HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

W.P.Nos.3255, 3281, 8593, 9135, 15259, 15269, 15286, 15927, 17128, 18931, 18938, 25433, 27678, 27728, 32722 & 33335 of 2023; 153, 924, 965, 1635, 1962, 2448, 2461, 3529 & 4781 of 2024

COMMON ORDER IN W.P.Nos.15259, 15269, 15286, 15927, 18938, 25433, 27678, 27728, 32722, 33335 of 2023 and 153, 1962, 2448, 2461, 3529 and 4781 of 2024:

Heard Sri Kambampati Ramesh Babu, Sri N. Siva Reddy, Sri Srinivas Basava representing Smt. Bobba Vijaya Lakshmi learned respective Counsels for the Writ Petitioners in this batch and Sri P. Vara Prasad, learned Asst. Government Pleader representing the Principal Secretary, Agriculture and Cooperative Department and the District Cooperative Officer.

2. This batch of Writ Petitions is filed by the employees working at various levels in the Primary Agricultural Cooperative Credit Societies in the State of Andhra Pradesh for seeking enhancement of age of superannuation from 60 years to 62 years as per the amendment made by the Government vide G.O.Ms.No.15 dated 31.01.2022. This amendment is made by the Government of Andhra Pradesh and is called as the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) (Amendment) Ordinance 2022. This Ordinance

was later approved by the State Legislature and eventually became an Act (Act No.4 of 2022) vide Gazette Notification No.4 dated 19.04.2022. Vide the Act No.4 of 2022, the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 has been amended, enhancing the age of superannuation for the employees working in the Government Departments from 60 years to 62 years.

3. The contention of the Writ Petitioners in these cases is that the age of superannuation which applies to the employees of the Government shall, *ipso facto*, apply to the employees working in the Primary Agricultural Cooperative Credit Societies in the State of Andhra Pradesh as per the provisions of the Statute namely the Cooperative Societies Act, 1964 (Act No.7 of 1964) and the Andhra Pradesh Cooperative Societies Rules, 1964.

4. Even though various submissions were advanced by various learned Counsel for the Writ Petitioners, broadly the contentious issue that had fallen for consideration before this Court is:

> *Whether the benefit of Andhra Pradesh Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2022 (Act No.4 of 2022) is available to the employees working in the Primary Agricultural*

Cooperative Credit Societies in the State of Andhra Pradesh in terms of the Cooperative Societies Act, 1964 and its Rules?

COUNSEL FOR THE WRIT PETITIONERS:

5. The learned Counsel for the Writ Petitioners have taken this Court through the provisions of the above mentioned Statute and the Rules. There is no dispute that the State of Andhra Pradesh has made amendments in respect of extention of age of superannuation to its employees from 60 years to 62 years vide Act No.4 of 2022. Therefore, this Court has to see whether this benefit of extention of age of superannuation arising out of this Act 4 of 2022 would apply to the employees working in the Primary Agricultural Cooperative Credit Societies or not. It would be necessary to examine the relevant provisions of Act No.7 of 1964 along with Rules as amended from time to time.

6. Act No.7 of 1964 was enacted by the Parliament to consolidate and amend the law relating to the Cooperative Societies in the State of Andhra Pradesh based on Cooperative Principles and Cooperative identity. The Respondent Primary Agricultural Cooperative Credit Societies in the instant case are the Registered Societies under the Act No.7 of 1964. Chapter XIII-B (titled as “Special Provisions Applicable to Cooperative

