



W.P.No.8663 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.8663 of 2020

and

W.M.P.No.10493 of 2020

P.Vadivelu,
C-5, Burns Colony,
SAIL Refractory Company Ltd.,
Magnesite Mines (PO),
Jagir Ammapalayam (via),
Salem – 636 302.

...Petitioner

-Vs-

1.SAIL Refractory Company Ltd.,
Rep by its Chief Operating Officer,
Post box No.565,
Salem – 636 005.

2.The Manager (Personnel),
SAIL Refractory Company Ltd.,
Post Box No.565,
Salem – 636 005.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, after calling for the records relating to the order



W.P.No.8663 of 2020

No.SRCL/P&A/2020/0154 dated 01.04.2020 passed by the 2nd respondent (Ex-A) and to quash the same as being illegal and contrary to the Board Resolution dated 07.09.2017 and OM dated 20.04.2007 and for a consequential direction to the respondents to continue the petitioner in service till he completes 60 years of age with all consequential benefits including the monetary benefits within a time frame to be fixed by this Court and pass such further orders.

For Petitioner : Mr.V.Govardhanan

For Respondents : Mr.C.Veeraraghavan

ORDER

This writ petition is filed to quash the order in No.SRCL/P&A/2020/0154 passed by the 2nd respondent dated 01.04.2020 and for a consequential direction to the respondents to continue the petitioner in service till he completes 60 years of age with all consequential benefits including the monetary benefits within a stipulated period of time.

2. The case of the petitioner is that he was appointed as a Fitter in Burn Standard Company Limited on 29.11.1984. He joined the said company on 01.12.1984. On 01.11.1988, he was upgraded as Skiled Gr.III. On



W.P.No.8663 of 2020

19.05.1998, the Ministry of Industry, Department of Public Enterprises issued a memorandum enhancing the age of retirement from 58 to 60 years.

The memorandum was applicable to Burn Standard Company, which was a public sector Company coming under the Department of Heavy Industries, Government of India. On 27.06.1998, the Burn Standard Company issued an administrative order increasing the age of retirement from 58 to 60 years. Though when the petitioner was appointed the age of retirement was 58 years, by virtue of said Office Memorandum and administrative order dated 19.05.1998 and 27.06.1998. The petitioner was entitled to continue till 60 years, the age of retirement. Despite the petitioner being entitled to continue till 60 years by virtue of Board Resolution dated 07.09.2017, the 2nd respondent issued a letter to the petitioner on 01.04.2020 stating that the petitioner would be retired on 30.06.2020 when he will be completing 58 years. Aggrieved by the order dated 01.04.2020, the present writ petition is filed.

3. Learned counsel appearing for the petitioner would submit that on 08.04.2001, the Bum Standard Company which was under the BIFR rolled back the age of retirement from 60 years to 58 years because the Company



W.P.No.8663 of 2020

was in the process of reconstruction. On 01.04.2004, the petitioner was promoted as Engineer (Maintenance) w.e.f 01.04.2004. On 10.04.2008, the petitioner was further promoted as Junior Manager (Workshop) with effect from 01.04.2007. On 15.10.2012, the petitioner was promoted as Assistant Manager (Workshop) w.e.f 01.04.2012. On 26.03.2016, the petitioner was promoted as Deputy Manager (Mines, Auto & Workshop) with effect from 01.04.2015. The petitioner is presently holding the post of Deputy Manager (Stores). In the meantime, on 20.04.2007, an Office Memorandum was issued by the Department of Public Enterprises regarding the question of enhancing the age of retirement from 58 years to 60 years. In the case of sick companies, (a) If the company has made profits for the preceding 3 years (b) and the net worth of the company had remained positive for the preceding 3 years (c) the company had not availed budgetary support for the preceding 3 years, it could increase the age of retirement from 58 to 60 years.

4. It is further submitted that no immediate action was taken based on the office memorandum dated 20.04.2007 because the Bum Standard Company was under the process of transferring all its assets and liabilities to a new company which came to be called as SAIL Refractory Company Ltd,



W.P.No.8663 of 2020

the 1st respondent. This is a fully owned subsidiary of SAIL. In the note dated 14.05.2010, put up to the Cabinet Committee on Economics Affairs by the Department of Heavy Industries, Ministry of Heavy Industries and Public Enterprises, it was stated that the Department should work out the modalities of transfer in such a way that the revision of pay scale and enhancement of retirement age will be looked into by Ministry of SAIL based on the Department of Public Enterprises guidelines after the transfer of units into them.

