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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4445-2024 (O&M)
Date of decision: 03.05.2024

(I)
Jeet Singh

...Petitioner

VERSUS

State of Haryana and others

...Respondents

(II) **CWP-7976-2024 (O&M)**
Randhir Singh

...Petitioner

VERSUS

State of Haryana and others

...Respondents

(III) **CWP-8098-2024 (O&M)**
Rajbir

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. S.S. Antal, Advocate, for the petitioners.

Mr. Samarth Sagar, Additional Advocate General, Haryana &
Mr. Ravinder S. Budhwar, Addl. Advocate General, Haryana.

Mr. Pawan Kumar Mutneja, Senior Advocate with
Ms. Suverna Mutneja, Advocate and
Mr. V.S. Mahal, Advocate,
for respondent No.3 in CWP-4445-2024.

Mr. R.K. Doon, Advocate,
for respondents No.2 & 3 in CWP-7976-2024 &
CWP-8098-2024.

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JASGURPREET SINGH PURI, J. (Oral)

1. These are three writ petitions filed in which identical issue is involved and therefore, they are being taken up together for final disposal with the consent of learned counsels for the parties. The facts are taken from CWP No.4445 of 2024 being the lead case. The lead case pertains to Karnal Cooperative Sugar Mill, whereas the other two cases pertain to Sonipat Cooperative Sugar Mill but the issue involved is the same.

2. The issue involved in the present cases which needs to be considered and adjudicated by this Court is as to whether the retirement age of the petitioners would be 58 years or 60 years.

Factual Matrix:-

3. The facts of the present case are that the petitioner was appointed to the post of Cane Clerk at Bhuna Cooperative Sugar Mills Ltd., Hisar vide Annexure P-1 on 28.05.1997. In the appointment letter, the retirement age of the petitioner was fixed to be 58 years. Likewise, there were many other employees appointed on the similar post in different Sugar Mills in the State of Haryana including the petitioners of the aforesaid two petitions. Thereafter, the aforesaid Mill was wound up in the year 2005 and some of the employees of the aforesaid Mill approached this Court by filing different writ petitions. A bunch of these writ petitions was decided by a Co-ordinate Bench of this Court on 28.01.2015 vide Annexure P-2 and a direction was issued to the authorities to adjust all the ex-employees of the erstwhile Bhuna Cooperative Sugar Mills on

the posts of their respective categories against available vacant posts in the other Cooperative Sugar Mills subject to their fulfillment of eligibility criteria, prescribed under the relevant Service Rules. It was also made clear that the appointments given to the ex-employees of erstwhile Bhuna Cooperative Sugar Mills would be treated as fresh appointments. The relevant portion of the aforesaid judgment Annexure P-2 is reproduced as under:-

> *"Having heard the learned counsel for the parties at considerable length and after giving thoughtful consideration to the peculiar fact situation noticed hereinabove, all these writ petitions are disposed of with direction to the respondent authorities to adjust all the ex-employees of the erstwhile Bhuna Cooperative Sugar Mills including the petitioners, on the posts of their respective categories, against available vacant posts in other cooperative sugar mills, as well as other cooperative institutions of the respondent State, as early as possible, subject to fulfillment of eligibility criteria, prescribed under the relevant Service Rules, however, granting relaxation in age, wherever it is required.*
>
> *It is further directed that the respondent authorities shall make an endeavour to adjust all the ex-employees of erstwhile Bhuna Cooperative Sugar Mills in their respective categories, at an early date because it will be in the interest of the petitioners as well as the Welfare State. Except in the emergent situations, the respondent authorities shall not fill any vacant post in the cooperative sugar mills as well as other cooperative institutions in the State, till the ex-employees of erstwhile Bhuna Cooperative Sugar Mills are adjusted. However, it is also made clear that the appointments given to the ex-employees of erstwhile Bhuna Cooperative Sugar Mills would be treated as fresh appointments.*
>
> *With the abovesaid observations made and directions issued, all these writ petitions stand disposed of, however, with no order as to the costs.*

4. In pursuance of the aforesaid direction issued by this Court, the petitioner was freshly appointed to the post of Cane Clerk (Seasonal) at Karnal Cooperative Sugar Mills Ltd., Karnal on 02.09.2015 vide appointment letter

Annexure P-3. In the appointment letter, it was made clear that the appointment will be a one time measure and it shall be treated as a fresh appointment on the post on which the ex-employee is adjusted. It was also so incorporated in the aforesaid appointment letter that the petitioner in all respects will be governed by the Service Rules of the Mills establishment applicable from time to time to his rank or class of employment. Furthermore, it was also provided in clause 19 of the aforesaid appointment letter that he will be retired from the Mills services at the age of 58 years. The relevant clauses of the aforesaid appointment letter i.e clause 1, 13 and 19 are reproduced as under:-

> *1. Your appointment with this Mills shall be as one time measure and your appointment shall be treated as a fresh appointment on the post on which the ex-employee is adjusted. No benefit of past service already rendered on the same post or the post of same/higher/lower pay structure shall be admissible in any respect. The pay shall be fixed at minimum or at entry level pay, as admissible to a person on the same post of his first appointment in this Mills.*
>
> *xxx-xxx-xxx-xxx*
>
> *13. You will in all respects be governed by the Service Rules of the Mills establishment applicable from time to time to your rank or class of employment.*
>
> *xxx-xxx-xxx-xxx*
>
> *19. You will be retired from the Mills services at the age of 58 years.*
>
> *Xxx-xxx-xxx-xxx*

5. In this way, there was a specific clause inserted in the appointment letter of the petitioner that he will be retired at the age of 58 years. The petitioner accepted the aforesaid terms and conditions of the appointment letter in whole. The petitioner has filed the present petition seeking a writ in the nature of *mandamus* directing the respondents not to relieve him on attaining the age of 58 years because he is covered by the recommendations of the Sugar

Wage Board which have been duly accepted and approved by not only the SUGARFED which is the Apex Body but also by the respondent-Sugar Mill itself.

