

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.8415 OF 2003

ORDER:

Heard Mr.P.Sudheer for petitioner and Sri R.S.Murthy for respondents.

The petitioner prays for Mandamus to strike down Memorandum No.CCS/14/Retirement/2003 dated 05.03.2003 issued by 2nd respondent, as illegal, unjust and unconstitutional and also prays for a direction to respondents to continue the service of petitioner from 31.05.2003 till he attains 60 years.

The admitted circumstances are adverted before considering the grievance of petitioner or writ prayer which is in a small sphere.

On 28.04.1972, the petitioner joined as Junior Clerk in South Central Railway Employees Cooperative Credit Society Limited/ 2nd respondent. The 2nd respondent was registered as a society under the A.P. Cooperative Societies Act, 1963. The 2nd respondent Society consists of employees of railways as its members. The service conditions were formulated in the year 1982. According to the service conditions, the age of superannuation of the staff of 2nd respondent Society will be on par with Railway Rules. It is alleged that the V Pay Commission raised the retirement age of the central government employees, including railways, from 58 to 60 years. The age of superannuation from 58 to 60 years is effective from 14.05.1998. According to petitioner, the 2nd respondent-Society instead of raising the age from 58 years to 60 years passed a resolution and communicated to 1st respondent on 26.10.1998 to

retain the age of superannuation as 58 years. The objection against the resolution is two fold, firstly that the resolution was passed without consulting the union and secondly even assuming a relevant byelaw is sought to be replaced, the byelaw is not approved by the 1st respondent. Therefore, it is contended that the age of retirement is covered by service condition No.17 of the 2nd respondent Society which reads as follows:

“Age of retirement:

Retirement age is as per Railway Rules as amended from time to time”

Therefore, as the amendment recommended through letter dated 26.10.1998 is not accepted by the competent authority, the age of superannuation is determinative in accordance with Railway Establishment Code. It is not disputed that the age of superannuation is 60 years in Railways and Chapter VIII deals with retirement and reads thus:

01. (F.R. 56).—(a) Except as otherwise provided in this Rule, or any other Rule or order for the time being in force, every Railway servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Railway servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

* Provided further that a Government servant who has attained the age of fifty eight years on or before the first day of May, 1998 and is on extension in service, shall retire from service on expiry of his extended period of service.

It is further alleged that as on the date of issuing memo dated 05.03.2013, the service condition governing the age of retirement of petitioner stipulates that the retirement age is as per Railway Rules as amended from time to time and the Railway Establishment Code has prescribed the age of retirement as 60 years. Hence, the memo impugned in the writ petition retiring the petitioner from service on attaining the age of 58 years is illegal, arbitrary and unconstitutional.

Mr. Sudheer referred to the order in W.P.No.1807 of 2010 and batch dated 04.07.2011 and as modified by order dated 01.11.2011 in W.A.No.559 of 2011 and further submitted that the employees who are working in 2nd respondent Society moved the competent authority and finally it was declared that the action of respondent No.2 in retiring employees at the age of 58 years is illegal. The petitioner places on record the orders of Assistant Commissioner of Labour, Circle-II, Hyderabad dated 01.06.2013, SE Case No.2 of 2012 etc., on the very same point and that directing petitioner to avail alternate remedy at this stage does not meet the ends of justice. There is no representation for 2nd respondent or counter available in the file.

Mr. R. S. Murthy does not dispute the circumstances referred to above but opposes the writ prayer by relying upon UNION OF INDIA (RAILWAY BOARD) AND OTHERS v. J. V. SUBBAIAH AND OTHERS¹. Mr. Sudheer submits that the decision relied upon by Mr. R. S. Murthy has no application to the fact situation of this case, for the

¹ AIR 1996 SC 2890

employees of stores filed OA before the Central Administrative Tribunal, Hyderabad Bench seeking declaration that they are regular railway employees in Class III post, and are to be paid regular salary for continuous service from the day of respective appointments in the Society, consequential promotion, increments, payment of arrears of salary etc., on par with Railway Employees. It is in this background that the ratio of the Apex Court is to the effect that the employees working in the Society are not entitled, as a matter of course, the privileges and conditions of railway employees governed by the Code. He further contends that the petitioner is not claiming any benefits under the employment code or praying for a declaration that he is employee of railways, but submits that when the age of retirement of employees in Railways is 60 years, the petitioner should have been continued up to 60 years. This Court is of the view that the decision relied upon has no application to the fact in issue in this case or the comparative reliance placed by petitioner on the service conditions in vogue in Railways.

I have perused the material available on record and also taken note of the submissions. The petitioner is an employee of 2nd respondent Society. The 2nd respondent Society has Service Conditions and No.17 filed as additional material papers deals with age of retirement and stipulates that the age of superannuation is as per Railway Rules as amended from time to time. The petitioner relies upon the Rule in vogue in railways and contends that his age of retirement shall be 60 years, but not 58 years. There is no dispute

about the scheme referred to above. The basis for retiring petitioner is the communication dated 26.10.1998 proposing to amend the service condition and, therefore, in view of the proposal for amendment, Condition No.17 has no application. The case of petitioner is that amendment to a condition by the Society by itself cannot be treated as binding byelaw, for the byelaws should be registered by the 1st respondent. In the case on hand, the amended byelaw is not registered and not a binding service condition. Therefore, the age of superannuation is 60 years, but not 58 years.

After perusing the material available on record and as this Court is not in agreement with the limited submissions of Mr.RSMurthy, this Court is of the view that retiring the petitioner on attaining the age of 58 years is illegal, arbitrary and unconstitutional. Further, employees similarly situated are already held by the Assistant Commissioner of Labour, Circle-II, Hyderabad to retire on attaining 60 years.

The 2nd respondent issued the impugned memo retiring the petitioner w.e.f., 31.05.2003 on the ground that the petitioner was completing 58 years. The presumption is the memo is issued having regard to the applicable service condition. Therefore, the burden is on 2nd respondent to satisfactorily establish that the memo impugned in the writ petition is issued in consonance with the extant service conditions. In the case on hand, the 2nd respondent failed to discharge the burden, for the letter on which the 2nd respondent relies upon cannot be treated as an amendment

either to byelaw or service condition altering the age of superannuation. Further, the age of superannuation is 60 years in Railways. By applying the Rule viz., retirement age is as per Railway Rules as amended from time to time, I am satisfied the impugned memo is illegal and unconstitutional. Hence, memorandum to the extent retiring the petitioner from service w.e.f., 31.05.2003 is set aside and this Court further holds that the petitioner is entitled to be continued up to 60 years. Since the petitioner had already retired from service, it is held that the 2nd respondent pays salary etc., to petitioner for denying two years of service as per service condition.

The writ petition is, accordingly, ordered as indicated above. There shall be no order as costs.

Consequently, pending miscellaneous petitions, if any, stand closed.



S.V.BHATT, J

19th April, 2017

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