

CWP-13831 of 2023 and other connected cases

2024:PHHC:078285



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

235+108+111

RESERVED ON: 13.05.2024
PRONOUNCED ON: 30.05.2024

(1) CWP-13831 of 2023

KULWINDER SINGH KANG

.....PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

(2) CWP-21087-2023

PARSHOTAM CHAND

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

(3) CWP-21889-2023

RAJINDER KUMAR

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

(4) CWP-22987-2023

KARAMJEET SINGH

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

(5) CWP-23110-2023

LAKHVIR SINGH

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CWP-13831 of 2023 and other connected cases

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(6) CWP-23138-2023

NINDER MOHAN

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

(7) CWP-25604-2023

SHINGARA SINGH

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

(8) CWP-25959-2023

DILBAG SINGH

...PETITIONER(s)

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

(9) CWP-26574-2023

JARNAIL SINGH

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

(10) CWP-26623-2023

DIDAR SINGH

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS



- (11) CWP-27049-2023

ASHOK KUMAR

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS
- (12) CWP-27993-2023

SURINDER SINGH

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS
- (13) CWP-28095-2023

BALWINDER SINGH

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS
- (14) CWP-28510-2023

RAM SARUP SHARMA

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS
- (15) CWP-7109-2024

MALKIT SINGH

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS
- (16) CWP-21714-2023

AJAIB SINGH

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS



- (17) CWP-23561-2023

KARTAR SINGH

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS
- (18) CWP-23579-2023

SURINDER SINGH

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS
- (19) CWP-476-2024

SATPAL SINGH

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS
- (20) CWP-655-2024

RACHHPAL SINGH

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS
- (21) CWP-648-2024

DES RAJ

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS
- (22) CWP-657-2024

SATNAM SINGH

V/S

STATE OF PUNJAB AND OTHERS

...PETITIONER

...RESPONDENTS

CWP-13831 of 2023 and other connected cases

2024:PHHC:078285



(23) CWP-20492-2023

BIKKAR SINGH

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

(24) CWP-20221-2023

RAVI KUMAR

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

(25) CWP-29251-2023

GURDEV SINGH SALH

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

(26) CWP-10627-2024

BALJINDER SINGH

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. D. S. Patwalia, Sr. Advocate with
Mr. Gaurav Rana, Advocate with
Mr. Armaan Dahiya, Advocate with
Ms. Priyanka Ahuja, Advocate with
Mr. M.S. Chauhan, Advocate for the petitioner(s)
(in CWP-648-2024, CWP-655-2024, CWP-657-2024,
CWP Nos.13831, 27049, 28095, 27993, 28510 of 2023,
CWP-23110-2023, CWP-23138-2023, CWP-21889-2023,
CWP-25604-2023, CWP-25959-2023, CWP-26574-2023,
CWP-26623-2023)



Mr. Navjot Singh, Advocate
for the petitioner (in CWP-476-2024)

Mr. Rishu Bajaj, Advocate
for the petitioner(in CWP-29251-2023)

Mr. Satish Jain, Advocate
for the petitioner (in CWP-10627-2024)

Mr. I. S. Saggu, Advocate with
Mr. Tejveer Singh Saggu, Advocate for the petitioner(s)
(in CWP Nos.23561 and 23579 of 2023)

Mr. Ashok Sharma Nabhewala, Advocate and
Ms. Gauri Sharma, Advocate for the petitioner(s)
(in CWP Nos. 20492, 20221, 21087 and 22987 of 2023)

Mr. H. S. Bedi, Advocate
for respondent No.3 (in CWP-23110-23138-2023) and
for respondent No.4 (in CWP-28510-25959-2023)

Mr. A.S. Nirmaan, Advocate for respondent No.3
(in CWP-13831-27049-2023)

Mr. Yagsimant Attri, Advocate
for respondent No.3 (in CWP-21714-2023)

Mr. Naginder Singh Vashist, Advocate
for respondent No.3 (in CWP-7109-2024)

Ms. Arundhati Kulshreshtha, AAG, Punjab.

NAMIT KUMAR, J.

