THE HIGH COURT OF MADHYA PRADESH: PRINCIPAL SEAT AT JABALPUR

(DIVISION BENCH)

WA-1088-2020

Gend Lal …….. Appellant

Vs.

State of Madhya Pradesh and others …… Respondents

*****

WA-100-2020

State of Madhya Pradesh and others …….. Appellants

Vs.

Daood Ahmed Khan …… Respondent

*****

WA-508-2020

D.K. Rathore …….. Appellant

Vs.

State of Madhya Pradesh and others …… Respondents

*****

WA-711-2020

MP Oilfed Soyabean Processing Plant …….. Appellant

Vs.

Ashok …… Respondent

*****

WA-863-2020

Liquidator/Managing Director, OILFED …….. Appellant

Vs.

Vijay Shankar Guha & others …… Respondents

Coram :

Hon'ble Mr. Justice Sujoy Paul, Judge

Hon'ble Mr. Justice B.K. Shrivastava, Judge

Presence :

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Mr. Purushaindra Kumar Kaurav, Senior Advocate assisted by Mr. Aditya Khandekar, Advocate for the employer- OILFED/Liquidator.

Mr. Ashok Kumar Chourasia, Advocate for the employees in WA-1088-2020 & WA-863-2020.

Mr. Arpan Pawar, Advocate for the appellant/employee in WA-508-2020.

Mr. Pushpendra Yadav, Additional Advocate General for the State of M.P.

Mr. A.P. Shroti, Advocate for the respondent No.1/employee in WA-100-2020.

J U D G M E N T

(Passed on this 08th day of December, 2020)

Per: Sujoy Paul, J :

In this batch of writ appeals, the employer- M.P. State Co-operative Oilseed Growers Federation (for short "**OILFED**") has called in question the legality, validity and propriety of certain orders passed by the learned Single Benches, wherein it was held that the petitioners therein are entitled to retire on attaining 62 years of age, whereas in another set of orders passed by the learned Single Judge, it was held that the petitioners/employees have not been absorbed in the State Government and are still on deputation, hence, they are not entitled to retire on attaining the age of 62 years, the age of retirement prescribed for State Government employees.

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2. Mr. Purushaindra Kaurav, learned senior counsel for the OILFED urged that by order dated 12.11.2013, the liquidation process for M.P. Oilseeds Growers Federation Limited was commenced. The State Government brought M.P. Shaskiya Sevak (Adhivarshiki-Ayu) Amendment Ordinance, 2018 (for short the "**Ordinance of 2018**") which was published in the Official Gazette on 27.06.2018. As per this ordinance, the age of superannuation of employees of State Government was enhanced from 60 to 62 years. Thereafter, by Administrative Instruction dated 27.04.2018, the Finance Department of Government of Madhya Pradesh clarified that Corporations/Boards of State Governments may although consider enhancing the age of superannuation based on their financial condition and other requirement etc., it needs approval from the Government, but no such decision should be taken by those Corporations/Boards which are in liquidation regarding enhancement of age of superannuation of their employees. It is urged that since admittedly the OILFED was under liquidation, the question of enhancing the age of superannuation of its employees does not arise. The Ordinance of 2018 is applicable to State Government employees only. The service conditions of original petitioners/employees of OILFED are governed by the "Service Rules", which intially prescribed initially age of superannuation as 58 years, which stood modified by order dated 01.10.2010, whereby it was enhanced to 60 years. Thus, the employees of OILFED are entitle to continue only upto 60 years of age. Learned senior counsel pointed out that the Gwalior Bench in ***WP-28763-2018 (Kailash Prasad Singh vs. State of M.P. & others)*** passed an interim order dated 19.12.2018. This

