

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.24341 OF 2014

RESERVED ON: DECEMBER 24, 2014

DATE OF DECISION: JANUARY 20, 2015

Baljit Kaur and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Rajiv Atma Ram, Sr. Advocate with
Mr.Vikas Kuthiala and Mr.Kohal Dev Sharma,
Ms.Promila Nain, Mr.Ravi Verma, Mr.Tarundeep Kumar,
Mr.Vikas Kuthiala, Mr.Ivneet Singh Pabla, Mr.RS
Budhwar, Mr.Subhash Ahuja, Mr.S.S.Malik, Dr.Anmol
Rattan Sidhu, Senior Advocate with Ms.Geeta Singwal,
Mr.Vikram Punia, Mr.SN Yadav, Mr.AS Tawatia,
Mr.RK Malik, Senior Advocate with Mr.Vishal Malik,
Mr.RN Sharma, Mr.Sandeep Singal, Mr.AK Chopra,
Senior Advocate with Mr.GS Bhandal, Mr.Raje Ram
Kaushik, Mr.JB Sharma, Mr.Ravinder Malik, Mr.Ajay Pal
Singh, Mr.TN Gupta and Mr.Rakesh Nagpal, Advocates
for the petitioners.

Mr.DS Nalwa, Additional Advocate General, Haryana
and Mr.Deepak Balyan, Additional Advocate General,
Haryana.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of a bunch* of 32 petitions as
identical issue is involved in these petitions.

2. The petitioners in these petitions assail the decision of

the Haryana State Government in having reduced the age of superannuation from 60 years to 58 years.

3. Facts, in brief, are being noticed from Civil Writ Petition No.24341 of 2014 (**Baljit Kaur and others v. State of Haryana and another**). The petitioners are employees under the State of Haryana. Insofar as the age of superannuation is concerned, the same is governed by Rule 3.26(a) of the Punjab Civil Services Rules, Volume I, Part I (as applicable to the State of Haryana) (hereinafter to be referred to as 'the Rules'). As per such statutory provision, the age of retirement is stipulated as 58 years.

4. A meeting is stated to have been held on 16.8.2014 under the Chairmanship of the then Chief Minister, State of Haryana with the representatives of Haryana Karamchari Mahasangh and Sarv Karamchari Sangh at the CM's Camp Office. Apart from other demands of the employees having been deliberated upon, the issue regarding raising of superannuation age of the employees of the State Government was also discussed and the following decision was stated to have been taken in the meeting on 16.8.2014:

“The age of superannuation of employees of Haryana Government will be extended from 58 years at present to 60 years at option of the employees.”

5. Thereafter, in a meeting of the Council of Ministers held on 17.8.2014, even though the item was not listed in the agenda, yet a decision was taken to the following effect:

“The Council of Ministers decided to give an option to

the employees to serve till the age of 60 years provided they are fit to continue in service. Similarly, the Class-IV employees will serve till the age of 62 years. The date of superannuation will remain unchanged.”

6. For implementation of such decision taken by the Council of Ministers in the meeting held on 17.8.2014, the matter is stated to have been referred to the Finance Department, whereupon certain observations were made. A memorandum dated 25.8.2014 is stated to have been submitted to the Cabinet Branch seeking the approval of the Council of Ministers to formulate guidelines for implementation of the decision taken in the meeting held on 17.8.2014 as regards giving an option to the employees to serve till the age of 60 years provided they are fit to continue in service. However, the Council of Ministers in a meeting held on 25.8.2014 took the following decision:

“The Council of Ministers on its own accord revised their decision taken in CMM on 17.8.2014 and decided that the age of superannuation (retirement) for Haryana Government Employees will be increased from 58 years to 60 years. Similarly, the age of superannuation (retirement) for Class-IV employees was increased from 60 years to 62 years.”

7. Towards implementation of such decision, the Chief Secretary to Government Haryana issued instructions dated 26.8.2014, Annexure P2, and duly communicated to all the Heads of the Departments across the State. As per such instructions

dated 26.8.2014, the matter with regard to raising the age of superannuation stood re-considered by the State Government and a decision was taken that the age of superannuation of Haryana Government employees is increased from 58 years to 60 years and for Class-IV employees from 60 years to 62 years. Such instructions were to come into force with immediate effect.