Credit Societies Identified Under Revival Package) was inserted and was brought into effect by making necessary amendments vide Act 16 of 2007. By virtue of this amendment, new provisions, namely Sections 115-C & 115-D were added and brought into effect. These are called the 'Special Provisions' and are applicable to Primary Agricultural Cooperative Credit Societies. Under Section 30 (1) of the Act No.7 of 1964, "the ultimate authority of a Society shall vest in the General Body". Clause-(xxiii) of Sub-section (2) of Section 30 would stipulate that the "approval of the staffing pattern, pay and other allowances of the employees of the society and contingencies," is also vested in the General Body. Rules 28 of the A.P Cooperative Societies Rules, 1964 deal with appointments, functions of the officers and servants of the societies. Clause (b) of Sub-rule (4) of Rule 28 stipulates that General Body, on the recommendation of the Managing Committee, is competent to revise the Service Rules or Pay Scales provided that the expenditure towards pay and allowances of the employees is less than 2% of the working capital or less than 30% of the Gross Profit under 'intimation' to the Registrar of Cooperative Societies. Clause (c) of Sub-Rule 4 of Rule 28 stipulates that Societies, except Societies mentioned under Sections 115-C & 115-D of the A.P Cooperative Societies

Act, 1964, which are in receipt of State aid shall not frame any Rules relating to age of retirement, leave rules, leave travel concession and rules relating to loans to employees which shall be in excess of the subsisting rules of Government concerning these matters.

7. Clause (d) of Sub-rule (4) of Rule 28 states that the Societies covered under Section 115-C & 115-D of the A.P Cooperative Societies Act, 1964 may decide on the age of superannuation of their employees and such age of superannuation shall not be in excess of subsisting rules governing the superannuation of the Government employees.

8. Sub-Rule (7) of Rule 28 (as amended on 04.02.2019) would also indicate that every paid servant and officer of the Societies mentioned in Sections 115-C & 115-D of the Act No.7 of 1964 are exempted from Rule 28(6) and that every paid servant and officer of the Societies 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.

9. Rule 28 of the A.P Cooperative Societies Act, 1964 as amended from time to time is extracted hereunder:-

*"28. **Officers and servants of societies:-***

(1) No Society shall appoint any person as its paid officer or servant in any category of service, unless he possesses the qualifications and furnished the security as specified by the Registrar, from time to time, for such category of service in the society or for the class of societies to which it belongs.

(2)All the existing societies with and without state aid shall, if not already approved, prepare service rules, within 45 days from the day of enforcement of these rules and submit to the Registrar for approval, which, among others, shall include the following if already not done so, with regard to staffing pattern, Scale of pay and allowances, Method of filling of posts, qualifications, and rules regarding disciplinary proceedings and other service matters,-

(3)All existing societies shall also furnish to the Registrar details of:

(i) Persons working in the society against the existing posts along with their qualification;

(ii)Job Chart/Nature of work/Pay Scales for each post/categories.

(iii)Staff in excess of staffing pattern if any, prescribed by Registrar;

(iv)the expenditure towards pay and allowances of the employees and its percentage to working capital and gross income;

(v) identification of surplus staff or inadequate staff, if any, category wise, and how the society, intends to deal with surplus staff or inadequate staff;

(vi) Pay scales of existing staff and when they are approved and by whom;

(vii) Working capital and Gross Income;

(4) Every society within 45 days of registration shall frame and submit to the Registrar for approval of its staffing pattern which shall include,-

(a)Service rules for its employee, specifying staffing pattern, qualifications, method of appointment, scales of pay and allowances,

responsibilities, duties, training, securities and disciplinary rules etc.

(b) revision of any of the service rules or pay scales etc. shall be made by the General Body on the recommendation of the Managing Committee provided the expenditure towards pay and allowances of the employees are less than 2% of the working capital or less than 30% of the Gross Profit under intimation to Registrar of Cooperative Societies. Provided further that if it is found to be in excess of the said norms either in audit, inspection or inquiry, the excess so spent shall be recoverable from members of the Managing Committee concerned under Section 60(1) of the Andhra Pradesh Coop. Societies Act and the Registrar shall have the powers to cancel such pay revision or modify it as deemed fit and adjust securities furnished by the paid servants.

(c) A society, except the Societies mentioned under Section 115-C & D of the Andhra Pradesh Co-operative Societies Act, 1964, in respect of State aid shall not frame any rules relating to age of retirement, leave rules, leave travel concession and rules relating to loans to employees which shall be in excess of the subsisting rules of Government concerning these matters.