6. Since the petitioner and the similarly situated persons are employees of Sugar Mills, their recruitment, conditions of service and wages etc. are also being recognised by the Sugar Wage Boards which have been constitued by the Government of India, Ministry of Labour from time to time. Since the Sugar Industry occupies an important place in the Indian economy in pursuance of the recommendations of the second five year plan regarding setting up of a Tripartite Wage Board for individual industries, the Government of India in the Ministry of Labour appointed First Central Wage Board for Sugar Industry on 26.12.1957 to determine the categories of employees (manual, clerical, supervisory etc.) who should be brought within the scope of the proposed wage fixation and to work out a wage structure based on the principles of fair wages as set forth in the report of the Committee on fair wages. In this way, the First Wage Board laid down a uniform wage structure for the workers with some regional variations and the report of First Wage Board was submitted on 26.11.1960. Thereafter, the Second Wage Board for Sugar Industry was set up and a report regarding the same was submitted to the Government by the Board on 16.02.1970. The Third Wage Board for Sugar Industry was set up on 17.07.1985 by the Ministry of Labour, Government of India with a Resolution to consider the question of a further revision of the present wage structure in the industry and recommendations will be made keeping in view the determination of the categories of employees (manual, clerical, supervisory etc.) who should be brought within the scope of the

proposed wage fixation and also to work out a wage structure based on the principles of fair wages as set forth in the report of the Committee on fair wages which includes the capacity of the industry to pay. Third Wage Board gave its report in the nature of recommendations on 31.01.1989.

7. There were specific provisions pertaining to age of retirement in the nature of recommendations in both the Second Wage Board and in the Third Wage Board. In the Second Wage Board, there was a recommendation with regard to the superannuation age that the age of superannuation shall be 60 years which has been so appended with the present petition at page No.66 of the paper-book. The relevant portion is reproduced as under:-

> *3. Superannuation age:*
>
> *(i) The age of superannuation shall be 60 years. Xxxx*
> *(ii) An employee shall retire on attaining the age of 60 years, but by mutual consent, his employment may be extended further.*

8. Similarly, in the Third Wage Board report again there was similar kind of recommendations with regard to the age of superannuation at para No.282 which is appended with the present petition at page No.71 and the relevant portion is reproduced as under:-

> *282. The age of superannuation is fixed at 60 years of completed age. xxxx*

9. In para No.33 of the aforesaid recommendation of the Third Wage Board, it has been so provided that the recommendations made by the Second Wage Board for Sugar Industry are wholesome and there is hardly any justification for further improvement thereupon and the norms are by and large adopted *mutatis mutandis.* It was specifically provided in the aforesaid

recommendations that the recommendations of the Board shall govern the service conditions of the workers of the vacuum pan sugar factories only and all the employees falling within the definition of *'workman'* as contained in the Industrial Disputes Act, 1947 as amended from time to time shall be covered by the recommendations as also those employed as Labour Welfare Officers, medical and educational staff including the categories detailed in the standard nomenclature. The relevant portion of the aforesaid para No.33 of the Third Wage Board recommendations as so appended with the present at Annexure P-7 is reproduced as under:-

> *33. The recommendations made by the Second Wage Board for Sugar Industry are wholesome and there is hardly any justification for further improvement thereupon. The norms are by and large adopted* **mutatis mutandis**. *The recommendations of this Board shall govern the service conditions of :*
>
> *(i) The workers of the vacuum pan sugar factories only;*
>
> *(ii) All the employees falling within the definition of 'Workman' as contained in the Industrial Disputes Act, 1947 as amended from time to time shall be covered by the recommendations as also those employed as Labour Welfare Officers, medical and educational staff including the categories detailed in the Standard Nomenclature (Annexure XXVIII).*

10. In the year 1989, the Registrar, Cooperative Societies, Haryana wrote a letter to the Managing Director, Haryana State Federation of Cooperative Sugar Mills Ltd. (SUGARFED) which is the Apex Body for Cooperative Sugar Mills in the State of Haryana vide Annexure R-2/1 by stating that Haryana Cooperative Societies Rules, 1989 have been notified on 31.01.1989 and as per the provisions of Rule 29, it is obligatory on the Cooperative Society to frame Rules for their employees with the approval of Registrar, Cooperative Societies but the same have not been framed as yet and it

has become the requirement of law to have Service Rules for employees and have the approval of the office of the Registrar and it was requested by the Registrar, Cooperative Societies to the SUGARFED to prepare a set of Model Service Rules for adoption by their affiliated Societies (Sugar Mills). Thereafter, the SUGARFED drafted common Service Rules for the member Cooperative Sugar Mills in consultation with the Managing Directors of these Mills and sent the same to the Registrar, Cooperative Societies vide Annexure R-2/2 on 03.08.1990. Thereafter, vide Annexure R-2/3 dated 14.11.1990, the Registrar, Cooperative Societies, Haryana conveyed to the Managing Director of SUGARFED that the Registrar, Cooperative Societies, Haryana has accorded approval under Rule 29 of the Haryana Cooperative Societies Rules, 1989 with some modifications and the approved Service Rules were enclosed for adoption by the Cooperative Sugar Mills in the State of Haryana and it was also stated that these Services Rules shall be applicable in the Cooperative Sugar Mills from the date of adoption by the Board of Directors/Board of Administrators of the said Cooperative Sugar Mills. Thereafter, vide Annexure R-2/4, there were some amendments suggested by the Registrar, Cooperative Societies in the Service Rules which were also directed to be circulated among the Mills. Thereafter, the Managing Director of SUGARFED sent a letter to all the Cooperative Sugar Mills of State of Haryana vide Annexure R-2/5 in this regard. In pursuance of the aforesaid Rules being framed under Rule 29 of the Haryana Cooperative Societies Rules, 1989, the respondent-Karnal Cooperative Sugar Mills adopted the aforesaid Rules. Although the aforesaid document pertaining to the adoptation has not been attached with the present petition but the learned Senior Counsel appearing on behalf of Karnal Cooperative Sugar

Mills has stated that the aforesaid Rules were adopted by the Karnal Cooperative Sugar Mills in the year 1992. Similarly, learned counsel appearing on behalf of other two cases who is representing the Sonipat Cooperative Sugar Mills has also supplied a copy of the adoptation of the Rules by the Sonipat Cooperative Sugar Mills on 27.09.1992 and a copy of the same is also taken on record as Mark-X which is reproduced as under:-

> *"THE SONIPAT COOP; SUGAR MILLS LTD. SONIPAT (HARYANA)*
> *Item No.9:- To adopt Service Rules for the employees of Sugar Mills duly approved by the Registrar, Coop: Societies, Haryana.*
>
> *It is brought to the notice of Board of Directors that the Registrar, Coop: Societies, Haryana, has accorded approval of Service Rules for the employees of Coop: Sugar Mills which were framed by the Haryana State Fedn. of Coop: Sugar Mills Limited, Chandigarh, after discussing with the Managing Directors of the Coop : Sugar Mills. Now, we have been asked by the Sugar Mills Federation, Haryana, vide its letter No.SMF-91/ECT/14726-34 dt. 6.5.1991 to adopt the Service Rules. As such, the matter is placed before the Board for approval to adopt Service Rules for the employees of our Sugar Mills already approved by the Registrar, Coop: Societies, Haryana, Chandigarh."*

11. In this way, both the aforesaid Sugar Mills i.e. Karnal Cooperative Sugar Mills and Sonipat Cooperative Sugar Mills adopted the Service Rules duly approved by the Registrar, Cooperative Societies and made under Rule 29 of the Haryana Cooperative Societies Rules, 1989. It has also been pointed out by the learned counsel for the respondents that all the Cooperative Sugar Mills of the State of Haryana in a similar way adopted the aforesaid Service Rules in the year 1992 and there is no dispute with regard to

the same. These Service Rules were acted upon and the service conditions of the employees were governed by the aforesaid Service Rules.