8. The Assembly Elections in the State of Haryana took place in the month of October, 2014 and a new political regime was swept into power. The new Council of Ministers in a meeting held on 25.11.2014 took a decision to reduce the age of superannuation from 60 years to 58 years. Copy of the minutes of the meeting of the Council of Ministers held on 25.11.2014 has been placed on record and appended at Annexure P6 along with the petition. In pursuance thereof, instructions dated 26.11.2014, Annexure P8, were issued and were communicated to all the Departments on the subject of reduction in the age of superannuation from 60 years to 58 years of the Government employees and from 62 years to 60 years in respect of Group 'D' employees. Vide instructions dated 26.11.2014, it was clarified that such employees who had reached the age of superannuation but could not be retired till date due to enhancement of superannuation age as per earlier instructions dated 26.8.2014, they would now be retired/superannuated w.e.f. 30.11.2014.

9. It is against such factual backdrop that these writ petitions have been filed impugning the decision of Council of Ministers taken in its meeting dated 25.11.2014 as regards reduction in the age of superannuation from 60 years to 58 years,

Annexure P6, as also the consequential instructions dated 26.11.2014, Annexure P8, whereby the decision of the Council of Ministers has been given effect to.

10. Mr.Rajiv Atma Ram, Senior Advocate has led the arguments in these petitions and has broadly raised the following submissions:

i) The instructions dated 26.8.2014 had created a vested right in the petitioners to continue to be in service till attaining the age of 60 years. A policy decision taken by the State Government to enhance the age of superannuation from 58 years to 60 years could be validly enforced through executive instructions as long as the same did not run counter to the statutory Rules. It is contended that a vested right created in the petitioners to serve upto the age of 60 years cannot be taken away in terms of the subsequent impugned instructions dated 26.11.2014.

ii) The earlier instructions dated 26.8.2014, Annexure P2, enhancing the age of superannuation from 58 years to 60 years was not in conflict with the relevant statutory provision inasmuch as Rule 3.26(a) of the Rules itself contemplated grant of extension in service to the employees beyond the age of 58 years. It has further been argued that the Council of Ministers having taken a decision in its meeting held on 25.8.2014 to enhance the retirement age from 58 years to 60 years, the subsequent amendment in Rule 3.26(a) of the Rules was a mere ministerial act and under such circumstances, the relevant Rule would be deemed to have been amended and it was not open for

the successor Government to take a contrary decision.

iii) It has been argued that a conscious decision taken by the competent authority with regard to enhancement of the age of superannuation, having already been put into operation, the same could not be reviewed by the successor in office. It has been pointed out that some of the petitioners in these petitions and who were to retire in the months of August, September and October of the year 2014 were permitted to continue in service on the strength of the earlier decision of CMM and instructions dated 26.8.2014, Annexure P2, and the impugned instructions dated 26.11.2014 amount to a re-consideration of the matter and the same is not legally permissible. Reliance in this regard has been made to a Division Bench decision of this Court in **Sarv Mittar Sharma, Special Secretary v. The Punjab and Haryana High Court, Chandigarh, 1992 (3) SCT 392.**

Another limb of the argument is that the subsequent impugned instructions dated 26.11.2014, Annexure P8, could not have been applied retrospectively so as to affect the rights of such employees who had already stood to benefit by virtue of the earlier decision and instructions dated 26.8.2014, Annexure P2, on the subject of enhancement of the age of superannuation.

iv) It has been vehemently contended that the impugned decision by the State Government to reduce the age of superannuation is politically motivated and is merely an attempt to seek vendetta on the out-going political party by reversing and reviewing the policy decisions taken earlier in point of time. Contention raised is that a change of Government does not entail

a change of policy and in the facts of the present case, the new political regime within a period of one month of coming into power has reversed the decision as regards increase in age of superannuation of the employees. The earlier decision and instructions dated 26.8.2014 as regards enhancement of the age of superannuation is stated to have been taken in public interest and in acceding to the demands of various Employee Unions and whereas the subsequent impugned decision in reversing such decision is stated to have been taken in haste and without any cogent or valid basis. In support of such submission, the decisions of the Hon'ble Supreme Court in **State of Karnataka and another v. All India Manufacturers Organization and others**, AIR 2006 SC 1846, **State of Haryana v. State of Punjab**, 2002(1) RCR (Civil) 696 and **State of Tamil Nadu and others v. K.Shyam Sunder and others**, (2011)8 Supreme Court Cases 737 have been referred to.