5. Thereafter, the petitioner became an employee of the 1st respondent Company pursuant to the Office Memorandum issued by the Department of Heavy Industries on 17.11.2011 regarding the transfer of assets and liabilities. In the 28th Meeting of the Board of Directors, the 1st respondent Company has resolved as follows in para 5 and the same is extracted below:

5. Further in terms of DPE Guidelines issued vide DPE Om No. 18(1) 2007- GM-GL-80 dated 20.04.2007, SRCL fulfils all the requisite eligibility criteria as follows:

1. Positive net worth for the last 3 years.
2. Continuous net profit for the last 3 years
3. years. SRCL has not availed any budgetary support during the last 3 years.



W.P.No.8663 of 2020

6. In view of the above reasons, it is proposed that the SRCL Board may kindly accord approval for SRCL employees for enhancement of the retirement age from the present 58 years to 60 years prospectively with effect from 01.09.2017. The petitioner became entitled to continue till 60 years because Burn Standard was no longer a sick Company as per RTI reply dated 02.01.2019. Despite his being entitled to continue till 60 years by virtue of Board Resolution dated 07.09.2017, the 2nd respondent issued a letter to the petitioner on 01.04.2020 stating that the petitioner would be retired on 30.06.2020 after completing 58 years. The impugned order dated 01.04.2020 is filed and marked as Ex-A.

7. Learned counsel further submitted that the impugned order is contrary to the OM dated 20.04.2007 issued by the Department of Public Enterprises regarding the enhancement of the retirement age from 58 to 60 years and the subsequent resolution based on this OM issued by 1st respondent Board on 07.09.2017. Thereafter, the 1st respondent Board in its resolution dated 07.09.2017 had enhanced the age of retirement of the employees from 58 to 60 years because (1) the net worth has become positive in the last 3 years, (2) continuous net profit for last 3 years, (3) SRCL has not



W.P.No.8663 of 2020

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availed any budgetary support. The 2nd respondent has no jurisdiction to issue the impugned order retiring him at 58 years. The petitioner gave a representation dated 07.05.2020 that he is entitled to continue till 50 years, for which the respondents have not chosen to provide any reply. When the 1st respondent had passed a Resolution dated 07.09.2017 enhancing the age of retirement from 58 to 60 years, they are bound by the resolution of the Board.

8. The non-executive employees who are covered by the Standing Orders are entitled to continue till 60 years. The Executives were entitled to continue till 60 years because of the OM dated 19.05.1998 issued by the Ministry of Industries and the administrative order dated 27.06.1998. But on 18.04.2001, there was a rollback to 58 years because reconstruction of the company was going on. The Government of India issued OM dated 20.04.2007 stating that the public sector units can increase the age of retirement back to 60 years if three conditions mentioned (a)(b)(c) above were satisfied. Since those conditions are satisfied, the 1st respondent has restored the retirement age to 60 years. The petitioner cannot be retired at 58 years. To retire the petitioner when he has completed 58 years and not 60 is



W.P.No.8663 of 2020

illegal and contrary to what has been set out above.

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9. Learned counsel for the petitioner submitted that this Court at the time of admission, has granted an order of interim stay in W.M.P.No.10493 of 2020 in W.P.No.8663 of 2020 dated 14.07.2020 and the same is in force till date.