12. In the year 2004 vide Annexure R-2/8 dated 10.11.2004, the matter was discussed before the SUGARFED pertaining to revision of pay scale of the employees of the Cooperative Sugar Mills of the State of Haryana who were drawing wages as per the Third Sugar Wage Board recommendations since there was a demand for revision of pay scale at the level of the employees of the Federation. On 28.08.2009 vide Annexure R-2/9, approval was granted for new pay scale to the employees of Cooperative Sugar Mills by revising the pay and various provisions were mentioned pertaining to the Salary Fixation Option, Salary Fixation System, Variable Dearness Allowance, House Rental Allowance, Medical Allowance and Retaining Allowance. However, there was no deliberation nor any decision was taken with regard to the age of retirement since the aforesaid deliberations were done only for the purpose of pay revision etc. However, in just less than two months thereafter a letter was written by the Managing Director of the SUGARFED to all the Managing Directors of the Cooperative Sugar Mills of the State of Haryana on 12/16.11.2009 vide Annexure R-2/11 with the subject of clarification regarding retirement age of the employees after new pay scales on Government pattern in which it was clarified that for the employees who are recruited in old pay scale before 01.09.2009 (except those who are already getting Government pay scales), their retirement age will be 60 years, whereas those employees who will be recruited after giving the new pay scales on Government pattern w.e.f. 01.09.2009 will have retirement age on Government pattern i.e 58 years. The

aforesaid letter which was in the nature of a clarification is reproduced as under:-

> *Ref.No. SMF-2009/AR/5675-84 Dated 12/16.11.2009*
>
> *To*
>
> *The Managing Directors*
> *Coop. Sugar Mills Ltd.,*
> *Panipat, Rohtak, Karnal, Shahabad, Sonepat,*
> *Palwal, Jind, Meham, Kaithal & Gohana.*
>
> ***Sub: Clarification regarding retirement age of the employees after new pay scales on Govt. pattern.***
>
> **--**
>
> *Reference MD, Gohana Sugar Mills' letter No.CDLSM/A/c/09/6106, dated 3.3.2009 and comments sent by MDs of all other mills in the matter cited as subject.*
>
> *In this connection, it is clarified that:-*
>
> *1) For employees who are recruited in old pay scales before 1.9.2009 (except those who are already getting Govt. pay scales), their retirement age will be 60 years.*
>
> *2) The employees who will be recruited after giving the new pay scales on Govt. pattern effective from 1.9.2009 will have retirement age on Govt. pattern i.e. 58 years.*
>
> *Sd/-*
> *Dy. Technical Advisor (1)*
> *For Managing Director*

13. Since the petitioner in CWP No. 4445 of 2024 was appointed in the year 2015 and the other two petitioners in CWP No.7976 of 2024 and CWP No. 8098 of 2024 were appointed in the year 2016, in their appointment letters, the age of retirement of the petitioners has been fixed to be 58 years in pursuance of the aforesaid letter Annexure R-2/11 and aggrieved by the same, they have filed these writ petitions.

<u>Submissions by learned counsel for the petitioners</u>:-

14. Mr.S.S.Antal, learned counsel appearing on behalf of the petitioners submitted that the action of the respondents in retiring the petitioners at the age of 58 years was not only perverse but also contrary to the Statutory Service Rules which have been framed while exercising powers under Rule 29 of the Haryana Cooperative Societies Rules, 1989. The Cooperative Societies Service Rules have been framed under Section 131 of the Haryana Cooperative Societies Act, 1984. The first argument raised by him was that the Service Rules which have been attached as Annexure P-11 namely, "The Service Rules for the employees of the Cooperative Sugar Mills in the State of Haryana" were framed in the year 1991 and were adopted by the respondent-Sugar Mills in the year 1992 by the Board of Directors and thereafter, the same have been acted upon and implemented by the respondent-Sugar Mills till date and submitted that it is now almost 32 years that the aforesaid Service Rules are being implemented by the Cooperative Sugar Mills continuously. He submitted that once the aforesaid Rules which are statutory in nature have been enforced and are legally enforceable in nature and provide for the age of superannuation, then no variation could have been made in the nature of a clarification, although the clarification was adopted by the Cooperative Sugar Mills later on without amendment of the Statutory Service Rules because it would be not only detrimental and prejudicial to the interests of the petitioners but also it will be illegal being contrary to the Statutory Rules. In this regard, he referred to Rule 14 of the aforesaid Rules of 1991 (adopted in the year 1992). Rule 14 pertains to retirement which is reproduced as under:-

> "***14. Retirement:-*** *All the employees except covered under Sugar Wage Board shall retire from the service of the society on attaining the age of 58 years. However, this age limit can be extended by a period of 2 years. in case the employee is found to be outstanding and competent for the duties and the health of the employee so permits subject to the approval of Registrar.* ***The retirement age for the employees whereby. Sugar Wage Board will be as per the retirement age mentioned in the Wage Board recommendation.***
>
> (emphasis supplied)

15. While referring to the aforesaid Rule, he submitted that for the purpose of determining the age of retirement, two classifications have been made under the aforesaid Rule. First classification is that those employees who are not covered under the Sugar Wage Board would retire at the age of 58 years and secondly, those who are covered under the Sugar Wage Board will retire as per retirement age mentioned in the Sugar Wage Board recommendations. He submitted that although in Rule 14 of the Statutory Service Rules, the age of retirement of those employees who are covered under the Sugar Wage Board has not been specifically provided but the age of retirement is provided under the Sugar Wage Board recommendations which have been reproduced above. However it has been specifically provided in Rule 14 that for those employees to whom Sugar Wage Board recommendations are applicable for the purpose of retirement age, then those recommendations will apply to them. Both the Second Sugar Wage Board and the Third Sugar Wage Board provided for the age as 60 years. While again referring to the aforesaid recommendations and report of the Sugar Wage Board as per para No. 282, it has been so provided that the age of superannuation is fixed as 60 years of completed age and in the same Sugar Wage Board report, it has also been mentioned in para No.33 that the recommendations of the Board shall govern the service conditions of all the

employees falling within the definition of 'workman' as contained in the Industrial Disputes Act, 1947 and some other employees. He submitted that the petitioners were appointed as Cane/Store Clerk and undoubtedly, they are workmen under the Industrial Disputes Act and therefore for the petitioners in terms of the aforesaid report of the Third Sugar Wage Board and in the light of the Statutory Service Rules, the retirement age ought to have been fixed as 60 years and not as 58 years and therefore, the action of the respondents is bad in law.

