

HIGH COURT OF CHHATTISGARH, BILASPUR
W.A No.376 of 2020

V.P. Kumthekar, S/o Prabhakar Kumthekar, Aged About 60 Years R/o - C-10,
 Arjun Vihar Colony, Mahoba Bazar, Tatibandh, Raipur, Chhattisgarh.

---- Appellant/Petitioner

Versus

1. State Of Chhattisgarh, Through - Secretary, Department Of Pashudhan Vikas,
 Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. The Registrar, Co-Operative Societies, Chhattisgarh H.Q.-Head Of The
 Department Building, Block-B, Second And Third Floor, Naya Raipur,
 Chhattisgarh.
3. Chhattisgarh State Co-Operative Dairy Federation, Through Its Managing
 Director, Urla, Post - B M Y Charouda, District - Durg Chhattisgarh.

-----Respondents

W.A No.378 of 2020

Uttam Rao Kawadkar S/o Late Natthuji Kawadkar Aged About 60 Years R/o-
 House No. 19, Ward-10, Mahamaya Road, Shankar Nagar, Kumhari, Durg,
 (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through - Secretary, Department Of Pashudhan Vikas,
 Mahandi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. The Registrar Co-Operative Societies, Chhattisgarh H.Q. - Head Of The
 Department Building, Block-B, Second And Third Floor, Naya Raipur,
 (Chhattisgarh)
3. Chhattisgarh State Co-Operative Dairy Federation Through Its Managing
 Director, Urla, Post - Bmy Charouda, District – Durg, Chhattisgarh

---- Respondents

For Petitioners:	Shri Neeraj Choubey, Advocate.
For Respondents No.1 & 2/State:	Shri Vikram Sharma, Deputy Government Advocate.
For Respondent No.3:	Shri K Rohan appears on behalf of Shri Amrito Das, Advocate.

Division Bench:

Hon'ble the Chief Justice

& Hon'ble Shri Sanjay S. Agrawal, J

Judgment/Order On Board

15.10.2020

Per Sanjay S. Agrawal, J.

1. Heard on admission.
2. Both these Appeals have been preferred by the Writ Petitioners under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, questioning the legality and propriety of the common order dated 21.08.2020 passed by the learned Single Judge, whereby the Petitioners' claim seeking enhancement of the age of superannuation from the age of 60 years to 62 years, has been dismissed. Since the issue is common, both these Appeal are being disposed of by this common order.
3. The facts which are essential to be stated for adjudication of these Appeals are that the Petitioners, who are employees of Chhattisgarh State Co-operative Societies Dairy Federation (Respondent No.3) (hereinabove referred to as 'the Federation') have questioned the legality of notices dated 17.03.2020 and 21.5.2020 (Annexure P-1) issued by the Federation, whereby the Petitioners have been informed that they would be retiring on attaining the age of 60 years on 31.08.2020, whereas Respondent No.1-State has enhanced the age of superannuation upto the age of 62 years vide its circular dated 26.08.2013. It is contended by the Petitioners that they are also entitled to be continued in their services till the date of attaining the age of 62 years as the Federation is the part of the State Government and the Federation cannot deprive of its employees from availing the said benefit. According to the Petitioners, the Fundamental Rules of the State Government are equally

applicable to the employees of the Federation with regard to the terms and conditions of all the services, therefore, the superannuation age of the employees of the Federation shall be governed under the provisions of Fundamental Rules framed by the State Government. It is contended further that the Registrar, Co-operative Societies (Respondent No.2) in exercise of the powers enumerated under Section 55(1) of the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act of 1960') has enhanced the age of superannuation from 60 years to 62 years with regard to all the Co-operative Societies of the State, subject to the approval of the governing body of the Societies. It is contended that the impugned notice (Ex.P-1) as issued by the Federation contrary to the said order of Registrar, Co-operative Societies, deserves to be quashed and the Petitioners may be permitted to be continued in their services up to the age of 62 years.

4. The Respondents have contested the claim. While contesting the aforesaid claim, it is stated by the Federation (Respondent No.3) that without availing the statutory remedy provided under Section 55 (2) of the Act of 1960, the Petition as framed questioning the impugned notice is liable to be dismissed. It is pleaded that any service dispute raised by the employees of the Co-operative Societies is referred under Section 55 (2) of the Act of 1960 and could be assailed before the Registrar, Co-operative Societies or any officer appointed by him and therefore, in stead of availing the said statutory remedy, the Petition as framed deserves to be dismissed on this ground alone.

