

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

* HONOURABLE SRI JUSTICE M. GANGA RAO

+ WRIT APPEAL No.1425 of 2016

And

+ W.A.M.P.No.2659 of 2017

% Date:28-12-2017

BETWEEN:

1. Lankapalli Chinna Reddappanaidu, S/o. L. Ramachandra Naidu, Occ:D.G.M. (Rtd), APCOB, R/o. 12-11-298, Warasiguda, Secunderabad, and others.
2. Morasa Chenchaiyah, S/o. M. Veeraraghavaiah, Occ: D.G.M. (Rtd), APCOB, R/o.4-1-62/1, Hanumantekdi, Troop Bazar, Hyderabad.
3. Buddiga Venkata Siva Sankaram, S/o. B. Jagannadham, Occ: A.G.M. (Rtd), APCOB, R/o.10-6-38/1, Brindavan Colony, Saroor Nagar, Hyderabad.
4. Pothana Vijay Kumar, S/o. P. Venkat Rao, Occ: A.G.M. (Rtd), APCOB, R/o. Flat No.103, Sri Sai Srujana Apartments, Mehedipatnam, Hyderabad.
5. Nimmagadda Ratna Kumari, W/o. K. Nageswara Rao, Occ: A.G.M. (Rtd), APCOB, r/o. Plot No.256, OU Colony, Shaikpet, Hyderabad – 8.
6. Kanuparti Krishna Kumar, S/o. Srihari Rao, Occ: A.G.M. (Rtd), APCOB, R/o. Flat B-202, Matrusri Apartments, Hyderaguda, Hyderabad – 29.
7. Chintaluri Samba Siva Rao, S/o. Ch. Hanumantha Rao, Occ: General Manger (Rtd.), APCOB, R/o. Flat A-401, Matrusri Apartments, Hyderabad, Hyderabad – 29.
8. A. Jaya Rama Reddy, S/o. A. Krishna reddy, Occ: A.G.M. (Rtd), APCOB, R/o. Flat No.4-A, Srinidhi Grand, Kavoori Hills Phase-1 Guttalabegumpet, Hyderabad – 500 081.
9. P. Srinivas, S/o. B. Late P. Sudarshanam, Occ: Sr. Manager (Rtd), APCOB, R/o. Plot No.32, Door No.129, R.K. Puram, Secunderabad – 500 006.
10. A. Hema Sunder, S/o. Late A. Kameswar Rao, Occ: A.G.M. (Rtd), APCOB, R/o. Plot -201, KR Residency, Manikonda, Hyderabad – 500089.

... Appellants

Vs.

1. State of A.P. rep. by its Special Chief Secretary, (Agriculture & Co-operation), A.P. Secretariat, Velagapudi, Guntur District, Andhra Pradesh.
2. Special Commissioner & Registrar of Co-operative Societies, Government of Andhra Pradesh, Skylark Complex, Shyamala Nagar, Guntur -2 A.P.
3. Andhra Pradesh State Cooperative Bank Limited., (APCOB), rep. by its Managing Director, D.No.27-29-28, NTR Sahakara Bhavan, Governorpet, Vijayawada – 5200 002, A.P.
4. National Bank for Agriculture and Rural Development (NABARD), rep. by its Managing Director, 2nd Floor, 'D' Wing C-24, 'G' Block, Bandra Kurla Complex Bandra (East), Mumbai – 400 051.

... Respondents

!Counsel for Appellants : Mr. K.V. Simhadri

^ Counsel for Respondent No.1 : G.P. for Services (A.P)

^ Counsel for respondent No.2 : Mr. V. Kishore S.C for APSCBL

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? Cases referred



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO

WRIT APPEAL No.1425 of 2016

And

W.A.M.P.No.2659 of 2017

JUDGMENT: (Per VRS,J)

Persons, who were employed in the managerial cadre of the Andhra Pradesh State Cooperative Bank Limited (the 3rd respondent herein), filed a writ petition in W.P.No.28014 of 2016, challenging a resolution of the Board of Directors of the Cooperative Bank dated 26.07.2016, by which the management of the Bank took a policy decision to retain the age of superannuation of the employees, other than subordinate staff, at 58 years. They also sought a declaration that they are entitled to continue up to the age of 60 years on par with similarly placed employees of all Public Sector Banks and other Financial institutions as well as the employees of the State Government of Andhra Pradesh. The writ petition was dismissed by the learned Judge, at the stage of admission, forcing the employees to come up with the above writ appeal.