(d) The Co-operative Credit Societies covered under Section 115-C & D of the Andhra Pradesh Co-operative Societies Act, 1964 may decide on the age of superannuation of their employees. However, it shall not be in excess of the subsisting rules governing the superannuation of the Government employees."

(5) No society shall appoint as its paid officer or servant in any category of service any person who is related to any director or member of the committee of a financing bank to which the society is affiliated.

(6) Notwithstanding anything contained in the Bye-laws/special bye-laws service regulations of the Co-operative societies, except the Societies mentioned under Section 115-C & D of the Andhra Pradesh Co-operative Societies Act, 1964 every paid servant and officer of the society other than those in the last grade service shall retire from service on the After Noon of the last date of the month on which he attains the age of 58 years.

The last grade servant of the society shall retire from the service on the afternoon of the last date of the month on which he attains the age of 60 years;

Explanation. –
(i) For the purposes of the rule, the expression "last grade servant" means Office Subordinate (formerly Attender) /Peon/ Watchman/ Scavenger and other equivalent designations incorporated as such in the staffing pattern as contained in the bye-laws/ special bye-laws of the Cooperative Society and approved by the Registrar.

(ii) A paid servant of officer of the society including last grade servant, whose date of birth falls on the first of a month shall retire from service on the afternoon of the last day of the proceeding month on attaining the age of (58) or (60) years, as the case may be.

(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.

10. For determination of the various issues involved in the present case, reference to other provisions of the Act and Rules may not be of much relevance. This apart, the amendment to Sub-rule (7) of Rule 28 has come into effect on 04.02.2019, and therefore, various Judgments which have interpretated provisions prior to this amendment relating to the age of superannuation are not of much relevance for determination of the present issue inasmuch as the Court has to decide the niggling issue of age of

superannuation for the servants and officers of the Co-operative Credit Societies only with reference to the amendments brought into effect subsequently.

11. The Andhra Pradesh Cooperative Societies Rules, 1964 have been promulgated in exercise of the powers conferred to Sub-section (1) of Section 30 of A.P Cooperative Societies Act, 1964 (Act No.7 of 1964). These Rules have been published in A.P Gazette on 30.07.1964. The amendments made to Sub-rule (7) of Rule 28 came into effect on 04.02.2019. Needless to state that not only the Rules framed, but also the amendments made to the Rule on 04.02.2019 have the force of law inasmuch as the said Rules constitutes 'subordinate legislation'.

12. Learned Counsel for the Writ Petitioners would contend that as per the Section 30 of the Act No.7 of 1964, the ultimate authority of the Society vests with the General Body. The General Body alone is the competent body that can deal with staffing pattern, pay and other allowances etc., and other contingencies relating to this is vested with the General Body.

13. Having considered the Rule position as indicated above, at the admission stage, the learned Single Judge of this Court, at different point of times, have granted interim reliefs in

Writ Petitions filed by the ‘servants and officers’ of the Society seeking applicability of ‘completion of 62 years’ as the age of superannuation. The Interim Orders were to the effect that the Writ Petitioners shall be continued until they attain the age of 62 years of superannuation. In other words, the Interim Orders would enhance the age of retirement from 60 years to 62 years.

SUBMISSIONS OF OFFICIAL RESPONDENTS:

14. The Principal Secretary, Agriculture and Cooperative Department and the District Cooperative Officer have jointly filed the Counter Affidavit. Principally, the contentions in the Counter Affidavit as well as the submission of Sri P.Vara Prasad, representing the Official Respondents are that the Act No.4 of 2022 (Amendment Act) amending the age of employees working in Government would not apply. The second contention raised by the said respondents is to the effect that unless Bye-laws are amended by the respective Societies, the General Bodies of the Societies are not vested with the power to enhance the age of superannuation from 60 years to 62 years, since the Government, vide Circular Memo dated 23.09.2022 had clarified that the amendment made to Act No.4 of 2022 would only apply to the Government Departments and other persons mentioned therein but the same shall not be applicable to the ‘servants and officers’

working in Cooperative Credit Societies which fall under Sections 115-C & 115-D of Act No.7 of 1964. The third contention is that the Resolutions passed by the General Bodies of the respective Societies would have no force of law until the said Resolutions enhancing the age of superannuation from 60 years to 62 years are approved by the Registrar of Cooperative Societies.

