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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1260 OF 2015

MANIK SAKHARAM MHASKE
VERSUS
THE CHIEF MANAGER (ADMINISTRATION), MAHARASHTRA STATE
SEEDS CORPORATION LTD, AKOLA AND ANOTHER.

...
Advocate for Petitioner : Shri Agrawal Pavankumar S.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th October, 2015

Per Court:

1 Shri Agrawal, learned Advocate for the Petitioner, strenuously criticizes the judgment and order dated 31.07.2014 delivered by the Industrial Court, Jalna in Complaint (ULP) No.53/2011. The contention is that the retirement age of the permanent employees as like the Petitioner was to be raised from 58 years to 60 years.

2 Shri Agrawal submits that the Petitioner had categorically stated in the complaint that the Respondent had resolved on 24.01.2014 to increase the age of retirement upto 60 years. The Petitioner had joined the Respondent in November, 1978 as a Junior Processing Assistant on daily-wages. He was regularized in service w.e.f. 29.12.1987 by an order

dated 04.01.1988. The Respondent is a Government of Maharashtra undertaking and the Maharashtra Civil Services Rules are applicable.

3 He further submits that the Respondent, which has a Board of Directors, prepared their own Service Rules in 1995. The said Rules are not certified as Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. The Petitioner was retired upon attaining the age of 58 years as per Rule 10(2) of the Maharashtra Civil Services Rules.

4 He then submits that the Petitioner was issued with a notice dated 01.03.2011 by the Respondent indicating that he would retire w.e.f. 31.05.2011 after attaining the age of 58 years. The said notice was challenged before the Industrial Court on 26.05.2011 which is about 04 days prior to the retirement of the Petitioner.

5 He submits that the resolution that was passed by the Respondent, should have been implemented forthwith and having failed to do so, is an unfair labour practice. He, therefore, prays that the impugned judgment deserves to be quashed and set aside and the Petitioner deserves to be granted all service benefits for the further period of two years since he has already superannuated on 31.05.2011 which is about 04 years ago.

6 I have considered the submissions of Shri Agrawal and have gone through the impugned judgment and the petition paper book with his assistance.

7 It is undisputed that the Petitioner is covered by the service conditions as were set out in the appointment order and those which were made applicable from time to time. Prior to the Maharashtra State Seeds Corporation Employees Service Rules, 1995 (for short “the 1995 Rules”) were introduced by the Respondent, the Petitioner was covered by the service conditions mentioned in the appointment order by which he was to retire on attaining the age of 58 years.

8 It is not the case of the Petitioner that the retirement age earlier was 60 years and by the introduction of the 1995 Rules, it has been reduced to 58 years. It is also undisputed that Rule 59 as per the 1995 Rules, would retire the Petitioner on attaining the age of 58 years.

9 The Industrial Court has considered the record in the form of oral and documentary evidence placed before it. The Industrial Court has also considered the implication of the Model Standing Orders applicable to the Petitioner prior to the introduction of the 1995 Rules. Even if the

contention of the Petitioner is that the 1995 Rules do not have the trappings of being certified under the Model Standing Orders, Order 27 of the Model Standing Orders would govern his case. Standing Order 27 reads as under:-

“Order 27:- The age of retirement or superannuation of the workmen may be sixty years or such other age as may be agreed upon between the employer and the workmen by any agreement, settlement or award which may be binding on the employer and the workmen under any law for the time being in force.”

10 It was thus, noticed by the Industrial Court that the Petitioner was to retire at the age of 58 years as was agreed between the Petitioner and the Respondent/ Employer in terms of the service conditions set out in the appointment order. The Industrial Court also noticed that no addition was made by the State Government to the schedule under the Model Standing Orders by which the retirement age of the Petitioner would be said to have been enhanced to 60 years.

11 Merely because the Respondent has resolved on 24.01.2014 to raise the age of retirement, would not make the said resolution applicable forthwith. The resolution has to be accepted by the State Government. Nothing is placed on record before the Industrial Court to indicate that the Government has accepted the resolution dated

24.01.2014 and has agreed to raise the age of retirement.

12 The Industrial Court has also noticed that there was no evidence as regards the service conditions applicable to two daily wage earners, namely, Smt.Gangabai Dhole and Smt.Rahemabee Shaikh Ibrahim, who were allegedly retired at the age of 60 years, notwithstanding the fact that the Respondent had mentioned in the Written Statement that the permanent employees are to retire at 58 years.

13 In the absence of evidence before the Industrial Court with regard to the said two daily wage earners, the Industrial Court has rightly concluded that the Respondent/ Employer has not introduced any rules made applicable by the State Government by which, the retirement age has been enhanced to 60 years.

14 The resolution No.1374 of 2014 at issue, which was passed on 24.01.2014 in the 252nd meeting of the Sub-Committee of the Board of the Respondent, even if is accepted today by the State Government, the same cannot be made applicable with retrospective effect to the case of the Petitioner.

15 In the light of the above, I do not find that the impugned

judgment could be termed as being perverse or erroneous. The Writ
Petition is devoid of merit and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)