1. By this common order, aforementioned twenty six writ petitions are being disposed of as identical questions of facts and law are involved therein for adjudication. The petitioners in these cases had been working in Co-operative Agricultural Societies and they fall in two categories i.e. (i) Secretary/Salesman and (ii) Peon-cum-Chowkidar. The bunch of writ petitions has been filed by the petitioners who were working as Secretary/Salesman and are claiming age of retirement as 60 years except in CWP Nos.655, 7109 and 10627



of 2024, which relate to the post of Peon-cum-Chowkidar and are claiming the age of retirement as 62 years. For the sake of brevity, facts are taken from CWP No.13831 of 2023 – Kulwinder Singh Kang v. State of Punjab and others.

2. Present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of *certiorari*, quashing letter/order dated 02.06.2023 (Annexure P-5) whereby it has been directed that the petitioner shall stand retired from service w.e.f. 30.06.2023 upon completion of age of 58 years, by alleging that the same is in complete contravention to the Service Rules governing the service of the petitioner.

3. The petitioner herein was working as Salesman in Kang Jagir Co-operative Agriculture Multipurpose Society Limited. His claim in the present writ petition is that he should be allowed to be retained in service till the age of 60 years and the action of the respondents/Society in retiring him at the age of 58 years is illegal and arbitrary. The services of the employees of the Agriculture Service Society were initially governed by “*The Punjab State Co-operative Agricultural Service Societies Services Rule, 1979*”, which were circulated vide Memorandum dated 29.05.1979 by the Registrar, Co-operative Societies, Punjab, Chandigarh, to all the Co-operative Societies vide Annexure P-2. The same were promulgated by the Registrar, Co-operative Societies, Punjab, under Rule 28 of the Co-operative Societies Act, 1963. It is not disputed that the Registrar, Co-operative Societies, Punjab, Chandigarh has the powers vested in him



under Rule 28 of the Punjab Co-operative Societies Rules, 1963, to frame the service rules of the employees of the Co-operative Societies from time to time and may also amend the same. Rule 10 of the 1979 Rules deals with retirement of the employees and the same, reads as under:-

“10.Retirement.

***Every member shall retire on attaining the age of 58 years** provided that a member may be required by the committee or permitted at his own request to retire from the service on attaining the age of 50 years after giving notice of one month.*

Provided that peon-cum-chowkidar will retire on attaining the age of 60 years.”

4. Thereafter, these Rules have been repealed by “The Punjab State Co-operative Agricultural Societies Service Rules, 1986”. The 1986 Rules were further succeeded by “The Punjab State Co-operative Agricultural Service Society Service Rules, 1997”. Rule 19 of the 1997 Rules, reads as under:-

“19. RETIREMENT’

*(a) **Every employee of the society shall retire on attaining the age of 60 years** except for the Peon-cum-Chowkidar who shall retire on attaining the age of sixty two years.”*

5. Thereafter, vide amendment dated 23.05.2001, Rule 19(a) of the 1997 Rules was amended and the age of retirement of the employees was reduced from 60 years to 58 years except for the Peon-cum-Chowkidar, who shall retire on attaining the age of 60 years and



further Proviso was added to the effect that the employees appointed before this amendment shall be governed by the existing provision of retirement of age. The said amendment reads as under:-

“No.Credit/CA-5/478 Dated 23.5.01

*From The Registrar,
Coop. Societies, Punjab,
Chandigarh*

*To All the Joint Registrars,
All the Deputy Registrars,
All the Assistant Registrars
In the field.*

*Sub: Amendment in Punjab State cooperative
Agriculture Service Societies Service Rules,
1997.*

Memo

It has been decided to lower the age of retirement of the employees of the Primary Agricultural Cooperative Societies 60 years to 58 years. Hence Rule 19 (A) of the Punjab State Coop. Agricultural Service Societies Service Rules, 1997 is hereby amended as under:

<i>Rule No</i>	<i>Existing Rule</i>	<i>Rule No.</i>	<i>Amended Rule</i>
<i>19(A)</i>	<i>Every employee of the society shall retire on attaining the age of 60 years except for the peon-cum- chowki-dar who shall re-tire on attaining the age of sixty two years.</i>	<i>19(A)</i>	<i>Every employee of the society shall retire on attaining the age of 58 years except for the peon-cum- chowkidar who shall retire on attaining the age of 60 years.</i> <i><u>Provided that the employees appointed before this amendment shall be go- verned by the</u></i>



			<u>existing provi- sion for retire- ment of age.</u>
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*This amendment to the Rules is issued under
rule 28 of the Punjab Coop. Societies Rules, 1963.*

*Sd/- Additional Registrar (Credit)
For Registrar, Coop Societies, Punjab
Chandigarh.”*