2. Heard Mr. K. V. Simhadri, learned counsel for the petitioners, the learned Government pleader for Services (A.P) and Mr. V. Kishore, learned Standing Counsel for the Andhra Pradesh State Cooperative Bank.

3. The A.P. State Cooperative Bank Limited, was established by an Act of the State Legislature under the A.P. State Cooperative Bank (Formation) Act, 1963, by amalgamating two banks, viz., Andhra Pradesh State Cooperative Bank, Vijayawada and Hyderabad Cooperative Apex Bank Limited, Hyderabad. After the advent of the A.P. Cooperative Societies Act, 1964, the Bank is deemed to be a society registered under

this Act as a Financing Bank and the provisions of the Banking Regulation Act, 1949 and the Banking Laws (Application to Cooperative Societies) Act, 1965, are applicable.

4. Upon the bifurcation of the composite State of Andhra Pradesh, w.e.f. 02.06.2014 under the Andhra Pradesh Re-organisation Act, 2014, the State of Andhra Pradesh issued Act No.4 of 2014, amending the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984. Though the said Act No.4 of 2014 received the assent of the Governor on 27.06.2014 and it was published in the Government Gazette on 27.06.2014, the Act was given effect from 02.06.2014, the date of bifurcation.

5. Under Section 2 of Amending Act No.4 of 2014, Section 3(1) of the 1984 Act was substituted with a new provision providing that the age of retirement of every Government employee will be 60 years.

6. The moment the State Government enhanced the age of superannuation of the Andhra Pradesh State Government employees from 58 to 60 years, the employees of Public Sector Undertakings started making a demand. In fact, the Board of Directors of the 3rd respondent-Bank also made an attempt, in its meeting held on 28.06.2014, to consider the enhancement of the age of superannuation. But the same was dropped purportedly on the basis of Rule 28(6) of the A.P. Cooperative Societies Rules, 1964, which stipulates that notwithstanding anything contained in the Bye-laws/service regulations of the cooperative societies, every paid servant and officer other than those in the last grade service shall retire on attaining the age of 58 years. Therefore, the Board, in its meeting on 28.06.2014 dropped the proposal to enhance the age,

on the ground that so long as Rule 28(6) read with Rule 28 (4) (c) was in force, it was not possible for the Board to take a decision.

7. It appears that steps were taken thereafter by the Registrar of Cooperative Societies to have the Rules amended. But the proposal to amend the Rule was turned down, on the short ground that Section 115-D (2) (iv) gave autonomy to cooperative societies in the matter of Personnel Policy, Staffing etc.

8. Therefore, the State directed the Registrar of Societies, by a Memo dated 23.05.2015 to take action in accordance with law.

9. In the meantime, de-merger of the erstwhile Andhra Pradesh State Cooperative Bank took place on account of the bifurcation of the State and a new Cooperative Bank known as Telangana State Cooperative Apex Bank Limited was formed w.e.f 02.04.2015. The A.P. State Cooperative Bank was declared by G.O.Ms.No.11, dated 07.04.2015 to be a continuing bank.

10. Thereafter, the appellants 1 to 7 herein filed a writ petition in W.P.No.21156 of 2016 seeking enhancement of the age of retirement. Along with the writ petition, they also filed a miscellaneous petition in W.P.M.P.No.25938 of 2016 for a direction to the Cooperative Bank to continue the services of the writ petitioners, pending disposal of the writ petition.

11. On 29.06.2016, a learned Single Judge of this Court passed an interim order directing the respondents to take a decision with regard to the age of superannuation, after taking into account Section 115-D (2) (iv) and various Memos issued by the Government from time to time. The learned Judge also directed that the persons who were in service, either

by virtue of interim orders or otherwise, be allowed to continue till 31.07.2016, pending a decision by the respective organisations.

12. Pursuant to the said interim order, the Board of Directors of the 3rd respondent-Bank passed a resolution on 26.07.2016 retaining the age of retirement of all employees, other than subordinate staff, at 58 years. The resolution stated that it was passed after considering the financial implications and other factors.