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Date: 2020.12.09 15:29:36 IST

interim order was passed without hearing the OILFED and while referring the Adhivarshiki Ayu Adhiniyam, 1967, as an interim measure, it was directed to continue the petitioner therein up to the age of 62 years. This order of Gwalior Bench was heavily relied upon by the Indore Bench in ***WP-7203-2019, (Ashok Thakur & others vs. State of Madhya Pradesh & others)*** decided on 30.07.2019. Shri Kaurav urged that three points are apparent on bare perusal of this order: (i) in ***Ashok Thakur (supra)*** the order of Gwalior Bench dated 19.12.2018, passed in ***Kailash Prasad Singh (supra)*** was treated to be a final order because of use of word "allowed"; (ii) it was treated to be passed by Principal Seat & (iii) OILFED was not heard while passing the order in the case of ***Ashok Thakur (supra)***. It is urged that the order of ***Ashok Thakur (supra)*** and another order passed in ***WP-10048-2019, (Daood Ahmed Khan vs. State of M.P.)*** is also called in question in these batch of writ appeals, whereby heavy reliance is placed on the order of ***Kailash Prasad Singh (supra)***. As pointed out, the whole foundation of ***Ashok Thakur (supra)*** is erroneous and, therefore, the order of ***Ashok Thakur (supra)*** could not have been a reason to allow the writ petition of Daood Ahmed Khan. By criticizing this order passed in ***Daood Ahmed Khan (supra)*** learned senior counsel further urged that indisputably, the respondents-employees/original petitioners were never absorbed in the OILFED. In absence of any express order of absorption, by no stretch of imagination, they can be treated to be employees of State Government. Heavy reliance is placed on Para-9 of order of ***Daood Ahmed Khan (supra)***, wherein learned Single Judge has given a finding that "the status of petitioner as he is still working on

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Date: 2020.12.09 15:29:36 IST

deputation…...". It is urged that this finding of learned Single Judge clearly shows that petitioner therein was not absorbed and was still on deputation. Petitioner therein neither filed any review petition seeking correction of the said factual error nor assailed this finding in a writ appeal and, hence, it is clear like noon day that petitioner therein continued to be an employee of OILFED.

3. Shri Kaurav by placing reliance on the other set of orders passed in ***WP-535-2019, [D.K. Rathore vs. State of M.P. & others]*** and ***WP-1528-2019, [Gendlal vs. State of M.P.]*** urged that the learned Single Judge has rightly opined that the petitioners therein were not in a position to show that they have been absorbed. There was no prayer made *qua* question of absorption in the writ petition. The previous Benches in the cases of ***Daood Ahmed Khan (supra)*** and ***Ashok Thakur (supra)*** have not considered the rules framed by the employer/OILFED and further failed to see that the M.P. Shaskiya Sevak (Adhivarshikiya-Ayu) Adhiniyam, 1967 (for short the "**Adhiniyam of 1967**") is not applicable to the employees of OILFED. Thus, the previous orders were rightly distinguished by the subsequent Bench in the common order passed in the case of ***D.K. Rathor (supra)***. A recent order passed in ***WP-17744-2020, [Ved Prakash Gupta Vs. State of M.P.]*** was also relied upon to contend that principle laid down by the learned Single Bench are in consonance with the settled law and the employees of corporation before their absorption in the State Government have no legal, vested or constitutional

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Date: 2020.12.09 15:29:36 IST

right to enjoy the age of superannuation prescribed for the State Government employees.

4. For the reasons stated herein above, the learned senior counsel assailed the order passed in ***WP-5344-2019 [Vijay Shankar Guha Vs. State of M.P.]*** also. This order is called in question in ***WA-863-2020, [Liquidator/Managing Director vs. Vijay Shankar Guha]***. It is urged that this order is also based on the orders passed in ***Ashok Thakur (supra)*** and ***Daood Ahmed Khan (supra)*** and, therefore, this order cannot sustain judicial scrutiny.

5. In support of the aforesaid contentions, Shri Kaurav placed reliance on **AIR 1963 SC 395**, ***[Bachhittar Singh Vs. State of Punjab]***. To elaborate, it is argued that a decision taken in the file of the department cannot be treated to be an order unless express order in the name of Governor is issued as required under Article 166 of the Constitution of India. No inference can be drawn that original petitioners were ever absorbed. He also placed reliance on ***(2006) 4 SCC 132, [Avas Vikas Sansthan & Ors. Vs. Avas Vikas Sansthan Engineers Association & Ors.]*** to contend that claim of absorption of original petitioner is without any foundation.