16. He further submitted that so far as Clause 19 which was incorporated in the appointment letters of the petitioners, wherein it was so provided that the retirement age of the petitioners shall be 58 years is concerned, the same was contrary to the Statutory Service Rules and it is a settled law that any clause which is contrary to the Statutory Rule is *void ab initio, non est* and cannot be enforced. He further submitted that mere fact that the petitioners accepted the appointment letters alongwith the aforesaid clause would not mean that they are estopped from challenging the action of the respondents since there can be no estoppel against the statute or law. He submitted that the aforesaid clause was liable to be ignored for the purpose of retirement of the petitioners in terms of the Statutory Service Rules. To further substantiate his arguments, he also submitted that even otherwise also, the aforesaid clause 19 was unconscionable and a result of inequality in the bargaining power. He submitted that the petitioners and similarly situated person became unemployed after they were retrenched from the erstwhile Bhuna Cooperative Sugar Mills and it was only with the intervention of this Court vide Annexure P-2 that they were adjusted in different Cooperative

Sugar Mills to earn their livelihood and in getting employment and at that point of time there was no question of entering into any negotiation or bargaining with the employer with regard to the fixation of retirement age and the focus was only to earn livelihood and to support their families. He also referred to a landmark judgment of Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Ltd. And another Versus Brojo Nath Ganguly and another, 1986(3) SCC 156*** to contend that when there is an inequality in the bargaining power, then such clause cannot be given effect to.

17. Learned counsel further submitted that the letter Annexure R-2/11 was only in the nature of a clarificatory letter issued by the Managing Director of the SUGARFED and cannot alter the age of retirement without amendment of the Service Rules. There is no legally enforceable document on the record to show that an employee who was recruited after 01.09.2009 will not be governed under the Sugar Wage Board. He also submitted that there is no document on the record to show that the recommendations of the Sugar Wage Board which have been crystalized and given effect to have ceased to operate. He also referred to Rule 43 of the aforesaid Rules which provide that the employees under the Sugar wage Board will be governed in the matter of pay and allowanes as per the Sugar Wage Board recommendations and pay of the other employees will be as per Annexure-A which would mean that the recommendations of the Sugar Wage Board were given effect to by the respondent-SUGARFED themselves and in this regard, he also referred to Note No.2 of Annexure-A which also provides that the pay scale and allowances of those employees who were covered under the Sugar Wage Board shall be determined by the Mills as per direction of the State Government from time to

time with the prior approval of Registrar and the Finance Department/HBPE through administrative Department.

18. Learned counsel further submitted that the respondent-State is a Welfare State and respondent-SUGARFED is a part of the State and the recommendations of Sugar Wage Board which were so adopted by the respondent were beneficial in nature considering the difficulties and conditions of service being given to the employees of Sugar Industry throughout India and it was in this background and the spirit of the same that the age of retirement for those employees who were covered within the definition of workmen under the Industrial Disputes Act were granted the benefit of retirement age of 60 years and therefore, even the action of the respondents was not only contrary to the Statutory Service Rules but also contrary to the spirit and rationale of the Sugar Wage Board recommendations which were meant for the purpose of granting benefit to such employees.

Submissions by learned Senior Counsel for respondent-Karnal Coooperative Sugar Mills and learned counsel for respondent-Sonipat Coooperative Sugar Mills

19. Mr. Pawan Kumar Mutneja, learned Senior Counsel with Ms. Suverna Mutneja, learned counsel for the respondent-Karnal Cooperative Sugar Mills and Mr. R.K. Doon, learned counsel appearing on behalf of respondent-Sonipat Cooperative Sugar Mills have submitted that the scope of the Third Sugar Wage Board was primiarly to fix the wage structure which has been done by the Sugar Wage Board and the aforesaid recommendations were only for a period of 10 years which is so reflected in para No.284 of the recommendations which state that the recommendations are to be effective for 10 years from Ist

of January, 1988. The aforesaid paragraph of the Third Sugar Wage Board is reproduced as under:-

> *284. These recommendations shall remain in force for a period of 10 years with effect from the Ist of January, 1988.*

20. They submitted that in this way the tenure of the Third Sugar Wage Board ceased to operate in January, 1998, whereas the petitioners have been appointed in the year 2015 and 2016 which was much after the cessation of the recommendations. To elaborate their arguments, they submitted that although in the Service Rules it has been so provided that those employees who are covered under the Sugar Wage Board will be retired according to the recommendations of the Sugar Wage Board but the recommendations ceased to operate in the year 1998 but the petitioners were freshly appointed in the year 2015 and 2016 and therefore, there was no question of the petitioners to have availed the benefit of the recommendations of the aforesaid Sugar Wage Board. They submitted that there is no doubt that Rule 14 of the aforesaid Service Rules consists of two categories and while framing of the Rules, consciously two categories were created because Rules were made in the year 1991 and at that point of time the recommendations of the Sugar Wage Board were in operation and therefore, rightly so a classification was created by making two different categories of those employees who were covered by the Sugar Wage Board recommendations and those who were not covered but that would not mean that the classification will continue to operate indefinitely notwithstanding the fact that the recommendations ceased to operate after 10 years i.e. in the year 1998 and since the petitioners were recruited much later, the aforesaid recommendations would not be applicable to the petitioners and

therefore, the claim of the petitioners that they should be retired at the age of 60 years is misconceived and against the law. While further advancing arguments, they further submitted that in the year 2004 after the Rules were framed, it was so thought and with the insistence of various Unions that new pay scales are to be given and wages are to be revised and consequent upon the same, there was a revision of pay scale vide Annexure R-2/9 on 28.09.2009 and those employees who are governed by the Service Rules, they were granted the revision of pay scale uniformly and therefore, the distinction between those who were even if workmen and regarding them the age of retirement was fixed as 60 years, they were to be treated at par with that of those who were otherwise not governed under the Sugar Wage Board and uniformity was maintained pertaining to the pay scale and not only this rather in the year 2017, the recommendations of 7th Pay Commission were also implemented vide Annexure R-2/10.

