IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP No.12912 of 2014 (O&M)

Sugar Federation Common Cadre Officers Welfare and Technical Association, Punjab ...Petitioner

Versus

The State of Punjab and others ...Respondents

and

2. CWP No.9129 of 1994 (O&M)

Sugar Federation Common Cadre Officers Welfare and Technical Association, Punjab ...Petitioner

Versus

The State of Punjab and others ...Respondents

Date of Decision : April 23, 2015

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CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Sanjay Tangri, Advocates
for the petitioners.

Mr.Gaurav Garg Dhuriwala, Deputy Advocate General
for the respondent – State of Punjab.

Mr.Rahul Sharma, Advocate for respondent – Sugarfed.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of CWP Nos.12912 of 2014 and 9129 of 1994, as the common questions are involved in both the cases for determination by this Court.

However, for decision of these cases the facts are being taken from CWP No.12912 of 1994.

Prayer made herein is for directions to quash Rule 2.95 of the Punjab State Cooperative Sugar Mills Service (Common Cadre) Rules, 1981 (for short 'the 1981 Rules') as amended in 1995, whereby, the retirement age of the employees has been reduced from 60 years to 58 years.

The petitioner claims to be an Association of Common Cadre Officers working with the Punjab State Federation of Cooperative Sugar Mills Limited (hereinafter referred to as 'Sugarfed'). The Sugarfed is an Apex Society registered under the Punjab Cooperative Societies Act, 1961 (for short 'the 1961 Act'). The Sugar Mills under the Cooperative Sector are its members. As per Section 84-A of the 1961 Act, an Apex Society, either suo moto or when required to do so by the Registrar shall constitute a common cadre of all or specified class of employees in the service of that society or in the service of Central Societies, which are members of the Apex Society etc. The Apex Society shall make rules and regulations for recruitment and conditions of service of the common cadre employees with the prior approval of the Registrar. In terms of Section 84-A, the Sugarfed being the Apex Society had framed the Common Cadre Rules in the year 1981. As per Rule 2.95 of the 1981 Rules, an employee appointed to the service was to retire on attaining the age of 60 years. In the year 1995, the 1981 Rules were amended and as per amended Rule 2.95, the retirement age, which earlier was 60 years, has been fixed as 58 years.

The amended Rule has been impugned on the following grounds:

(i) The procedure as prescribed in Section 84-A of the 1961 Act has not been complied with.

(ii) The amendment to the Rules has not been approved by the Board of Directors of Sugarfed.

(iii) The Rule is retorspective in operation insofar as it applies to existing employees who were recruited under the 1981 Rules and takes away their vested right for retirement at the age of 60 years as per the unamended Rule which was in existence at the time of their appointment.

(iv) The Rule is discriminatory inasmuch as while making a similar amendment to the Punjab State Cooperative Agricultural Society Rules, 1997, it was specifically provided that the employees appointed before the amendment shall be governed

by the existing provisions for retirement of age.

Elaborating the first point, it has been stated that as per the provisions of Section 84-A, the Rules for regulating the recruitment and conditions of service of the Common Cadre employees have to be framed by the Apex Society with the prior approval of the Registrar, Cooperative Society. But in the present case, proposal to amend the Rules were initiated by the Secretary Cooperation, Punjab, who without any authority of law wrote to the Registrar, Cooperative Societies to take action to reduce the age of retirement of Sugarfed employees from 60 years to 58 years. Thereafter, the Registrar, Cooperative Societies through his letter dated 30.06.1993 (Annexure P-2) addressed to the Managing Director, Sugarfed conveyed his approval for amendment of the Common Cadre Rules reducing the age of retirement from 60 years to 58 years. The Managing Director was requested to incorporate the amendment in the Common Cadre Rules. At that time, the term of the Board of Directors, which is competent authority to effect the amendment in the Rules, had expired and the Secretary Cooperation had been appointed as Administrator. The matter of amendment of the Rules was put up to him for approval and vide resolution dated 18.02.1994, the said amendment was approved by the Administrator.

Learned counsel for the petitioner contends that this procedure is wholly illegal and arbitrary. As per Section 84-A, it is the Apex Society, which can make Rules for regulation of recruitment and conditions of service of the employees with the prior approval of the Registrar. It is argued that Section 84-A does not contemplate a situation where the Registrar would direct the Apex Society to make or amend any Rule governing the service conditions of the employees. Hence, the amendment made is illegal being contrary to the provisions of Section 84-A of the 1961 Act.

