**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP No. 649 of 2001**

**Judgment reserved on 28-03-2016**

**Judgment delivered on 08-08-2016**

- Cement Corporation of India Officers and Supervisors Association & Another

**---- Petitioner**

**Versus**

- Cement Corporation of India Ltd. & Others

**---- Respondent**

---

| | |
|---|---|
| For Petitioners | Shri Ashish Shrivastava Advocate and Shri Animesh Verma, Advocate |
| For Respondents | Shri Vinod Deshmukh, Advocate |
| For Interveners | Shri Prateek Sinha, Advocate |

---

**Hon'ble Shri Justice Prashant Kumar Mishra**

**C A V Order**

1. The present petition under Article 226 of the Constitution of India has been preferred by the Cement Corporation of India Officers and Supervisors Association and the Cement and Khadan Karmachari Union (INTUC), Unit of Cement Corporation of India (for short 'the CCI'), Cement Factory at Mandhar, Raipur seeking issuance of writ of certiorari for quashing the circular dated 03.04.2001 together with the decision/amendment to reduce the age of retirement from 60 years to 58 years as also for quashing the circular dated 09.04.2001 issuing instructions in respect of application of

Voluntary Retirement Scheme (for short 'the VRS Scheme'). Petitioners have also prayed for a direction to restrain the respondents from retiring the officers and employees of CCI, Cement Factory, Mandhar, District Raipur pursuant to the circular dated 03.04.2001 and to allow them to continue their service till they attain the age of 60 years subject to decision on their application for voluntary retirement under the VRS Scheme, 2001.

2. The petitioners are the association and union of the officers and other employees working in the Cement Factory at Mandhar, Raipur owned by the CCI. They have called in question the decision of the respondents to reduce the age of retirement from 60 years to 58 years on the ground that the said decision is arbitrary and *mala fide*.

3. It is argued on behalf of the petitioners that in the year 1998 itself, a decision was taken to enhance the age of retirement from 58 years to 60 years in implementation of decision taken by the Central Government at that point of time. Without there being any substantial change in the financial condition of the respondent company and after introduction of the VRS Scheme, the impugned decision has been taken to deprive them of the benefit of VRS Scheme. At the time of impugned decision, VRS applications of many of the members of the petitioners' association were pending, therefore, the decision is *mala fide* and adverse to the interest of the members of the petitioners' association.

4. It is further argued that the decision has resulted in alteration in terms and conditions of service of employees to their disadvantage, which is not permissible in law. The further submission of the petitioners is that the respondents are estopped under the principle of promissory equitable estopple to resile from the benefit of VRS Scheme, because the financial assistance of Rs.60.00 crores has been granted to the CCI by including the liabilities, which it will incur at the time of allowing VRS to the employees of the CCI irrespective of their present age.

5. Per contra, learned counsel appearing for the respondents has argued that the petition suffers from non-joinder of necessary parties inasmuch as the Government of India has not been joined in the petition. Learned counsel for the respondents would defend the order impugned on submission that the CCI being under the administrative control of the Ministry of Heavy Industries & Public Enterprises, Department of Public Enterprises, Government of India, is bound to implement the Central Government's decision dated 09.05.2000 and the subsequent office memorandum dated 01.01.2001 (Annexures R-1 & R-2 respectively), therefore, in absence of challenge to these orders, the writ petition deserves to be dismissed at the threshold.

6. The writ petition as it was filed on 17.04.2001 has not made the Union of India as a party respondent. Return to the writ petition was filed by the respondents on 08.05.2001, yet the writ petition

was not amended for a period of about 15 years. The application (I.A.No.7) for amendment was filed to challenge the order dated 09.05.2000 and to implead the Union of India as a party respondent, however, the amendment application was rejected by this Court on 23.02.2015.

7. On 09.05.2000, the Central Government issued the office memorandum. The same reads as under:-

> <u>OFFICE MEMORANDUM</u>
>
> **Subject:- Age of retirement of employees of Public Sector Enterprises.**
>
> The undersigned is directed to refer to this Department's O.M. No. 18(6)/98-GM dated 19.5.1998 and No. 18/9/98-GM dated 21.8.1998 on the subject mentioned above and to say that there has been proposals for rolling back the age of retirement in the case of some sick/unviable PSUs for which rehabilitation/ revival packages are under consideration. The procedure to be followed in such cases was considered and it has now been decided that in such cases the Board of the concerned company should review its decision on the raising of the age of retirement and make suitable recommendations to the administrative Ministry/Department concerned for taking the approval of the Cabinet.
>
> All the administrative Ministries/ Departments are requested to follow the above procedure in case the age of retirement of employees of sick/unviable PSU for which rehabilitation/revival packages are under consideration, is to be rolled back to 58 years. The PSUs under their administrative control may also be apprised of this procedure.

8. By another office memorandum dated 01.01.2001, the Central Government decided that such proposals for roll back of the age of superannuation from 60 years to 58 years in Public Sector Enterprises covered under the DPE OM dated

09.05.2000, which are duly approved by their Board of Directors and also the Minister-in-Charge of the administrative Ministry need not be brought before the Cabinet.

