THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.1 of 2017 (WVMP.No.3719 of 2017) in WPMP.No.26191 of 2017 in WP.No.21304 of 2017;

I.A.No.2 of 2017 (WVMP.No.4914 of 2017) in WPMP.No.26191 of 2017 in WP.No.21304 of 2017;

and

WP.No.21304 of 2017 and C.C.No.1825 of 2017

COMMON ORDER :

Heard the counsel for petitioners in WP.No.21304 of 2017 and C.C.No.1825 of 2017, the learned Government Pleader for Panchayat Raj (A.P.) for 1st respondent in WP.No.21304 of 2017, the learned Government Pleader for Finance & Planning (A.P.) for 2nd respondent in WP.No.21304 of 2017; Sri Padiri Raviteja, Counsel for respondent nos.3 to 8 in WP.No.21304 of 2017 and for respondent nos.3, 5 and 6 in C.C.No.1825 of 2017.

WP.No.21304 of 2017 :

2. The petitioners herein have filed WP.No.21304 of 2017 to declare the action of respondents in issuing notices to petitioners vide proceedings Rc.No.Estt./1128/2016 dt.12.06.2017 and proceedings in Rc.No.A2/15/2017 dt.18.04.2017, trying to retire the petitioners on their attaining the age of 58 years in stead of 60 years, and contending that this action of the respondents is arbitrary, illegal and unconstitutional. The petitioners also seek setting aside of the said proceedings and for a direction to the respondents to continue them in service beyond the age of 58 years as was done in the case of employees working in similar organizations.

3. The petitioner nos.1 and 2 are working as Senior Assistant in the District Rural Development Agency, Y.S.R., Kadapa District, while the 3rd respondent is employed as Extension Officer, DWACRA, and the 4th petitioner is working as Area Coordinator, Inkollu Cluster (A.C.), DWACRA in the District Rural Development Agency, Ongole, in Prakasham District.

4. The petitioner nos.1 and 2 were thus working under the respondent nos.5 and 6, while the petitioner nos.3 and 4 were working under the control of respondent nos.7 and 8.

5. The petitioners had been appointed regularly in the said organizations.

6. The petitioners contend G.O.Ms.No.135 Panchayat Raj & Rural Development (RD.II) Department dt.08.03.1991 governs their service conditions; Clause 12 of the said G.O. states that employee of the District Rural Development Agency (D.R.D.A.) **(for short, the 'D.R.D.A.')** shall retire on attaining the age of superannuation; and the age of superannuation and the date of retirement from the service from the agency shall be as per the provisions applicable to the Government employees of similar categories from time to time.

7. They allege that the DRDAs are mentioned in Schedule-IX to the Andhra Pradesh Re-Organization Act, 2014 **(for short, 'the 2014 Act')** which provided for bifurcation of the erstwhile State of Andhra Pradesh into the new State of Telangana and the residuary State of Andhra Pradesh with effect from 02.06.2014. According to them, they are natives of the State of Andhra Pradesh and their place of employment is also in the State of Andhra

Pradesh; after the bifurcation of the State of Andhra Pradesh, the residuary State of Andhra Pradesh passed the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Amendment Act, 2014, amending the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 with effect from 02.06.2014; Section 2 of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Amendment Act, 2014 provided that every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of (60) years; and in view of Rule 12 of G.O.Ms.No.135 Panchayat Raj & Rural Development (RD.II) Department dt.08.03.1991, the petitioners were also entitled to continue in service up to the age of (60) years. They further contend that persons who are similarly placed like them approached this Court seeking relief for continuance in service beyond the age of (58) years up to the age of (60) years, and that this Court had granted interim directions to continue such persons until further orders vide order dt.18.05.2017 in WPMP.No.21019 of 2017 in WP.No.17171 of 2017, order dt.18.05.2017 in WPMP.No.21024 of 2017 in WP.No.17175 of 2017, etc., and that therefore, they are also entitled to get similar interim orders. It is further contended that the State of Andhra Pradesh in its Cabinet meeting held on 15.06.2017 also reiterated its decision to enhance the age of superannuation from 58 to 60 years for all the employees working in Public Sector undertakings / Corporations enlisted in Schedules IX and X of the '2014 Act', and therefore, the respondents ought not to relieve the petitioners from service on 30.06.2017 as is sought to be done in the impugned notices on the ground that petitioners are going to attain the age of 58 years in that month. They also placed reliance on the order dt.05.05.2017 in Special leave to Appeal (C) No.14033-14034 of 2017, and also the order dt.09.08.2017 in Special Leave to Appeal (C) Nos.13623 of 2017 and batch. They further contend that G.O.Ms.No.102, Finance (HR-IV-FR) Department dt.27.06.2017 had been issued by the Government of Andhra Pradesh enhancing the age of superannuation of employees working in Institutions enlisted in Schedules IX and X from 58 years to 60 years provided a specific decision is taken to that effect by the Board of Directors / Managing Committees of these legal entities, and that G.O.Ms.No.102, Finance (HR-IV-FR) Department dt.27.06.2017 was given only prospective operation; but, subsequently the same was modified by G.O.Ms.No.138 Finance (HR.IV-FR) Department dt.08.08.2017 specifically stating that G.O.Ms.No.102, Finance (HR-IV-FR) Department dt.27.06.2017 would come into force with effect from 02.06.2014 and the Companies / Corporations / Societies mentioned in Schedules IX and X should amend their relevant regulations / bye-laws accordingly.