15. Sri P. Vara Prasad, learned Assistant Government Pleader, representing Principal Secretary, Agriculture and Cooperative Department and the District Cooperative Officer, had fourthly, contended that the Government of Andhra Pradesh had issued the Model Service Regulations (Regulations) on 23.02.2021. He would submit that as per Para No.11 of Chapter-III of the said Regulations 'every employee of the society shall retire from service with effect from 1st day of the month in which he/she attains the age of 60 years'. Learned Counsel would submit that in view of these Model Service Regulations, particularly with regard to Para No.11 of Chapter-III, the servants and officers of the Societies shall retire only after attaining the age of 60 years but not 62 years.

DISCUSSION:

16. During the course of submissions, Sri Srinivasa Basava, learned Counsel appearing for some of the Writ Petitioners in some Writ Petitions had submitted that Rule 12 of the A.P Cooperative Societies Rules, 1964 classifies various Societies; that the Primary Agricultural Cooperative Credit Societies are classified under Clause (b) of Sub-rule (1) of Rule 12 as “Credit Society”; that Sub-Rule (5) deals with sub-classification as a) Apex Society b) Central Society and c) Primary Society; that Clause (iii) of Sub-rule (5) of Rule 12 defines “Primary Society” to mean a Society which is neither an apex nor a central society. Learned counsel for the Writ Petitioners has also drawn the attention of this Court to G.O.Ms.No.15 dated 04.02.2019 that led to amendments to Rule 28 of the Rules. Vide G.O.Ms.No.36 dated 01.03.2019, the Government has issued Orders to implement Human Resource (HR) Policy to Primary Agricultural Cooperative Credit Societies employees by the Managing Committees as mentioned in Annexure to the said G.O which contains recommendations; that the Recommendation No.21 deals with retirement age and it categorically states that every paid servant and officer of the 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; that thereafter, the Government has issued the G.O.Ms.No.90 dated 04.02.2020 for the purpose of issuing guidelines. In Para No.3 therein about seven guidelines have been mentioned. The said guidelines are in continuation to the earlier guidelines issued in G.O.Ms.No.36 dated 01.03.2019.

17. Learned Counsel for the Writ Petitioners has submitted that as per Sub-rule (7) of Rule 28 which came into force on 04.02.2019 vide G.O.Ms.No.15 read with Clause (b) of Sub-rule (4) of Rule 28, it is clear that the Managing Committee, after having ensured that the expenditure towards pay and allowances of the employees are less than 2% of the working capital or 30% of Gross Profit under intimation to the Registrar of the Cooperative Societies make recommendation to the General Body and that as per Section 30 of the Act No.7 of 1964, the General Body of the Society who has the ultimate authority may either approve the recommendation or reject recommendation. He further submits that once the Resolution has been passed by the General Body approving the recommendation of the Managing Committee, the Registrar of the Cooperative Societies is only required to be 'intimated'. Sub-clause (b) of Sub-rule (4) of

Rule 28 makes it abundantly clear that there is no requirement of seeking 'approval' of the Registrar of Cooperative Societies. Rather a mere intimation would suffice. He would submit that in the present set of cases, the recommendations have been made by the respective Managing Committees to the General body and the General Body, after having considered the recommendations of the Managing Committees, and after ensuring that such recommendations are in tune with financial consideration as indicated therein, have passed Resolutions. Therefore, such Resolutions would completely satisfy all the legal requirements.

18. Learned Counsel for the Writ Petitioners would submit that the amended rule, which has the force of law does not impose obligation on any Society (Primary Agricultural Cooperative Credit Societies) to seek 'approval' either from the Central Bank or from the Government. He would then submit that the Model Service Regulations for PACCS, as referred by Sri P. Vara Prasad, learned Assistant Government Pleader, stipulating the requirement of 'approval from the Government' is rather contrary to law.