21. They submitted that it was in this background that a clarification was issued in the year 2009 vide Annexure R-2/11 that those employees who were recruited in old pay scales before 01.09.2009, their retirement age will be 60 years and those who are recruited after giving the new pay scales on Government pattern w.e.f. 01.09.2009 will have the retirement age of 58 years. They submitted that the aforesaid clarification which was issued by the SUGARFED to the Cooperative Sugar Mills was thereafter adopted by the Cooperative Sugar Mills themselves by passing of a Resolution by the Board of Directors which has also been annexed as Annexure R-3/2 dated 28.01.2010. They submitted that once the clarification issued by the Managing Director of the SUGARFED has been accepted and adopted by the Cooperative Sugar Mills

on 28.01.2010, then after the aforesaid adoptation, it would become an enforceable law. The aforesaid adoptation vide Annexure R-3/2 is reproduced as under:-

> *"THE KARNAL COOP. SUGAR MULLS LTD. KARNAL*
>
> *Copy of agenda item No.5 along with explanatory note & decision passed by the BOD in its meeting held on 28.01.10.*
>
> *Agenda item No. 5*
>
> *To grant approval for implementation of retirement age of the employees who will be recruited after giving new pay scales on Govt. pattern from 1.9.2009 will have retirement age on Govt. pattern i.e 58 years. For employees who are recruited in old scales before 1.9.09 (except those who are already getting Govt. pay scales), their retirement age will be 60 years.*
>
> *It is submitted for the information of the Board that a letter No.SMF-2009 AR5077 dated 12/16.11.2009 is enclosed as Annex. P. has been received in this office from the office of MD., Haryana State Fed. of Coop. Sugar Mills Ltd.Panchkula vide which, the clarifications are as under:*
>
> 1. *The Employees who are recruited in old pay scales before 1.9.2009 (except those who are already getting Govt pay scales), their retirement age will be 60 years.*
> 2. *The employees who will be recruited after giving the new pay scales on Govt. pattern effective from 1.9.2009 will have retirement age on Govt. pattern i.e. 58 years.*
>
> *The agenda is placed before the Board for grant approval for implementation of retirement age of the employees.*
>
> ***Decisions***
>
> ***Approved.***
>
> *Sd-* *Sd-*
>
> *Managing Director* *Chairman*
>
> *No. ---10/Geni- 592 Dt. 18.02.2010*
>
> *CC- O.S./ H.T.K. for information &n/a Sd/- Managing Director*

22. While again referring to the aforesaid Resolution approved by the Board of Directors of Karnal Cooperative Sugar Mills, they submitted that earlier also when the Draft Rules of 1991 were sent to the Cooperative Sugar Mills, they were approved by the Board of Directors and were implemented and

now again when a clarification letter has been issued, the same has also been accepted subsequently by the Board of Directors and therefore any employee who has been recruited after 01.09.2009 will be governed by the subsequent Resolution which has been approved by the Board of Directors which has the force of law. They further submitted that under the Cooperative Societies Act, the executive power vests with the Society itself through its General Body or Board of Directors and therefore now the Resolution dated 28.01.2010 passed by the Karnal Cooperative Sugar Mills has the force of law and therefore, the petitions filed by the petitioners should be dismissed only on the ground that they were recruited in the years 2015 and 2016 that was much after the passing of the Resolution in the year 2010.

23. Mr. Mutneja, learned Senior Counsel and Mr. Doon, learned counsel for Sugar Mills specifically submitted that so far as the Service Rules of 1991 are concerned, since they were framed under Rule 29 of the Haryana Cooperative Societies Rules, 1989, the same are Statutory in nature and they are not disputing the aforesaid position. They also submitted that the petitioners are drawing the salary at the government pattern equally as that of the other government employees.

24. Learned Senior Counsel further submitted that a similarly situated person, who was also appointed as a Cane Supervisor with the Karnal Cooperative Sugar Mills in the year 2015 and had retired on attaining the age of 58 years challenged the action of the respondents in CWP No.9401 of 2021, which was decided on 23.11.2021 vide Annexure R-2/12, whereby a Coordinate Bench of this Court had dismissed the petition on the ground that when the petitioner of that case was appointed, there was a specific clause in the

appointment letter that he will retire at the age of 58 years and the petitioner having accepted the conditions now cannot be allowed to back out from the same and claim that he should be retired at the age of 60 years being covered by the Sugar Wage Board. He also submitted that the aforesaid judgment was assailed in the LPA, which stands admitted without any interim order. He further submitted that in view of the above, the present petitions also deserve to be dismissed.

<u>Submissions by learned Additional Advocate Generals, Haryana</u>

25. Mr. Samarth Sagar, learned Addl. A.G. Haryana and Mr. Ravinder S. Budhwar, learned Additional Advocate General, Haryana have submitted that so far as the nature of the aforesaid Service Rules of 1991 are concerned, the same are Statutory in nature being framed under Rule 29 of the Haryana Cooperative Societies Rules, 1989 and the same are being implemented till date.

26. They further submitted that it has been so provided in Rule 43 of the Service Rules that employees covered in the Sugar Wage Board will be governed in the matter of pay and allowances as per the Sugar Wage Board recommendations and the pay of other employees will be as per Annexure 'A' and their allowances as per Government Rules. Rule 43 of the Service Rules is reproduced as under:-

> *"43.* ***Pay and allowance.-*** *Employees covered under Sugar Wage Board will be governed in the matter of pay and allowanes as per the Sugar Wage Board recommendations. The pay of the other employees will be as per Annexure-A and their allowances will be as per Govt. rules."*

27. They also submitted that when the petitioners were appointed in the year 2015 and 2016 respectively, then they were appointed on the pattern of Government pay-scale and allowances and not on the pattern of Sugar Wage Board and therefore for them there was no distinction in the classification and therefore, they are not to be governed by the Sugar Wage Board and once they are not to be governed by the Sugar Wage Board because of accepting the same pay and allowances as that of other Government employees who were not governed by Sugar Wage Board, then they cannot take the benefit of Rule 14 by which it has been so provided that for the employees who are governed by the Sugar Wage Board, they will retire as per the recommendations of the Sugar Wage Board and therefore on this ground also, the petitioners do not deserve any relief.

