* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 26th September, 2022**

\+ W.P.(C) 4348/2003

S.G.PARASHAR ..... Petitioner

Through: Appearance not given

versus

UOI &ORS. ..... Respondents

Through: Mr. Vishi Sharma and Mr. Amit Kumar, Advocates for R-3/NCUI

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

<u>O R D E R</u>

<u>CHANDRA DHARI SINGH, J (Oral)</u>

1. The instant civil writ petition is filed by the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

> *"Issue Writ of Mandamus or certiorari or any other appropriate writ or directions thereby quashing the impugned decision dated 21.04.2003 and as a necessary consequence thereof for quashing the impugned office order dated 7.7.2003.*
>
> *Issue Writ of Mandamus or certiorari or any other appropriate writ or directions directing the Respondent No. 3 to implement the recommendation of the 5th Pay Commission Report with regard to increase in age of superannuation from 58 to 60 years as has been done by the Central Government for its employees and has also been done by other organization/autonomous bodies similar to the Respondent No. 3."*

2. The Petitioner at the time of the filing of the writ petition was holding the charge of the post of Executive Director (Estate & Admin.) with Respondent No.3 (hereinafter referred to as "R3"). Respondent No.1 has all the control over the affairs of the R3 whereas Respondent No.2 is the ministry responsible for the office memorandum dated 13th May 1998 which pertains to the recommendations made by the 5th Pay Commission relating to age of retirement of the Central Government Employees.

3. The service conditions of the Petitioner and other employees of R3 are governed by Service Rules formulated by R3 (hereinafter referred to as "Service Rules"). Rule 12 of the Service Rules is relevant for the present controversy and has been reproduced below:

> *"Rule 12:*
> *Superannuation:*
>
> *An employee shall retire from the service of the Union:*
> *(i) On the last day of the month in which he/she attains the age of 58 years. If the ate of superannuation is first, he/she will retire on the last day of the previous month.*
> *(ii) On his being declared medically unfit for service by a medical board to be designated by the Appointing Authority in this behalf;*
> *(iii) On the imposition of the penalty of compulsory retirement;*
> *(iv) "The employees of the Union shall be entitled for following superannuation facilities:*
> *(a) Family Pension;*
> *(b) Gratuity Benefits;*
> *(c) General Provident Fund; and*
> *(d) Other benefits as announced by the Government of India from time to time.*
> *Provided that when it is in the interest of the Union to retain any employee after the age of fifty-eight, he may be re-*

employed for a period of one year at a time, till he attains the age of sixty. The power to re-employ an employee who has completed the age of fifty-eight shall be exercised by the Executive Committee of the Union. No employee shall be re-employed after he completes the age of sixty."

4. As per office memorandum dated 13th May 1998 issued by Respondent No.2 pertaining to the *"5th Central Pay Commission- Age of Retirement-raising of-FR56"*, it was recommended on the permission of the Hon'ble President of India that every government servant whose age of retirement is currently 58 years shall now retire from service on the afternoon of the last day of the month in which he/she attains the age of 60 years.

5. This memorandum was to come into effect from the date of notification and would be applicable to all Central Government Employees except those who had already retired. An amendment to FR56 was also accordingly issued on 13th May 1998 itself.

6. After the memorandum dated 13th May 1998, another memorandum dated 30th May 1998 was circulated by Respondent No.2 pertaining to age of retirement in autonomous bodies/organization-raising. The memorandum dated 30th May 1998 specifically stated that the Central Government had accepted the recommendation of the 5th Central Pay Commission and therefore, it had been decided to increase the age of retirement of Central Government Employees from 58 years to 60 years and accordingly F.R. 56 was amended vide notifications dated 13th May 1998 and 27th May 1998. Paragraph 2 of the memorandum dated 30th May 1998 is relevant for the present case as it states that the

Central Government had decided to extend the benefit of extension in age of retirement from 58 years to 60 years in the following cases: Relevant portion has been reproduced below:

