The High Court Of Madhya Pradesh

Writ Petition No.3694/2019

ASHUTOSH PANDEY

Vs

THE MANAGING DIRECTOR, MPRTC & OTHERS

Writ Petition No.5786/2019

SURESHCHAND SHARMA

Vs

TRANSPORT DEPARTMENT & OTHERS

Writ Petition No.7785/2019

AJAY KUMAR BAJPAI

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.8891/2019

RAJJU PRASAD SAHU

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.9480/2019

DEVESH KUMAR PANDEY

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.9848/2019

RAM SEWAK TIWARI

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.10609/2019

LOKENDRA SINGH

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.11102/2019

SUKHRAM SINGH

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.11103/2019

ARVIND KUMAR SAINI

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.12133/2019

LAVKUSH PRASAD PANDEY

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.15085/2019

OM PRAKASH TIWARI

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.17741/2019

NAND KISHORE MISHRA

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.20133/2019

LALTA PRASAD SHUKLA

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.21857/2019

VYAS MUNI CHATURVEDI

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.25193/2019

RAM BAHADUR VERMA

Vs

THE STATE OF M.P. & OTHERS

Writ Petition No.25736/2019

PRAKASH SHARMA

Vs

THE STATE OF M.P. & OTHERS

Present: **Hon'ble Shri Ajay Kumar Mittal,Chief Justice**
Hon'ble Shri Justice Vijay Kumar Shukla,
Judge.

Shri Smt. Vibha Pathak, Shri Ajay Pratap Singh, Shri Ashok K. Gupta, Shri Sanjay Kumar Verma and Shri Rajendra Nath Roy, learned counsel for the petitioners.

Shri P. K. Mishra, learned Counsel for the M.P. State Road Transport Corporation.

Shri H. S. Chhabra, learned Govt. Advocate for the respondents/ State.

Whether approved for reporting ?	**Yes**
Law laid down	*The Circulars, amendment in the Fundamental Rules regarding age of superannuation of State Government emloyees are not ipso facto applicable to the employees of the Corporation. The fixation of age of superannuation is within the domain of the employer and the Rule Making Authority.*
Significant paragraph Nos.	**Para No. 12 & 13**

O R D E R

(JABALPUR DATED 25-02-2020)

Per: Shri Vijay Kumar Shukla, J.

Regard being had to the similative of the issue involved in the bunch of petitions, they are being decided by the common order. For the sake of convenience the facts are noted from W.P. No.3694/2019 – Ashutosh Pandey & 2 others Vs. The Managing Director, M.P. Road Transport Corporation and others.

2. The petitioners who are working on different posts like Personal Assistant (Junior Stenographer), Supervisor and Conductor in the M.P. Road Transport Corporation (hereinafter referred in short as 'MPRTC), have challenged the orders of the respondents retiring them on the completion of the age of 58 years instead of 60 years and they have also claimed further that the age of superannuation should be treated as 62 years in the light of the recent amendment by the State Government in respect of the Government servants. The following reliefs have been claimed :-

> *"A. Issue writ in the nature of certiorari and they may kindly the impugned order dated 7.5.2018 (Annexure P/1, P/2 and P/3) be quashed.*
>
> *B. That the respondents be directed to comply the order of Apex Court dated 5.2.2019 (Ann. P/6) and till than the petitioner be continued in service.*
>
> *C. Any other relief which this Hon'ble Court deems fit and proper including the cost of the petition looking to the facts and circumstances of the case may be granted in the interest of justice."*

3. The petitioners are employees of MPRTC. The said Corporation is an independent Autonomous body constituted under the Road Transportation Corporation Act, 1950. It is undertaking of the State of Madhya Pradesh and is governed by its own Rules and Regulations.