8. After hearing the counsel for petitioners, the learned Government Pleader for Panchayat Raj and Rural Development for 1st respondent, the learned Government Pleader for Finance for 2nd respondent and Sri P. Raviteja, counsel for respondent nos.3 to 8, this Court on 07.07.2017 in WPMP.No.26191 of 2017 in WP.No.21304 of 2017 granted an interim direction to the respondents to continue the petitioners in service till the age of 60 years by relying on clause 12 contained in G.O.Ms.No.135 Panchayat Raj & Rural Development (RD.II) Department dt.08.03.1991 and the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Amendment Act, 2014.

W.A.No.1063 of 2017 :

9. Against the said interim order, the respondent no.3 preferred Writ Appeal No.1063 of 2017. The Writ Appeal was disposed of on 31.07.2017 taking a view that since when the WPMP.No.26191 of 2017 in WP.No.21304 of 2017 is still pending, it would be appropriate if after the 3rd respondent in the Writ Petition / Writ Appellant filed an application to vacate the interim order, a final order is passed in the WPMP.No.26191 of 2017 in WP.No.21304 of 2017. It was further observed that the Division Bench is not expressing any opinion on the legality or otherwise of the order under Appeal while permitting the 3rd respondent in the Writ Petition to file an application to vacate the interim order dt.07.07.2017.

C.C.No.1825 of 2017 :

10. Since the interim order dt.07.07.2017 passed in WPMP.No.26191 of 2017 in WP.No.21304 of 2017 was not implemented thereafter, the petitioners filed C.C.No.1825 of 2017 to punish the respondents named therein for willful disobedience of the interim order dt.07.07.2017 passed in WPMP.No.26191 of 2017 in WP.No.21304 of 2017.

I.A. No.1 of 2017 and I.A.No.2 of 2017 filed to vacate the interim order :

11. Thereafter, the 3rd respondent in the Writ Petition filed I.A.No.1 of 2017 (WVMP.No.3719 of 2017) in WPMP.No.26191 of 2017 in WP.No.21304 of 2017, and I.A.No.2 of 2017 (WVMP.No.4914 of 2017) in WPMP.No.26191 of 2017 in WP.No.21304 of 2017, to vacate the interim order dt.07.07.2017 passed in WPMP.No.26191 of 2017 in WP.No.21304 of 2017.

12. In the counter-affidavit filed by the 2nd respondent while admitting that there was an amendment to the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 in 2014 by Act No.4 of 2014, extending the age of superannuation of Government employees from 58 years to 60 years, the 2nd respondent contended that G.O.Ms.No.147, Finance (HR.IV-FR) Department dt.30.06.2014, had been issued by the 2nd respondent; that basing on directions of this Court, the State of Andhra Pradesh accorded approval for enhancement of the age of superannuation of the employees working in the institutions listed in Schedules IX and X subject to certain conditions; that the DRDA is not listed in Schedule IX or X; and therefore, orders issued under G.O.Ms.No.102, Finance (HR-IV-FR) Department dt.27.06.2017 or G.O.Ms.No.138 Finance (HR.IV-FR) Department dt.08.08.2017 are not applicable to the organizations under which the petitioners are working. However, it is admitted that petitioners are working in DWACRA, DRDA, Ongole, at Prakasham District which is under the administrative control of the Panchayat Raj and Rural Development Department of the Government of Andhra Pradesh (1st respondent) and respondent nos.3 to 6, and that the Finance Department is only an advisory department and any further action in the matter should be taken by the Panchayat Raj and Rural Development Department and its Head of the Department.

13. The 3rd respondent in its counter also adopted the same stand. It reiterated that the service conditions of the petitioners are governed by G.O.Ms.No.135 Panchayat Raj & Rural Development (RD.II) Department dt.08.03.1991, and stated that the said G.O. only communicated Model

Service Regulations and directed the DRDAs, which are public Societies registered under the Societies Registration Act, 1860, to frame the bye-laws in accordance with those model service regulations and get them approved by their respective governing bodies and that each DRDA therefore had to frame special bye-laws. It was further contended that at present the DRDAs were funded with funds released by Government of India in the Ration 75:25 up to 31.03.2015 and from 01.04.2015 the Government of India and the DRDA were releasing funds in the ration of 60:40. It is stated that because of financial issues and policy differences between the State of Andhra Pradesh and Union of India, the DRDAs were not able to adopt the Model guidelines issued by the State of Andhra Pradesh and would not be able to give benefits of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Amendment Act, 2014.