10. A counter affidavit was filed on behalf of the first respondent dated 03.08.2020.

11. Learned counsel appearing for the respondents would contend that as per clause – 6 of the appointment letter, the age of retirement of the petitioner is 58 years and in the matter of retirement, the appointment order holds good and the same is applicable to the petitioner. As per clause-6 of his service condition/appointment order dated 29.11.1984, his retirement age from service is specified as follows:

“You will retire from the service of the company on completion of 58 (Fifty eight) years of your age”



W.P.No.8663 of 2020

12. Learned counsel further submitted that the notice issued by M/s Burn Standard Company Limited on 18.04.2001 while rolling back the age of retirement from 60 to 58 years states as follows:

QUOTE "On the instruction of Govt. of India vide its OM No.18 (6)/98- GM-GL/002 dated 19.5.1998, the age of retirement was enhanced from 58 to 60 years with effect from 18.6.1998, when the Company was under investigation by BIFR. Subsequently, on 16.4.1999, BIFR sanctioned a revival scheme for M/s Burn Standard Company Ltd which imposed certain conditions, one of which was reduction of age of retirement from 60 to 58 years. The enhancement of age of retirement from 58 to 60 years has seriously deterred the prospect of the revival of the company.

However, the Government of India have now reviewed its policy and allowed special dispensation for the SICK Companies vide its OM No, 18/10/99-GM-GL-30 dated 01.01.2001 authorizing the Board of Directors of Companies to restore the age of retirement of SICK PSUs to 58 years, subject to the approval of Govt. of India.

In compliance of the OM No.18/10/99-GM-GL-30 dated 01.01.2001 and in the interest of revival of the Company, it has been decided by the Management, with the approval of Administrative Ministry, that the age of retirement shall be restored to 58 year with immediate effect", UNQUOTE.

13. The SAIL Refractory Company Limited Board passed a resolution on 07.09.2017 recommending the age of retirement of SRCL employees as 60 years with effect from 01.09.2017. The SRCL Board in its subsequent 30th Board Meeting held on 12.03.2018, modified the earlier resolution dated



W.P.No.8663 of 2020

07.09.2017 to the extent that till the approval of SAIL Corporate Office and Ministry of Steel, Government of India is obtained, the age of retirement of the SRCL executive employees will continue to be 58 years and in case such approval is obtained, that has to be adopted prospectively for executives who are on the rolls of SRCL on the date on which approval will be accorded for implementation.

14. The proposal/Board Resolution forwarded to the SAIL Corporate Office in this regard for approval of competent authority is still pending for approval and therefore the claim of the petitioner based on the SRCL Board Resolution dated 07.09.2017 carries no merit in it and is null and void. Moreover, if at all the proposal is considered for approval by the Administrative Ministry, the approval will be effected only prospectively. As the petitioner has already superannuated on 30.06.2020 on attaining the age of 58 years as per the existing rules, his claim to continue in service has no merit in it and is liable to be dismissed.

15. The petitioner is not entitled to continue in service beyond 30.06.2020, i.e., on attaining the age of superannuation of 58 years as per his



W.P.No.8663 of 2020

appointment letter and as per the prevailing rules of the company. The petitioner who was appointed in the Burn Standard Company Limited is governed by the terms and conditions of the offer of appointment issued by Burn Standard Company Limited, which was transferred to SAIL as a subsidiary company of SAIL, by name SRCL, formulated with effect from 16.12.2011 and the petitioner is bound by the appointment order wherein the retirement age is 58 years.

16. The SAIL Refractory Company Limited and SAIL are two different entities with different Board of Directors and both Boards are separate and the employees/Officers of the Burn Standard Company Limited are bound by the terms and conditions of their service appointment letter and the petitioner is the person appointed in the year 1984 by the Burn Standard Company Limited and he is bound by the terms and conditions of service of his appointment letter dated 29.11.1984 and is bound to retire on attaining the age of 58 years, i.e., on 30.06.2020 as per the existing rules. The petitioner is the employee of SRCL and not the employee of SAIL and the terms and conditions of the employment still holds good and for that matter, his retirement age shall be 58 years and not at any cost at 60 years as stated



W.P.No.8663 of 2020

by the petitioner. Since the petitioner is an Executive Employee of SRCL.

who attained the age of 58 years on 05.06.2020, the 1st respondent issued retirement. Notice was on 01.04.2020 to retire him on 30. 6.2020 and there is no *mala fide* intention and discrimination on the part of the 1st respondent in issuing the retirement notice and any mere Resolution of the Company's Board of the SRCL will not give any right to the petitioner unless the same is approved by the promoter, Steel Authority of India (SAIL) and the Ministry of Steel. The petitioner being an Executive Employee of SRCL (erstwhile Burn Standard Company) has to retire at the age of 58 years and the retirement notice of this respondent dated 01.04.2020 holds good and valid.