6. Shri Arpan Pawar, learned counsel for certain employees urged that the ciruclar dated 27.04.2018 on which the reliance is placed by Shri Kaurav does not cover the cases of deputationists. Hence, the said circular

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Date: 2020.12.09 15:29:36 IST

is of no assistance to the appellant/employer. Although, there exists no express order of absorption of original petitioner by State Government, the fact remains that the said occasion did not arise and the State Government did not pass any such express order regarding absorption and, therefore, there was no occasion for original petitioner to claim any relief regarding absorption in the writ petition. It is common ground taken by Shri Pawar and Shri A.P. Shroti that the orders passed by the single benches in the cases of ***Ashok Thakur (supra)*** and ***Daood Ahmed Khan (supra)*** were binding on subsequent Single Bench. Hence, in view of **(2004) 11 SCC 26,** ***[State of Punjab & another Vs. Devans Modern Breweries Ltd & Anr.],*** **2020 SCC Online SC 529,** ***[S. Kasi Vs. State through the Inspector of Police Samaynallur Police Station Madurai District]*** and a Special Bench decision of this Court reported in **2003 (1) MPLJ 513** ***[Jabalpur Bus Operators Association & Ors. Vs. State of M.P. & Anr.]***, the only course open to the subsequent Single Bench was to refer the matter for consideration by a Larger Bench. The subsequent judgments which are passed by the learned single bench and are subject matter of challenge in appeal filed by employees were erroneously passed without referring the matter to the Larger Bench.

7. Shri A.P. Shroti, learned counsel for certain employees stated that no doubt, there exists commonality of issues to a great extent in theses matters. It cannot be doubted that interim order passed by learned Single Judge dated 19.12.2018 in the case of ***Kailash Prasad Singh (supra)*** is erroneously treated to be final order in the case of ***Ashok Thakur (supra)***,

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Date: 2020.12.09 15:29:36 IST

the fact remains that there are other factors on which the order of ***Daood Ahmed Khan (supra)*** is founded upon.

8. Shri Shroti has taken pains to contend that there is a chequered history of litigation regarding absorption of the employees of OILFED is concerned. In furtherance of the previous order passed by this Court, a *Contempt Petition No.191/2016, [M.P. Oil Fed Officers & employees Kalyan Sangh and another vs. The State of M.P. and others]* was filed wherein the Principle Secretary, Corporation Department, Government of M.P. filed his affidavit dated 07.08.2016. By placing heavy reliance on paragraphs 4 and 6 of the affidavit, it is urged that the affidavit and the annexure shows that a conscious decision had already been taken to absorb the original petitioner. The name of original petitioner finds place in the list of annexures with the said affidavit at Item No.410. In continuation of this, reliance is also placed on interlocutory order dated 20.9.2016 passed in ***WP-15705-2016, (Prashant Kelapur & Ors Vs. State of M.P. and Ors.)*** Court directed the respondents to clarify whether the list annexed with the affidavit aforesaid is only a proposal or a final decision. In order dated 27.9.2016 passed in ***Prashant Kelapur (supra)***, it is recorded that the respondents filed a clarification stating that the said affidavit/annexure appended to it, is not a proposal, indeed, it is a final decision taken by the government.

