HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
(SPECIAL ORIGINAL JURISDICTION)
WEDNESDAY, THE TWENTY NINTH DAY OF JUNE,
TWO THOUSAND AND SIXTEEN

: PRESENT :

THE HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

W.P .No. 38643 of 2015

Between:-

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and order of High Court dt. 03-09-2015 made in WPMP.No. 36833 of 2015 and upon hearing the arguments of SMT M. SHALINI, Advocate for the Petitioner and the Govt. Pleader for Cooperation(AP) & the Advocate General(AP) on behalf of respondent Nos.1 & 2 and the Court made the following

ORDER :-

"Heard learned Counsel for the Petitioners, learned Standing Counsel for the respondent Societies, learned Government Pleader and the learned Advocate General for the State of A.P.

The petitioner(s) are the employees of the Cooperative Credit Societies defined under Section 115-C of the A.P. Cooperative Societies Act, 1964 (hereinafter referred to as 'the Act' for brevity). Chapter XIII-B was inserted by Act No. 16 of 2007 in the Act and Section 115-D(2)(iv) says that the Cooperative Credit Societies shall have autonomy in all the financial and administrative matters subject to the guidelines of Reserve Bank of India/National Bank for Agriculture and Rural Development in the areas including personal policy, staffing, recruitment, posting and compensation to staff. Sub section (24) thereof says that the existing provisions of the Act, Rules and guidelines shall continue to be in force till the guidelines/stipulations are issued by Reserve Bank of India/National Bank for Agriculture and Rural Development wherever required in the above provisions. Further, Section 31 A (12) of the Act provides for fixing the staffing pattern, qualifications, pay scales and other allowances to the employees of the society subject to the availability of the administrative and contingent fund and approval of the General Body and Registrar, and such power has to be exercised by the Committee of a Society subject to the provisions of the Act, rules, by laws and resolutions

of the General Body. The National Bank for Agriculture and Rural Development issued a communication on 04.07.201 framing Human Resource Policy in Short Term Cooperative Banks by raising the age of retirement to 60 years. This was communicated to the General Secretary, All India cooperative Bank Employees Federation, Chennai. After the bifurcation of the State of erstwhile united Andhra Pradesh, in respect of Government employees, the residual State of Andhra Pradesh, by Act 4 of 2014, enhanced the age of superannuation from 58 years to 60 years. The A.P. State Cooperative Bank has also been bifurcated. It appears that the Board of Directors of the A.P. State Cooperative Bank met on 28.06.2014 for the sole purpose of considering the enhancement of age of superannuation from 58 years to 60 years and in the said meeting the Registrar of cooperative Societies who is the member of the Board objected for taking a decision stating the Rule 28(6) of AP Cooperative Societies Act has to be amended to pave the way for enhancing the age of superannuation to 60 years. The said Rule provides for retirement of employees at 58 years and it was in the statute book prior to insertion of chapter XIII-B in the Act. The letter of National Bank for Agriculture and Rural Development dated 04.07.2011 makes it clear that the Cooperative Credit Society entities have been provided autonomy in all financial and administrative mattes especially personal policy, staffing, recruitment, postings and compensation to staff etc. Retirement age thereof being an administrative matter, a decision has to be taken by the Board of respective banks/organizations keeping in view the provisions of the Bye-laws and Cooperative societies Act as well as the profitability, financial strength and repaying capacity thereof. The Government issued Memo No.5825/Coop.III/2014-2, dated 23.05.2015 reiterating the position with regard to Section 115-D(2)Iv) of the Act and stated that the said provision granted autonomy to Cooperative Credit societies in the matters of personal policy, staffing etc. It was made clear that any decision on increasing the age of retirement shall be taken by the respective organizations. The Government issued another Memo No. 5825/Coop.III/20114-10 dated 12.08.2015 in continuation of the above memo and stated that the Government decided to give autonomy to non-credit societies also on increasing the age of retirement.

It appears that when some employees approached this Court and this court granted interim orders for their continuation beyond the age of 58 years and several others, who did not approach, retired after attaining the age of 58

years. In some similar mattes though this Court granted interim order directing continuance of the employees beyond 58 years to 60 years, when the respondents carried the matter to Division Bench, a Division Bench of this Court set aside the order of the learned single Judge in Writ Appeal Nos. 872, 874 and 875 of 2015 and observed that it is open to the respective employers to make up their mind and take an appropriate decision with regard to enhancement of the age of superannuation and regulate the conditions of serve of their respective employees accordingly.

Several societies and Banks passed resolutions enhancing the age of superannuation from 58 years to 60 years and sought directions from the Registrar of Cooperative Societies, who in turn addressed the Government seeking suitable instructions, though such instructions are not necessary. However, the Government made its decision clear by issuing Memos dated 23.05.2015 and 12.08.2015 as aforesaid. In view of the above, it is for the respective organizations covered by Section 115-C of the Act and also non-credit societies to take a decision on the issues of increasing the age of retirement beyond 58 years to 60 years and regulate service conditions of its employees.

Learned Counsel in one of the cases brought to the notice of this Court, the decision of the Supreme Court in *State of Utter Pradesh vs. Dayanand Chkrawarthy* (Civil Appeal No. 5527 of 2012, dated 02.07.2013), wherein the similar cases of the employees came up for consideration. In the said case, some of the employees were allowed to superannuate at the age of 58 years and some other employees were continued till the age of 60 years. The Apex Court held that the employees who moved the Court of law irrespective of fact whether interim order was passed in their favour or not shall be entitled for full salary up to the age of 60 years. It was also held therein that the employees who never moved any Court of law and had to retire on attaining the age of superannuation are not entitled for any arrears of salary. However for the purpose of fixation of benefits like pension, gratuity etc., it was directed that their age of superannuation at 60 yeas shall be taken into consideration. This Court is not inclined to extend such relief at this stage, without having regard to the facts situation of the organizations. However, in order to avoid discriminatory treatment between the employees who continued in service by virtue of the interim orders and those who did not get any such orders but retired after attaining the age of 58 years, the

respective respondents-organizations should take a decision regulating the service conditions of all the employees with regard to age of superannuation uniformly.

In view of the above, there shall be a direction to the respondents to take a decision with regard to the age of superannuation taking into consideration the provisions of Section 115-D(2)(iv) of the Act and also the Memos of the Government issued from time to time, within a period of four weeks from today. The petitioners, who are in service either by virtue of interim orders or otherwise shall be allowed to continue in service till 31.07.2016, pending decision by the respective organizations.

Post Writ Petition along with W.P.No. 20673 of 2016 and Batch."

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ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To
1.The Principal Secretary, Agriculture and Cooperation Department, State of Andhra Pradesh, Secretariat, Hyderabad.
2.The Commissioner for Co-op & Registrar of Co-op Societies Gruhakalpa, Nampally, Hyderabad.
3.The Chief Executive Officer, Guntur District Co-operative Central Bank Ltd, Guntur District.
4.Two CCs to the Advocate General(AP), High Court at Hyd(OUT)
5.Two CCs to the G.P. for Cooperation(AP), High Court at Hyd(OUT)
6.One CC to Smt M. Shalini, Advocate(OPUC)
7.One spare copy.

TKK

HIGH COURT

ARLR.J

DT.29-06-2016.

ORDER

W.P.No. 38643 of 2015

INTERIM DIRECTION

DRAFTED BY TKK
DT.01-07-2016.

HIGH COURT

ARLR.J

DT.29-06-2016.

Note :- Post Writ Petition along with W.P.No. 20673 of 2016 and Batch.

ORDER

W.P.No. 38643 of 2015

INTERIM DIRECTION