6. Thereafter, Rule 19(a) of the Rules, 1997, has further been amended by the Registrar, Co-operative Societies, Punjab, Chandigarh, on 24.09.2020, which provides that every employee of the Society shall retire on attaining the age of 58 years except Peon-cum-Chowkidar, who shall retire on attaining the age of 60 years and the Proviso, which was added to the effect that the employees appointed before amendment dated 23.05.2001 shall be governed by existing provision for retirement of age, was deleted. Consequently, the petitioner has been ordered to be retired at the age of 58 years (except in CWP Nos.655 of 2024, 7109 of 2024 and 10627 of 2024 in which the petitioners were working as Peon-cum-Chowkidar and are claiming their age of retirement at the age of 62 years) as aggrieved against the action of the respondents for retiring him at the age of 58 years.

7. On issuance of notice of motion, written statement has been filed, wherein it has been stated that the petitioner has approached this Court directly without availing alternative remedy of appeal and revision as the order dated 02.06.2023 (Annexure P-5) which is issued on the basis of resolution passed by the managing committee of respondent No.3-Society and against which the remedy of a petition



under sub clause (1-a) of clause (1) of Rule 80 of the Punjab Cooperative Societies Rules, 1963 is available to the petitioner which he has not availed. On merits, it has been stated as under: -

“4. That the petitioner in order to gain the undue benefit and to mislead this Hon'ble Court has concealed the material fact that an amendment has been made in Rule 19(a) of the Punjab Cooperative Agriculture Service Societies Employees Service Rules 1997, as the Govt. of Punjab had taken a policy decision to retire all the employees who have attained the age of 58 years except Group-D employees who retire at the age of 60 years. In pursuance of the decision taken by the Govt. of Punjab, the Registrar Cooperative Societies Punjab, Chandigarh exercising powers vested in him under Rule 28 the Punjab Cooperative Societies Rules 1963, issued the instructions vide letter No. RCS/Credit-2/CEA-4/Service Rules/314 dated 24.09.2020 and has amended Rule 19(a) of the Service Rules and omitted the proviso in the said rule which earlier provided that the employees appointed before 1997 amendment to the Service Rules shall be governed by the existing provision for retirement of age. Prior to the amendment vide letter dated 24.09.20, Rule 19(a) of the Service Rules read as under:-

19. Retirement

(a) Every employee of the Society shall retire on attaining the age of 58 years except the Peon- cum- Chowkidar who shall retire on attaining the age of sixty years.

Provided that the employees appointed before this amendment shall be governed by the existing provision for retirement of age.

5. That the proviso to Rule 19-a of the Service Rules, has been omitted by the respondent no. 2 by making



amendment in the Service Rules exercising powers vested in the Registrar Cooperative Societies Punjab, Chandigarh under Rule 28 of the Punjab Cooperative Societies Rules, 1963 (hereinafter referred to as Rules). Under Rule 28 of the Rules, it is provided that the qualifications and conditions of service, subject to which, any person may be employed by a cooperative society or a class of cooperative societies, shall be such as may be determined by the Registrar from time to time. The Registrar Cooperative Societies Punjab has omitted proviso to Rule 19-a exercising powers vested in him under Rule 28 of the Rules. Thus, the age of retirement of the employee in a cooperative society has now been fixed at 58 years except the Peon- cum-Chowkidar who is retire at the age of 60 years. So, the age of retirement of the petitioner has been fixed at 58 years and he is wrongly claiming to be retired at the age of 60 years. The Registrar Cooperative Societies is also vested with powers to give directions under Rule 45 of the Rules, which are consistent with the provisions of the Act as he consider necessary for the beneficial and efficient functioning of any cooperative society or class of Cooperative Societies. Rule 28(1) of the Rules reads as under:-

"28. Qualifications and conditions of service of employees

(1) The qualifications and conditions of service, subject to which, any person may be employed by a cooperative society or a class of cooperative societies shall be such as may be determined by the Registrar from time to time".

That the above rule is very clear and shows that the Registrar Cooperative Societies is vested with powers to frame the service rules of the employees of cooperative society from time to time and may also amend the same.