9. Shri Shroti, learned counsel placed reliance on the order passed in ***WA-267-2016 (State of M.P. Vs. Deceased Anil Kumar Tiwari)*** decided

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Date: 2020.12.09 15:29:36 IST

on 29.8.2016. It is argued that this order will make it clear that petitioner therein must be treated to be absorbed by the department. For the same purpose, he placed reliance on the administrative orders dated 17.12.2014, 23.7.2016 and 9.8.2016. It is strenuously contended that the language employed in the order dated 23.7.2016 clearly shows that the petitioner therein was absorbed. Since, the petitioner has been absorbed, he has every legal right to enjoy the same age of superannuation which is prescribed for a state government employee. Interestingly, Shri Pawar and Shri Shroti, learned counsel also placed reliance on **(2006) 4 SCC 132,** ***[Avas Vikas Sansthan & Ors. Vs. Avas Vikas Sansthan Engineers Association & Ors.].***

10. Shri Ashok Chourasia, learned counsel for one of the respondent stated that the OILFED is a state owned company. The full, effective and ultimate control over the affairs of the OILFED are in the hands of the State Government. Hence, the State Government should provide the same age of superannuation to the employees of OILFED. He gave an example of erstwhile employees of the M.P. Administrative Tribunal, who on its abolition, were absorbed either in the High Court or in other departments of State Government. He claimed similar treatment.

11. No other point is pressed by the learned counsel for the parties.

12. We have heard the parties at length and perused the record.

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Date: 2020.12.09 15:29:36 IST

13. Before dealing with the rival contention, it is opposite to refer to the entire interim order of Gwalior Bench, passed in the case of ***Kailash Prasad Singh (supra)***, which reads as under :-

> "Shri Alok Katare, learned counsel for the petitioner.
>
> Shri Vivek Mishra, learned Government Advocate for the respondents/State.
>
> Grievance of the petitioner is that despite the respondents having taken policy decision of absorbing all the employees of M.P. State Cooperative Oil Seeds Growers Federation, formal orders of absorption in government service have not been passed as a result of which the petitioner is not being treated as a Govt. Employee and, therefore, is deprived of the benefit of continuing in Govt. service till the age of 62 years in terms of amendment carried out in the Madhya Pradesh Shashkiya Sewak (Ardhvarshiki Ayu) Adhiniyam, 1967, and instead is being retired w.e.f. 31.12.2018 on attaining the age of 60 years vide Annexure P-1.
>
> Meanwhile, petitioner shall be allowed to continue in service beyond the age of 60 years, till the age of 62 years.
>
> List after winter vacations, 2018."

A plain reading of this order shows that it is an interim order and not a final order and OILFED was not heard.

14. Para-2 of order of ***Ashok Thakur (supra)*** reads as under :-

> "Learned counsel for the petitioner has pointed out that the petitioners are the employees of the M.P. Oil Seed Growers Fedration and the similarly situated employees have been absorbed in other department since the federation is under liquidation but the petitioners have been allowed to continue in the federation and in respect of such employees, the age of superannuation has been treated to be 62 years and identically placed person had filed W.P. No. 28763/2018 which has been allowed by the Principal Seat by order dated 19.12.2018.

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Date: 2020.12.09 15:29:36 IST

Learned counsel for the State has not disputed the aforesaid aspect of the matter.

[Emphasis Supplied]"

A conjoint reading of both the orders aforesaid, leaves no room for any doubt that Indore Bench has erroneously treated the interim order of ***Kailash Prasad Singh (supra)*** as final order of Principal Seat, Jabalpur. Whereas the order of ***Kailash Prasad Singh (supra)*** was passed by Gwalior Bench. It is also clear that while passing the order in ***Ashok Thakur (supra)***, the OILFED was not heard. Interestingly, the counsel appearing for the employees did not dispute the aforesaid factual aspects and argument of Shri Kourav that the order passed in ***Ashok Thakur (supra)*** is erroneously founded upon an interlocutory order passed in the case of ***Kailash Prasad Singh (supra)***. Pertinently, in ***Ashok Thakur (supra),*** no other reason is assigned by the Indore Bench and order passed in ***Kailash Prasad Singh (supra)*** was made applicable *mutatis mutandis*. Hence, orders passed in ***Ashok Thakur (supra)*** cannot be permitted to stand.