> *"(d) In case of autonomous bodies/organisation which were following the rules as applicable to the Central Government Employees and where the pay scales and conditions of service are identical to Central Government Employees, the age of retirement shall be extended by 2 years.*
>
> *(e) Where the existing rules of the autonomous bodies/organization provides either that the age of retirement of personnel working shall be same as corresponding categories/grades in the Central Governments or where the existing rules provide that all the conditions of service shall be identical to corresponding category of personnel in the Central Government, the age of retirement may be increased by two years to 60 years.*
>
> *(f) A third category was also provided for, for autonomous bodies/organizations not covered by (a) and (b) above and in these cases the administrative ministry would examine the matter on merits and thereafter approach the department of personnel"*

7. The contents of the 5th Pay Commission Report came to be considered by the Governing Council of the R3 for the first time in its 102nd meeting of the Governing Council held on 24th September 1997 where it was listed as *'Additional Agenda Item No. 1, being Implementation of Recommendations of the Fifth Pay Commission Report for the Employees of NCUI.'* The Governing Council however, felt that it was too early to consider the matter since the Government had not yet notified the recommendations. On notification the same were to be placed before the Management for consideration.

8. The implementation of the recommendations of the 5th Pay Commission for the employees of R3 came to be considered as Agenda Item No. 8 in the 93rd meeting of the Executive Committee of R3 held on 13th November 1997 wherein the same was approved. Thereafter, the issue for consideration of raising retirement age of the employees of R3 from 58 to 60 years as recommended by the 5th Central Pay Commission was placed by the Secretariat of R3 itself as Additional Agenda Item No. 2 for the 105th meeting of the Governing Council of R3 which was held on 15th June 1998. However, no final decision was taken by the Governing Council and the Item was deferred to be placed in the next Governing Council meeting.

9. In the next meeting of the Governing Council of R3 being the 106th meeting held on 25th July 1998 the issue of raising retirement age was listed as Agenda Item No. 6. The issue was however, again deferred to be placed before the next meeting of the Governing Council. In the 107th meeting of the Governing Council which took place on 24th September 1998 the issue of raising retirement age was again placed at Agenda Item No. 7 but was dropped from the Agenda by the Governing Council.

10. On coming to know that the Governing Council had dropped the issue of raising the retirement age from the Agenda in the recorded minutes of the 107th meeting, the NCUI Employees Union gave a representation dated 6th November 1998 asking for implementation of the total package of the 5th Central Pay Commission as approved by the Government of India. Specific demand regarding increase in the retirement age from 58 to 60 years was also made. After this, the then

President of R3 directed that the representation dated 6th November 1998 be placed before the Governing Council.

11. In the 108th meeting of the Governing Council of R3 the issue of raising retirement age was given as Agenda Item No. 7. In the Agenda Notes prepared by the Secretariat of the R3 itself, it was clearly mentioned that *first,* apart from raising the retirement age all other benefits as recommended by the 5th Pay Commission Report such as revision of Pay Scale, Leave Encashment, Family Pension, Gratuity, GPF, LTC, Dearness Allowances had already been granted to the employees of the R3. *Secondly*, it was mentioned that similarly placed cooperative organizations such as Krishak Bharti Cooperative Ltd. (KRIBHCO), National Cooperative Development Corporation (NCDC) and IFFCO had already enhanced the retirement age for their employees. However, this matter was again dropped from the Agenda.

12. On 16th August 2008 one Mr. Bhagwati Prasad came to be appointed as the Chief Executive of R3 on deputation. In the 121st meeting of the Governing Council held on 6th August 2002, in Agenda Item no. 10 pertaining to Staff matters, it was decided that Shri Bhagwati Prasad, Chief Executive be absorbed in the services of the R3. It was further decided that he would be entitled to draw pension and other retirement benefits from R3 after completing all formalities with Government of Uttar Pradesh as per rules. Prior to this his deputation was extended up to 14th August, 2002.

