and not for employees working in Organizations and Government undertakings and ordered all the Organizations to take remedial action. Therefore, the petitioners are not entitled to continue in service beyond 60 years and requested to dismiss the writ petitions.

Learned counsel for the petitioners contended that the Organizations 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 from 58 to 60 was extended to the employees who belong to the Public Sector Undertakings of the State Government, but the same was not done now.

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 par with the State Government employees. Learned counsel for the petitioners would strenuously contend that the petitioners herein are employees of different Organizations rendering their services in connection with the affairs of the State, as such the petitioners herein also fall within the definition of Section 1 (2) of Act No.23 of 1984, thereby they are entitled for enhancement of age of superannuation from 60 years to 62 years.

Learned Standing Counsel for the respondents would submit that, in “**The Managing Director vs. C.Chandrasekhar Reddy** (W.A.No.1033 of 2022 and batch, dated 05.05.2023)”, the

Division Bench of this Court upheld the contention of the Organization therein while setting aside the impugned order of the learned Single Judge, where the age of superannuation was enhanced from 60 to 62 years. They would further submit 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.

Learned Standing Counsel would further submit that the employees of the respondents – Organizations are not entitled for enhancement of age of superannuation from 60 to 62 years. They would further contend that the Service Rules of the Organization Employees were also misinterpreted and those Service Rules do not come under the purview of Service Rules made under Article 301 of the Constitution of India.

Admittedly, the petitioners are working in respondent No.1 – Organization. The Government of Andhra Pradesh took a decision to continue the employees who are working as on 02.06.2014 upto the age of 60 years and accordingly an Amendment was issued to Act 23 of 1984 as stated above. The Organizations were permitted to extend the enhanced age of superannuation age of 60 years to the employees of the

Organizations who are in service as on 01.06.2014. Thereafter, Government issued G.O.Ms.No.15 Finance (HR.IV-FR&LR) Department dated 31.01.2022 enhancing superannuation age from 60 to 62 years. In spite of the same, respondents – Organizations are not extending the same benefit to their employees.

Further, State Government issued Cir.Memo.No.1813129 /FIN01 - HR /212 /2022-HR-IV dated 23.09.2022, wherein it is observed that certain Government PSUs/Corporations/ Institutions/Companies/Societies including Educational Institutions/Non-teaching staff of the Universities have issued orders extending the age of superannuation from 60 to 62 years, without having the necessary competency and clarified that the order issued vide G.O.Ms.No.15, Finance (HR IV – FR&LR) Department, dated 31.01.2022 read with the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2022 (Act 4 of 2022) are applicable in respect of no other category of employee except the following:

- 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.

Therefore, there is no proposal pending with the respondents – Organizations for enhancement of superannuation age of employees from 60 to 62 years.

In “**G.Rama Mohan Rao Vs. Government of Andhra Pradesh**”³ when some of the employees of Organizations/ Companies/Societies/Institutions, listed in the IX and X Schedule of the A.P. Reorganisation Act, 2014 (the "2014 Central Act" for short), have invoked the jurisdiction of the Court, under Article 226 of the Constitution of India to declare the orders issued by the Government of Andhra Pradesh, in

³ (2017) 3 ALT 1 (DB) = 2017 SCC OnLine Hyd 54

G.O. Ms. No. 112 dated 18.06.2016 keeping in abeyance the earlier orders issued by them, enhancing the age of superannuation of employees of public sector undertakings under the administrative control of the Government from 58 to 60 years, till formulation of a policy regarding extension of the age of superannuation of such employees, as arbitrary and illegal, the Division Bench of the High Court of Judicature at Hyderabad, held as follows:

“The earlier G.Os were issued by the Government of A.P. without these legal entities amending its rules/ regulations/ byelaws, 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.

Since the Board of Directors/Managing Committees of these wholly or substantially government owned Companies/Corporations/Societies have submitted proposals,

the State Government is obligated to consider the request of each of these corporations/companies/societies separately, based on their financial position, genuineness of their need to enhance the age of superannuation etc, and then take a decision whether or not their request, to enhance the age of superannuation of their employees from 58 to 60 years, should be approved. Suffice it, if the Government of A.P. is directed to consider the proposals submitted by each of these corporations/societies/companies, for enhancement of the age of superannuation from 58 to 60 years in accordance with law, and take a decision thereupon at the earliest, in any event not later than four months from the date of receipt of a copy of this order. All the Writ Petitions are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.”

In the present cases, the respondents have not submitted any proposal or request to the Government for enhancement of superannuation age of their employees from 60 to 62 years. Therefore, conclusion arrived at by the Hon’ble Division Bench of the High Court of Judicature at Hyderabad in “**G.Rama Mohan Rao Vs. Government of Andhra Pradesh**” (referred supra) is not applicable to the present facts of the case.

Learned Standing Counsel would rely upon the judgment 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:

“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.**

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.**

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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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 petitioner 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."

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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.

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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."

Hence, following the judgment of the Hon'ble Division Bench of this Court in "**The Managing Director vs. C.Chandrasekhar Reddy**, (referred supra)" it is for the respondents to take a policy decision by passing Board Resolution, thereafter obtain approval from the State Government in respect of enhancement of age of superannuation from 60 to 62 years on par with the employees of State Government. Till such process is completed, the employees of the respondents –Organizations are not entitled for the enhancement of superannuation age from 60 to 62 years.

The petitioners are not entitled for the relief as claimed.
Therefore, the writ petitions are liable to be dismissed.

Accordingly, the writ petitions are dismissed. No costs.

In view of the dismissal of the main writ petitions, the interim order, if any, passed in the writ petitions shall stand vacated.

Miscellaneous petitions pending, if any, in the Writ Petitions, shall stand closed.

JUSTICE V.SUJATHA

Date : 06.09.2023

SPP

HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION Nos. 42551 of 2022 and 16065 of 2023

Date : 06.09.2023

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