

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

W.P.NO.s.26495 and 26926 OF 2015

W.P.NO.26495 OF 2015

Between:

Andhra Pradesh Housing Board,
rep by its Vice Chairman & Housing Commissioner,
Gruhukalpa Building, M.J. Road, Hyderabad and two others ...

Petitioners

And

Andhra Pradesh Administrative Tribunal,
Rep by its Registrar, Purane Haveli, Hyderabad and two others

Respondents

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JUDGMENT PRONOUNCED ON: 25.08.2015

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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE SMT JUSTICE ANIS

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes |
| 3. Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? | No |

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For the Petitioners : Sri A.K.Jayaprakash Rao

For the Respondents : G.P. for Services –I (A.P.).

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> Head Note:

? CITATIONS:

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
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COMMON ORDER:

(per Hon'ble Sri Justice Nooty Ramamohana Rao)

The Andhra Pradesh Housing Board (for short 'the Housing Board') and its officers are the writ petitioners herein. They challenge the correctness of the orders passed by the Andhra Pradesh Administrative Tribunal (for brevity 'the Tribunal') in the OAs. instituted by the contesting respondents, who are the employees of the Housing Board.

The main dispute raised by the employees concern the age of superannuation. The Housing Board proposed to retire them on attaining the age of superannuation of 58 years, whereas the employees concerned, based upon an Amendment brought about to the Andhra Pradesh Public Employment (Regulation of age of superannuation) Act, 1984 (for short 'the Superannuation Act'), contend that the age of superannuation has since been raised to 60

years, they are entitled to continue in service till they attain the age of 60 years. The contention canvassed by the employees was found favour with the Tribunal. Challenging the said orders, the present writ petitions have been filed.

Sri A.K. Jayaprakash Rao, learned Standing Counsel for the Housing Board would strenuously contend that the Amendment made to the Superannuation Act concerns the government servants employed in the State of Andhra Pradesh, but the employees of the Housing Board are not the servants of the State of Andhra Pradesh for them to be governed by the provisions of the said Enactment. The learned Standing Counsel would further urge that the Housing Board, being the creature of a statute, has got its own independent entity and all policy decisions will be taken by the Board of Directors of the Housing Board and upon such decision being taken by the Board of Directors, any such decision can take binding effect. According to Sri Jayaprakash, so far, the Housing Board has not passed any such Resolution enhancing the age of superannuation of its employees from 58 to 60 years and hence, it is under no legal obligation to continue its employees in its service up to the age of 60 years. Hence, it is contended that the Tribunal has grossly erred in allowing the OAs and directing the Housing Board to continue the respective employees in service till they attain the age of 60 years.

Per contra, Sri Vedula Srinivas and Sri K. Subrahmanyam, learned counsel appearing for the unofficial respondents in both the writ petitions, would contend that the Housing Board is the creature of the Andhra Pradesh Housing Board Act, 1956 (for short 'the Housing Board Act'). It was established in accordance with and in terms of Section 3 of the said Act. Therefore, the Housing Board is squarely bound by the Provisions of the Housing Board Act. In that context, it was pointed out that Section 16 of the said Act, which talks of application of Service Rules and certain other Rules, subscribes to the Provision prevailing and applicable to the Government servants as

equally applicable to the Housing Board employees. Section 16 of the Housing Board Act reads as under:

“16. Application of Services and certain other rules:

Unless otherwise provided in this Act or prescribed thereunder the provisions of the Service Rules for the time being in force in the State relating to salaries, leave, pensions, traveling allowance, retirements and all conditions of service and the rules for the time being in force relating to the conduct of Government servants and enquiries in to the conduct and punishment of Government servants, shall apply to the Officers and servants of the Board appointed under Section 17.”

A careful analysis of the above Provision makes it very clear that unless a Provision is otherwise provided in this Enactment or any prescription is made under the Provisions of the Service Rules framed thereunder, the Provisions of the Service Rules for the time being in force in the State of Andhra Pradesh relating to the retirement, shall apply to the officers and servants of the Housing Board, appointed under Section 17 of the Housing Board Act. There is no dispute that the contesting respondents are those who were appointed in accordance with and in terms of Section 17 of the Housing Board Act. Therefore, Section 16 of this Act is the result of a telescoping tool, which was used by the Legislature. It has literally regulated the field occupied by Section 16, by borrowing the matter of application to the servants of the Housing Board appointed under Section 17 of the Housing Board Act, what is prevailing for the time being in force in the State of Andhra Pradesh.

In the State of Andhra Pradesh, by Act No.4 of 2014, Section 3 of the Superannuation Act, 1984, has been amended and the Amendment was also notified in the Official Gazette on 27-06-2014. By Amending Section 3, the age of superannuation of every government employee has been raised from 58 to 60 years.

Therefore, it becomes crystal clear that unless a contra Provision is made under the Housing Board Act or under the Regulations framed thereunder, the age of retirement prescribed for the servants of the State of Andhra Pradesh, which is available for the time being in force, will get applied to the servants of the Housing Board also.

In our opinion Section 16 of the Housing Board Act binds the Housing Board to regulate the age of superannuation of its servants strictly in terms thereof.

The learned Standing Counsel is more than fair in pointing out that there is no contra Provision made under the Housing Board Act or under the Regulations framed thereunder, which has got the enforceability prescribing the age of superannuation of the servants of the Housing Board. In the absence of this exception carved out by Section 16 of the Housing Board Act, the remaining Provisions of the said Section 16 will spring to life.

Therefore, we do not find any infirmity, either legal or otherwise, in the order passed by the Tribunal. Hence, we direct the Housing Board, the writ petitioner in both the writ petitions, not to effect retirements of any of its servants and employees till they attain the age of 60 years, until and unless an appropriate Provision is made in that respect in the Housing Board Act or any enforceable Regulation framed thereunder.

With this, both the writ petitions stand dismissed at the admission stage, but however, without costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

**NOOTY RAMAMOHANA
RAO, J.**

ANIS, J.

Note:

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25.08.2015.