13. Aggrieved by the said resolution, the appellants filed the writ petition W.P.No.28014 of 2016. The reliefs prayed in the writ petition, in simple terms, were as follows:

- a. to declare the action of the Bank in relieving the petitioners from service on 30.07.2016 as illegal;
- b. to set aside the Board Resolution dated 26.07.2016;
- c. to allow the employees to continue up to 60 years on par with similarly placed employees of all Public Sector Banks, all other Financial Institutions, majority of the State Cooperative Banks in the country and the District Cooperative Central Banks.
- d. to declare Rule 28(6) of the A.P. Cooperative Societies Rules, 1964 and Clause 17 (a) of the A.P. State Cooperative Bank Staff Service Regulations, as inapplicable in the light of Section 115-D (2)(iv) and (24) of the A.P. Cooperative Societies Act, 1964; and
- e. to reinstate all the appellants into service and continue them till they attain the age of 60 years.

14. The appellants also made one other prayer, viz., to direct the 3rd respondent-Bank to extend the benefit of enhancement of the age of superannuation to 60 years, in the event of a decision being taken in respect of other employees at some point of time.

15. The learned Judge before whom the writ petition came up for hearing, relied upon the decision of the Supreme Court in *Centre for Public Interest Litigation v. Union of India*¹, and came to the conclusion that fixation of the age of retirement is a policy decision, which cannot be interfered with, unless it was found to be arbitrary, *mala fide* or violative of statutory provisions or based upon irrelevant considerations. In other words, the learned Judge refused to entertain the writ petition on the sole ground that the impugned Board Resolution was in the realm of a policy decision with which no inference was warranted.

16. Aggrieved by the said order of the learned Judge, the appellants came up with the above writ appeal and claimed that the 3rd respondent-Bank was taking steps, after the dismissal of the writ petition, to increase the age of superannuation in respect of a few employees. Therefore, the above writ appeal was admitted on 26.12.2016. However the prayer of the appellants to grant interim relief, so as to enable them to continue in service, was rejected by this Court. But it was also recorded in the order passed in the miscellaneous petition that if the Bank decided to consider the cases of a few individuals for continuance beyond the age of 58 years, it was open to the appellants to come up with a fresh miscellaneous application.

17. Taking advantage of the liberty so granted in the order passed on 26.12.2016 while dismissing the prayer for interim reliefs, the appellants came up with a miscellaneous petition in W.A.M.P.2659 of 2017, placing on record the developments that had taken place subsequent to the dismissal of the writ petition and also seeking implementation of two orders passed by the State Government in favour

¹ (2016) 6 SCC 408

of the employees of other Public Sector Undertakings. Strictly speaking what is prayed for in W.A.M.P.No.2659 of 2017 is not an interim or ancillary relief, arising out of the main relief sought in the writ appeal. In fact, the developments that took place after the disposal of a case, would normally constitute a fresh cause of action for a new case and will not certainly make the order passed by the learned Single Judge erroneous.

18. To put it differently, the prayer in the miscellaneous petition is not incidental or ancillary to the prayer in the main writ appeal or even in the writ petition out of which the writ appeal arises. Even the cause of action for the miscellaneous petition arose long after the disposal of the writ petition. But if we adopt the shortcut method of disposing of the writ appeal on that score, there will only be one more round of litigation. Therefore, in order to avoid further litigation on this aspect, and to have finality to the litigation, we have treated the prayer made in W.A.M.P. No.2659 of 2017 as if it is the prayer in the main writ petition. In fact, Mr. K. V. Simhadri, learned counsel for the appellant submitted that the alternative prayer made in the writ petition encompasses the prayer now made in the miscellaneous petition on the basis of subsequent developments.

19. The developments that have taken place subsequent to the dismissal of the writ petition filed by the appellants are :

(1) The Government of Andhra Pradesh issued G.O.Ms.No.112, Finance, dated 18.06.2016 holding that the enhancement of the age of retirement under the Amending Act No.4 of 2014 was not applicable to the employees of Public Sector Undertakings and Institutions listed in Schedules IX and X of the A.P. Reorganisation Act, 2014, until the division of assets between the two States was finalized. But this Government

Order was set aside by a Bench of this court in W.P.No.18205 of 2014 dated 07.03.2017 and certain directions were issued to the Government to consider the amendment to Bye-laws/Rules and Regulations of those Public Sector Undertakings, if they make requests for enhancement of the age of superannuation, on the basis of their financial position, genuineness of need, etc.

