

GAHC010171362020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/212/2020

NIKHIL CHANDRA DAS
S/O- UPENDRA CHANDRA DAS, R/O- VIP ROAD NEAR SBI ITANAGAR, P.O.
AND P.S. ITANAGAR, DIST.- PAPUMPARE, ARUNACHAL PRADESH, PIN-
791111.

VERSUS

THE STATE OF ARUNACHAL PRADESH AND 3 ORS.
REP. BY THE CHIEF SECRETARY, GOVT. OF ARUNACHAL PRADESH, CIVIL
SECRETARIAT, ITANAGAR- 791111.

2:THE SECRETARY (MINES AND MINERALS)

GOVT. OF ARUNACHAL PRADESH
CIVIL SECRETARIAT
ITANAGAR.

3:THE ARUNACHAL PRADESH MINERAL DEVELOPMENT AND TRADING
CORPORATION LIMITED
(A GOVERNMENT OF ARUNACHAL PRADESH UNDERTAKING) WITH ITS
REGISTERED OFFICE AT ITANAGAR- 791111
APFC BUILDING
GROUND FLOOR
VAN VIHAR
ITANAGAR- 791111.

4:THE MANAGING DIRECTOR

ARUNACHAL PRADESH MINERAL DEVELOPMENT AND TRAINING
CORPORATION LTD.
ITANAGAR
ARUNACHAL PRADESH

APFC BUILDING
GROUND FLOOR
VAN VIHAR
ITANAGAR- 791113

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent : GA, AP

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

18.01.2023

[N. Kotiswar Singh, CJ(Acting)]

Heard Mr. R.P. Sarmah, learned Senior counsel assisted by Ms. S.P. Chetry, for the appellant. Also heard Mr. B.D. Goswami, learned counsel appearing for the respondent Nos.3 and 4 – Arunachal Pradesh Mineral Development and Trading Corporation Limited and Mr. A. Chandran, learned Additional Senior Government Advocate, Arunachal Pradesh, appearing for respondent Nos.1 and 2.

2. In this appeal, the appellant has challenged the order dated 08.10.2020 passed by the learned Single Judge in WP(C) No.126(AP)/2020 by directing the respondent Corporation to determine the age of retirement of its employees, which according to the learned Senior counsel for the appellant is not necessary in view of the fact that there is already a decision of the Corporation to follow the norms of the State Government in absence of any rules framed by the Corporation and since the State Government had already enhanced the age of superannuation to 60 years, which the Corporation has to follow, the appellant/petitioner

ought to have been allowed to serve till 60 years.

3. The appellant was working as an Office Assistant in the Arunachal Pradesh Mineral Development & Trading Corporation Limited, a Government of Arunachal Pradesh Undertaking having its registered office in Itanagar.

4. The issue raised in this appeal is about the age of superannuation of the employees of the Corporation. It is the case of the appellant that the Board of Directors of the Corporation had taken a decision on 26.11.1991 to the effect that till finalization of its own staff service rules, the Corporation should follow the staff service rules of the State Government. The appellant/petitioner accordingly, contends that in view of the decision of the Board of Directors taken on 26.11.1991, the date of superannuation as fixed by the State Government would also automatically be applicable to the employees of the Corporation. It is the specific plea of the appellant that when the said decision was taken on 26.11.1991, the age of retirement was 58 years in the State of Arunachal Pradesh, but it was subsequently enhanced to 60 years in the year 2017 by the State Government vide notification dated 20.10.2017 under No.AR-68/2010.

5. It has been submitted that under the circumstances, once the age of superannuation has been enhanced to 60 years in respect of the employees of the State of Arunachal Pradesh, the employees of the Corporation also would be entitled to be enhanced the age of superannuation to 60 years. It is the case of the appellant that however, the appellant/petitioner was made to retire on reaching the age of 58 years, which has been challenged in the writ petition on the ground that the petitioner/appellant could not have been made to retire on reaching the age of 58 years for the reason that the State

Government had already increased the retirement age to 60 years and in terms of the decision of the Board of Directors on 26.11.1991, the employees of the Corporation also ought to have been allowed to serve till 60 years.