17. Heard both sides and perused the materials available on record.

18. The petitioner was initially appointed as Fitter on 01.12.1984 in the Burn Standard Company Limited, Salem which was transferred to SAIL as a subsidiary company of SAIL, by name SRCL formulated with effect from 16.12.2011. The SAIL Refractory Company Limited Board passed Resolution on 07.09.2017 recommending the age of retirement of SRCL Employees as 60 years with effect from 01.09.2017. SRCL Board in its 30th



W.P.No.8663 of 2020

Board Resolution dated on 12.03.2018, has modified the earlier resolution dated 07.09.2017 (based on which the petitioner makes his claim) to the extent that till the approval of SAIL Corporate Office and Ministry of Steel, Govt. of India is obtained, the age of retirement of the SRCL Executive Employees will continue to be 58 years and in case such approval is obtained, that has to be adopted prospectively. The proposal/Board Resolution forwarded to the SAIL Corporate Office in this regard for approval of competent authority is still pending for approval and therefore the claim of the Petitioner based on the SRCL Board Resolution dated 07.09.2017 carries no merit in it and is null and void. Moreover, if at all the proposal is considered for approval by the Administrative Ministry, the approval will be effected only prospectively. As the petitioner has already superannuated on 30.06.2020 on attaining the age of 58 years as per the existing rules, his claim to continue in service has no merit in it and is liable to be dismissed.

19. The memo filed by the petitioner on 22.11.2024 and the objection to the memo filed by the petitioner dated 30.11.2024 is taken on record.



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W.P.No.8663 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

W.P. No. 8663 of 2020

P. Vadivelu,
C-5, Burns Colony,
SAIL Refractory Company Ltd.,
Magnesite Mines (po),
Jagir Ammapalayam (via),
Salem - 636 302.

...Petitioner

-Versus-

1) SAIL Refractory Company Ltd.,
Rep. by its Chief Operating Officer,
Post Box No. 565,
Salem - 636 005.

2) The Manager (Personnel),
SAIL Refractory Company Ltd.,
Post Box No. 565,
Salem - 636 005.

...Respondents

MEMO FILED BY THE PETITIONER

1) The above writ petition is filed by the petitioner seeking to quash the order of the 2nd respondent dt. 01.04.2020 wherein it was informed that he would be retired from service w.e.f 30.06.2020 on completing 58 years of age when the company resolution of the 1st respondent Board dt. 07.09.2017 has enhanced the retirement age to 60 years.

2) On 30.06.2020, the above writ petition came up for admission and this Hon'ble Court granted interim injunction for two weeks and permitted us to take notice on the Respondent Management. On 14.07.2020, the matter came up for further hearing and this Hon'ble Court has extended the interim stay till the disposal of writ petition.



W.P.No.8663 of 2020

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3) On 14.11.2024, the matter came up for final hearing before this Hon'ble Court and we submitted that by virtue of interim order the petitioner continued in service and got superannuated on 30.06.2022 from the services of Respondent Management. We further submitted that the petitioner is entitled for yearly increment in July 2020 and July 2021. The Respondent Management has implemented pay revision to the employees in January 2022 but the benefit of pay revision was not extended to the petitioner as he continued in service beyond 58 years. After granting the pay revision to petitioner, the Respondent Management shall re-calculate the difference in payment such as gratuity, retirement benefits and leave encashment and to settle the same within a time frame fixed by this Hon'ble Court.

It is therefore prayed that this Hon'ble Court may direct the Respondent Management to grant the yearly increment for July 2020 and July 2021 and to revise the pay with effect from January 2022 and to recalculate the difference in retirement benefits, gratuity and leave encashment and to settle the same to the petitioner within a time frame fixed by this Hon'ble Court and thus render justice.

Dated at Chennai on this the 22nd day of November, 2024.

Counsel for Petitioner



W.P.No.8663 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

W.P.No. 8663 of 2020

P. Vadivelu
C-5, Burns Colony
SAIL Refractory Company Limited
Magnasite mines (PO)
Jagir Ammapalayam (via)
Salem- 636302.

..PETITIONER

Vs.

