IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 1495 of 2019
and
W.M.P. No. 1667 of 2019

A.Pandiaraja ... Petitioner

-vs-

1. The Secretary to Government of India
   Ministry of Textiles, Udyog Bhavan
   New Delhi.

2. The Chairman/ Board of Governors
   Sardar Vallabhbhai Patel International
   School of Textiles and Management
   Udyog Bhavan,
   New Delhi.

3. The Director
   Sardar Vallabhbhai Patel International
   School of Textiles and Management
   Avinashhi Road, Peelamedu
   Coimbatore – 641 004. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the clause 13.1 of the Sardar Vallabhbhai Patel International School of Textiles and Management Rules, 2004 in so far as it prescribes 58 years as age of retirement and the consequential order of the Third Respondent in its Ref. No. SVPITM/DIR/Office Order 2018 dated 05.01.2019 by which the Petitioner has been directed to superannuate on 31.01.2019 and quash the same and consequently permit the Petitioner to continue in service till he attains 60 years of age in terms of Government of India O.M. No. 25012/8/98-Estt.(A) dated 30.05.1998 with all consequential and attendant benefits.
(Prayer amended vide order dated 26.02.2019 made in W.M.P No. 6314 of 2019 in W.P. No. 1495 of 2019)

For Petitioner : Mr. V.Vijay Shankar

For Respondent : Mr. G.Baskaran
Central Government Standing Counsel

ORDER

Heard Mr. S.Mahesh, Learned Counsel for the Petitioner and Mr. G.Baskaran, Learned Central Government Standing Counsel appearing for the First to Third Respondents, and perused the materials placed on record, apart from the materials placed on record.

2. The Second Respondent, viz., Sardar Vallabhai Patel International School of Textiles and Management, is a registered Society under the Tamil Nadu Societies Registration Act, 1975. The Board of Governors of the Second Respondent had framed the recruitment and promotional rules of its employees, which provides in clause 13.1 as follows:-

> "13.1. No person shall ordinarily be retained in the service of the Institute beyond the age of 58 years. However, extension in a special case may be granted in accordance with the instructions of Government of India and for reasons to be recorded. The date of superannuation shall be the last date of month in which the person attained the age of 58 years. However, the employees whose date of birth is the first of the month shall retire from the service on the afternoon of the last date of the proceeding month on attaining the age of 58 years."

The Petitioner, who was an employee of the Second Respondent, was to retire from service on 31.12.2019 on attaining the age of superannuation of 58 years. He had then filed this Writ Petition on 18.01.2019 challenging the Order in Ref. No. SVPITM/DIR/ Office Order /2018 dated 05.01.2019 passed by the Third Respondent informing that he would be relieved from service on 31.01.2019 and had sought for consequential direction to continue in service till he attains the age of 60 years in terms of O.M. No. 25012/8/98-Estt.(A) dated 30.05.1998 issued by the Government of India.

3. Though the Petitioner had sought for an order of interim injunction restraining the Respondents from relieving service during the pendency of the Writ Petition in W.M.P. No. 1667 of 2019, it was not granted and the Petitioner had on 31.01.2019 retired from service. Thereafter, the application in W.M.P. No. 6314 of 2019 had been filed to include the reliefs assailing the validity of clause 13.1 of the Sardar Vallabhai Patel International School of Textiles and Management Rules, 2004, insofar as it prescribes 58 years as the age of retirement, as

contrary to O.M. No. 25012/8/98-Estt.(A) dated 30.05.1998 issued by the Government of India, which has been ordered by this Court on 26.02.2019, and necessary amendments to that effect have been carried out in the relief sought in the Writ Petition.

4. The Respondents have resisted the claim of the Petitioner by contending that in the absence of any decision taken to increase the retirement age from 58 years to 60 years in clause 13.1 of the Sardar Vallabhai Patel International School of Textiles and Management Rules, 2004, in furtherance to the relevant office memorandum, the Petitioner cannot claim any benefit of extension in service.

5. Learned Counsel for the Petitioner strenuously pleaded that the Second Respondent was bound to amend the rule increasing the age from 58 years to 60 years in furtherance to the said office memorandum so as to extend the benefit to the Petitioner and the failure to do so causes discrimination in the retirement age amongst autonomous bodies functioning under the purview of the Government of India.