Learned counsel would also argue that the impugned decision in reducing the age of superannuation amounts to respondent i.e. State of Haryana assailing its own order even though passed by the predecessor Government. Such course of action is stated to be not permissible in the eyes of law.

v) Even a plea of discrimination and violation of Article 16 of the Constitution of India has been raised. It has been submitted that the Judicial Officers in the State of Haryana as also Lecturers working in Government aided private Colleges and getting grant-in-aid to the extent of 95% retire at the age of 60 years. A tabulation has also been furnished in the rejoinder filed

on behalf of the petitioners to the written statement filed by the State whereby a reference has been made to a number of States across the Nation where the age of superannuation has been stipulated as 60 years. Retirement age of employees being 60 years or in excess in the case of certain other countries has also been cited. Petitioners, as such, seek parity of treatment and pray for striking down the decision of the State Government in reducing the age of superannuation to 58 years.

vi) Furthermore, the impugned decision is stated to be arbitrary and in violation of the principles of natural justice. It has been submitted that no notice was given to the employees prior to reducing the age of superannuation and which, in turn, would have a direct adverse bearing in relation to taking up pursuits of private employment post-retirement. It is argued that even sufficient breathing time was not granted to the petitioners so as to come to terms with such a harsh decision.

11. During the course of hearing of these petitions, an additional affidavit dated 18.12.2014 of Jarnail Singh son of late Shri Sadhu Ram, petitioner No.2 in Civil Writ Petition No.24341 of 2014 was placed on record. In such affidavit, it was stated that the total strength of Council of Ministers in the Legislative Assembly in State of Haryana is 10 in number including the Chief Minister of the State. Based on such factual position, a submission has been raised as regards violation of the mandate of the proviso to Article 164(1-A) of the Constitution of India, in terms of which the number of Ministers including the Chief Minister in a State is not to be less than 12 in number. It is

contended that the Council of Ministers in the Legislative Assembly of the State being only 10, the decision of such Council of Ministers dated 25.11.2014 to reduce the age of superannuation from 60 years to 58 years and the consequential impugned instructions dated 26.11.2014, Annexure P8, are void ab initio. Reliance has been placed upon a Division Bench judgment of the Bombay High Court in **Aires Rodrigues v. State of Goa, 2009 (Supp.) BCR 16** to assert that the provisions of Article 164 of the Constitution of India are mandatory.

12. Per contra, learned State counsel would submit that the decision to reduce the age of superannuation was in the nature of policy decision and which was exclusively in the domain and competency of the employer. It is further submitted that change in the age of superannuation does not amount to termination or removal and as such, no legal right of the petitioners has been infringed. Learned State counsel would point out that under Rule 3.26(a) of the Rules, the age of superannuation is stipulated as 58 years and the Rules having not been amended, no vested right of the petitioners has been violated. The decision to reduce the age of superannuation to 58 years is stated to be in consonance with the rule position. Stand taken on behalf of the State is that the earlier decision reflected in the instructions dated 26.8.2014 enhancing the age of superannuation to 60 years was not an “honest decision” and, accordingly, the need had been felt to reverse the same. To substantiate such assertion, it has been stated that on many previous occasions i.e. in the year 2005 the Haryana Clerical

Manch, the Haryana Irrigation Department Clerical Association in the year 2007, the All Haryana Roadways Employees, Faridabad in the year 2008 as also the Haryana Sanyukt Karamchari Manch as late as in February 2013 had raised the demand for increasing the age of superannuation, but the same had not been acceded to. However, just prior to the imposition of Model Code of Conduct of the State Assembly Elections, the age of superannuation had been enhanced with the sole objective of gaining political mileage. In this regard, it has also been pointed out that the Council of Ministers in its meeting held on 17.8.2014 had taken a decision to give an option to the employees to serve till the age of 60 years provided they are fit to continue in service but the age of superannuation was to remain the same. To formulate guidelines to implement such decision, a memorandum was submitted before the Council of Ministers. However, the Council of Ministers in its meeting held on 25.8.2014 took upon themselves to revise their earlier decision taken on 17.8.2014 and increased the age of superannuation of the Haryana Government employees from 58 years to 60 years without any basis. Under such circumstances, the decision to reduce the age of superannuation is stated to be without any fault.

13. Insofar as Article 164(1-A) of the Constitution of India is concerned, it has been contended that the aim and object of the 91st amendment of the Act 2003 was to curb the tendency of having large size ministries and thereby reducing the burden on the State Exchequer. It is submitted that the proviso to Article 164(1-A) of the Constitution of India is being mis-construed and it

cannot be held that a decision taken by 10 Council of Ministers including the Chief Minister would be unconstitutional. Learned State counsel would further submit that Article 164(1-A) of the Constitution of India refers to the mode of appointment of Chief Minister and Ministers in the State, whereas the conduct of business of the Government of State is regulated and governed under Article 166 of the Constitution of India. In terms of Article 166(3) of the Constitution of India, rules of business were notified on 21.6.1977 and under such Rules, there is no quorum of Council of Ministers prescribed. It is argued that the decision taken by the Council of Ministers on 25.11.2014 in reducing the age of superannuation was in conformity with the rules of business framed under Article 166 of the Constitution of India. On such broad submissions, dismissal of the writ petitions has been prayed for.