15. In ***Daood Ahmed Khan (supra)***, as pointed out by Shri Shroti, yet another aspect was taken into account by learned Single Judge. This may be seen from Para -7 of the impugned order. As noticed above, Shri Shroti has made herculean efforts to show that the petitioner therein was actually absorbed. He placed reliance on the orders passed in other matters and the undertaking given in other matters. However, it is important to note that the petitioner (Daood Ahmed Khan) has described his status in a different

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Date: 2020.12.09 15:29:36 IST

way in WP-10048-2019. It is averred that "*all the employee of the OILFED who has been absorbed in regular establishment under the State Government they are superannuated on completion of age of 62 years. However, the petitioner still waiting for formal order of absorption as per the Absorption Policy dated 12.08.2013. Till today the petitioner has not been absorbed in regular service under the State Government, whereas the juniors to the petitioner are already enjoying the fruits of absorption.*"

(*Emphasis Supplied*)

16. In view of above pleadings of petitioner himself, it is crystal clear that petitioner has not been absorbed in the regular service under the State Government. This is trite that no amount of evidence which is not in consonance with the pleadings can improve the case of the petitioner. In other words, no inference can be drawn from the orders passed in different matters between different parties in support of present petitioner's absorption. Petitioner himself described his status as "un-absorbed employee". Thus, the affidavit of Principal Secretary filed in some other case etc. on which reliance is placed is of no assistance to the original petitioner. The Division Bench of this Court in **1999 (2) MPLJ 247**, ***[Jagdish Prasad Shivhare vs. Municipal Corporation, Gwalior and others]*** held as under:

> "A decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found"

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Date: 2020.12.09 15:29:36 IST

17. A Division Bench of this Court in ***Ashutosh Pandey Vs. Managing Director, MPRTC & others*** reported in **2020 (3) MPLJ 590**, opined as under:

> "**12.** Apart from this, the fixation of age of superannuation is within the domain of the employer. In the case of *B. Bharat Kumar and others vs. Osmania University and others, reported in (2007) 11 SCC 58*, the Apex Court held that in respect of the fixation of age of superannuation, it is a policy decision and the same is within the wisdom of the Rule Making Authority and the judicial review in such administrative action is not called for. In the case of *Nagaland Senior Government Employees Welfare Association and others vs. State of Nagaland and others reported in (2010) 7 SCC 643* the Apex Court has taken a similar view and held that the policy decision in regard to the age of retirement is within the domain of the Rule Making Authority and in such matters, the judicial review is limited and circumscribed.
>
> **13.** The Circulars and amendment in the Fundamental Rules and Madhya Pradesh Ardhavarshiki Ayu Adhiniyam enhancing the age of superannuation of the Government Servants are not *ipso facto* applicable to the employees of the Corporation. There is no material to establish that the petitioners have been absorbed in the Government Service. Hence, they cannot claim equality with the Government employees in respect of age of superannuation. The Corporation has not adopted the Circular or amendment made in the Fundamental Rules regarding age of superannuation of the State Government employees.
>
> [Emphasis Supplied]"

18. In view of the principle laid down in this Division Bench judgment, it is clear that employees of Corporation cannot claimed same age of retirement which is prescribed for the State Government employees unless he is duly absorbed as State Government employee.

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Date: 2020.12.09 15:29:36 IST

19. It cannot be doubted that the Adhiniyam of 1967 is applicable to the Civil Post holders of Government of Madhya Pradesh. The Adhiniyam of 1967 is not applicable to the employees of Corporation. The circular dated 27.04.2018 reads as under :-

"**मध्यप्रदेश शासन**
वित्त विभाग
वल्लभ भवन, मंत्रालय, भोपाल

क्रमांक आर–203/1018/2018/नियम/धार भोपाल, दिनांक 27.04.2018

प्रति,

शासन के समस्त विभाग,
अध्यक्ष राजस्व मंडल, ग्वालियर,
समस्त निगम/मण्डल,
नगरीय निकाय/कार्पोरेशन,
समस्त जिलाध्यक्ष,
मध्यप्रदेश।

