

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 485 of 2016

(Arising out of the order dated 17.8.2016 passed by learned Single Judge in

WPS No.3704 of 2013)

N.K.Agrawal, S/o. Late Bharat Lalji Agrawal, Aged about 70 years, R/o. 11, Nagar Nigam Colony, Samta Road, Agrasen Chowk, Raipur (CG)

---- Appellant

Versus

1. Chhattisgarh State Co-operative Marketing Federation Ltd through Secretary, C.G. State Cooperative Marketing Federation Ltd, 880-Civil Lines, Head Office, Raipur (CG)
2. Managing Director, C.G. State Cooperative Marketing Federation Ltd, 880-Civil Lines, Head Office, Raipur (CG)
3. Chief Accounts Officer, C.G. State Cooperative Marketing Federation Ltd, 880-Civil Lines, Head Office, Raipur (CG)
4. State of Chhattisgarh Through Secretary, Department of Cooperative Society, Mantralaya, Mahanadi Bhawan, New Raipur, District-Raipur (CG)

---- Respondents

For Appellant	:	Ms Juhi Jaiswal, Advocate
For Respondents No.1 to 3	:	Mr.Prafull Bharat, Advocate
For Respondent No.4	:	Mr.Siddharth Dubey, Dy.Govt.Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Sanjay K. Agrawal, Judge

Judgment on Board

Sanjay K. Agrawal, J.

24.06.2019

1. This writ appeal is directed against the order dated 17.8.2016 passed by learned Single Judge in WPS No.3704 of 2013 by which the appellant's writ petition claiming service benefits including gratuity, leave encashment, group insurance and salary for suspension period along with interest has been dismissed by learned Single Judge finding no merit particularly in view of the provisions contained in sub-rule (23) of Rule 25 of the

Chhattisgarh Rajya Sahkari Vipnan Sangh Service Rules, 2007 (hereinafter called as "Rules of 2007").

2. Ms. Juhi Jaiswal, learned counsel appearing for the appellant, would submit that learned Single Judge is absolutely unjustified in dismissing the writ petition as the appellant has demitted the office on 30.4.2005, whereas the Rules 2007 upon which reliance has been placed came into force w.e.f.1.3.2007 and the appellant's case is governed by the Madhya Pradesh Rajya Sahkari Vipnan Sangh Service Rules (hereinafter called as "the old Rules") in which there is no pari-materia provision like sub-rule (23) of Rule 25 of the Rules of 2007 and as such, the order of learned Single Judge deserves to be set aside.
3. Mr.Prafull Bharat, learned counsel appearing for respondents No.1 to 3, would fairly submit that since the appellant stood superannuated from his office on 30.4.2005, therefore, the old Rules would be applicable and the Rules of 2007, which came into force w.e.f. 1.3.2007 would not be applicable.
4. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. Admittedly, the appellant stood superannuated from his office on 30.4.2005 and at that time, the old Rules was in force. The Rules of 2007 came into force w.e.f. 1.3.2007. Learned Single Judge relied upon sub-rule (23) of Rule 25 of the Rules of 2007 which provides that if an employee ceases to remain in service during the pendency of the departmental enquiry either

on account of attainment of age of superannuation or for any other reason, even then pending departmental enquiry shall continue wherein the competent authority may pass appropriate orders even after retirement/removal and further relied upon Section 4(6) of the Payment of Gratuity Act, 1972 (hereinafter called as “the Act of 1972”) and held that the respondent-Corporation is empowered to impose major or minor penalty and to withhold payment of retiral dues in the light of condition prescribed in the above-stated provision.

6. It is stated at the Bar by the parties that there is no such rule similar to sub-rule (23) of Rule 25 of the Rules of 2007 in the old Rules, which is applicable to the appellant barring his retiral dues, which he is otherwise entitled and therefore, it cannot be held that the appellant is not entitled for retiral dues, as such, the appellant is entitled for retiral dues in accordance with Rules in force at the time of his retirement.
7. Accordingly, the impugned order dated 17.8.2016 passed by learned Single Judge in WPS No.3704/2013 is hereby set aside. The respondent-Corporation is directed to consider the case of the appellant for grant of retiral dues along with interest amount as per Rules in force at the time of retirement within 45 days from the date of receipt of certified copy of this order.
8. The writ appeal is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Sanjay K. Agrawal)
Judge