Analysis of submissions:-

28. I have heard the learned counsel for the parties at length.

29. Before considering the merits of the present case, the contention of learned Senior Counsel appearing on behalf of the respondent-Karnal Cooperative Sugar Mills that a Coordinate Bench of this Court has dismissed the petition of a similarly situated person and in the light of the same, the present petitions should also be dismissed would be appropriate to be considered. The aforesaid judgment passed by a Coordinate Bench of this Court is at Annexure R-2/12. A perusal of the same would show that the petitioner of that case was also appointed like that of the present petitioner (in CWP-4445-2024) in the year 2015 in the same Sugar Mill i.e. Karnal Sugar Mill with a specific clause of retirement at the age of 58 years and a Coordinate Bench of this Court dismissed the petition on the ground that he himself had accepted the

aforesaid condition and once there is a condition in the appointment letter with regard to the retirement age, then he cannot turn around and say that his date of retirement should be changed to 60 years and on this premise, the aforesaid writ petition was dismissed. On the other hand, learned counsel for the petitioners has argued that the aforesaid judgment passed by a Coordinate Bench of this Court does not take into consideration or even refer to the Statutory Service Rules nor the applicability of various instructions issued from time to time but primarily the petition has been dismissed only on the ground that a specific clause pertaining to retirement age was inserted in the appointment letter of that petitioner and therefore, the petition was dismissed. Therefore, it cannot be said that the case of the respondents is covered by the aforesaid judgment.

30. For the purpose of analyzing and considering the aforesaid submissions of learned counsel for parties, it would be apt to analyze the position of law in this regard.

Doctrine of *stare decisis*, *sub silentio* and *per incuriam*

31. Doctrine of ***stare decisis*** is expressed in the maxim '***Stare decisis et non quieta movere***' which means 'To stand by decisions and not to disturb which is settled'. The basic reason and logic of this doctrine is to maintain consistency by eliminating uncertainity. In other words, a view which is already settled should not ordinarily be disturbed because another view is possible.

32. However the doctrine of ***stare decisis*** is subject to two exceptions i.e. ***sub silentio*** and ***per incuriam***. According to the Black's Law Dictionary, ***sub silentio*** which is a latin maxim means 'under silence, without notice being taken, without being expressly mentioned' and the maxim ***per incuriam*** means

'of a judicial decision wrongly decided usually because the Judge or judges were ill-informed about the applicable law'.

33. The aforesaid two doctrines of ***sub silentio*** and ***per incuriam*** being exceptions to the doctrine of ***stare decisis*** are although not synonymous but they overlap with each other since there is a thin line of distinction. However effect in their operation carrying out an exception is similar in nature. When a point of law which has legal enforceability by way of a Statutory provision or any other instrument has escaped from consideration in a decision, then that point of law is said to have passed in ***sub silentio***. A decision is ***per incuriam*** when it does not take note of or ignores a Statutory law, judgment or applicable law, then such a decision is said to be ***per incuriam***. However the end result in both the above stated exceptions is the same that in both the eventualities, the judgments are of no legal intent and are not to be followed as precedents.

34. In the present case, a perusal of the judgment passed by a Coordinate Bench vide Annexure R-2/12 would show that the judgment has been passed in *personam* and there is neither any declaration of law nor any law has been laid down nor the provisions of law having statutory force in the form of Statutory Service Rules or any such instrument having the force of law has been considered. However, in the present case, the entire case of the petitioners is dependent upon the enforceability of Statutory Service Rules which have been framed under Rule 29 of the Cooperative Societies Rules, 1989 which have been framed under the Haryana Cooperative Societies Act, 1984. Apart from the above, the fact that the aforesaid Service Rules on which heavy reliance has been placed by the learned counsel for the petitioners as to whether

they are Statutory Service Rules or not is not disputed by any of the learned counsels for the respondents including the State.

35. In other words, since the nature of Service Rules being Statutory in nature is not disputed by the respondents in the present case, the petitioners seek to enforce the rights vested in them in the aforesaid Service Rules which are statutory in nature. Therefore, this Court is of the view that the aforesaid judgment Annexure P-2/12 is ***per incuriam*** with the Statutory Services Rules and consideration of the aforesaid issue of the applicability of these rules to the petitioners was passed ***sub silentio*** in the aforesaid judgment. Therefore, it cannot be said that the present petitions should be dismissed only on the basis of the aforesaid judgment nor it would be appropriate to refer the present petitions to a larger Bench.

36. On merits, a primary argument has been raised by learned counsel for the petitioners that the services of the petitioners are governed by the Service Rules of 1991, which are Statutory Service Rules and in pursuance of Rule 14 of the aforesaid Rules, the date of retirement of the petitioners is to be governed by the Sugar Wage Board. As per recommendations of the Third Sugar Wage Board, the retirement age of a workman would be 60 years. It is undisputed that the petitioners are workmen and at the time when the Third Sugar Wage Board was constituted and recommendations were made, specific provisions have been incorporated as reproduced above that for a workman, the age of retirement will be 60 years. The aforesaid Statutory Services Rules were not only adopted by the respondents-Sugar Mills by passing a Resolution but they were also implemented later on and as per the learned counsels for the parties, the implementation is continuing till date, which is almost 32 years.

37. However, later on a development took place wherein there was a revision in the pay-scale of all the employees uniformly including those who were governed by the Sugar Wage Board vide Annexure R-2/8 and thereafter, on the basis of the aforesaid logic which prevailed over the respondent-SUGARFED that since now the wage structure of those who were earlier governed by the Sugar Wage Board and that of the Government employee is the same, their retirement age should also be altered and on the basis of the aforesaid reasoning, the Managing Director of the SUGARFED issued a letter dated 12/16.11.2009 in the nature of a 'clarification' vide Annexure R-2/11 whereby it was so stated that it is clarified that for those employees who are recruited in the old pay scale before 01.09.2009, except those who are already getting Government scale, their retirement age would be 60 years, whereas those employees who will be recruited after the new pay scales on Government pattern w.e.f. 01.09.2009 will have retirement age on Government pattern i.e. 58 years. In this way, by way of aforesaid clarificatory letter issued by the Managing Director of the SUGARFED which is the Apex body, a new classification came into being by fixing a cut off date. However, there is nothing on the record to show that the aforesaid clarification was in pursuance of any direction issued by the Registrar, Cooperative Societies but as per the learned counsels for the respondents, it was a result of various meetings which were held between the Managing Director and Unions but there is nothing on record to show that any formal approval was sought from the Registrar, Cooperative Societies of the Government of Haryana. However, as per learned Senior Counsel for the respondents, in the State of Haryana, the Managing Director of the SUGARFED, exercises the powers of Registrar, Cooperative

Societies for the purpose of functioning of the Sugar Mills. However, it is an admitted position that there was no amendment to the aforesaid Service Rules of 1991 with regard to the clause pertaining to the retirement age.