13. Thereafter, in the 122nd meeting of the Governing Council held on 19th December 2002 at Agenda Item no. 11, i.e., Staff matters in the

Agenda Notes as circulated to members, there was no mention of the absorption of Shri Bhagwati Prasad in the services of the R3. However, during the course of the meeting, it transpired that the issue of absorption of Shri Bhagwati Prasad was also taken up wherein the comments of Shri Bhagwati Prasad were considered. Shri Bhagwati Prasad's contentions were that as per U.P. Government Rules the age of superannuation is 60 years while as per the service rules of R3 the same is 58 years. Shri Bhagwati Prasad further requested that his services be absorbed by R3 by keeping his age of superannuation at 60 years as provided under the U.P. Government Rules. Shri Bhagwati Prasad also gave an example of KRIBHCO that in that Cooperative Organization the age of superannuation was 60 years.

14. This issue was discussed by the Governing Council without any notes or comments being sought for or given by the Secretariat of the R3. The President of the Governing Council also mentioned regarding some legal opinion which had not been placed on record as there were no Agenda Notes prepared/circulated or placed. Governing Council accepted the legal opinion and thereafter it amended Rule No. 12(i) of the Service Rules of the R3 and gave benefit of 60 years of superannuation to the Chief Executive only. This point was never examined by the Secretariat of the R3. It may be mentioned that no details of earlier decisions of Governing Council about non-consideration of raising retirement age were seen or looked into by the new Governing Council formed as on 30th March 2000. No legal opinion was taken in case of other employees

while dropping the Agenda Item pertaining to raising of Retirement Age for all employees.

15. The Petitioner made a representation dated 2nd April 2003 to R3 for getting the benefit of the recommendation of the 5th Pay Commission Report pertaining to raising of age of retirement from 58 to 60 years. It was also mentioned in the representation that all other recommendations of the Pay Commission had been accepted by R3 and that this benefit should also be granted to maintain parity with the Rules of the Government of India regarding age of retirement as was being done earlier as well. It was also mentioned that benefit of increase in retirement age had been extended to the Chief Executive.

16. Vide decision dated 21st April 2003 the Chief Executive and the President of R3 rejected the representation with the following remarks:

> *"The above representation needs to be disposed off as per the provision of the Service Rule. Service Rules do not provide for superannuation of the age of 60 years in his case. May kindly like to agree*
>
> *Proposed by C.E   Agreed by President"*

17. The Petitioner had received Office Order dated 7th July 2003 whereby he was informed that he will be retired from service on attaining the age of 58 years of superannuation w.e.f. 31st July 2003 and he should obtain his no dues certificate. Being aggrieved by the orders dated 21st April 2003 and the office order dated 7th July 2003 and further being aggrieved due to non-implementation of the Fifth Pay Commission

Report regarding increase in age of superannuation, the Petitioner has invoked the writ jurisdiction of this Court.

SUBMISSIONS ON BEHALF OF THE PETITIONER

18. Learned counsel appearing on behalf of the Petitioner has contended that the actions of R3 are discriminatory, arbitrary, violative of the provisions of the Constitution of India and seek to benefit one person to the exclusion of all other employees of an organization. It is submitted that the case of the Chief Executive was taken up by the R3 without any previous Agenda Notes and without any representation by the Chief Executive in this regard therefore, a decision based on incorrect reasoning has been taken only with a view to benefit and cause favour to one person.

19. It is also submitted that without any cogent or valid reasons, R3 is not implementing the recommendation of the 5th Pay Commission with regard to relaxation of age of superannuation from 58 to 60 years. It is choosing to ignore the memorandums dated 13th May 1998 and 30th May 1998 issued by the Respondent No.2 with regard to increase in age of superannuation. It is respectfully submitted that the R3 is squarely covered by Clause 2 (i) of the Memorandum dated 30th May 1998 as the pay scales of the R3 are similar to Central Government Pay Scales and therefore, the recommendations of the Pay Commission were bound to be followed by R3 which is an organization registered under the Multi State Co-operative Societies Act, 2002.

20. It is further contended that the issue of increase in age of

superannuation was tabled before the Governing Council of the R3 on numerous occasions and was recommended by the Secretariat of the R3. The Secretariat had mentioned two aspects which called for an immediate conforming with the report of the Pay Commission. *First*, that all other aspects of the Pay Commission Report such as Pay Scales, G.P.F., L.T.C. and other allowances etc. had been followed by R3 as per Government of India Rules and *secondly*, because other similar organizations/autonomous bodies such as KRIBHCO, IFFCO and NCDC had also increased the age of superannuation from 58 to 60 years as per records available in Agenda Item No. 7 of 108th meeting of Governing Council.