The Rule 19(a) of the Service Rules have been amended and the proviso to this rule which provided that the employees who were appointed before the amendment in 1997 shall be governed by the existing provisions for retirement of age which was 60 years according to the 1986 service rules and which has now been amended to 58 years after amendment in Rule 19(a) of the Service Rules. The petitioner has himself reproduced Rule 28 of Rules in para 4 of the Writ Petition. So, 1986 rules or 2007 rules and proviso to Rule 19-A of the Service Rules is not applicable to the petitioner after the amendment to Rule 19(a) by the respondent no. 2. The petitioner himself has attached the copy of letter /instructions dated 24.09.2022 (P-4) with the Petition as mentioned in para 9 of the writ petition. The petitioner has wrong mentioned in para 10 of the writ petition that no notification whatsoever has been issued in pursuance to the impugned memo dated 24.09.2020 whereby the amended rules have been notified. It is worth mentioning that in the past no such amendments are notified in Government Gazzette but circulated to the concerned quarters to convey to the field functionaries e.g. the different cooperative societies.

6. That the respondent no. 3 society had rightly directed that the petitioner shall stand retired from service w.e.f 30.06.2023 upon attaining the age of 58 years in view the amendment in rule 19-A of the service rules whereby the proviso to rule 19(A) has been omitted. The petitioner has been retired in view of the amended rule 19-A of the Service Rules on attaining the age of 58 years which has been amended exercising powers vested in respondent no.2 under Rule 28 of the Rules vide letter Memo No. RCS/Credit2/CEA4/Service Rules/1997/314 dated 24.09.2020. Copy of amended Service Rules dated 24.9.2020 is attached as Annexure R-1.



7. *That the petitioner has not come before this Hon'ble Court with clean hands as he has concealed material facts from this Hon'ble Court as he has not disclosed that Rule 19-A of the Service Rules has been amended and proviso to Rule 19-A has been omitted, only to mislead this Hon'ble Court. In these circumstances, it is requested that the stay granted to the petitioner may kindly be vacated in the public interest, otherwise the society will suffer an irreparable loss."*

8. Learned counsel for the petitioners have argued that present petitioners have been protected vide amendment dated 23.05.2001 in Service Rules, 1997, which provides that every employee of the Society shall retire on attaining the age of 58 years except for the post of Peon-cum-Chowkidar who shall retire on attaining the age of 60 years provided that employees appointed before this amendment shall be governed by the existing provision for retirement of age. He further submitted that since the date of appointment of the petitioners in all the cases is prior to 23.05.2001, therefore, their age of retirement is 60 years and they have wrongly been retired at the age of 58 years. He further submitted that the amendment dated 24.09.2020 whereby retirement age has been reduced from 60 years to 58 years would only be applicable to the appointments made after 24.09.2020 as it has been mentioned in the said amendment that the same will be applicable with immediate effect.

9. *Per contra*, learned State counsel submitted that proviso to Rule 19(a) of the Service Rules has been omitted by respondent No.2 by making amendment in the Service Rules while exercising his



Rules, 1963 and therefore, the petitioners cannot be allowed to continue beyond the age of 58 years and the amendment dated 24.09.2020 is perfectly legal and valid. She further submitted that even the said amendment has not been impugned by the petitioners in the present writ petitions.

10. I have heard learned counsel for the parties and perused the record.

11. In the present writ petitions, the effect and operation of impugned orders were stayed and the petitioners were protected vide orders of different dates passed by Co-ordinate Bench(es) of this Court. Thereafter, the interim relief granted to the petitioners was vacated vide detailed order dated 12.01.2024 in lead case CWP No.13831 of 2023 – Kulwinder Singh Kang v. State of Punjab and others.

12. Admittedly, the amendment made to Rule 19(a) of the Punjab State Co-operative Agricultural Service Society Service Rules, 1997, which has been made on 24.09.2020, vide Annexure P-4, whereby the age of retirement has been fixed at the age of 58 years, except for the post of Peon-cum-Chowkidar, has not even been challenged in the present writ petition(s) and the said amendment is the subject-matter of CWP No.574 of 2023 – Jasbir Singh v. State of Punjab and others. Once the amendment dated 24.09.2020 (Annexure P-4) has not been challenged by the petitioners in any of the writ petitions, the action of the respondents in retiring the petitioners at the age of 58 years is perfectly legal and valid and the same is in



consonance with the amendment dated 24.09.2020 made in Rules, 1997.