(2) However, a few employees went before the Supreme Court and the Special Leave Petitions are now pending.

(3) Thereafter, the Government of Andhra Pradesh issued an order in G.O.Ms.No.102, Finance, Dated 27.06.2017. By this order, the Government accorded in-principle approval for the enhancement of the age of superannuation of employees working in the institutions listed in Schedules IX and X of the A.P. Reorganisation Act, 2014, subject to certain conditions. These conditions were (1) the decision to enhancing the age of retirement should be taken by the Board of Directors /Managing Committees of the respective legal entities; (2) before taking the decision, the institutions should take into consideration the financial position and genuineness of the need to enhance the age of superannuation; and (3) in the case of residential educational societies, the decision should be based on the genuineness of the institutions' needs and the assessment of performance of the societies.

(4) Paragrah-5 of G.O.Ms.No.102 dated 27.06.2017 made it clear that the said order would come into force prospectively from the date of issue of the orders by competent authorities after amending the relevant Regulations/Bye-laws.

(5) Thereafter the Supreme Court passed an order on 31.07.2017, calling upon the Government to explain why the benefit of the order

passed on 05.05.2017 was extended on a selective basis. Therefore the Government pressed the panic button and issued G.O.Ms.No.138, dated 08.08.2017, amending para-5 of G.O.Ms.No.102, dated 27.06.2017 and directing that the order in G.O.Ms.No.102 will come into force w.e.f. 02.06.2014 and that the Companies/Corporations/Societies shall amend their relevant Regulations/Bye-laws accordingly.

(6) The Government Order, G.O.Ms.No.138, dated 08.08.2017 went one step further by directing that the employees of the institutions included in Schedules IX and X of the A.P. Reorganisation Act shall not be superannuated on attaining the age of 58 years and that if an employee had been superannuated, he shall be reinstated and continued up to 60 years.

(7) Based upon G.O.Ms.No.138, dated 08.08.2017 all the Special Leave Petitions were closed by the Supreme Court as nothing further survived for adjudication.

(8) In the mean time, the Board of Directors of the 3rd respondent-Bank passed a resolution on 03-07-2017 amending Regulation 17(a) to the following effect:

“Every employee other than subordinate staff shall retire from service on the last day of the month in which he/she attains the age of 60 years (w.e.f. 30.06.2017).
Subordinate staff shall retire from service on the last day of the month in which he/she attains the age of 62 years (w.e.f. 30.06.2017).”

20. On the basis of the above mentioned subsequent events that have taken place after the dismissal of the writ petition, the appellants contend that the employees, who were sent out upon attaining the age of 58 years, during the period from 30.07.2016 and 29.06.2017, have come to suffer hostile discrimination and that the management deliberately

prolonged the issue of taking a decision up to 03.07.2017, so as to ease out one group of employees like them.

21. Apart from pitching their the claim on Article 14, Mr. K.V. Simhadri, learned counsel appearing for the appellants, raised the following contentions:

1) When a proposal to enhance the age of superannuation was put up at the earliest point of time on 28.06.2014, the Board refused to accept it on the basis of Rule 28 (4) (c) read with Rule 28 (6) of the A.P. Cooperative Societies Rules, 1964. But they have now taken a decision to enhance the age of superannuation, without amending the Rules, showing thereby that the Rules never posed a legal impediment, but were used only as ruse;

2) The 3rd respondent-Bank which originally claimed total autonomy in terms of Section 115-D (2) (iv) of the Act, has chosen now to follow the Government Orders in G.O.Ms.No.102, dated 27.06.2017 and G.O.Ms. No.138, dated 08.08.2017, demonstrating thereby that the defence of autonomy was a bogey. A Division Bench of this Court has already concluded in a decision in W.A.No.1291 of 2017 dated 07.09.2017 that there was no absolute autonomy;

3) The agenda placed before the Board of Directors of the Bank shows that a decision had already been arrived at by the Managing Director and the Board was made a fait accompli.

