HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4712 of 2016

Komal Lal Patel S/o Jhaduram Patel, Aged About 60 Years R/o Santoshi Nagar, Near Durga Mandir, Durgapara, Raipur Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Pashudhan Vikas, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh., Chhattisgarh

2. The Registrar, Co- Operative Societies, Chhattisgarh H. Q. Head Of The Department Building, Block - B, Second And Third Floor, Naya Raipur Chhattisgarh, District : Raipur, Chhattisgarh

3. Chhattisgarh State Co-Operative Dairy Federation, Through Its Managing Director, Urla, Post B M Y Charouda, District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Neeraj Choubey, Advocate
Respondents	:	Mr. Avinash K Mishra, PL.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

15.12.2021

1. Learned counsel for the parties would submit that the issue involved in this case is squarely covered by the judgment passed by this Court in Writ Petition (S) No. 5672/2014 (P.N. Upadhyay Vs. State of Chhattisgarh & Others) on 15.12.2015, in which this Court has dismissed the writ petitions and held as under :-

> "21. The principle of law that emerges from the aforesaid decisions is that the rule making function of the Registrar under Section 55 of the Act is legislative in character duly delegated to him by the Act of 1960. Now the question would be scope of interference by this Court in the legislative power

exercised by the Registrar by passing an order impugned laying down age of superannuation of Co-operative servants to be 62 years subject to approval by the Board of Directors of the concerned Co-operative Society in view of Section 31 of the Act of 1960.

22. Scope of interference in the legislative function has been pointed out by the Supreme Court authoritively in the matter of Sundarjas Kanyalal Bhathija and others v. The Collector, Thane, Maharashtra 5 AIR 1990 SC 261, following statement of law of the report is relevant as under:-

> "23...........It must be noted that the function of the government in establishing a Corporation under the Act is neither executive not administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. It they are complied with, then, the Court could say no more. In the present case the government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs".

Thus, the scope of interference in the legislative function is extremely limited and only question to be examined while dealing with challenge to the legislative function is whether statutory provisions have been complied with or not.

23. The determination of the nature of function exercised by the Registrar under Section 55 of the Act and scope of interference by this Court in legislative function in jurisdiction under Article 226 of the Constitution of India brings me back to the question as to whether the petitioners have made out a case for interference in the order passed by Registrar, Co-operative Society dated 30.08.2013. The petitioner has simply pleaded that the order of the Registrar enhancing the age of superannuation of the co-operative servant from 60 to 62 years making the said enhancement subject to approval of the Board of Directors is illegal. The petitioners have neither pleaded nor established that any statutory provisions have not been complied with or violated by the Registrar while exercising the power under Section 55(1) of the Act of 1960, as held by the Supreme Court in the matter of Sundarjas (Supra). Therefore, the condition imposed by the Registrar making the enhancement of age of superannuation subject to approval of the Board of Directors is in accordance with law and it cannot be held to be illegal merely because it does not suit to the interest of the petitioners.

24. There is an additional reason for upholding the order of Registrar. The Registrar passed the impugned order on 30.08.2013, thereafter, the general body of respondent No.3 in its meeting dated 04.03.2014 considered the order of the Registrar and decided to maintain the age of retirement as it is. It is settled law that alteration in the age of retirement by the employers is a matter of executive policy and is permissible for sufficient and cogent reasons as has been held by the Supreme Court in paragraph 45 of the judgment in the case of M. P. Vidyut Karmachari Sangh v. M. P. Electricity Board 6 (2004) 9 SCC 755, relying on K. Nagaraj v. State of A. P. (1985) 1 SCC 523, Osmania University v. V. S. Muthurangam 8

(1997) 10 SCC 741, L. Lakshmana Rao v. State of Karnataka (1976) 2 SCC 502 and Chandra Singh v. State Rajasthan 2003 (6) SCC 545.

25. The determination of above-stated question brings me to next question as to whether the order passed by respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit resolving and deciding to maintain the age of superannuation from 60 is justified ?

26. Respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit is a body corporate duly established and constituted under Section 31 of the Act of 1960, has considered the order of the Registrar, Co-operative Societies in its proper prospective and has clearly reached into conclusion that on account of excessive and rising establishment expenses Dugdha Mahasandh decided to maintain the age of superannuation of the employees working in their Mahasandh to 60 years as it is and not to enhance the age of superannuation to be 62 years. It has already been held in foregoing paragraph and that enhancement in age of retirement is a matter of Executive policy and the petitioners have failed to demonstrate the arbitrariness and illegality in the order of the Registrar and Dugdha Mahasangh passed in this regard. I do not see any illegality either in the order of the Registrar or in the order rejecting representations, warranting interference by this Court in exercise of jurisdiction under Article 226/227 of the Constitution of India.

27. As a fall out and consequence of the aforesaid discussion, all the writ petitions being without substance are liable to be and are hereby dismissed but without imposition of cost(s)."

2. Accordingly, the present writ petition is dismissed in line with the order passed in Writ Petition (S) No. 5672/2014 (P.N. Upadhyay Vs. State of Chhattisgarh & Others). No order as to cost.

Sd/-

(Sanjay K. Agrawal)
Judge

Santosh