38. When the aforesaid Rules were framed in the year 1991 under Rule 29 of the Haryana Cooperative Societies Rules, then with the approval of the Registrar, Cooperative Societies, the same were sent to the respective Sugar Mills for adoption. The respective Sugar Mills including the present respondents-Sugar Mills admittedly adopted the same by passing a Resolution and thereafter, they were acted upon. In this way, the Statutory Service Rules continued and they are still continuing till date. Rule 29 of the Haryana Cooperative Societies Rules is reproduced as under:-

> ***"29. Employees of Cooperative Societies (Section 131(2) (xxxix)-*** *Subject to the provisions of Section 37 of the Act, every society (shall make rules in the light of model service rules to regulate) the recruitment and conditions of service of its employees with the approval of the Registrar."*

39. In the year 2009, when the aforesaid letter was dated 12/16.11.2009 vide Annexure R-2/11 (R-3/1) was issued, then a perusal of the same would show that it was only clarificatory in nature, whereas no amendment has been effected in the Statutory Service Rules.

40. On the other hand, the Statutory Service Rules clearly provide under Rule 14 that all the employees 'except' covered under Sugar Wage Board shall retire from the service of society on attaining the age of 58 years. For the employees who are covered under the Sugar Wage Board, the Third Wage Board had already recommended that the age of retirement shall be 60 years especially to that of the 'workmen'. It is not disputed by the respondents that the

petitioners are the workmen and as per the recommendations of Sugar Wage Board, their retirement age was 60 years but the argument which has been raised by learned counsels for respondents was that once the aforesaid letter Annexure R-2/11 (R-3/1) dated 12/16.11.2009 has been issued which has been thereafter subsequently adopted by the respondents-Sugar Mills, then the aforesaid recommendations of the Sugar Wage Board even if they are so incorporated in Rule 14 would not be applicable to the petitioners.

41. This Court is of the considered view that any administrative order or instruction which is contrary to the Statutory Rules is ***non-est*** and has no force of law. This proposition of law is no longer ***res-integra***. Hon'ble Supreme Court in ***Ashok Ram Parhad and others Versus State of Maharashtra and others, 2023 SCC Online SC 265*** held as under:-

> *"25. In service jurisprudence, the service rules are liable to prevail. There can be Government resolutions being in consonance with or expounding the rules, but not in conflict with the same. On having set forth this general proposition, we now examine the scenario of the Rules as prevalent. If we turn to the statutory Rules framed under Article 309 of the Constitution, i.e., the 1984 Rules, Rule 2 refers to the appointment to the post of the DFO and the same to be made by promotion from amongst officers of the Maharashtra Forest Service and also by appointment directly. The Proviso to Rule 2 of the 1984 Rules is unambiguous and quite clear, i.e., the period spent on training at Government Forest Colleges and other period of probation including extended period of probation, if any, "shall not be counted towards the requisite period of service." Thus, what is envisaged is that the appointment is different from the recruitment process, which starts with the commencement of training. There can be possibilities of a candidate not completing the training satisfactorily, thereby resulting in the candidate's removal on probation. Such probation period can also be extended to see whether a candidate improves in performance. (Hence, even if the Government Resolution dated*

25.01.1990 upgraded the post."of ACF from Class II to Class I, the Proviso to Rule 2 of the 1984 Rules will continue to hold valid in determining the period of service.) .

42. Another argument was raised by learned counsels for the respondents-Sugar Mills that Board of Directors of a Cooperative Society is the Chief Executive Body and it is to decide a matter placed before it which has the force of law and since the aforesaid letter dated 12/16.11.2009 has been so adopted by the respondents-Sugar Mills, it will have the force of law. The aforesaid argument of learned counsels for the respondent-Sugar Mills is not sustainable in view of the fact that even if the Board of Directors of a Cooperative Society is the Chief Executive Body but even a Chief Executive Body or a Board of Directors of a Cooperative Society cannot act in violation and contrary to the Statutory Services Rules when these Rules have a force of law and which are enforceable and therefore vests a right upon a person. These Statutory rights cannot be taken away by passing of a subsequent Resolution in the absence of an amendment to the aforesaid Statutory Services Rules. Therefore any adoptation made by the Board of Directors of Sugar Mills in pursuance of clarificatory letter dated 12/16.11.2009 is liable to be ignored in the light of the Statutory Services Rules.

43. Another argument was raised by learned counsels for the respondents-Sugar Mills that although there was a provision for 60 years of age of retirement for a workman as per the recommendations of Sugar Wage Board but the aforesaid recommendations of the Third Sugar Wage Board extinguished and ceased to operate after a period of 10 years because the tenure of the same was 10 years. He referred to the provisions of para No.284 of the Third Sugar Wage Board which have been reproduced above, wherein the

tenure of the recommendations was only 10 years i.e. from the year 1988 to 1998 and as per the learned counsels for respondents-Sugar Mills, once the tenure has been extinguished in the year 1998 and the petitioners have been appointed in the years 2015 and 2016, they cannot take the benefit of the aforesaid retirement age of 60 years even if the same has been recommended in the aforesaid recommendations to be 60 years.

44. The aforesaid argument raised by learned counsels for the respondents-Sugar Mills although seems to be attractive but does not cut any ice. The aforesaid recommendations of Third Sugar Wage Board came into being on 31.01.1989 and as per the aforesaid para No.284, it was so stated that the recommendations shall remain in force for a period of 10 years i.e. w.e.f. Ist January, 1988. These recommendations were made on 31.01.1989, wherein recommendations of the age of 60 years for a workman was provided. In pursuance of these recommendations which were accepted by the respondents, the Service Rules were framed under the Cooperative Societies Act and Rules made thereunder in the year 1991. These Service Rules were adopted by the Sugar Mills in the year 1992 and therefore, rights of the petitioners and similarly situated persons got crystallized in their favour in the year 1992 itself. In other words, the recommendations which were made in the year 1989 were duly implemented and accepted and solidified in the year 1992 by creation of rights. Therefore, it cannot be said that as per the report, the recommendations were only till the year 1998 and the status of the petitioners would cease to operate thereafter. A perusal of the aforesaid para No. 284 as reproduced above earlier would show that it would mean that after making recommendations they will remain in force for a period of 10 years which

means that they are to be considered to be acted upon and implemented or accepted within the aforesaid period of 10 years and if nothing is done for a period of 10 years, then after 10 years, the recommendations will cease to operate. However, the position is not the same in the present cases as in the present cases, those recommendations were acted upon within a period of 10 years and so far as the framing of the Service Rules are concerned, it culminated into framing of the Statutory Service Rules which had the force of law in the year 1992 within the period of 10 years by crystallizing the rights within the aforesaid period and therefore, *ex-facie* argument raised by learned counsels for the respondents-Sugar Mills is misconceived and is liable to be rejected.