4) Upon the bifurcation of the State, the A.P. State Cooperative Bank came under the jurisdiction of the Central Registrar in terms of Section 103 of the Multi State Cooperative Societies Act, 2002 and hence the directions of the Government, as contained in G.O.Ms.No.138, dated 08.08.2017, were binding upon the 3rd respondent-Bank, despite the fact

that the 3rd respondent-Bank was not one of the institutions listed in Schedules IX and X of the A.P. Reorganisation Act, 2014;

5) The refusal of the 3rd respondent-Bank to extend the benefit of G.O.Ms.No.138, dated 08.08.2017 to the employees of the 3rd respondent-Bank was arbitrary and illegal.

22. We have carefully considered the above submissions.

Contention 1

23. The first contention of the learned counsel for the appellants is that when a proposal was put up at the earliest point of time on 28-6-2014, the Board of Directors of the third respondent refused to accept it on the basis of Rule 28(4)(c) read with Rule 28(6) of the Andhra Pradesh Cooperative Societies Rules, 1964. But now they have taken a decision to increase the age of superannuation of the sub-staff beyond what is provided in Rule 26(6), in violation of Rule 28(4)(c).

24. We do not know where the aforesaid contention will take the appellants to. If the decision now made, to enhance the age of superannuation, is in violation of Rule 28(4)(c) and 28(6), then it is no ground to ask the management of the Bank as to why they should not extend the same benefit of violation of the rule in favour of the appellants.

25. The Andhra Pradesh Cooperative Societies Rules, 1964 were issued in exercise of the power conferred by Section 130(1) of the Andhra Pradesh Cooperative Societies Act, 1964. Rule 28 of these Rules deals with officers and servants of Societies. Sub-rule (4) of Rule 28 obliges every Society to frame and submit to the Registrar, within 45 days of registration, its staff pattern that should include the Service Rules, qualifications, method of appointments etc. Clause (c) of sub-rule (4) of

Rule 28 stipulates that a Society in receipt of State aid shall not frame any rules relating to age of retirement, leave rules, leave travel concession and rules relating to loans to employees which shall be in excess of the subsisting rules of Government concerning these matters. Rule 28(4)(c) reads as follows:

“A Society in receipt of State aid shall not frame any rules relating to age of retirement, leave rules, leave travel concession and rules relating to loans to employees which shall be in excess of the subsisting rules of Government concerning these matters.”

26. Sub-rule (6) of Rule 28 makes it clear that notwithstanding anything contained in any Bye-law of a Cooperative Society, every paid servant other than those in the last grade, shall retire on the After Noon of the last day of the month on which he attains the age of 58 years. Sub-rule (6) of Rule 28 reads as follows:

“Notwithstanding anything contained in the Bye-laws/ special bye-laws service regulations or common cadre regulations of the co-operative societies every paid servant and officer of the society other than those in the last grade service shall retire from service on the After Noon of the last date of the month on which he attains the age of 58 years.

The last grade servant of the society shall retire from the service on the afternoon of the last date of the month on which he attains the age of 60 years;

27. Today, it is possible to contend on the basis of Rule 28(6) that the resolution of the Board dated 03-7-2017 enhancing the age of superannuation of sub-staff to 62 years and others to 60 years is contrary to Rule 28(6). But two consequences would follow out of said conclusion. One is that the appellants cannot claim the benefit of an act done by the management in violation of the rules. The second is that in any case, we are not dealing with a challenge to the resolution of the Board dated

03-7-2017, so as to set it aside for violation of Rule 28(6). Therefore, the first contention is liable to be rejected.

Contention 2

28. The second contention is about the original claim of the Bank about their financial autonomy in terms of Section 115-D(2)(iv) of the A.P. Cooperative Societies Act, 1964 and their turn around later, to follow the Government Orders G.O.Ms.No.102, dated 27-6-2017 and G.O.Ms.No.138, dated 08-8-2017. According to the learned counsel for the appellants, the question as to whether the Society has total autonomy or not is already concluded by a decision of the Division Bench of this Court in Writ Appeal No.1291 of 2017, dated 07-9-2017. In the said decision, the Division Bench of this Court held that the autonomy granted to Cooperative Credit Societies, is not unfettered or absolute but is circumscribed by twin limitations viz., (a) the autonomy is limited to five areas mentioned in Section 115-D(2) and (b) even in these five areas the autonomy is subject to the guidelines issued by RBI and NABARD.