14. Learned counsel for the parties have been heard at length and pleadings on record have been perused.

15. Article 164 (1-A) of the Constitution of India was inserted as per the Constitution 91st Amendment Act, 2003 which came into force from 1.1.2004. Article 164(1-A) of the Constitution of India reads as under:

"164(1-A). The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than

twelve:

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then the total number of ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.”

16. This provision mandates that the Council of Ministers in the State shall not exceed 15% of the total number of Members of Legislative Assembly of that State while further providing that the number of Ministers including the Chief Minister in a State shall not be less than 12. Second proviso to Article 164(1-A) of the Constitution of India provides that wherever the total number of Ministers including the Chief Minister in the Council of Ministers exceeds the cap of 15%, or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

17. The Statement of Objects and Reasons for the 91st Amendment Act, 2003 is extracted hereinbelow:

“ STATEMENT OF OBJECTS AND REASONS

Demands have been made from time to time in

certain quarters for strengthening and amending the Anti-defection Law as contained in the Tenth Schedule to the Constitution of India, on the ground that these provisions have not been able to achieve the desired goal of checking defections. The Tenth Schedule has also been criticised on the ground that it allows bulk defections while declaring individual defections as illegal. The provisions for exemption from disqualification in case of splits as provided in paragraph 3 of the Tenth Schedule to the Constitution of India has, in particular, come under severe criticism on account of its destabilising effect on the Government.

The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of May, 1990, the Law Commission of India in its 170th Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its 170th Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of March 31, 2002 have, inter alia, recommended omission of said paragraph 3 of the Tenth Schedule to the Constitution of India pertaining to exemption from disqualification in case of splits. The NCRWC is also of the view that a defector should be penalised for his action by debarring him from holding any public office as a

Minister or any other remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier. It is proposed to accept these suggestions.

The NCRWC has also observed that abnormally large Councils of ministers were being constituted by various Governments at Centre and States and this practice had to be prohibited by law and that a ceiling on the number of Ministers in a State or the Union Government be fixed at the maximum of 10% of the total strength of the popular House of the Legislature.

In the light of the above, it is proposed to amend the Constitution by omitting paragraph 3 of the Tenth Schedule to the Constitution of India and to provide that the size of the Council of Ministers should not be more than 10% of the strength of House or Houses concerned whether Unicameral or Bicameral. However, in case of smaller States like Sikkim, Mizoram and Goa having 32, 40 and 40 Members in the Legislative Assemblies respectively, a minimum strength of seven Ministers is proposed.

The Bill seeks to achieve the objects mentioned above.

ARUN JAITLEY

*NEW DELHI;
The 26th April, 2003."*

18. In A.Manjula Bhashini and others v. Managing Director, Andhra Pradesh Women's Cooperative Finance

Corporation Limited and another, (2009)8 SCC 431, it had been held that even though the Statement of Objects and Reasons contained in the Bill leading to the enactment of the particular Act cannot be made the sole basis for construing the provisions contained therein, yet the same can be referred to for understanding the background, the antecedent state of affairs and the mischief sought to be remedied by the statute. It was further observed that the Statement of Objects and Reasons can also be looked into as an external aid for appreciating the true intent of the legislature and the object sought to be achieved by enactment of the particular Act. In the affidavit dated 22.12.2014 of the Secretary to Government Haryana, General Administration Department, certain extracts of the debate under Article 164(1-A) of the Constitution of India have also been re-produced.

19. As has been observed in **Aires Rodrigues** (supra) as also from a conjoint reading of the Statement of Objects and Reasons and the relevant extract of the debate would clearly show that the purpose of enacting of Article 164(1-A) of the Constitution of India was two-fold, i.e., (i) to limit the size of the Cabinet for better governance as also to avoid the heavy burden on the public exchequer, and (ii) to discourage defection in politics.