Learned counsel for the respondents has disputed the contentions of the learned counsel for the petitioner and stated that vide resolution No.1 dated 18.02.1994, the amendment in the Common Cadre Rules has been duly accepted by the Sugarfed and the petitioner can have no grievance.

Section 84-A is reproduced as under:

> *"**84-A. Constitution of common cadre of employees of certain societies:-**(1) An apex society may suo moto, and when required to do so by the Registrar, shall constitute a common cadre of all or specified class of*

> *employees in the service of that society or in the service of the central societies which are members of the Apex Society or in the service of the primary societies which are members of the apex society or the aforesaid societies.*
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> *(2) When a common cadre of employees is constituted under sub-section (1), the apex Society shall make rules for the regulation of recruitment and conditions of service of such employees with the prior approval of the Registrar."*

It is not disputed that pursuant to the communication from the Registrar dated 30.6.1993, whereby, approval was accorded by him to the amendment of the Common Cadre Rules for reducing the age of retirement from 60 years to 58 years, resolution No.1 dated 18.02.1994 was passed by the Administrator for amendment in the Common Cadre Rules. Thus, both the requirements of Section 84-A namely the prior approval by the Registrar and that the amendment be made by the Apex Society stand complied with and hence there is no violation of Section 84-A.

There is nothing illegal or irregular in the Registrar recommending an amendment to the Rules. It has been judicially recognized that the Registrar occupies a pivotal position in

Cooperative Societies Acts of various States. A Division Bench of this Court in ***Bapauli Cooperative Agricultural Service v. State of Haryana, (P&H)(DB),*** ***1976 AIR (Punjab) 283*** has summed up the central role of the Registrar in the Scheme of the 1961 Act by describing him as a mentor and guide to the societies and observed as under:

> *"17. A cumulative consideration of the aforementioned provisions of the Act make it abundantly clear that the societies formed only with the object of promoting economic interests of its members on co-operative principles can be registered by the Registrar under the Act. The bye-laws of these societies are not supposed to be contrary to the provisions of the Act and rules framed thereunder. Apart from the right of the society suo motu apply to the Registrar for the amendment of bye-laws, the Registrar himself is empowered to direct a society to amend its bye-laws, if he is satisfied that such an amendment is necessary or desirable in the interests of such a society. Since the bye-laws of a society have of necessity to be in conformity with the provisions of the Act and the Rules as laid down in section 8(1)(c) of the Act, it is reasonable to infer that wherever it appears to the Registrar the bye-laws of a particular society come in conflict with the provisions of the Act and the rules framed*

> *thereunder, he would not only be empowered to order an amendment of the bye-laws but shall also be under a duty to do so under section 10-A of the Act. The Registrar acts as a mentor and a guide for the co-operative societies. He is under a statutory obligation to see that these societies continue to function For this purpose, he has been empowered to supervise the election of the managing committees and to nominate or to supersede the committee if the term of the elected committee expires or the committee is found to be amiss in the performance of its statutory duties, as the case may be. In short, the ultimate power of control and supervision vests in the Registrar. He is expected to see that the Co-operative Societies which are corporate bodies under the Act continue to function in accordance with the provisions of the Act and the Rules."*

The Court in the above case was examining the validity of Section 84-A of the 1961 Act.

The Registrar's position was again emphasized by the Hon'ble Supreme court in ***Virendra Pal Singh v. Distt. Asstt. Registrar, Coop. Societies,*** ***(1980) 4 SCC 109*****, at page 114***,* as under **:**

> ***"11.*** *Another submission made to us was that the enormous supervisory power vested in the Registrar of Cooperative Societies, the constitution of a centralised*

service and the plenitude of executive power given to the Secretary of the society have the effect of converting the so called Cooperative Society into a subordinate governmental institution and therefore the legislation cannot really be said to be a law in regard to cooperative societies so as to fall within Entry 32 of List II. We see no force in this submission. It is true that the Registrar is given wide powers of supervision. It is also true that Secretaries are also given vast executive powers. But the supervisory powers given to the Registrar, the executive powers given to the Secretary and the creationof a centralised service have a single object in view, namely, the better working of the cooperative societies. It is well known that many of the cooperative societies, particularly in rural areas, need the guidance of well trained expert officers and it is the function of the Secretary and the other members of the centralised service to afford proper guidance to the ignorant and often illiterate members of the cooperative society. The supervisory powers given to the Registrar are with a view to enable him and the officials of his department to keep a vigilant and benevolent eye on the working of the society so that none may take advantage of the innocent rural folk and so that the cooperative movement may be a success and a real boon to the weaker sections of the people. The constitution of a centralised service is perhaps to see that