1. **SAIL Refractory Company Limited**
Represented by Chief Operating Officer,
Post Box No. 565,
Salem- 636005.

2. **The Manager (Personnel)**
SAIL Refractory Company Limited
Post Box No. 565,
Salem- 636005.

..RESPONDENTS

OBJECTION TO THE MEMO FILED BY THE PETITIONER

1. It is humbly submitted by the respondents that the present writ petition has been filed by the petitioner challenging the order dated 01.04.2020 passed by the 2nd respondent for attaining superannuation at the age of 58 years. Petitioner through the present Petition is claiming the benefit up to 60 years based on the resolution passed by the board dated 07.09.2017. It is pertinent to mention here that SRCL Board in subsequent 30th Board Meeting held on 12.3.2018, the earlier resolution dated 07.09.2017 was modified to the extent that till the approval of SAIL Corporate office and Ministry of Steel, Govt. of India is obtained, the age of retirement of the SRCL Executive Employees will continue to be 58 years and in case such approval is obtained that has to be adopted prospectively for executives



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W.P.No.8663 of 2020

who are on the rolls of SRCL on the date on which approval will be accorded for implementation.

2. Pursuant to the interim order dated 30.06.2020 by this Hon'ble court, Petitioner has served at SRCL till the age of 60 years, for which he has been duly compensated at the salary rate applicable as of his superannuation date.
3. The Petitioner's attempt to derive finality from the interim order is legally not permissible. An interim order is not determinative of the merits of the case and does not create a substantive right. The Petitioner's service beyond 58 years of age was solely in compliance with this Hon'ble Court's interim direction, and no additional entitlements have accrued to him.
4. After attainment of age of 58 years the Petitioner has served at SRCL only in furtherance of aforesaid interim order of this Hon'ble Order. There is not a single instance where the Petitioner has raised any objection as regard to benefits that he was deriving from SRCL during those extra two years of service. The Petitioner has never approached this Hon'ble Court for any such relief at the time of present petition or before attainment of two years and remained silent throughout this period, as he understands it well that it is not bonafide of him to claim extra benefits to which he is not entitled pending the present Writ petition and aforesaid approval of competent Authority at SRCL.
5. The Respondents respectfully submit that the retirement age for SRCL employees remains 58 years as per SRCL's governing rules. The



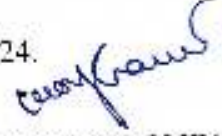
W.P.No.8663 of 2020

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Petitioner's continuation of service beyond 58 years was an exception pending adjudication before this Hon'ble Court and do not entitle him to increments or benefits as per the prevailing rules.

It is therefore prayed that this Hon'ble Court may dismiss the writ petition and also the relief sought for based on the memo as devoid of merits and thus render justice.

Dated at Chennai on this 30th day of November 2024.


COUNSEL FOR RESPONDENTS

20. In view of the above factual matrix of the case, taking into consideration the above memos filed by the petitioner dated 22.11.2024 and the respondents dated 30.11.2024 and also the fact that this Court has granted an order of interim stay in W.M.P.No.10493 of 2020 in W.P.No.8663 of 2020 at the time of admission of the writ petition and in view of the interim stay order, the petitioner continued in service and got superannuated on 30.06.2022 from the service of the respondents Management. Hence this Court is of the considered view that the petitioner is entitled for consequential benefits including all the monetary benefits.



W.P.No.8663 of 2020

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21. The respondents are directed to settle all the consequential benefits including the monetary benefits to the petitioner within a period of three months from the date of receipt of a copy of this order.

In the result the writ petition stands disposed of with the above observations and direction. No costs. Consequently, connected miscellaneous petition is closed.

06.12.2024

cda

Index : Yes / No

Speaking / Non-Speaking order

Neutral Citation : Yes / No

To

1.The Chief Operating Officer,
SAIL Refractory Company Ltd.,
Post box No.565,
Salem – 636 005.

2.The Manager (Personnel),
SAIL Refractory Company Ltd.,
Post Box No.565,
Salem – 636 005.



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W.P.No.8663 of 2020

J.SATHYA NARAYANA PRASAD, J.

cda

W.P.No.8663 of 2020

06.12.2024