20. Even though in the main provision under Article 164(1-A) of the Constitution of India, a specific embargo is envisaged inasmuch as the Council of Ministers including the Chief Minister in a State is not to exceed 15% of the total number of Members of the Legislative Assembly of that State, yet a situation was

foreseen whereby in the case of certain States where the size of the Assembly is rather small, as for instance, Mizoram – 40 in number and Sikkim – 32 in number, by applying such embargo of 15%, there would be only 5 to 6 Ministers in such States and thereby leading to a situation of adequate representation of various Districts, Regions, Groups etc. being denied. It was to overcome such situation that the number of 12 Ministers finds a mention in the first proviso and which by way of an exception could even breach the cap of 15% stipulated in the main substantive provision. Even though the first proviso lays down the number of Ministers including the Chief Minister in a State to be not less than 12, but the same cannot be read in a manner of controlling the operation of the main substantive provision.

21. The Legislative intent behind Article 164(1-A) of the Constitution of India i.e. to limit the size of Council of Ministers cannot be lost sight of. The second proviso further sheds light in the Legislative intent as regards strict adherence to the upper cap as regards the size of Council of Ministers while mandating that whenever the total number of Ministers including the Chief Minister in the Council of Ministers exceeds the upper limit of 15% or the number specified in the first proviso i.e. 12, then the total number of Ministers in that State has to be brought in conformity with the provision of this clause within a period of six months from such date as the President may by public notification appoint.

22. In **J.K. Industries Limited etc. v. The Chief Inspector of Factories and Boilers and others**, JT 1996 (9) SC 27, the Hon'ble Supreme Court while explaining the scope of proviso to the main

provision had held that the accepted Rule of interpretation is that a Section and the proviso thereto must be construed as a whole and the proviso is normally employed to remove such cases from the general enactment. It was further held that the proviso must be considered in relation to the principal matter to which it stands as a proviso and the proviso cannot be read to provide something which is alien to the main provision itself.

23. As such, the first proviso cannot be interpreted in a manner to hold that merely because there were 10 Ministers in the Council of Ministers in the State of Haryana including the Chief Minister i.e. less than the number indicated in the proviso itself, the decision taken by such Council of Ministers on 25.11.2014 to reduce the age of superannuation is unconstitutional and in violation of Article 164(1-A) of the Constitution of India. The provisions of Article 164(1-A) of the Constitution of India would be construed as mandatory insofar as upper limit of the Council of Ministers in State to not exceed 15% of the total number of members of Legislative Assembly of that State are concerned and not as regards having a minimum number of Ministers. Even in the case of *Aires Rodrigues* (supra), while holding the provisions of Article 164(1-A) of the Constitution of India to be mandatory, it was held that it would not be permissible to enlarge the Council of Ministers beyond the prescribed limitation of 15% as stipulated in the main provision and to adopt an indirect method to defeat such figure by way of appointing Parliament Secretaries who otherwise had been given the status, perks and privileges equivalent to Ministers.

24. The assertion raised on behalf of the petitioners as regards there being a violation of the mandate of Article 164(1-A) of the Constitution of India proceeds on a premise whereby the first proviso is being torn away from the main substantive provision and is being read in complete isolation thereof. Such rule of interpretation cannot be admitted. Contention in such regard raised on behalf of the petitioners is hereby rejected.

25. The issue that now arises for consideration is as to whether the impugned instructions dated 26.11.2014 take away any vested right of the petitioners to continue in service upto the age of 60 years.

26. It is by now well settled that the relationship between the Government and its employees is not like an ordinary contract of service between a Master and Servant. Once appointed to a post or office, the Government employee acquires a status and his rights and obligations are determined by Statute or Statutory Rules which may be framed by the Government. The expressions “vested right” and “accrued right” have been used in service jurisprudence in the context of a right flowing under the relevant Rule. Concededly, Rule 3.26(a) of the Rules governs the age of retirement of the petitioners. Such Rule reads as under:

“3.26(a): Except as otherwise provided in other clauses of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years. He must not be retained in service after the age of retirement, except in exceptional

circumstances, with the sanction of the competent authority on public grounds, which must be recorded in writing.”

27. The language of the Rule is clear and unambiguous. Rather it is couched in negative terms. Every Government employee “shall” retire upon attaining 58 years of age and must not be retained in service thereafter except in exceptional circumstances. Such Rule has not been amended till date.

28. The decision contained in the instructions dated 26.8.2014 enhancing the age of superannuation from 58 years to 60 years would not acquire the character of a Statutory Rule. Such executive instructions cannot be accepted to be a statutory amendment of the existing Rule governing the age of retirement. Even retention of an employee beyond the age of 58 years under exceptional circumstances as envisaged under the Rule would not empower the executive to take a blanket decision to raise the age of superannuation of the employees across the board. Accordingly, it is held that there is no right that had come to vest in the petitioners to continue in service till the age of 60 years on the strength of instructions dated 26.8.2014 which are in derogation of the relevant Statutory Rule. In the absence of such a right, there was no requirement of affording a hearing to the petitioners prior to taking the impugned decision.