4. Before adverting to the principle issue regarding fixation of age of superannuation, it is apt to mention that the Corporation has stated in the reply that it has sustained heavy loss and situation has reached to the extent whereby salary of the employees was not being paid for months together as such the same resulted into multifarious litigation. The State Government considering the financial status of the Corporation, the cabinet has resolved to close down the Corporation. In view of the decision made by the State Government to close down the Corporation, a scheme dated 1.7.2005 was launched which was known as “Voluntary Retirement Scheme, 2005” and had provided option for the same from the period 1.7.2005 to 1.8.2005. Those employees who were proposed to be terminated due to closer of the Corporation and financial crisis, it was decided to provide them financial help and also rehabilitation. The scheme was extended from 12.10.2006 to 28.10.2006. A large number of employees near about 90% to 95% employees of the Corporation opted their retirement under the scheme and retired from service. The Corporation is in winding process and since there was no source of income, all the property of the Corporation was seized and

attached with the State Government or to Finance Company or Bank. At present near about 2% - 3% employees are working in the department. Thus, from the above facts it is axiomatic that the financial condition of the Corporation is stringent.

5. Counsel for the petitioners urged that as per the recommendations of 5th Central Pay Commission (CPC), the petitioners are entitled for the enhanced age of superannuation. It is urged that the Apex Court in its order dated 5.2.2019 passed in Special Leave to Appeal (C) No.(s) 32869/2017 and SLP (C) No.32870/2017 (Rajya Parivahan Karmchari Mahasangh Vs. M.P. Road Transport Corporation and others) directed the State Government and the MPRTC to take a decision regarding extension of benefit of the 5th Pay Commission. The petitioners have also placed reliance on a Circular dated 27.4.2018 issued by the Finance Department of the State of M.P., whereby the age of superannuation has been enhanced from 60 to 62 years in respect of the employees working in the Corporation/ Board of the State of Madhya Pradesh. They have also placed reliance on a judgment passed by the Single Judge in **W.P. No.15991/2018 (Amirruddin Akolawal Vs. Department of Food & Supplies and others)**. It was also contended that the Service Regulations framed by the Corporation would not apply to them.

6. Combatting the aforesaid submissions, learned counsel for the respondents/ Corporation submitted that the services of the

Corporation employees were not absorbed in the State Government and they are still governed by the Regulation 59 of the Service Regulation framed in exercise of the powers under the Road Transport Act, 1950. It was also urged that the issue regarding the age of superannuation in respect of the employees of the Corporation has already been decided by the Division Bench in **W.A. No.246/2013 (Heera Singh Narwariya Vs. State of M.P. & Others)** decided on 16.12.2013 and by Coordinate Benches of this Court in the number of writ petitions **W.P. No.2659/2013 – Heera Singh Narwariya Vs. State of M.P. And others** decided on 25.4.2013**; W.P. No.2767/2015 – Gangaram and others Vs. The State of M.P. and others** decided on 21.1.2016 and **W.P. No.4339/2016 – Shrikant Tiwari Vs. State of M.P. and others** decided on 1.4.2016.

7. We have heard learned counsel for the parties. There is no document on record to show that the services of the petitioners have been absorbed in the Government service. The services of the petitioners who are employees of the Corporation are governed by the Regulations framed under the Road Transport Act, 1959 which reads as under :-

> "*Employees of State Transport are liable to compulsory retirement on the date of their completion of Fifty Eight years of the age unless specifically permitted by the Corporation to continue in service for a specified period thereafter, but he must not be retained after the*

age of 60 years, without the sanction of State Government.

Provided that Class IV employees will normally be retired on the date of their completion of 60 years of age."

8. In the case of **Heera Singh Narwariya Vs. State of M.P. And others – W.P. No.2659/2013** (supra) , a Coordinate Bench of this Court has referred to the judgment passed in the case of **S. P. Dubey Vs. M.P. R.T.C.** reported in **(1991)1 MPJR 327** which was relied by the employees of the Corporation, held that the Circular dated 28.5.1989 addressed by the Finance Department to all the departments would not apply to the employees of the Corporation. There was no material to show that the amendment by the State of Madhya Pradesh in F.R.56 relating to the age of superannuation of Government servants are applicable to the employees of MPRTC. A Division Bench of this Court in the case of **Heera Singh Narwariya Vs. State of M.P. & Others** (WA No.246/2013) (supra) in its judgment dated 16.12.2013, after taking into consideration the Service Regulation No.59 held that from the aforesaid provision it is clear that the employee could be retire after attaining the age of 58 years, however, the Corporation can retain an employee upto the age of 60 years but no vested right is created in favour of an employee of the Corporation to continue upto the age of 60 years.