6. We have heard the learned counsel for the parties and also perused the materials on record.

7. According to the learned Senior counsel for the appellant, the learned Single Judge by ignoring the aforesaid decision of the Board of Directors to equate the age of retirement of the employees of the Corporation with that of the State Government, which was enhanced to 60 years on 20.10.2017, directed the Corporation to take a decision as to the retirement age of the employees of the Corporation, which according to the learned Senior counsel was not necessary in as much as the age of retirement of the employees of the Corporation would be also deemed to be 60 years.

8. However, we are unable to agree with the submissions advanced by the learned Senior counsel for the appellant for the reasons discussed herein below.

9. The Board of Directors of the Corporation took a decision on 26.11.1991 that till finalization of the staff service rules of the Corporation, the Corporation should follow the staff service rules of the State Government. At the relevant time, the age of retirement of the Government employee under the State of Arunachal Pradesh was admittedly 58 years. The age of retirement of the employees of the Government of Arunachal Pradesh was enhanced to 60 years only on 20.10.2017. What we have noted is that after the State Government took the decision to enhance the age of retirement, the Board thereafter did not take any decision to enhance the age of superannuation of the employees of the Corporation. Further, the

earlier decision taken by the Board of the Corporation was not to the effect that the staff service rules of the State Government as in vogue from time to time, would be applicable also to the employees of the Corporation. If such a decision had been taken, the employees of the Corporation would have been entitled to the benefit of the enhanced age of superannuation, upon enhancement of the age of superannuation of the State Government employees.

10. It may be observed that enhancement or decrease in the age of superannuation of the employee is the right of the employer and the employee has no vested right to be in service beyond the age fixed by the employer from time to time, as distinguished from other service conditions of an employee. It is well-settled that the service conditions of an employee cannot be changed to the detriment of the employee during his service. Such a principle would apply in respect of salary, other perks and benefits, which would accrue to the employee but it does not extend to the fixation of age of retirement, which can be enhanced or decreased at the discretion of the employer and the age of superannuation cannot be said to be an accrued right of the employee.

11. Therefore, if after the enhancement of the age of the employees of the State Government of Arunachal Pradesh at 60 years, the Corporation had desired to give the same benefit of enhanced age of retirement, they could have taken a decision to that effect. However, no such decision was taken by the Corporation after 20.10.2017.

12. We have also considered the plea taken by Mr. R.P. Sarmah, learned Senior counsel for the appellant that other Corporations in the State had taken the decision to enhance the age of superannuation to 60 years by drawing our attention to certain orders of retirement in respect of some other Corporations. However, the fact that the other Corporations had

enhanced the age of retirement will not make any difference as far as the present Arunachal Pradesh Mineral Development and Trading Corporation Limited is concerned, since the Corporation had not taken any decision for enhancement of retirement age.

13. In our view it was necessary on the part of the Corporation to take a decision as regards the enhancement of the age of superannuation of its employees, if the Corporation wanted to give the same benefit as extended to the employees of the State Government, which however, does not appear to have been done in the present case.

14. Mr. Goswami for the Corporation has submitted that after the said decision was taken on 26.11.1991 by the Board of Directors of the Corporation, no subsequent decision was taken to enhance the age of superannuation of the employees of the Corporation after 20.10.2017 when the decision was taken by the State Government to enhance the age of superannuation.

15. Mr. Sarmah, referring to the decision of the Board of Directors as regards the payment/release of enhanced salary of contingent employees of the Corporation in the line with State Government, that the Corporation will abide by the rules and guidelines of the State Government, submits that it is confined to the enhancement of salary of the contingent employees and has nothing to do with the enhancement of age of superannuation of the regular employees of the Corporation, we are also of the opinion that the aforesaid decision is applicable relating to salary of contingent employees of the Corporation and not relating to enhancement of age of superannuation.

16. In absence of any specific decision of the Board of the Corporation to enhance the age of retirement of its employees, merely because the age of retirement of the State

Government employees had been enhanced, such a benefit cannot be extended to the employees of the Corporation.

17. Under the circumstances, we do not find any merit in this appeal and accordingly, the same is dismissed.

Sd/- Soumitra Saikia
JUDGE

Sd/- N. Kotiswar Singh
CHIEF JUSTICE (ACTING)

Comparing Assistant