9. By order dated 12.01.2001, the concerned department of the Central Government directed the CCI that the said Corporation is also seeking Government support for meeting their wage bills, the matter concerning reduction of age of superannuation be placed for consideration before the Board. The Board of Directors of the CCI, thereafter, decided vide Annexure R-4 to reduce the age of superannuation from 60 years to 58 years. It also decided to amend the rules and guidelines/instructions in this regard by declaring that they shall stand modified *mutatis mutandis* to this effect.

10. This resolution was passed by the Board of Directors of the CCI pursuant to the Central Government's direction dated 22.02.2001 authorizing it to make necessary amendment in the rules, regulations, standing orders etc. The CCI, thereafter, issued the impugned circular dated 03.04.2001 amending para 22 (i) of the CCI Recruitment, Promotion & Seniority Rules and para 17 of the guidelines/instructions regarding service matters of employees of CCI covered by Cement Wage Board, to reduce the age of superannuation from 60 years to 58 years as also to make it effective from immediate effect. It was also directed that the employees who have already attained/will attain the age of 58 years up to 30.04.2001 shall retire from the service of the Corporation at the close of working hours on

30.04.2001 and such employees whose date of birth falls on 01.05.2001 will also retire from the service of the Corporation at the close of working hours on 30.04.2001. In respect of the workmen covered under the Industrial Disputes Act, 1947, the decision was directed to come into force on expiry of notice period as per Section 9-A of the Industrial Disputes Act, 1947.

11. A close reading of the documents available in the record would undeniably reveal that the CCI is a Public Sector Enterprise owned and controlled by the Government of India through its Department of Public Enterprise, Ministry of Heavy Industries & Public Enterprises. It is bound to follow the directions/ administrative orders issued by the Central Government. It is also the admitted position that the Cement Factory at Mandhar, Unit of CCI has fallen sick and revival scheme was operative under the direction of the Central Government. While considering the proposal for rolling back the age of retirement of the employees in the sick/unviable Public Sector Undertakings for which rehabilitation/revival packages are under consideration, the Central Government decided that the officers and employees working in such PSUs shall retire at the age of 58 years instead of at the age of 60 years. The decision was taken at the highest level by the Government of India and nothing was left to the discretion of the sick/unviable PSUs like the CCI. There was no option for the CCI but to accept and implement the decision taken by the Central Government and the same has been precisely done by the CCI by the impugned order. It is not that the decision was taken with reference to any

VRS Scheme or to defeat the interest of a particular group of officer or employee of a particular PSU. The decision is to operate uniformly to all sick/unviable PSUs, therefore, such administrative decision having financial implications is not to be termed as arbitrary or *mala fide*.

12. The Supreme Court in **M.P. Vidyut Karamchari Sangh v. M.P. Electricity Board**[1], held thus :

> 43. The power of the Board, therefore, to lay down the conditions of service of its employees either in terms of regulation or otherwise would be subject only to any valid law to the contrary operating in the field. Agreement within the meaning of proviso appended to Standing Order 14-A is not a law and, thus, the Regulations made by the Board shall prevail thereover.
>
> 45. Alterations in the age of retirement by the employer is a matter of executive policy and for sufficient and cogent reasons, the same is permissible. [See K. Nagaraj v. State of A.P., Osmania University v. V.S. Muthurangam, N. Lakshmana Rao v. State of Karnataka and Chandra Singh v. State of Rajasthan].

13. In **K. Nagaraj and Others v. State of Andhra Pradesh and Another**[2] the Supreme Court has held that the decision concerning fixation of age of superannuation pertains to executive sphere and judicial review is available only when the same is arbitrary or unreasonable in the circumstances of the case.

14. In **State of Uttar Pradesh & Ors. v. Hirendra Pal Singh & Ors.**[3] the following has been held by the Supreme Court :

---

1 (2004) 9 SCC 755
2 (1985) 1 SCC 523
3 (2011) 5 SCC 305

> 12. In view of the above, it is evident that even in government services where the terms and conditions of service are governed by the statutory provisions, the legislature is competent to enhance or reduce the age of superannuation. In view of the above, it is beyond our imagination as to why such a course is not permissible for the appellant State while fixing the age of working of the District Government Advocates.

15. Thus, the law is well settled that ordinarily the writ Court would not interfere with the decision taken by the Government/ Executive to reduce or enhance the age of superannuation.

16. In the case in hand, the petitioners have not pointed out any such law, which would prevail upon the CCI service rules and guidelines/instructions regarding service matters of employees of the CCI covered by Cement Wage Board, which prescribes the age of superannuation to be 60 years. In absence of any such statutory law being available to assist the petitioners to seek the relief prayed for, this Court is not entitled to interfere in such matters, which is in the domain of executive policy and the decision having been arrived at by assigning germane and cogent reasons. The impugned order, thus, neither suffers from *mala fide* or arbitrary exercise of power nor it can be said to be without authority of law.

17. As a sequel, the writ petition, *sans substratum*, is liable to be and is hereby dismissed. No orders as to costs.

Sd/- Judge

Prashant Kumar Mishra

Gowri