> *the officials do not acquire any vested interest in the cooperative society of a locality. Though Secretaries are vested with vast powers they are subject to the control and supervision of Chairman and the Committee of Management. We are, therefore, unable to agree with the submission that the U.P. Cooperative Societies Act is not a law dealing with cooperative societies because wide powers are given to the Registrar of Cooperative Societies and the Secretaries of Societies and because a centralised service has been created."*

It has been next argued that the amendment has not been approved by the Board of Directors, which is the competent authority to amend the Rules and hence the amendment is not valid. This argument again cannot sustain. At the time when the amendment was made, the Board of Directors was not in existence as its term had expired and the affairs of Sugarfed were being looked after by the Administrator appointed under Section 26(1D) of the 1961 Act. As per Section 26(1D) where any Committee has ceased to hold office and no committee has been constituted in accordance with the provisions of the Act and Rules, the Registrar may appoint a Government employee as an Administrator who shall before the expiry of the period of his appointment arrange for the constitution of a new Committee. As per Section 26(1E), the provisions of Section 27(3) and (4) of the 1961 Act shall apply to an Administrator appointed under Section 26(1D), meaning thereby, that an Administrator appointed under Section 26(1D) shall have the same powers as an Administrator appointed under Section 27. As per Section 27(3), the Administrator shall, subject to control of Registrar, and such instructions as he may from time to time give, have powers to perform all or any of the functions of the Committee or of any officers of the society and take all such actions as may be required in the interest of the society. Section 2(b) of the 1961 Act defines the Committee to mean the governing body of a Cooperative Society by whatever name called, to which the management of the affairs of the society is entrusted.

From a combined reading of the aforementioned provisions, it would be clear that the Administrator appointed on the expiry of the term of the Board of Directors shall have the power to perform all or any of the functions of the governing body, which in the present case is the Board of Directors. Hence, the approval of the resolution by the Administrator is to be deemed to be the approval by the Board of Directors. Thus, the argument of the petitioner that as the amendment has not been made by the Board of Directors, hence it is illegal, is without force.

The argument of the Ld. Counsel for the petitioners that the amendment is retrospective and takes away the vested rights of the petitioners to retire at the age of 60 years and is hence illegal and unconstitutional, is also liable to be rejected. It has been settled by the Courts in a catena of judgments that fixation of retirement age is a matter of policy and it cannot be held that by reducing the age of retirement any vested right of an employee is taken away.

In ***N. Lakshmana Rao v. State of Karnataka*, (1976) 2 SCC 502**, the reduction of the age of retirement was held to be legal and valid by observing as under**:**

> ***"25.*** *The question of retirement age was considered by this Court in Bishun Narain Mishra v. State of U.P. The State Government in that case raised the age of superannuation from 55 to 58 years and again reduced the age to 55 years. It was held that there is no provision which takes away power of the Government to increase or reduce the age of superannuation. When the rule only deals with the age of superannuation and the government servant had to retire because of the reduction in the age of superannuation it cannot be said that the termination of*

> *the service amounts to removal within the meaning of Article 311.*
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> *It, therefore, follows that teachers who exercised the form of option were subject to change in the conditions of service under Rules framed under Article 309. There is no constitutional limitation to reduce the age of retirement. A government servant enjoys the status of a government servant. He cannot be removed and his services cannot be terminated except in accordance with the provisions of the Constitution. Fixing an age of retirement does not amount to removal or termination."*

A Constitution Bench of the Hon'ble Supreme court again examined this issue in ***K. Nagaraj v. State of A.P., (1985) 1 SCC 523.*** The facts of this case were that the Telugu Desam Party which formed the Government in Andhra Pradesh in 1983, reduced the age of retirement of all government employees from 60 years to 58 years. Over 18,000 government employees and 10,000 public sector employees were superannuated as a result of the said order. The Hon'ble Supreme Court repelled a challenge to the action by observing as under:

