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

Judgment reserved on: 23.01.2023

% **Judgment delivered on: 09.02.2023**

\+ LPA 59/2023 & CM APPLs. 3231-33/2023

S G PARASHAR ..... Appellant

Through: Mr. Sandeep Kumar Dwivedi, Mr.Satyam Pandey, Mr. Syed Mohd. Muztab, Advocates

versus

UNION OF INDIA THROUGH SECRETARY, DEPARTMENT OF AGRICULTURE AND COOPERATION MINISTRY OF AGRICULTURE & ORS. ..... Respondents

Through: Mr. Anil Soni, CGSC for R-1 & R-2

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

<u>J U D G M E N T</u>

<u>SATISH CHANDRA SHARMA, C.J.</u>

1. The Appellant before this Court, a retired Executive Director of National Cooperative Union of India (hereinafter referred to as 'NCUI'), has filed the present Appeal being aggrieved by the judgment and order dated 26.09.2022 passed by the Learned Single Judge in W.P.(C) No. 4348/2003 titled *S. G. Parashar Vs. UOI & Ors.*.

2. The facts of the case reveal that the Appellant before this Court, while in service, had preferred a Writ Petition in the year 2003 claiming continuance of service up to the age of 60 years.

3. The Appellant at the relevant point of time was working as an Executive Director in the service of the Respondent Organization. The Appellant came up with the case before the Learned Single Judge stating that the Respondent Organization, though it is a Society registered under the Multi State Cooperative Societies Act, is fully in control of Government of India, and therefore, the recommendations made by the 5th Pay Commission relating to age of retirement of Central Government employees should be made applicable to the employees of Respondent No.1 Society also.

4. The Appellant further stated that an Office Memorandum was issued by the Secretary of Ministry of Personnel, Public Grievance & Pensions dated 30.05.1998 regarding the recommendation of the 5th Pay Commission in respect of date of retirement, and the Office Memorandum dated 13.05.1998 should also have been made applicable to the employees of the Respondent No.1 Society.

5. The Learned Single Judge after hearing Learned Counsel for the Parties and after careful consideration of the material on record has dismissed the Writ Petition. The following reliefs were prayed for before the Learned Single Judge:

> "*(a) 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.*
>
> *(b) 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."

6. The order/ judgment dated 26.09.2022 passed by the Learned Single Judge as contained in Paragraphs 28 to 34 reads as under:

"***FINDING 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.*"

7. Learned Counsel for the Appellant has vehemently argued before this Court that one Sh. Bhagvati Prasad who was a Chief Executive in another Organization under the same Cooperative i.e. NCUI, was permitted to continue up to the age of 60 years, and therefore, the action of the Respondent in discriminating against the Appellant vis-à-vis Sh. Bhagvati Prasad, is violative of Articles 14, 16 & 21 of the Constitution of India.

8. Learned Counsel has vehemently argued before this Court that the Central Government, based upon the recommendation of the 5th Central Pay Commission, enhanced the age of retirement by issuance of an Office Memorandum dated 13.05.1998, and therefore, once the Central Government has enhanced the age of retirement up to the age of 60 years in respect of all Government Service, the Appellant should have also been permitted to continue till the age of 60 years as he was working in a Society which was fully under the administrative control of the Central Government.

9. Learned Counsel for the Appellant has vehemently argued before this Court that the Organization in which the Appellant was working is fully funded by Central Government and by no stretch of imagination, the Organization could have ignored the Office Memorandum dated 13.05.1998 & 30.05.1998, which are in respect of superannuation of employees, and have a binding effect upon the Respondent Organization also.

10. Learned Counsel has also argued that in other Organization/ Autonomous Body such as Krishak Bharti Cooperative Ltd. (KRIBHCO), Indian Farmers Fertilizer Cooperative Ltd. (IFFCO) and National Cooperative Development Corporation (NCDC), the age of retirement was enhanced to 60 years, and therefore, by no stretch of imagination, the Appellant could have been singled out in the matter of retirement even though the Organization was under the administrative control of the Government.