29. We do not know how the aforesaid decision will be of any assistance to the appellants herein. Even according to the appellants, a proposal was made way back on 24-6-2014 for the enhancement of the age of superannuation. But the proposal was dropped, after the Government took a stand that there was autonomy. Today, the Board of Directors of the Bank did not take a decision, purely on the basis of G.O.Ms.No.102. This G.O.Ms.No.102 is *per se* applicable only to the institutions listed in Schedules IX and X of the Andhra Pradesh Reorganisation Act, 2014.

30. The second contention of the learned counsel for the appellants would hold good only if the Government had issued a direction to the

Cooperative Bank and the Bank resisted the same, on the ground that they have autonomy. The Government never issued any direction to the third respondent Society. The Board merely took note of the Government Order, as one of the several factors to come to a decision on 03-7-2017 as to whether they should enhance the age of superannuation or not. Therefore, no conflict has arisen in this case between a decision of the Cooperative Bank and a direction of the Government, to enable the appellants to contend that there was or there was no autonomy. Hence, the second contention is also rejected.

Contention 3

31. The third contention of the learned counsel for the appellants is that the agenda placed before the Board of Directors shows that a decision had already been arrived at by the Managing Director and the Board had been made a fait accompli.

32. We have seen the agenda as well as the agenda note placed before the Board. All that the agenda note says is that the Managing Director and Chief General Manager of the Bank held discussions with the President as well as the stake holders i.e., the staff union on 23-6-2017 and that a consensus was arrived at in the matter of enhancement of the age of superannuation. This does not tantamount to a unilateral decision taken by the Managing Director and thrust upon the Board. Hence, the third contention is rejected.

Contention 4

33. The fourth contention of the learned counsel for the appellants is that after the bifurcation of the State, the third respondent Bank came under the jurisdiction of the Central Registrar in terms of Section 103 of the Multi-State Cooperative Societies Act, 2002 and that therefore the

directions issued by the Government in G.O.Ms.No.138 are to be implemented, irrespective of whether the third respondent Bank was an institution included in Schedules IX and X of the A.P. Reorganisation Act, 2014 or not.

34. But we do not think that Section 103 of the Multi-State Cooperative Societies Act, 2002 has any relevance to the issue on hand. Section 103 provides for a deeming fiction whereby a Cooperative Society registered in one State, would be deemed to be a Multi-State Cooperative Society, whenever the State in which it is registered, is reorganised into more than one State. Sub-section (1) of Section 103 makes it clear that despite the Society becoming a Multi-State Cooperative Society, the bye-laws of such Society would continue to be in force, to the extent they are not inconsistent with the provisions of the Act. Nothing more can be read into Section 103 of the Multi-State Cooperative Societies Act, 2002.

35. As a matter of fact, the deeming fiction came into operation with the issue of a Certificate of Registration on 14-8-2014 under the Multi-State Cooperative Societies Act, 2002. Thereafter, two separate Cooperative Banks, one for Telangana and another for Andhra Pradesh were formed, by virtue of a scheme of reorganisation/reconstitution, on the basis of a report submitted by NABARD Consultancy Services Limited. After the formation of two separate Cooperative Banks, the Central Registrar issued a Notification on 12-3-2015, cancelling the registration granted under the Multi-State Cooperative Societies Act, 2002 with effect from 02-4-2005.

36. Neither the Multi-State Cooperative Societies Act, 2002 nor the Notifications of the Central Registrar have any bearing upon the claim of the appellants to have their age of superannuation enhanced to 60 years.

The contention of the learned counsel for the appellants that in view of the bifurcation, the directions of the Government are to be followed by the Cooperative Bank, is without any basis. The Government never issued a direction to the third respondent Bank to increase the age of superannuation. The Government Order enhancing the age of superannuation in respect of employees of Public Sector Undertakings, is not a direction to the Cooperative Bank. Therefore, there is no question of the Bank refusing to follow any directions of the Government. Hence, the fourth contention is also rejected.