21. It is submitted that no reasons were given in the minutes of meeting of the Governing Council while rejecting the increase in age of superannuation. The minutes of meeting do not indicate any application of mind or valid reason for rejection of the Agenda Notes and while rejecting the matter relating to superannuation in its meeting, R3 has chosen to ignore the fact that the benefit of increase in superannuation has been given to similar placed organizations such as KRIBHCO. However, while giving the benefit to its Chief Executive, reliance was placed upon the same Organization i.e., KRIBHCO to show that age of superannuation had been increased from 58 to 60 years.

22. It is also submitted that the amendment in Rule 12 (i) of the Service Rules of R3 to give benefit to the Chief Executive which has been done without receiving the comments from the Secretariat and without the matter being tabled or being on agenda in the meeting of the

Governing Council. It has also chosen not to call for comments from the employees or officers prior to amendment, as has been done in earlier cases as it was obvious that the amendment was discriminatory, unfair, illegal and would have been greeted with protests. Therefore, the Chief Executive is enjoying benefit of two Service Rules at the same time.

23. Learned counsel appearing on behalf of the Petitioner has also submitted that the Petitioner has not been afforded any opportunity of a personal hearing on his representation dated 2nd April 2003 which has been rejected summarily. Moreover, the Petitioner has not been intimated as to the fate of his representation or the representation made by the other employees/officers of the R3. Moreover, the representation of the Petitioner was never placed before the Governing Council or Chief Executive for their consideration as decisions in such matters vests with them under the byelaws of the R3, being byelaw No. 15 (vi) and 17 (x) respectively. The office order dated 7th July 2003 has been passed without discussing or mentioning or showing consideration of the Petitioner’s representation and in total disregard to the case of the Petitioner for enhancement of age of superannuation vis-a-vis the Chief Executive and therefore, there is total contravention of the rules of natural justice in as much as the Petitioner's representation dated 2nd April 2003 has not been decided.

24. Learned counsel appearing on behalf of the Petitioner has also contended that the Service Rules of the R3 and especially Rule 14, 20, 21, 24, 25, 26, 27 etc. show that the R3 is following the same rules as are prescribed by the Central Government regarding conditions of service.

Therefore, there is no valid reason as to why the Rule of Superannuation should not be similar to the rule which is being followed for Central Government Employees i.e., F.R. 56. He has also placed reliance on Rule 81 of Service Rules which further clarifies the issue by stating that all matters relating to Service Rules not covered by these rules, the corresponding rules and regulations of the Central Government shall apply. Therefore, it is discriminatory and illegal on the part of the R3 to not follow Central Government recommendations for raising age of superannuation when all other Central Government Recommendations are being followed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

25. Learned counsel appearing on behalf of the R3 has taken a preliminary objection that the issue raised in the above said writ petition is similar to the issue which was raised earlier by some other employees of R3 and the said writ petition filed by the Petitioners therein was dismissed by a Coordinate Bench of this Court vide a detailed judgment dated 12th September 2001. Therefore, from a bare perusal of the above said judgement, it is clear that the Petitioner herein is not entitled to continue in service beyond the age of 58 years. It is also submitted that the Petitioner is fully aware of the above said orders passed by a Coordinate Bench of this Hon'ble Court but has intentionally concealed the said fact.

26. It is further submitted that the grievance of the Petitioner herein pertains to non-implementation of the decision of the Government of

India to increase the retirement age of the Government employees by two years by R3. As it is the own case of the Petitioner that the Governing Council of R3, alone is competent to take the decisions in respect of the applicability of the decisions taken by the Government of India and the Governing Council has already decided not to implement the decision regarding increase in the retirement age by two years, therefore, nothing survives in the claim of the Petitioner and the present writ petition should be dismissed.