19. Learned Counsel for the Writ Petitioners would seriously attack the submissions of Sri P. Vara Prasad, learned Assistant Government Pleader for Cooperation by contending

that these Model Bye-laws have been suggested by the Registrar of the Cooperative Societies by Proceedings dated 23.02.2021 and these Proceedings are in the nature of Executive Instruction and that these Model Bye-laws are contrary to the amended Sub-rule (7) of Rule 28 of A.P Cooperative Societies Act, 1964. They would submit that the Executive Instruction can only supplement, but can never supplant the Statute or the Subordinate Legislation.

20. It is pertinent to mention here that even though the notices were issued to the various Primary Agricultural Cooperative Credit Societies and have been served on them, they have not evinced interest in even entering appearances and making submissions one way or the other i.e., either in support of the Writ Petitioners or in support of the Department of Agriculture and Cooperative Societies and the District Cooperative Officer. Even when pertinent question was posed by this Court as to what is the stand of the Primary Agricultural Cooperative Credit Societies and why they have not entered appearance, learned Counsel for the Writ Petitioners have stated that they have no interest in participating in the Court Proceedings because General Bodies of the respective Societies have already resolved in favour of enhancing the age of superannuation by following the due process of law. Learned Counsel for the Respondents has

raised another contention that the present cases are squarely covered by the Judgment of the Hon'ble Division Bench of this Hon'ble Court dated 05.05.2023 in W.A.No.1033 of 2022 and batch.

21. Sri P. Vara Prasad, learned Assistant Government Pleader for Cooperation would contend that the Division Bench had categorically held that the consent of the Government is required and that enhancement of age of superannuation from 60 years to 62 years insofar as Primary Agricultural Cooperative Credit Societies are concerned is not automatic.

22. Learned Counsel for the Writ Petitioners have contended that the Judgment rendered by the Hon'ble Division Bench is only with regard Corporations and that the law governing Corporations has been considered by the Hon'ble Division Bench and by taking into consideration various aspects and the law governing Government Corporations and by taking into account the deep and pervasive control on the administration and finances by the Government on the Corporations, the Hon'ble Division Bench, had given a finding that, it is mandatory to obtain approval from the Government. It is mandatory for Corporations to obtain approval from the Government and that a Resolution

made by the Board or the Managing Committee of Corporation would have no effect without an approval from the Government.

ANALYSIS AND CONCLUSIONS:

23. Having considered the submissions of the learned Counsel on either side and having considered the discussion herein above, the following conclusions are arrived by this Court.

a) That this Court is in agreement with the submissions of the learned Counsel for the Petitioners to the effect that the Primary Agricultural Cooperative Credit Societies where the Writ Petitioners are working, fall under the categories as defined in Section 115-C & 115-D of the Cooperative Societies Act, 1964 (Act No.7 of 1964)

b) That on 04.02.2019 Sub-rule (7) came to be inserted under Rule 28, which is categorical to the effect that every paid Servant and Officer of a Society, which falls within the purview of Sections 115-C & 115-D, 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. The current Statute governing the age of

Government employees is under Andhra Pradesh Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2022 (Act, 4 of 2022) and it prescribes the age of superannuation of Government employees as 62 years. Hence, the age of superannuation for ‘paid servants and officers working in PACCS shall be 62 years as per sub-Rule (7) of Rule 48 of the Rules provided the respective Society had passed a Resolution by complying with Sub-rule (4) of Rule 28 of the Co-operative Societies Rules, 1969.

c) That Clause (b) of Sub-rule (4) of Rule 28 would provide that, if a society intends to revise any of the service rules or pay scales etc., it shall be made only by a Resolution of the General Body and that the Resolution of the General Body which is preceded by the recommendation of the Managing Committee and that such recommendation of the Managing Committee should be preceded with ensuring that the expenditure towards Pay and Allowances of the employees are less than 2% of the working capital or less than 30% of the Gross Profit. It is also stipulated in the Clause (b) of Sub-rule (4) of Rule 28 that, such Resolution approving the recommendation made by the Managing Committee shall be ‘intimated’ to the Registrar of Co-operative Societies.