11. It has been further stated that the Respondent have not at all considered the representation of the Appellant dated 02.04.2003, and he has superannuated on completion of 58 years of service. The Appellant has raised other grounds also, however, the main ground canvassed by the Appellant is that once the age of retirement was increased in respect of Central Government employees based upon the recommendation of the 5th Pay Commission, the same should have been made applicable to all the employees working in the Central Government Organizations as well as Autonomous Bodies/ Societies under the control of the Government.

12. This Court has carefully gone through the documents on record, the grounds raised by the Appellant and the Judgment passed by the Learned Single Judge.

13. The undisputed facts of the case reveal that the Service Condition of the Appellant are governed by the Rules framed by the Respondent No.3 Organization, and Rule 12 of the Service Conditions is reproduced as under:

> *"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 reemployed after he completes the age of sixty."*

14. The Service Rules categorically provided retirement at the age of 58 years. It is true that an Office Memorandum was issued on 13.05.1998 by Respondent No. 2 based upon the recommendation of the 5th Central Pay Commission, enhancing the age from 58 to 60 years and Fundamental Rule 56 was accordingly amended on 30.05.1998 itself.

15. It is also an undisputed fact of the case that another Memorandum dated 30.05.1998 was issued categorically stating that the Central Government had accepted the recommendation of the 5th Pay Commission, and it has been decided to increase the age of retirement of Central Government employees from 58 years to 60 years, and accordingly, Fundamental Rule (FR) 56 was amended vide notification dated 13.05.1998 and 27.05.1998. The Office Memorandum dated 30.05.1998 is reproduced as under:

"No. 25012/8/98 Estt. (A)
Government of India
Ministry of Personnel, Public Grievance & Pensions
(Department of Personnel & Training)

New Delhi-110001, Dated the 30th May, 1998

OFFICE MEMORANDUM

Subject: Age of Retirement in autonomous bodies/organizations - Raising of

The undersigned is directed to say that the Fifth Central Pay Commission in para 128.16 of its report recommended for increase in age of retirement of Central Government Employees from 58 years to 60 years. The recommendation or the Fifth Central Pay Commission has been accepted by the Government and it has been decided to increase the age of retirement of Central Government Employees from 58 years to 60 years.

Accordingly, F R, 56 has been amended vide this Department's Notifications No, 25012/2/97 - Estt. (A) dated 13.5.1998 and 27.5.1998. The amended F.R. 56 (a) reads as under:-

> *"(a) Except as otherwise provided in this rule. every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:*
>
> *Provided that a Government Servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years."*
>
> *"Provided further that a Government Servant who has attained the age of fifty eight years on or before the first day of May, 1998 and is on extension in service, shall retire from service on expiry of his extended period of service."*

2. Consequent upon revision of scale of pay of the Central Government Employees, the question of extending the same benefits to the employees of the autonomous bodies/organizations was also under consideration of the Government. It has been decided to extend the benefit of extension in age of retirement from 58 years to 60 years in the following cases:-

> *(a) In cases where the autonomous bodies/organizations are 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 two years with prospective effect through appropriate Notification amending the Rules in consultation with the administrative Ministry concerned subject to condition that the age of retirement shall not exceed 60 years. There shall be a complete ban on*

grant of extension in service beyond the age of superannuation except in the case of medical and scientific specialists, who can be granted extension in service, on a case to case basis, upto the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service on 1.5 1998.

(b) In cases where the existing rules of the relevant autonomous bodies/organizations provide either that the age of retirement of specific categories of personnel working in these organizations shall be same as corresponding categories/grades in the Central Govt. or where the existing rules provide that all the conditions of service shall be identical to corresponding category of personnel in the Central Govt., the age of retirement may be increased by two years from prospective effect subject to a maximum of 60 years, in consultation with the concerned Administrative Ministry except in cases where the age of retirement in these organizations is already more compared to their counterparts in the Central Govt. There shall be a complete ban on extension in service beyond the age of superannuation except in the case of medical and scientific specialists, who can be granted extension in service, on a case to case basis, upto the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service on 1.5.1998.

(c) In respect of autonomous bodies/organizations not covered by (a) & (b) above, the Administrative Ministry concerned may examine the matter on merits and thereafter approach the Department of Personnel, if it proposed to extend the age of retirement in these autonomous bodies/organizations. The usual

conditions that the maximum age of retirement shall not exceed 60 years and there shall be a complete ban on extension in service beyond the age of superannuation except in the case of medical and scientific specialists, who can be granted extension in service, on a case to case basis. upto the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service on the date of issue of orders shall apply.