29. The argument raised by learned Senior counsel that a conscious decision having been taken by the previous regime to enhance the age of retirement, the subsequent amendment of the relevant Rule would only be a ministerial act and rather the Rule

would be deemed to be amended is preposterous . If amendment of a statutory provision by deeming fiction was to be accepted, then the very sanctity of exercise of powers under Article 309 of the Constitution of India and framing of Rules would be lost. In this regard, it would be useful to refer to the following observations made by the Hon'ble Supreme Court of India in **K.Kuppusamy and another v. State of T.N. and others, (1998) 8 Supreme Court Cases 469:**

"Heard counsel on both sides.

The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by

necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule."

30. The contention as regards violation of Article 16 of the Constitution of India is fallacious and rejected. Existence of a right in law is a pre-requisite to sustain the plea of discrimination. As per relevant Statutory Rule, the age of retirement of the petitioners is stipulated as 58 years. There would be no vested right to continue in service beyond such age. In the case of Judicial Officers in the State of Haryana, the Service Rules prescribe the age of retirement as 60 years. Employees working in private Institutions receiving aid to the extent of 95% are not Government employees. The question of parity as to the age of retirement, as such, does not arise.

31. Certain petitioners in these petitions are questioning the validity of the instructions dated 26.11.2014 on the ground of retrospectivity. It is being contended that qua such employees who were to retire in the months of August, September and October, 2014, the earlier decision to enhance the age of retirement has already been put into operation. Precise argument raised is that any executive decision taken thereafter can at best be prospective in nature and cannot apply to them. Even such contention is mis-conceived. The earlier decision as has already been held did not vest any right in law in such petitioners. At the highest, it was a concession granted unilaterally by the employer and has thereafter been withdrawn unilaterally. Even otherwise, the impugned instructions dated 26.11.2014 are to take effect from a future date.

32. The right of an employer to vary the age of retirement has been considered by the Apex Court in **K.Nagaraj and others v. State of Andhra Pradesh and another, (1985) 1 Supreme Court Cases 523**. Facts in **K.Nagaraj's** case (supra) were that the elections were held to the Legislative Assembly of Andhra Pradesh in January 1983 and a new political party called Telugu Desam came into power. It assumed Office on 9.1.1983. On 8.2.1983, a decision was taken to reduce the age of superannuation of all Government employees other than in the last grade service from 58 years to 55 years. Towards implementation of such decision, even the Statutory Service Rules were suitably amended. Challenge to such action was negated and the action of the State Government in having reduced the age of retirement from 58 years to 55 years was held to be in conformity with law. In **K.Nagaraj's** case (supra), the Hon'ble Supreme Court also indicated the approach which the Courts should adopt while examining the question regarding fixation of the age of retirement and observed as follows:

".....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 consideration 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. 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."*

33. Is the decision of the State Government in reducing the

age of retirement from 60 years to 58 years in the light of impugned instructions dated 26.11.2014 arbitrary and irrational?

34. Pleadings on record would show that in a meeting on 16.8.2014 under the Chairmanship of the then Chief Minister, State of Haryana, it had been decided that the age of superannuation of the employees be extended from 58 years to 60 years at the option of the employees. The Council of Ministers in its meeting held on 17.8.2014 took a decision to give an option to the employees to serve till the age of 60 years provided they are fit to continue in service. However, the date of superannuation was to remain unchanged. Apparently, the Government was conscious at that point of time as regards the rule position prescribing the age of retirement as 58 years. To implement the decision of the Council of Ministers taken on 17.8.2014, the matter had been referred to the Finance Department. On 22.8.2014, certain observations were raised by the Finance Department and it would be expedient to refer to the same:

“Subject: To raise the age of superannuation of Haryana Government employees.

