THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.33290 OF 2010; 8447, 8451, 13214 & 15713 OF 2011

COMMON ORDER:

The petitioners were working as Charge Hand, Junior Charge Hand, Stripper, Senior Stripper, Operative – I, Operative – II, Assistant Foreman, Senior Instrument Mechanic, A.F.M. (Electrical) and Senior Material Issuer. They were informed by the notice impugned in these Writ petitions that they would be attaining the age of superannuation i.e., 58 years and they would be retired from service. These notices are challenged on the ground that a decision was taken to enhance the age of retirement to 60 years and if the same is applied, the petitioners are entitled to continue in service till they attain the age of 60 years.

2. Heard learned counsel for the petitioners and learned Standing Counsel for the respondent - Organization.

3. It is not in dispute that the age of retirement for the posts held by the petitioners is prescribed as 58 years, as per the service conditions of the respondent - Organization. The claim of the petitioners to continue in service beyond the age of 58 years and upto 60 years, is based on the office memorandum issued by the Government of India on 20.04.2007. According to this office memorandum, the Government authorised the Central Public Sector Enterprises to enhance the age of retirement from 58 years to 60 years subject to fulfilment of conditions mentioned in paragraph No.2 thereof. To that extent, the relevant conditions read as under:

"(a) The CPSE concerned should as per its audited annual accounts have made net profits for the last 3 years continuously and should have a positive net worth during the last three years.

(b) The CPSE has not availed any budgetary support during the last 3 years and no budgetary support will be availed by the CPSE in future.

(c) The proposals are approved by the Board of Directors of the CPSE concerned and have the concurrency of Financial Advisor of the concerned administrative Ministry/Department."

4. It is fairly submitted by learned Standing Counsel for the respondent - Organization that no such decision was taken in terms of the said office memorandum for enhancing the age. The petitioners are also not clear as to whether those conditions are fulfilled.

5. Learned counsel for the petitioners would submit that the respondent - Organization was making profits and therefore in terms of the decision of the Government of India, the age of retirement is 60 years. Learned counsel further submits that the employees similarly situated to petitioners approached Jodhpur Bench of Rajasthan High Court.

6. Learned Standing Counsel for the respondent – Organization, on instructions, submits that the Jodhpur Bench of Rajasthan High Court has dismissed similar claim.

7. Be that as it may, it is not in dispute that the age of retirement as prescribed in the service conditions governing the petitioners' is 58 years and the same is not enhanced to 60 years. It is also not in dispute that the office memorandum relied upon by the petitioners is dated 20.04.2007 that was much

earlier to the date on which the petitioners attained the age of superannuation. When the service conditions prescribe 58 years as the age of retirement and when the same is not enhanced, the Court cannot compel the employer to continue the petitioners' in service on the assumption that the Organization was making profits and therefore, in terms of the Government Orders, the age of retirement ought to have been increased to 60 years. The Government Orders only enable the concerned company to enhance the age limit. It is the discretion of the employer to prescribe appropriate age of retirement and Court cannot give a direction to continue a person in service, contrary to the age prescribed in the service conditions. It cannot be said that the proceedings through which the petitioners were informed that they were attaining the age of superannuation i.e., 58 years cannot be said as illegal or would amount to arbitrary exercise of power.

8. Learned Standing Counsel would submit that subsequently the Government has disinvested its share to a great extent in the respondent - Organization and it is no more exclusive Public Sector Enterprise. Therefore, even the earlier guidelines of Government Orders may not be relevant. Hence, I do not see any merit in the contention of the learned counsel for the petitioners.

9. The Writ Petitions are accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, filed in these Writ Petitions shall stand closed.

P. NAVEEN RAO, J

Date:19.09.2016

KH