6. It is not possible to accept the said contention raised in view of the binding decision of the Hon'ble Supreme Court of India in Sureshchandra Singh -vs-Fertilizer Corporation of India Limited [(2004) 1 SCC 592], where an identical claim made relying on the same office memorandum dated 31.05.1998 by the employees similarly placed to the Petitioner in another institution was rejected holding as follows:-

> "5. Here the Government of India took a policy decision to increase the retirement of Central Government employees. Application of that decision in respect of employees of public sector enterprises is dependent upon so many factors that are to be taken into account in the light of the peculiar characteristics of each company or corporation or department. So the first OM itself provides that the order will come into force only with effect from the date of notification of amendment to the relevant rules and regulations. So it is for the authority concerned to make necessary changes in the rules and regulations after taking into account all the relevant aspects. Immediately after the first OM dated 13-5-1998 the Department of Public Enterprises, Ministry of Industry, Government of India issued OM dated 19-5-1998 wherein the modalities of the implementation of the first OM in this Department was detailed. Here it is pertinent to note that the OM dated 19-5-1998 is not an instruction issued in the name of the President. On

the other hand, it was issued by the Department of Public Enterprises, which is advisory in nature. It accorded a broad discretion to the corporations or companies for the implementation of the enhanced retirement age after taking into account all the relevant factors. Pursuant to this direction the Board of Directors of FCIL took the decision not to increase the retirement age of its employees. The relevant factors that prevailed upon the Board of Directors are fully set out in its resolution and they are: that the Company is one of the highest loss-making company in the country; that the accumulated loss till the relevant date was to the tune of Rs 5049 crores; that the Company is incurring financial losses of roughly Rs 2.35 crores everyday; that the Company has no capacity to pay salaries to its employees; that the Company was referred to BIFR and was declared as sick on 6-11-1992; that as on the relevant date the Company has the negative net worth to the tune of Rs 4316.21 crores and; that the Company has surplus manpower; that it is not taking any new employees but on the contrary it is making conscious efforts to reduce the surplus manpower.

6. It is also to be noted that the OM dated 19-5-1998 itself does not raise the retirement age to sixty years. It is only an administrative direction and court cannot issue a writ to enforce such administrative instructions that is not having the force of law. The appellants do not have any right to continue in service till the age of sixty years. The decision of the Board of Directors is not arbitrary or unreasonable or unrelated to the question of enhancement in the age of retirement. Hence the first contention stands rejected.

7. The appellants assail the decision of the Board on the ground of violation of principles of equality. It is alleged that the Board-level employees were allowed to continue in service till the age of sixty and employees like the appellants who were below the Board level were forced to retire at the age of fifty-eight. In reply the respondents submitted that the Board-level employees could not be equated and compared with the other employees. Wholetime directors, who are two in numbers, are directly appointed by the President of India for a fixed term of five years that could be reviewed even earlier; and that other members of the Board are government servants and are nominees or

representatives from various Ministries and are appointed by the President of India for a term of three years. In these circumstances we find that the Board of Directors themselves form a different class and cannot be compared with other employees in regard to conditions of service applicable to them. Allegation of discrimination is also raised by the appellants vis-à-vis employees of other corporations. Each public sector undertaking is an independent body/entity and is free to have its own service conditions as per law. However, all employees in FCIL who are working in its various units and divisions retire at the age of fifty-eight as per the relevant rules; and that even the future employees will retire at the age of fifty-eight. We also find that the employees of different corporations could not be treated alike since every corporation will have to take into account its separate circumstances so as to formulate its policy and consequently, the argument that there is discrimination of appellants vis-à-vis employees of other corporations also cannot be accepted. Thus, the appellants have failed on all grounds. The appeals stand dismissed."

In view of the aforesaid legal position, it is not possible to grant any of the reliefs claimed in the Writ Petition.

In fine, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Secretary to Government of India
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New Delhi.

2. The Chairman/ Board of Governors
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3. The Director
Sardar Vallabhbhai Patel International
School of Textiles and Management
Avinashhi Road, Peelamedu
Coimbatore - 641 004.

+2cc to Mr. G.Baskaran (CGSC), Advocate, S.R.No.16480
+1cc to Mr. V.Vijay Shankar, Advocate, S.R.No.16886

W.P. No. 1495 of 2019

PL(CO)
CT 15/06/2022