> *"7. This is the broad outline of the petitioners' case. We will presently set out the specific contentions advanced*

before us but, before doing so, it would be necessary to indicate the approach which, in our opinion, should be adopted while examining a question of the present nature, namely, the fixation of the age of retirement. Barring a few services in a few parts of the world as, for example, the American Supreme Court, the terms and conditions of every public service provide for an age of retirement. Indeed, the proposition that there ought to be an age of retirement in public services is widely accepted as reasonable and rational. The fact that the stipulation as to the age of retirement is a common feature of all of our public services establishes its necessity, no less than its reasonableness. Public interest demands that there ought to be an age of retirement in public services. The point of the peak level of efficiency is bound to differ from individual to individual but the age of retirement cannot obviously differ from individual to individual for that reason. A common scheme of general application governing superannuation has therefore to be evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counterbalance conflicting claims while determining the age of superannuation. On *the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these conflicting claims of the different segments of society involves minute questions of policy which must, as far as possible, be left to the judgment of the executive and the Legislature. These claims involve considerations of varying vigour and applicability. Often, the court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of a given case. We do not suggest that every question of policy is outside the scope of judicial review or that, necessarily, there are no manageable standards for reviewing any and every question of policy. Were it so, this Court would have declined to entertain pricing disputes covering as wide a range as cars to mustard oil. If the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the court's interference would be called for, though not for fixing the age of retirement but for mandating a closer consideration of the matter. "Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14."*

> *[SCC para 85, p. 38: SCC (L&S) p. 200J. But, while resolving the validity of policy issues like the age of retirement, it is not proper to put the conflicting claims in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. That is an exercise which the administrator and the Legislature have to undertake. As stated in The Supreme Court and the Judicial Function: "Judicial self-restraint is itself one of the factors to be added to the balancing process, carrying more or less weight as the circumstances seem to require."*

A Division Bench of this Court in ***Shiv Kumar and others Vs. State of Haryana and others, 2011(4) SLR 254***, rejected a challenge to the amendment made in 1988 to the Haryana State Supply and Marketing Cooperative Service (Common Cadre) Rules, 1969 reducing the age of retirement from 60 years to 58 years by observing as under:

> *"1. The short question raised in the instant petition filed under Clause X of the Letters Patent is whether the appellant could avoid the reduction in the age of retirement to 58 years which has been effected by the amendment made in 1988 to the Haryana State Supply and Marketing Cooperative Service (Common Cadre) Rules, 1969 (for brevity 'the 1969 Rules') . It is appropriate to mention that after amendment under the*

1988 Rules, the age of retirement has now been provided to be 58 years whereas under the 1969 Rules, the age of retirement was 58 years with further provision for However, extension of 2 years that could be granted by the Administrative Committee after taking into account the service record and the medical fitness.

2. The learned Single Judge held that the respondents were well within their rights to effect the change in age of retirement and no right of the appellant has been infringed. The extension of two years provided by 1969 Rules cannot be claimed as a matter of right. In any case, we are of the view that the State is not precluded from reducing the age of retirement and making the amendment applicable to the present incumbents who are holding the post. The aforesaid view has been taken by Hon'ble the Supreme Court rendered in the case of ***K. Nagaraj v. State of Andhra Pradesh AIR 1985 SC 551*** *and the same view has been followed by Hon'ble the Supreme Court in the case of* ***Nagaland Senior Government Employees Welfare Association and others v. State of Nagaland and others (2010) 7 SCC 643****. The fixation of age of retirement essentially is a matter of executive policy which is largely dependent on need of administration. In* ***K. Nagraja's case (supra)****, the age of public servant was decreased to 55 years and the constitutional validity of the rule was challenged. Hon'ble* *the Supreme Court held that the legislature did not act arbitrarily or irrationally. The appellants cannot make a complaint that by reducing the age of retirement to 58 years, any vested rights have been taken away because amendment made in the Rule in 1988 Rules would certainly apply to the case of the appellants who have retired on 30.04.2011. The Rule framed in the year 1988, obviously would apply and govern the age of their retirement. In view of the judgment rendered in* ***K. Nagrajan's case (supra)****, the appeal does not merit admission."*

The next point raised regarding the provisions being discriminatory is only to be noted to be rejected. It is well-settled that discrimination can arise only between similarly situated persons. The Rules, which are stated to be discriminatory apply to employees of Primary Agricultural Cooperative Society, whereas, the present Rules apply to the employees of Common Cadre. Thus, the argument regarding discrimination also cannot sustain.

Accordingly, there is no merit in the petitions and the same are dismissed.

(SATISH KUMAR MITTAL) **(HARINDER SINGH SIDHU)**
JUDGE **JUDGE**

April 23, 2015

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