The Finance Department has observed as under:-

The Administrative Department has simply forwarded the decision of the CMM without framing detailed policy and instructions for implementing the same. Several issues, as listed below, needs to be deliberated and decided upon at the level of AD for implementing the decision of the CMM:

i) Last line of the decision of the CMM reads “the

date of superannuation will remain unchanged". It automatically implies that the superannuation order of every individual will be passed on attaining the age of 58 years. From this it follows that the period served beyond the age of 58 years will not be counted for the purposes of pension, promotion, grant of ACP, grant of normal increment, leave etc. AD needs to deliberate carefully on these issues while framing the proposal for implementing the decision of the CMM. Further, it needs to be decided what will the nature of employment of the "superannuated" persons? Will it be considered extension; re-employment; or contract etc.?

ii) After formal superannuation at the age of 58 years the posts meant to be filled up by way of promotion will fall vacant against which "superannuated" person will continue to work and draw his salary. In this scenario can and will the person who is due to be promoted on such a post demand his promotion because formally the senior post would have become vacant. This situation can give rise to legal complication; therefore, a considered decision needs to be taken in consultation with law department.

iii)The decision of the CMM, interalia, states that an option to the employees will be given “to serve till the age of 60 years provided they are fit to continue in service.”

The AD has to prepare detailed guidelines for seeking options from the employees; including the time and stage in the service of the employees when such an option may be exercised.

Whether the “fitness” shall be in the nature of physical fitness or in terms of the service record or both, must be stated precisely and specifically. Further, whether expression “fit to continue in service” will also include the usefulness to continue. In other words, several categories of posts in various departments have been declared as diminishing cadres. Government wishes to eliminate those posts after superannuation of the individuals concerned. Whether this policy will be applicable on occupants of those posts also needs to be decided.

iv)It also needs to be decided at what time the retiral dues will be paid to the persons who will be “superannuated” at the age of 58 years, but extended/re-employed in service after that. On the face of it, after formal superannuation the employees can demand payment of retiral

benefits including leave-encashment, gratuity and commutation of pension. If such rights are granted to the "superannuated" person it will bring a heavy financial burden on the State Government because of double outgo on account of retiral benefits as well as salaries. Specific Rules may have to be framed for denying pensionary rights to such persons.

v) Whether Punishment & Appeal Rules will continue to apply on such persons after superannuation also needs to be examined.

vi) It is understood that the vacancies likely to arise in next few months have been included by various departments while sending requisitions to the various recruiting agencies. Policy guidelines may also have to be framed for revising those requisitions after implementation of the decision of the CMM.

Accordingly, AD is requested to formulate a detailed policy on this subject and propose amendment of the rules and policy/instructions wherever necessary before seeking concurrence of FD. The date of coming into force of this policy also should be decided keeping in view the time required for framing detailed policy for implementing decisions of the CMM.

*Sd/-
Special Secretary Finance,
for Additional Chief Secretary to Govt. Haryana,
Finance Department.*

To

*The Chief Secretary to Government, Haryana
(in GS-I Branch).*

U.O.No.5/10/2014-4FR/20352 Dated 22 August, 2014."

35. The issues raised by the Finance Department were pertinent as also relevant to the subject. However, without even addressing the same, the Council of Ministers took a decision in the meeting held on 25.8.2014 to enhance the age of retirement of Haryana Government employees from 58 years to 60 years. Towards implementation of such decision, the instructions dated 26.8.2014, Annexure P2, were issued.

36. The timing of such decision cannot be lost on this Court. The State Assembly Elections were around the corner. The Model Code of Conduct was on the verge of being imposed. The decision to enhance the age of retirement and that too in derogation of the relevant Rule can only be seen as an attempt to garner a particular vote bank. This Court would have no hesitation in holding that the action of the State Government in reversing the earlier decision of enhancing the age of retirement from 58 years to 60 years by terming the same to be "not honest" is well founded.

37. The judgments cited on behalf of the petitioners are distinguishable on facts. In **Sarv Mittar Sharma's** case (supra) towards implementation of an earlier order dated 24.4.1989 passed by the then Chief Justice, pay of the petitioner therein had been revised and such decision thereafter upon reconsideration had been recalled without affording any opportunity or notice. Such action by the successor in office had been held to be bad in

law. The issue was not as to whether the initial fixation of pay of Sarv Mittar Sharma was in violation of any statutory provision. In the present case, however, the earlier executive decision enhancing the age of superannuation from 58 years to 60 years has been noticed to be in direct conflict with Rule 3.26(a) of the Rules.

38. In **State of Karnataka and another v. All India Manufacturers Organization and others** (supra), directions issued by the High Court of Karnataka to the State to continue with the implementation of a project called the Bangalore-Mysore Infrastructure Corridor Project were upheld by the Apex Court. The High Court had directed that the project as originally conceived and upheld in an earlier judgment be implemented in “letter and spirit”. The Hon'ble Supreme Court while affirming the directions issued by the High Court had held that when one of the contracted parties is “State” within the meaning of Article 12 of the Constitution of India, it does not cease to enjoy the character of the State and if such Corporation has entered into a contract in discharge and performance of its statutory duty and the other party has acted upon it, the statutory Corporation cannot be allowed to act arbitrarily and to resile from its contractual obligations. Such judicial precedent would have no applicability to the controversy raised in the instant petition.