विषय :– निगम/मण्डल के सेवायुक्तों की अधिवार्षिकी सेवानिवृत्ति आयु 60 वर्ष से बढ़ाकर 62 वर्ष किये जाने के संबंध में।

***

राज्य शासन द्वारा दिनांक 31 मार्च 2018 को अधिसूचित म.प्र. शासकीय सेवक (अधिवार्षिकी–आयु) संशोधन अध्यादेश 2018 से राज्य शासन के शासकीय सेवकों की अधिवार्षिकी पर सेनानिवृत्ति की आयु 60 वर्ष से बढ़ाकर 62 वर्ष की गई है।

इस परिप्रेक्ष्य में यदि राज्य शासन के निगम/मण्डल, स्वयं के सुसंगत सेवा नियमों में उपर्युक्त अनुसार सेवानिवृत्ति आयु के प्रावधान को सम्मिलित करना चाहते हैं तब स्वयं की वित्तीय स्थिति, आवश्यकता आदि को विचार में रखते हुए सक्षम स्तर से अनुशंसा प्राप्त कर संबंधित प्रशासनिक विभाग से निर्णय प्राप्त कर सकते हैं। परंतु, जिन निगम/मण्डलों को राज्य शासन द्वारा बन्द किया जा चुका है अथवा जिनके बन्द (Closure/liquidation) करने की प्रक्रिया प्रवृत्त है, ऐसी संस्थाओं के सेवायुक्तों की वर्तमान अधिवार्षिकी पर सेवानिवृत्ति आयु में वृद्धि नहीं की जाए।

म.प्र. राज्यपाल के नाम से
तथा आदेशानुसार

(पंकज अग्रवाल)
प्रमुख, सचिव
म0प्र0 शासन, वित्त विभाग"

[Emphasis Supplied]

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Date: 2020.12.09 15:29:36 IST

A conjoint reading of provisions of Adhiniyam of 1976 and the circular shows that the un-absorbed employees of OILFED cannot claim any right of continuance in employment till attaining the age of 62 years.

20. So far the argument that the subsequent Bench which took the different view than the view taken in ***Ashok Thakur (supra)*** should have referred the matter to Larger Bench is concerned, suffice it to say that in ***Jabalpur Bus Operator Association (supra)*** the Special Bench opined that the decision of earlier Bench unless distinguished by later Bench is binding on the subsequent Bench. The earlier judgment in ***Ashok Thakur (supra)*** which is followed in ***Daood Ahmed Khan (supra)*** was considered by subsequent Bench and distinguished in correct prospective. The subsequent Bench considered the judgment of ***Ashok Thakur (supra)*** and ***Daood Ahmed Khan (supra)*** and distinguished its by holding that the Adhivarshiki Ayu Adhiniyam is not applicable to employees of OILFED. The petitioners therein have not been absorbed and they have not raised any dispute *qua* their absorption in the writ petition. Interestingly, both the parties placed reliance on the judgment of Supreme Court in ***Avas Vikas Sanstha (supra)*** which relates to claim of absorption. We are afraid, this point is beyond the *lis* in these batch of writ appeals. Indeed, we are only examining the status of original petitioners which was prevailing at the time of filing of writ petition and whether on the basis of said status, they had any claim for continuing upto 62 years of age. Thus, the judgment is of no relevance in the present matters. So far the argument of Shri Chourasia is concerned, it is of same nature regarding claim of absorption.

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Date: 2020.12.09 15:29:36 IST

The claim of absorption is not the subject matter of debate in these appeals.

21. We find no illegality in the subsequent orders passed by Single Bench in ***D.K. Rathore (supra)*** and ***Gend Lal (supra)*** and said orders are affirmed. The impugned orders of the learned Single Benches in remaining writ appeals are set aside.

22. In view of foregoing analysis, the **WA-100-2020, WA-711-2020 & WA-863/2020** are **allowed**. **WA-1088-2020 & WA-508-2020** are **dismissed**.

(SUJOY PAUL)
JUDGE

(B.K. SHRIVASTAVA)
JUDGE

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