27. Learned counsel appearing on behalf of R3 has submitted that the Petitioner has made an attempt to mislead this Hon'ble Court by comparing his case with that of Mr. Bhagwati Prasad as Mr. Bhagwati Prasad is the Chief Executive of R3. The post of Chief Executive is a distinct and statutory post and cannot be compared with the post held by the Petitioner. The Governing Council of R3 has due to administrative exigencies while keeping in mind the financial implications has amended the rule relating to age of superannuation by creating an exception in the case of Chief Executive, who shall superannuate on his/her attaining the age of 60 years. The Petitioner, thus, cannot be equated with Chief Executive.

FINDINGS AND ANALYSIS

28. Heard the learned counsel for the parties and perused the record. I have given my thoughtful consideration to the submissions made by the parties.

29. At the outset, it is pertinent to mention that some other employees

of R3 similarly placed as the Petitioner herein had approached this Court for seeking similar relief. Vide judgment dated 12th September 2001 in C.W. No. 6565 of 2000 and C.W. No. 6142 of 1999, a Co-ordinate bench of this Court dismissed the writ petitions as being devoid of merits. The relevant portion has been reproduced below:

> *"**8.** It is crystal clear from the aforesaid resolution that NCUI did not approve the proposal for enhancement of the retirement age from 58 years to 60 years. Thus, the request and the proposal of the NCCT for enhancement of the retirement age from 58 to 60 years was neither approved by NCUI nor by the Government of India.*
> ***9.** I have already referred to rule 11 of the Service Rules governing the service conditions of the petitioners. The said rule indicates that approval of the Government of India is necessary for amending the Service Rules in the matter and for enhancement of retirement age. Said position is also clear from the various documents placed on record whereunder Government's approval had been sought for It is thus clearly established that unless and until Government of India approves the proposal the contention of the counsel appearing for the petitioner cannot be accepted that retirement age stands raised to 60 years. **My attention was also drawn to a Division Bench decision of Kerala High Court in Director General, National Council for Cooperative Training v. Dr. A. Ramakrishnan (WA No. 2948/2000 disposed of on 24.11.2000) and also to the decision of Calcutta High Court in Writ Petition No. 19372 (W)/1998, Shri Badal Chandra Chakraborty v. Union of India, disposed of on 13.2.2001**. Similar contentions as raised in the present writ petitions were also raised before the said High Courts. In the said decisions it was held that unless and until Government of India approved the proposal the petitioner has no legal right to continue in service beyond 58 years of age. I am in respectful agreement with the aforesaid decisions of the Kerala High Court and Calcutta High Court. The petitioners were clearly governed*

by the service rules. Rule 11 thereof stipulates that employees like the petitioners would stand retired on completion of 58 years of age. No amendment was made to the said rules in accordance with law, and therefore, the petitioners cannot claim that they are required to be continued till they attain the age of 60 years.

***10.** In that view of the matter, I do not find any merit in these writ petitions and the writ petitions stand dismissed. However, it is observed that if any of the petitioners had served beyond the age of 58 years the pay and allowances paid to them shall not be recovered from them. In terms of the aforesaid observations and directions the writ petitions stand disposed of."*

CONCLUSION

30. It becomes immensely clear that the issued raised by way of present writ petition has already been adjudicated by a Coordinate Bench of this Court. Moreover, as reproduced above, the same issue has also been dealt by certain other High Courts namely, Calcutta High Court and Kerala High Court which have also dismissed the identical relief(s) sought herein.

31. This Court is in agreement with the view taken by the Coordinate Bench of this Court that the Petitioner cannot claim a legal right to continue in the services of R3 as they are completely governed by the Service Rules. Rule 12 of the Service Rules clearly provides that an employee shall retire from services of the Union on the last day of the month in which he/she attains the age of 58 years. No amendment was made to the said rules in accordance with law, and therefore, the Petitioner cannot claim that they are required to be continued till they attain the age of 60 years.

32. In view of the aforesaid, this Court does not find any merit in the instant writ petition and accordingly, the writ petition is dismissed.

33. Pending applications, if any, stand dismissed.

34. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 26, 2022
Dy/mg