39. Likewise, in the case of **State of Haryana v. State of Punjab** (supra), the issue was in relation to the Satluj Yamuna Link Canal Project and the water distribution as also process of its supply to the sharing States. The Hon'ble Supreme Court had

observed that the State Governments having entered into agreements amongst themselves on the intervention of the Prime Minister of the country and resulting in the withdrawal of the pending suits in the Court cannot be permitted to take a stand contrary to the agreements arrived at between themselves. Against such backdrop, it was held that decisions taken at the governmental level should not be easily nullified by a change of Government and by some other political party assuming power. Such decision also does not benefit the cause of the petitioners.

40. In **K.Shyam Sunder and others** (supra), the Hon'ble Supreme Court while examining the issue of change of policy with the change of Government had held as follows:

“Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party has come into power. Political agenda of an individual or a political party should not be subversive of rule of law.”

Such dictum rather supports the impugned decision.

41. For the reasons recorded above, this Court does not find any infirmity in the decision of the State Government in reducing the age of retirement of the petitioners from 60 years to 58 years and thereby re-iterating the rule position as it exists in the Statute Book.

42. These petitions are found completely bereft of merit and are dismissed.

43. Petitions dismissed.

JANUARY 20, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: *Whether to be referred to Reporter? Yes/No*

***List of connected cases**

1. CWP No.24341 of 2014
Baljit Kaur and others V/s State of Haryana and another
2. CWP No.24386 of 2014
Amrit Pal Singh V/s State of Haryana and another
3. CWP No.24387 of 2014
Dr. Kamlesh Dhaka and others V/s State of Haryana and others
4. CWP No.24394 of 2014
Jasbir Kaur and others V/s State of Haryana and others
5. CWP No.24396 of 2014
SI Babu Lal and others V/s State of Haryana and another
6. CWP No.24430 of 2014
Mahavir Singh and others V/s State of Haryana and others
7. CWP No.24432 of 2014
Ram Phal and others V/s State of Haryana and others
8. CWP No.24435 of 2014
Satvir Singh Kadian V/s State of Haryana and others
9. CWP No.24441 of 2014
Mahender Kumar and another V/s State of Haryana and others
10. CWP No.24442 of 2014
Rajinder Kaur Bedi V/s State of Haryana and others
11. CWP No.24445 of 2014
Bhupender Singh V/s State of Haryana and others
12. CWP No.24453 of 2014
Parvin Kumar V/s State of Haryana and another

13. CWP No.24533 of 2014
Satish Kumar V/s State of Haryana and others
14. CWP No.24541 of 2014
Saroj Bala and another V/s State of Haryana and others
15. CWP No.24543 of 2014
Vijender Singh and another V/s State of Haryana and others
16. CWP No.24581 of 2014
Vinod Rani and others V/s State of Haryana and others
17. CWP No.24718 of 2014
Dr. Pradeep Kumar Makhija and others V/s State of Haryana
and another
18. CWP No.24827 of 2014
Chattar Singh Inspector V/s State of Haryana and others
19. CWP No.24835 of 2014
Amit Bhardwaj V/s State of Haryana and another
20. CWP No.24836 of 2014
Barham Parkash V/s State of Haryana and another
21. CWP No.24837 of 2014
Satyawar Sharma and another V/s State of Haryana and
others
22. CWP No.24972 of 2014
Ranbir Singh V/s State of Haryana and another
23. CWP No.25007 of 2014
Radhey Shyam and others V/s State of Haryana and others
24. CWP No.25028 of 2014
Tara Bhatti and another V/s State of Haryana and another
25. CWP No.25086 of 2014
Rameshwar Dass V/s State of Haryana and others
26. CWP No.25881 of 2014
Sunita Devi V/s State of Haryana and others
27. CWP No.25941 of 2014
Mary Gold Gupta V/s State of Haryana and another
28. CWP No.25955 of 2014
Leela Devi V/s State of Haryana and another
29. CWP No.26020 of 2014
Sudesh Bangarh and another V/s State of Haryana and
another

30. CWP No.26508 of 2014
Ram Chander V/s State of Haryana and others
31. CWP No.26577 of 2014
Darshna Ahlawat and others V/s State of Haryana and others
32. CWP No.26662 of 2014
Kamla Chaudhary and others V/s State of Haryana and
another