

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1118 of 2015

1. Chhattisgarh State Electricity Board Diploma Engineers Association, Bearing Registration No. C.G. State/128 Dated 05/03/2002, Through Its State General Secretary, Shri N.R. Chhipa, S/O Late Panna Lal Chhipa, Aged About 53 Years, Head Office And Resident Of I/12, CHPL Dream Home, Junwani Road, Bhilai, District Durg, Chhattisgarh

---- Petitioner

Versus

1. Chhattisgarh State Power Holding Company Limited Through Managing Director, Office at Danganiya, Raipur, District Raipur, Chhattisgarh
2. The General Manager (H.R.) Chhattisgarh Power Holding Company Limited, Office at Danganiya Raipur, District Raipur, Chhattisgarh
3. State Of Chhattisgarh Through Secretary (Energy), Office At Mahanadi Bhavan, Naya Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioner	Shri Praveen Dhurandhar, Advocate
For Respondent Nos.1 & 2	Shri A.S. Gaharwar, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on 06/07/2015 :

Heard learned counsel for the parties.

1. The petitioner herein is the Association of Diploma Engineers working in different companies of the Chhattisgarh State Power

Holding Company Limited (for short 'CSPHCL'). The grievance raised in this petition is concerning the legality and validity of the enhancement of age of superannuation from 60 years to 62 years by the impugned order dated 30.08.2013 (Annexure-P-1).

2. Learned counsel for the petitioner would submit that the employees working in the Madhya Pradesh Electricity Board (for short 'the MPEB'), who have now been allocated to the Chhattisgarh State Electricity Board (for short 'the CSEB') and, thereafter, deputed for continuing their service in different companies under the respondent No.1 CSPHCL, are governed by the provisions of the Madhya Pradesh Electricity Board (General Service) Regulations, 1952 (for short 'the Regulations') framed under Section 79 (c) of the Electricity (Supply) Act, 1948 (since repealed) and the said Regulations have been adopted by the CSPHCL. Under the said Regulations, the age of superannuation of Class I, II & III employees is 58 years, however, the Board may, at its discretion, retain the services of a servant up to the age of 60 years. The erstwhile CSEB had earlier enhanced the age of superannuation from 58 years to 60 years and by the impugned order, the age of superannuation has been further enhanced from 60 years to 62 years.
3. According to the learned counsel for the petitioner, the said enhancement of age of superannuation is contrary to the Regulations and moreover the same would adversely effect the promotional prospects of such diploma engineers, who are

placed below in the seniority list because when the persons on higher post will not retire, vacancies will not be created for promotion for the members, who are placed below in the gradation list.

4. The main ground of attack is founded on the premises that the age of retirement is fixed under the Regulations, therefore, the same cannot be enhanced by an administrative order. The other contention is based on adverse effect on the promotional prospect of the diploma engineers.
5. The first submission concerning violation of the regulations needs to be rejected for the sole reason that the earlier enhancement vide Annexure-P-2 from 58 years to 60 years was also made by an executive order issued in exercise of powers conferred under Section 79 (c) of the Act, 1948. Although, the said provision is not mentioned in the impugned order yet, it is the settled law that if an authority has the power to perform the function mere non mention of the source of power does not vitiate the exercise.
6. The Supreme Court in **P.K. Palanisamy v. N. Arumugham and Another¹**, held thus :

28. In Ram Sunder Ram v. Union of India it was held: (SCC pp. 260-61, para 19)

“19. ... It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact,

1 (2009) 9 SCC 173

the order of discharge has to be read having been passed under Section 22 of the Army Act.

‘9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.’ (See *N. Mani v. Sangeetha Theatre*, SCC p. 280, para 9.)

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.”

29. In *N. Mani v. Sangeetha Theatre* it is stated: (SCC p. 280, para 9)

“9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

7. The second plea regarding loss of promotional prospects is equally unfounded because, it is in the exclusive domain of the employer or the rule making authority to fix the age of superannuation. Principles enshrined under Article 14 of the Constitution of India is not attracted in such cases because, the age is enhanced for all the employees uniformly. As a matter of fact, the argument has no rational basis because the age is

increased for the members of the petitioner association also and they would be promoted as and when the seniors retire. The only effect of the increase in age of superannuation is that the promotion will be deferred for few years but it is not a case where they have been superseded contrary to law.

8. In **I.N. Saksena v. The State of Madhya Pradesh**², the Supreme Court upheld the enhancement of age of superannuation by the State Government by passing an executive order in anticipation of the relevant rules being amended.
9. In **K. Nagaraj and Others v. State of Andhra Pradesh and Another**³ the Supreme Court has held that the decision concerning fixation of age of superannuation pertains to executive sphere and judicial review is available only when the same is arbitrary or unreasonable in the circumstances of the case.
10. In **State of Uttar Pradesh and Others v. Hirendra Pal Singh and Others**⁴ the following has been held by the Supreme Court :

12. In view of the above, it is evident that even in government services where the terms and conditions of service are governed by the statutory provisions, the legislature is competent to enhance or reduce the age of superannuation. In view of the above, it is beyond our imagination as to why such a course is not permissible for the appellant State while fixing the age of

² AIR 1967 SC 1264

³ (1985) 1 SCC 523

⁴ (2011) 5 SCC 305

working of the District Government
Advocates.

11. Thus, the law is well settled that ordinarily the writ Court would not interfere with the decision taken by the Government/ Executive to reduce or enhance the age of superannuation. In the case in hand, the said decision is not found to be arbitrary or unreasonable or violative of any statutory provision.
12. Ex consequenti, the writ petition, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Gowri