d) Clause (b) of Sub-rule (4) of Rule 28 would also stipulate that, if the Managing Committee has recommended without ensuring the financial viability, as indicated above, the Resolution *per se* would not become illegal and if excess amount has been paid, the excess so spent shall be recoverable from members of the Managing Committee concerned under Section 60(1) of the Andhra Pradesh Cooperative Societies Act and the Registrar shall have the power to cancel such pay revision to modify it as deemed fit and adjust securities furnished by the paid servants.

e) Parity cannot be drawn between the Government Corporations and the Primary Agricultural Cooperative Credit Societies either in terms of financial autonomy or the administrative autonomy. Also, parity cannot be drawn between Government Corporations and Primary Agricultural Cooperative

Credit Societies because the Primary Agricultural Cooperative Credit Societies are governed under Cooperative Societies Act, 1964 and A.P Cooperative Society Rules, 1964. Special provisions are enacted for Credit Societies which are brought under the purview of Sections 115-C & 115-D of the Act, 1964 and there is no comparable provision or provisions governing the Government Corporations. Therefore, for the reasons stated, no parity can be drawn between the Government Corporations and the Primary Agricultural Cooperative Credit Societies. Therefore, the Judgment rendered by the Hon'ble Division Bench of this Hon'ble Court in W.A.No.1033 of 2022 and batch dated 05.05.2023, is not applicable to the set of facts in the present Writ Petitions.

(f) The Model bye-law, which was cited by Sri P. Vara Prasad, Learned Counsel for the Official Respondents is held to be contrary to the parent Statute and Subordinate Legislation namely the Cooperative Societies Act, 1964 (Act 7 of 1964) and the A.P Cooperative Societies Rules, 1964. It is further held that the Model bye-law which was issued by the Registrar of Cooperative Societies dated 23.02.2021 is only an Executive Instruction and it does not have the force of law. (*B.N. Nagarajan and others etc., Vs. State of Mysore and Others, etc., [(1966) 3 SCR 682], Para Nos.3 to 24; State of Maharashtra Vs. Jagannath Achyut Karandikar [1989 Supp (1) 393], Para Nos.6 to 12; Union of India and Another Vs. Ashok Kumar Aggarwal [(2013) 16 SCC 147], Para Nos. 59 to 62 and Jaiveer Singh and Others Vs. State of Uttarakhand and Others [2023 SCC Online SC 1584], Para Nos.46 to 49*).

24. In view of the above conclusions drawn by this Court, herein above, the Writ Petitions are allowed. The servants and officers of all Primary Agricultural Cooperative Credit Societies shall be retired on the last day of the month completing 62 years of age. There shall be a further direction that such of those Writ Petitioners who were made to retire on completion of 60 years of age during the pendency of their respective Writ Petitions shall now be reinstated into service, if they have not completed 62 years of age and they shall also be paid arrears of salary by the respective Primary Agricultural Cooperative Credit Societies. It is

made clear that this direction is only applicable to such persons who have filed Writ Petitions before they have attained the age of 60 years but interim protection could not be granted for any reason. No Order as to Costs.

25. The Writ Petitions stand allowed as indicated above. No order as to costs.

COMMON ORDER IN W.P.Nos.3255, 3281, 8593, 9135, 17128, 18931 of 2023; 924, 965 & 1635 of 2024:

26. Resolutions, if any, passed by the General Bodies of the respective Respondent Societies, have not been placed on record in these Writ Petitions.

27. In this premise, these Writ Petitions stand dismissed. No order as to costs.

28. Interlocutory Applications, if any, stand closed in terms of this Order.

(GANNAMANENI RAMAKRISHNA PRASAD, J)

Dt: 06.05.2024
JKS/Vns

HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION No.

06.05.2024

JKS