14. The counsel for respective parties reiterated the same contentions.

15. I have noted the contentions of both sides.

16. Admittedly, the Government of Andhra Pradesh issued G.O.Ms.No.135 Panchayat Raj & Rural Development (RD.II) Department dt.08.03.1991, framing Model Regulations governing service conditions of employees of DRDAs, directing the said Agencies which are registered under the Societies Registration Act, 1860 to frame the bye-laws in accordance with the Model Service Regulations and get them approved by their respective governing bodies. It is also not in dispute that clause 12 of the Model Regulations framed therein make applicable provisions relating to

Government employees in regard age of superannuation and determination of age of retirement of employees in the service of the DRDA.

17. According to 3rd respondent, these being only Model Service Regulations, the DRDAs ought to frame bye-laws in accordance with them and get them approved, but because of financial issues and also differences between the State of Andhra Pradesh and the Union of India, the DRDAs were not able to adopt the Model guidelines issued in G.O.Ms.No.135 Panchayat Raj & Rural Development (RD.II) Department dt.08.03.1991.

18. If this stand is to be accepted, then there are no bye laws/ service rules governing the service conditions including the age of superannuation of the employees of the DRDAs. If so, the respondents cannot contend that the petitioners are required to retire on attaining 58 years of age. So the impugned proceedings stating petitioners ought to retire by end of June 2017 since they complete 58 years of age have no statutory or other legal basis.

19. The counter affidavits of the respondents are totally silent on what basis they are making the petitioners retire on attaining the age of superannuation.

20. In the absence of any rule or byelaw framed governing the age of superannuation of petitioners by the respondents, they cannot be made to retire at the age of 58 years.

21. Also, the respondent nos.3, 5 and 7 cannot now seek to take advantage of their wrong and say that the benefit under Clause 12 of G.O.Ms.No.135 Panchayat Raj & Rural Development (RD.II) Department dt.08.03.1991 of applying the age of superannuation applicable to

Government employees, as amended by the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Amendment Act, 2014, cannot be made applicable to the petitioners, because of their own default in framing bye-laws in tune with the Model Service Regulations notified in G.O.Ms.No.135 Panchayat Raj & Rural Development (RD.II) Department dt.08.03.1991 for the last 26 years.

22. The principle that a party cannot take advantage of its own wrong is well settled and has been laid down in **Union of India v. Maj. Gen. Madan Lal Yadav**[1], **Aruna Roy v. Union of India**[2], **Goaplast (P) Ltd. v. Chico Ursula D'Souza**[3] and **Devendra Kumar v. State of Uttaranchal**[4].

23. In my considered view, at least till such bye laws are framed, the petitioners' services have to be deemed as being governed by the Model Regulations framed by G.O.Ms.No.135 dt.8.3.1989 by treating as if bye laws on the same lines were framed by respondents 3 and 5.

24. Since the age of superannuation of Government employees has now been increased to 60 years by the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Amendment Act, 2014 as well as G.O.Ms.No.138 Finance (HR.IV-FR) Department dt.08.08.2017 by virtue of Regulation 12, I hold that the petitioners herein are entitled to be continued in Service till they attain the age of (60) years.

25. Accordingly, I.A.No.1 of 2017 (WVMP.No.3719 of 2017) in WPMP.No.26191 of 2017 in WP.No.21304 of 2017, and I.A.No.2 of 2017

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[1] (1996) 4 SCC 127
[2] (2002) 7 SCC 368
[3] (2003) 3 SCC 232
[4] (2013) 9 SCC 363

(WVMP.No.4914 of 2017) in WPMP.No.26191 of 2017 in WP.No.21304 of 2017 to vacate the order dt.07.07.2017 passed in WPMP.No.26191 of 2017 in WP.No.21304 of 2017 are dismissed; the said interim order is made absolute, and W.P.No.21304 of 2017 is allowed; the proceedings in Rc.No.Estt./1128/2016 dt.12.06.2017 and proceedings in Rc.No.A2/15/2017 dt.18.04.2017, issued by the respondents proposing to retire the petitioners on completion of age of 58 years on 30.06.2017, are both set aside; and the petitioners herein are held entitled to continue in service till they attain the age of 60 years, and the respondents shall pay wages to petitioners from 30.06.2017 till the date the petitioners are taken back into service, and grant continuity of service to the petitioners from 30.06.2017 till they are taken back into service. The said exercise shall be completed within a period of four (4) weeks from the date of receipt of copy of the order.

26. Having regard to the above order, I am not inclined to punish the respondents for contempt of Court. Accordingly, C.C.No.1825 of 2017 is closed. No order as to costs.

27. As a sequel, miscellaneous applications, pending if any in the Writ Petition as well as in the Contempt Case, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 03.04.2018
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