13. Hon'ble Supreme Court in ***Union of India and others v. S.K. Saigal and others, 2007(1) SCT 286***, has held that no mandamus can be issued contrary to the provisions of the Act and Rules. Para 11 of the said judgment, reads as follows:-

*“11. It was, therefore, clearly an admitted case of the respondents by themselves that they had not worked for 5 years as Scientists 'B', which is the mandate of the Rules and, therefore, the Tribunal transgressed its jurisdiction granting the relief to the respondents dehors the mandate of the Rules. It is now settled principle of law that no mandamus can be issued which would be contrary to the Act and the Rules. See **State of U.P. v. Harish Chandra (1996) 9 SCC 309; Union of India v. Association for Democratic Reforms and Anr. (2002) 5 SCC 294.**”*

To the same effect is the judgment of the Hon'ble Supreme Court in ***State of Haryana and others v. Sumitra Devi and others, 2004(1) SCT 309***.

14. Further, while making amendment in Rule 19(a), a policy decision has been taken by the Punjab Government to retire all the employees who have attained the age of 58 years except Group 'D' employees who shall retire at the age of 60 years. In pursuance to the said decision taken by the Government of Punjab, Registrar, Cooperative Societies, Punjab, Chandigarh, while exercising powers vested in him under Rule 28 of the Punjab Cooperative Societies Rules, 1963 issued amendment dated 24.09.2020 and has amended Rule 19(a) of the Rules and omitted the proviso to the said Rules which earlier



provided that the employees appointed before 23.05.2001 shall be governed by the existing provision of retirement of age.

15. Judicial notice of the fact can also be taken that in the State of Punjab, the age of retirement of all the employees is 58 years in terms of Rule 3.26 of the Punjab Civil Services Rules Volume-I Part-I and, therefore, the said amendment dated 24.09.2020 is in consonance with the said Rule and the age of retirement has also been made at par with the State Government employees. Further, there is considerable delay in filing the present writ petitions. Admittedly, the amendment in the Rules, 1997 has been made on 24.09.2020 whereby the proviso to Rule 19(a) has been omitted and the age of retirement has been reduced to 58 years. The same has been acted upon by the respondents and the employees have been retired at the age of 58 years. The present writ petitions have been filed after about three years from the date of said amendment and that too when the petitioners are at the verge of retirement.

16. Similar issue relating to reduction of age of retirement from 60 years to 58 years by the State of Haryana vide instructions dated 26.11.2014 has been considered and upheld by this Court in ***Baljit Kaur and others v. State of Haryana and another, 2015(1) S.C.T. 647***, wherein it was held as under: -

“25. The issue that now arises for consideration is as to whether the impugned instructions dated 26.11.2014 take away any vested right of the petitioners to continue in service upto the age of 60 years.

26. It is by now well settled that the relationship between the Government and its employees is not like an ordinary



contract of service between a Master and Servant. Once appointed to a post or office, the Government employee acquires a status and his rights and obligations are determined by Statute or Statutory Rules which may be framed by the Government. The expressions “vested right” and “accrued right” have been used in service jurisprudence in the context of a right flowing under the relevant Rule. Concededly, Rule 3.26(a) of the Rules governs the age of retirement of the petitioners. Such Rule reads as under:

“3.26(a): Except as otherwise provided in other clauses of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years. He must not be retained in service after the age of retirement, except in exceptional circumstances, with the sanction of the competent authority on public grounds, which must be recorded in writing.”

27. The language of the Rule is clear and unambiguous. Rather it is couched in negative terms. Every Government employee “shall” retire upon attaining 58 years of age and must not be retained in service thereafter except in exceptional circumstances. Such Rule has not been amended till date.

28. The decision contained in the instructions dated 26.8.2014 enhancing the age of superannuation from 58 years to 60 years would not acquire the character of a Statutory Rule. Such executive instructions cannot be accepted to be a statutory amendment of the existing Rule governing the age of retirement. Even retention of an employee beyond the age of 58 years under exceptional circumstances as envisaged under the Rule would not empower the executive to take a blanket decision to raise



the age of superannuation of the employees across the board. Accordingly, it is held that there is no right that had come to vest in the petitioners to continue in service till the age of 60 years on the strength of instructions dated 26.8.2014 which are in derogation of the relevant Statutory Rule. In the absence of such a right, there was no requirement of affording a hearing to the petitioners prior to taking the impugned decision.