Contention 5

37. The fifth contention of the learned counsel for the appellants is that the refusal of the third respondent Bank to extend the benefit of G.O.Ms.No.138, dated 08-8-2017, to the employees of the Bank is arbitrary and illegal.

38. According to the learned counsel for the appellants, the third respondent Bank has been making huge profits for the last three consecutive years with a turnover of more than Rs.10,000 Crores and that it is the only Bank which does not have a non-performing asset. According to the learned counsel, each of the employee business is Rs.54.67 Crores and per employee profit is Rs.16.32 lakhs. Therefore, it is the contention of the learned counsel that as per the HR Policy of NABARD, issued on the basis of the recommendations of Mitra Committee, the age of superannuation should be fixed at 60 years. Reliance is also placed upon the Memorandum of Understanding entered into on 29-8-2016 by and between the Government of India, the Government of Andhra Pradesh and NABARD.

39. First of all we do not know how the management of a bank can be compelled to enhance the age of superannuation on the ground that their profitability was high, they had no non-performing asset and that based upon the profitability and the capacity to pay, the age of retirement should be determined.

40. It is true that the Government of India, the Government of Andhra Pradesh and NABARD entered into a Memorandum of Understanding on 29-8-2006. The said Memorandum of Understanding was entered into for the purpose of implementation of a package for the revival of the cooperative credit structure. Under Clause 9 of the Memorandum of Understanding, the State of Andhra Pradesh undertook to bring amendments to the Andhra Pradesh Cooperative Societies Act, 1964 to give effect to the reforms envisaged under the package, in respect of certain matters that included providing autonomy to rural cooperative credit structure in all financial and internal administrative matters especially in certain areas including personnel policy, staffing, recruitment, posting and compensation to staff. We do not know how the decision of the Board of Directors of the Cooperative Bank to enhance the age of retirement only prospectively from 30-6-2017, will be in violation of any of the provisions of the Memorandum of Understanding. If the third respondent Bank has autonomy, then even the Government cannot interfere with their decision dated 03-7-2017. In case the third respondent Bank is taken not to have autonomy, then there must be a Government Order specifically directing the Cooperative Bank to increase the age of superannuation. There is no such Government Order except G.O.Ms. No.102 and G.O.Ms.No.138, which are specifically made applicable only to

the institutions listed in Schedules IX and X of the A.P. Reorganisation Act, 2014. Therefore, the fifth contention is also to be rejected.

Residuary Contention

41. One last contention based upon Article 14 is raised by the learned counsel for the appellants. According to the learned counsel, the age of superannuation of the employees of the District Cooperative Banks has been enhanced to 60 years and hence the employees of the third respondent Bank have come to suffer hostile discrimination. But as the Government itself had indicated in G.O.Ms.No.102, the question of enhancement of the age of superannuation has to be decided by the Board of Directors of the legal entities, with reference to their financial position and genuineness of the need. These parameters would differ from institution to institution.

42. After all, the third respondent Bank is a commercial venture. The appellants retired on attaining 58 years of age or after the expiry of the interim orders, on 30-7-2016. The decision to enhance the age of superannuation with prospective effect from 30-6-2017 was taken on 03-7-2017. It will certainly not be financially viable for any institution of commercial nature, to take back into service, the employees who went out during the period from 31-7-2016 to 29-6-2017. By its very nature, any decision either to enhance the age of superannuation or to reduce the age of superannuation cannot be passed with retrospective effect. Therefore, we find nothing wrong in the action of the third respondent Bank in implementing the decision to enhance the age of retirement only prospectively. First of all, the appellants or any other employee would have no right to compel the employer to enhance the age of superannuation merely because it has been done in other organisations.

The appellants will have to establish a right vested in them in law to seek such a *mandamus*. Since there is no such right, the learned single Judge was right in dismissing the writ petition. Hence, we find no justification to interfere with the order of the learned single Judge. Therefore, the writ appeal is dismissed.

43. As a sequel, miscellaneous petitions pending in this writ appeal, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

28th December, 2017
Js/Ak

M. GANGA RAO, J.



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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(Per VRS,J)



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(Ak)