5. It is contested further on the ground that the issues as raised by the Petitioner were raised before this Court in W.P(S) No.5672 of 2014 and other connected matters, wherein it was held that the employees of the Federation shall be governed by the by-laws providing the age of superannuation in the

Federation and accordingly, held that they shall be retired at the age of 60 years. The finding so recorded in the said judgment was affirmed further by the Division Bench of this Court in W.A No.62/2016 and other connected Appeals vide order dated 01.08.2017.

6. According to the further contention of the Federation, the order dated 30.08.2013 (Annexure P-9) as passed by the Registrar, Co-operative Societies in exercise of the said power under Section 55 (1) of the Act of 1960 enhancing the age of the superannuation up to the age of 62 years was, in fact, subject to the approval of the Board of Directors, which was, however, not approved by its resolution dated 24.09.2014 (Annexure R-5). The claim of the Petitioners is, therefore, liable to be dismissed.

7. After considering the contentions of the respective parties, it was held by the learned Single Judge that the issue as raised by the Petitioners was already decided by the Division Bench of this Court vide order dated 01.08.2017 (Annexure R-2) in Writ Appeal No.62/16 and other connected Appeals (Writ Appeals No.63/2016, 73/2016, 74/2016 and 282/2016) and observed further that since the order of Registrar, Co-operative Societies dated 30.08.2013 (Annexure P-9) was not approved by the Board of Directors in its meeting held on 24.09.2014 (Annexure R-5), therefore, the Petitioners cannot claim for their superannuation at the age of 62 years. It held further that since the Petition has been filed without availing the statutory remedy provided under sub-section (2) of Section 55 of the Act of 1960, as such, it cannot be held to be sustainable and in consequence, dismissed the claim.

8. From perusal of the averments made in the Petition, it appears that the Petitioners are claiming for their superannuation at age of 62 years based upon the order dated 30.08.2013 (Annexure P-9) passed by the Registrar, Co-

operative Societies whereby, the age of the superannuation of the employees of the Federation has been enhanced from 60 years to 62 years. It, however, appears, rather admittedly, that it was passed subject to the approval of the Board of Directors of the Society. The effect of the said order would, therefore, be dependant upon its approval as such by the Board of Directors of the Society, which, however, could not find approval as evidenced by its meeting held on 24.09.2014 (Annexure P-5). The relevant portion of the said resolution reads as under:-

“(13) उल्लेखनीय है कि दुग्ध महासंघ की आमसभा दिनांक 04-03-2014 को आयोजित की गई, जिसमें लिये गये निर्णय का उल्लेख बिन्दु--3 में किया गया है। अतः संचालक मण्डल ने सर्वसम्मति से छ०ग० राज्य सहकारी दुग्ध महासंघ के अधिकारियों/कर्मचारियों की अधिवार्षिकी आयु 60 वर्ष से बढ़ाकर 62 वर्ष करने के प्रस्ताव को अमान्य करते हुए सेवा निवृत्ति आयु यथावत 60 वर्ष ही रखने का निर्णय लिया।”

9. In view of the aforesaid resolution, it is evident that the order as passed by the Registrar, Co-operative Societies was not approved by the Board of Directors of the Society and therefore, the Petitioners cannot claim their right as such based on it.

10. That apart, the issues as raised by the Petitioners herein were already considered by this Court in W.P(S) No.5672/2014 and other connected matters, wherein it was held categorically that the employees working in the Federation shall be governed by the by-laws providing the age of superannuation in the Federation and accordingly, held that they shall be superannuated at the age of 60 years. The said decision of the learned Single Judge was affirmed further in Writ Appeal No.62/2016 and other connected

appeals as mentioned hereinabove vide order dated 01.08.2017. It is thus clear that the issue of superannuation as agitated herein by the Petitioners has already been settled by this Court and remains no more *res integra* as it has attained its finality by efflux of time. Besides, it appears from a bare perusal of sub-section (2) of Section 55 of the Act of 1960, an alternative statutory remedy in order to question the alleged impugned notice (Annexure P-1) was available to the Petitioners, yet it was filed without availing the same.

11. Consequently, we do not find any substance in these Appeals, which are liable to be and are hereby dismissed. No order as to costs.

Sd/-

(P R Ramachandra Menon)
CHIEF JUSTICE

Sd/-

(Sanjay S. Agrawal)
JUDGE