45. Another argument was raised by learned counsels for the respondents-Sugar Mills that in the year 2004, the benefit of revision of pay scale was granted to those employees who were being governed by the Sugar Wage Board and thereafter, even the benefit of 7th Pay Commission was also given in the year 2017 and all of them were brought at par with the other employees and a uniformity was maintained and it was because of this reason that the aforesaid clarification was issued that those who have been recruited in old pay scales before 01.09.2009, their retirement age will be 60 years but those who were recruited after giving the new pay scales on Govt. pattern w.e.f. 01.09.2009 will have the retirement age on Govt. pattern i.e. 58 years and therefore, the classification was a reasonable classification. However, the aforesaid argument of the learned counsels for the respondents-Sugar Mills also deserves to be rejected on the ground that the revision of pay scale or grant of benefit of 7th Pay Commission report uniformly to the employees cannot take

away the vested right of the employees which was conferred upon them by virtue of Rule 14 of the Statutory Service Rules which has the force of law. Revision of pay-scale or implementation of any Pay Commission Report is totally different from that of the retirement age which has been fixed under the Statutory Services Rules. Had it been a case that on the basis of the aforesaid logic or rationale that an amendment was carried on in the Statutory Service Rules, then the petitioners would not have any case but it is an admitted position that there was no amendment carried on in the Statutory Service Rules and therefore, the aforesaid rationale or logic has no basis for the purpose of considering the retirement age of such employees.

46. Next argument which was raised by learned counsels for the respondents-Sugar Mills was that the petitioners were appointed in the years 2015 and 2016 and in their appointment letters a specific condition was incorporated in clause 19 that their retirement age will be 58 years and therefore, after accepting the same, they cannot now turn around and say that their retirement age should be 60 years. A perusal of the appointment letter (Annexure P-3) would show that in addition to the aforesaid clause 19, there is another clause incorporated in clause 13 which provides that the petitioner will in all other respects be governed by the Service Rules of the Mills establishment applicable from time to time. Therefore, clause 19 cannot be read in isolation from clause 13. As per clause 13, the service conditions of the petitioners were to be governed by the Service Rules of the Mills which are the Rules of 1991 as adopted by the Sugar Mills in the year 1992 and under Rule 14 it is provided that retirement age of employees covered by Sugar Wage Board will be as per recommendations of Sugar Wage Board. The petitioners were covered under

Sugar Wage Board being workmen and therefore, their retirement age was 60 years. Therefore, it is crystal clear that the aforesaid clause 19 incorporated in the appointment letter was contrary to the Statutory Service Rules. It is a settled law that if any clause is inserted in any instrument or in any appointment letter which is totally contrary to the Statutory Service Rules which have the force of law, then such a clause is ***void ab initio*** and ***non-est*** and is liable to be ignored.

47. One additional argument was also raised by learned counsels for the respondents-Sugar Mills in this regard that after accepting the aforesaid condition of retirement at the age of 58 years in the appointment letter by the petitioners and worked upon the post, they cannot turn around and say that the aforesaid clause will not apply to them. However, such an argument is unsustainable since there can be no estoppel against law or a Statute. If a clause is contrary to Statutory Service Rules, then the same cannot be enforced against the petitioners.

48. During the course of arguments, learned counsel for the petitioners also raised an additional argument by stating that the aforesaid clause was also a result of an inequality in the bargaining power and was an unconscionable clause particularily considering the background of the case wherein the petitioners were earlier working in Bhuna Cooperative Sugar Mill which was wound up and they became unemployed and it was on the basis of the directions issued by a Coordinate Bench of this Court vide Annexure P-2 that they were directed to be taken afresh and it was to avoid unemployment and pitiable condition of the employees of the Bhuna Cooperative Sugar Mill. There appears to be a reason and substance in the argument raised by learned counsel

for the petitioners. In those extraordinary circumstances, there was no occasion for the petitioners to have not accepted the appointment letter at that point of time only because of the aforesaid clause 19 because the only focus was on getting an employment for livelihood and to support the family. Even otherwise also, such kind of clauses which are unconscionable cannot be given effect in view of the judgment of Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Ltd. And another Versus Brojo Nath Ganguly and another (supra).***

49. An argument was raised by Mr. Samarth Sagar, learned Additional Advocate General, Haryana that there is a provision in Rule 43 of Statutory Service Rules, 1991, which provides that employees covered under the Sugar Wage Board will be governed in the matter of pay and allowances as per the Sugar Wage Board recommendations and the pay of the other employees will be as per Annexure-'A' and their allowances will be as per Govt. Rules. He submitted that for the purpose of pay and allowances, two classifications were created under the Rules. Firstly, those employees who were governed by the Sugar Wage Board and secondly, those who were governed by the Government Rules but this classification had eroded after the employees who were governed by the Sugar Wage Board were granted the pay at par with those employees who were governed by the Government Rules and uniformity had come into play. The aforesaid classification in Rule 43 extinguished because of the uniformity in the pay scales which ultimately became a reason and logic for issuance of a clarification letter vide Annexure R-2/11 (R-3/1). However, the aforesaid submission made by learned learned Additional Advocate General is liable to be rejected because of the reason that extinguishment, if any, of the

classification based upon the pay scale by grant of uniform pay scale cannot have any effect on the classification which has been so made under Rule 14. There is no inconsistency between Rule 14 and Rule 43 and they operate in an independent domain. Even if assumingly there is some inconsistency then the Doctrine of Harmonious Construction is required to be applied for giving effect to both the provisions. Rule 14 deals with the retirement age and Rule 43 deals with the pay and allowances and therefore, a change of circumstance emanating from Rule 43 cannot be transposed into Rule 14 so as to deny a vested right which has been so vested in an employee by virtue of Rule 14 which is a part of the Statutory Service Rules.

50. In view of the aforesaid facts and circumstances of the present case, all the three petitions are allowed. It is held that the retirement age of the petitioners shall be 60 years. The issue raised stands answered. The learned counsels for the parties have stated that qua all the three petitioners, the order of retirement has not been passed and they have not been relieved from service even if they have crossed the age of 58 years. Therefore, it is directed that the petitioners shall continue in service till attaining the age of 60 years.

51. Since there are hundreds of such similarly situated employees who were appointed after the year 2009 and out of them some might have retired and some of them are yet to retire, it will be necessary to issue following directions:-

(1) The present judgment will operate prospectively and will not apply to those who have already retired and relieved.

(2) The respondents are directed to consider passing of an order to rationalize the effect of present judgment in which it has been held

that the retirement age would be of 60 years to those similarly situated employees who are yet to retire, by issuance of an appropriate direction, so as to avoid any multiple litigation in view of the principle of ***Interest Reipublicae ut sit finis litium,*** which means that it is in the interest of the State to put an end to the litigation.

(JASGURPREET SINGH PURI)
JUDGE

03.05.2024
Rakesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No