9. In the case of **Gangaram Rao and others Vs. State of M.P. And others (W.P. No.2767/2015(s)**, this Court held that

the amendment in the Employees Industrial Employment Standing Orders Rules, 1963 providing age of superannuation to be 60 years would also not apply to the employees of the Corporation in view of the proviso of the aforesaid amendment shall not apply to the employees of the Corporation, Board and Undertakings of the State Government. The same view was followed by another Single Bench in the case of **Shrikant Tiwari Vs. State of M.P. (W.P. No.4339/2016)** (supra).

10. In the case of **Jagmohan Sharma Vs. State of M.P. and another** (W.P. No.15971/2015(s)) (supra) a Coordinate Bench of this Court has taken into consideration the amendment made in the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1961 and the Rules and held that as per proviso appended to the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 which stipulates that the amendment in the age of retirement shall not apply to the employees of the Corporation, Board and Undertakings. The relevant part of the order reads as under :-

> "The context is that the State of M. P. in exercise of the powers conferred by sub-Section (1) and (2) "No.4(E) 1 2001 A-XVI. In exercise of the powers conferred by sub-section (1) and (2) of Section 21 of the Madhya Pradesh Industrial Employment (Standing Orders Act, 1961 (No.26 of 1961), the State Government incorporated amendment in the

Madhya Pradesh Industrial Employment (Standing Orders) Rules 1963, in the following terms:

> "In the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 in the Annexure, in serial number 14-A, the words "An employee shall retire from the service of the employer on the date he attains the age of 58 years. He may, however, be retained in service by the employer after the date of attaining the age of 58 year if his services are necessary in the interest of the undertaking." shall be replaced by the words" "An employee shall retire from the service of the employer on the date he attains the age of 60 years, and in the first proviso the words "if the age of retirement is not less than 58 years" shall be replaced by the words "if the age of retirement is not less than 60 years" and at the end of this proviso the words "**provided further that this amendment shall not apply to the employees of Corporations, Boards and Undertakings of the State Government" shall be added."**

Evidently, employees of Corporation, Board and undertakings of the State Government stood excluded from the amendment. In other words the enhanced age of retirement was not extended.

Later on on the basis of the queries sought for by certain establishment as to whether the enhanced age is to be incorporated in award, agreement or settlement, the State Government further issued a notification on 30.12.2014 published in the

Madhya Pradesh Gazette and incorporated new provision in Rule 8 in the following terms-

> "Provided that where the Government has made any amendments in the Standard Standing Orders the same shall be deemed to be duly incorporated in any award agreement or settlement and in the certified amendments to the Standing Orders applicable to an undertaking."

Careful reading of this newly added proviso makes it clear that the amendment incorporated vide notification dated 28.6.2014 will also apply in "award, agreement or settlement and in certified amendments to the standing orders applicable to an undertakings." The insertion of this proviso; however, does not supersede the amendment incorporated in the proviso to serial No.14 A of Annexure appended to Madhya Pradesh Industrial Employment (Standing Orders) Rules 1963 which stipulates that the amendment (as to the age of retirement) shall not apply to the employees of Corporation, Boards and Undertakings of the State Government.

These facts distinguishes the case at hand from that of Iqbal Hussain V. The Madhya Pradesh Road Transport Corporation :Writ Petition No.5478/2014(s) decided on 12.5.2015 wherein the said amendment has not been taken into consideration.

Having thus considered since no relief can be granted to the petitioner petition fails and is **dismissed**.No costs."

11. The Circular dated 27.4.2018 also does not render any help to the case of the petitioners. The said Circular is issued by the Finance Department enhancing the age of superannuation from 60 to 62 years in respect of the employees of the Corporation and Board, leaving it on the discretion of the Corporation/ Board to take a decision in respect of the age of superannuation by incorporating it in the Service Rules/ Regulations keeping in view the financial status of the Corporation/ Board. It is clearly mentioned that those Corporation/ Board of the State of Madhya Pradesh which are already closed or which are under liquidation, the age of superannuation shall not be increased. As we have already discussed the financial condition of the Corporation was stringent and therefore, a decision was taken to close down the same.

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.

14. In view of the aforesaid, there is no merit in these writ petitions. All the writ petitions fails and are hereby **dismissed**.

(AJAY KUMAR MITTAL)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
J U D G E

Mrs.mishra



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MRS DEEPA MISHRA
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