x x x x

32. The right of an employer to vary the age of retirement has been considered by the Apex Court in K.Nagaraj and others v. State of Andhra Pradesh and another, (1985) 1 Supreme Court Cases 523. Facts in K.Nagaraj's case (supra) were that the elections were held to the Legislative Assembly of Andhra Pradesh in January 1983 and a new political party called Telugu Desam came into power. It assumed Office on 9.1.1983. On 8.2.1983, a decision was taken to reduce the age of superannuation of all Government employees other than in the last grade service from 58 years to 55 years. Towards implementation of such decision, even the Statutory Service Rules were suitably amended. Challenge to such action was negated and the action of the State Government in having reduced the age of retirement from 58 years to 55 years was held to be in conformity with law. In K.Nagaraj's case (supra), the Hon'ble Supreme Court also indicated the approach which the Courts should adopt while examining the question regarding fixation of the age of retirement and observed as follows:

“.....Barring a few services in a few parts of the world as, for example, the American Supreme Court, the terms and conditions of every public service provide for an age of retirement. Indeed, the proposition that there ought to be an age of



retirement in public services is widely accepted as reasonable and rational. The fact that the stipulation as to the age of retirement is a common feature of all of our public services establishes its necessity, no less than its reasonableness. Public interest demands that there ought to be an age of retirement in public services. The point of the peak level of efficiency is bound to differ from individual to individual but the age of retirement cannot obviously differ from individual to individual for that reason. A common scheme of general application governing superannuation has therefore to be evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counterbalance conflicting claims while determining the age of superannuation. On the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these conflicting claims of the different segments of society involves minute questions of policy which must, as far as possible, be left to the judgment of the executive and the Legislature. These claims involve consideration of varying vigour and applicability. Often, the court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the



circumstances of a given case. We do not suggest that every question of policy is outside the scope of judicial review or that, necessarily, there are no manageable standards for reviewing any and every question of policy. Were it so, this Court would have declined to entertain pricing disputes covering as wide a range as cars to mustard oil. If the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the court's interference would be called for, though not for fixing the age of retirement but for mandating a closer consideration of the matter. "Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. But, while resolving the validity of policy issues like the age of retirement, it is not proper to put the conflicting claims in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. That is an exercise which the administrator and the Legislature have to undertake. As stated in The Supreme Court and the Judicial Function. "Judicial self-restraint is itself one of the factors to be added to the balancing process, carrying more or less weight as the circumstances seem to require."

33. Is the decision of the State Government in reducing the age of retirement from 60 years to 58 years in the light of impugned instructions dated 26.11.2014 arbitrary and irrational?

x x x x

41. For the reasons recorded above, this Court does not find any infirmity in the decision of the State Government in reducing the age of retirement of the petitioners from 60



years to 58 years and thereby re-iterating the rule position as it exists in the Statute Book.”

17. The Hon’ble Supreme Court of India in ***Central Council for Research in Ayurvedic Sciences and another v. Bikartan Das and others, 2023 AIR (Supreme Court) 4011*** has held that the age of superannuation is always governed by statutory rules and other service conditions. Para 48 of the said judgment reads as under: -

“48. We may only say that the entire approach of the High Court towards the present litigation was incorrect. We are a bit disappointed to observe that the High Court dealt with the present litigation in a very casual manner. First, the High Court went to the extent of granting interim relief extending the period of service beyond 60 years till the disposal of the Original Petition by the CAT. By virtue of such interim order which the High Court ordinarily should not grant, the respondent No. 1 although was to retire in 2018 yet continued in service till 2021. It is only when this Court stayed the operation of the impugned order passed by the High Court while issuing notice that the service of the respondent No. 1 came to an end. The Court or the Tribunal should, therefore, be slow and circumspect in granting interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated. But if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior. At the cost of repetition, we may state that the High Court was conscious of the fact as very much recorded in the impugned order that the respondent No. 1 was appointed as a Research Assistant and was functioning as a Researcher under the Research Council and his service



conditions were also different compared to the AYUSH doctors serving with the Ministry of AYUSH. The High Court misdirected itself saying that the benefit of enhanced age of superannuation can also be granted if the duties performed are the same like AYUSH doctors. We fail to understand how can the Court fix the age of superannuation of an employee saying that he is very much devoted towards his job. The age of superannuation is always governed by statutory rules & other service conditions.”

18. In view of the foregoing discussion and settled proposition of law, this Court is not inclined to interfere with the impugned orders and finding no merit in the present petitions, same are hereby dismissed with no order as to costs.

30.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No