3. Approvals in the cases covered by paras 2 (a) and (b) above will be at the level of the Minister-in-Charge of the administrative Ministry.

Sd/-
(Harinder Singh)
Joint Secretary to the Government of India"

16. The aforesaid OM dated 30th May, 1998 was not made applicable to autonomous bodies/ organisation in toto and it was subject to certain terms and conditions.

17. It is an undisputed fact that the matter relating to implementation of recommendation of the 5th Pay Commission was considered by the Executive Committee from time to time and it was also placed before the Governing Council of Respondent No.3. However, it was only on 12.06.2014, that the Governing Council decided to raise the retirement age from 58 to 60 years. The Resolution passed by the Governing Council is reproduced as under:

"***NATIONAL COOPERATION UNION OF INDIA***
Minutes of the 167th Meeting of the Governing Council of NCUI Held on 25.05.2014 at New Delhi.

X X X X X X

Addl. Agenda Item No. 2: To consider the proposal to raise the retirement age
of the employees of NCUI from 58 to 60 years,

The President informed the council that the employees of NCUI have been time & again requesting to raise the retirement age from 58 to 60 years and it was also brought as an agenda in the previous Governing Council meetings. He further informed that the retirement age has already been enhanced in NCCT, which is a unit of NGUI and also most of the cooperative institutions, Central / State Governments, Central Autonomous Bodies, PUs, NCDC and NABARD etc. have already raised the superannuation age from 58 to 60 years as per the recommendations of the Vth Pay Commission. It was further informed that in Government Educational Institutions / Universities, recognized by the UGC. the retirement age for faculty has been increased upto 65 years. Further, due to retirement of existing employees, the official work. training programmes and other activities of the union, are seriously affected. Further, if the retirement age is extended for two more years, the silount payable to retiring employees on account of leave salary, pension, gratuity etc. can be postponed by another two years. The Issue was discussed in detail and considering the advantages of this proposal, the council decided to increase the superannuation age of the employees of NCUI from 58 to 60 years with immediate effect and approved the amendment in service rules, as proposed

Thereafter, the meeting ended with a vote of thanks to the Chair.

Sd/-	*Sd/-*
(Dr. Dinesh)	*(Dr. Chandra Pal Singh Yadav)*
Chief Executive	*President*
12.06.2014	*12.06.2014*"

18. It is also an undisputed fact of the case that the Appellant has attained the age of superannuation much prior to the decision taken by the Organization in which the Petitioner was working, and therefore, in the considered opinion of this Court, once the organization in which the Appellant was working has taken a decision only on 12.06.2014 to continue its employee up to the age of 60 years, the decision of the Governing Council cannot be made applicable with retrospective effect.

19. It is also an undisputed fact that the Governing Council of Respondent No.3 alone is competent to take decision in respect of applicability of decisions taken by Government, and the Governing Council has decided to implement the decision in respect of enhancement of age of retirement only on 12.06.2014.

20. Learned Counsel has vehemently argued before this Court that one Sh. Bhagwati Prasad, Chief Executive, who was serving in NCUI, was permitted to continue up to the age of 60 years, and the National Cooperative Union of India (NCUI) and National Council for Cooperative Training are different departments under the same nodal ministry, and therefore, if Sh. Bhagwati Prasad, Chief Executive, was favoured, the rest of the employees of National Council for Cooperative Training, should have been also permitted to continue up to the age of 60 years. This Court has also looked into the aforesaid issue.

21. Mr. Bhagwati Prasad was a Chief Executive of the NCUI, and he was not holding the same post the Petitioner was holding. Otherwise also, the Appellant is not entitled for any relief, especially in light of the fact that the decision to enhance the age of the employees was taken in respect of NCUI employees up the age of 60 years only on 12.06.2014.

22. Accordingly, this Court does not find any reason to interfere with the order/judgment dated 26.09.2022 passed by Learned Single Judge, and, therefore, the present LPA stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

FEBRUARY 09, 2023
aks