(2021) 07 OHC CK 0235

In the Orissa High Court

Case No : Writ Petition (Civil) Nos. 7460, 7461, 7462 Of 2019

Ashok Kumar Dash APPELLANT

Vs

State Of Odisha And Other RESPONDENT

Date of Decision : 27-07-2021

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Odisha Civil Services (Pension) Rules 1992 — Rule 71(a)
Orissa Water Supply and Sewerage Board Act, 1991 — Section 9(1)
Reserve Bank of India Act, 1934 — Section 7(2), 15(1), 58(1)

Citation : (2021) 07 OHC CK 0235

Hon'ble Judges : Dr. B.R. Sarangi, J

Bench : Single Bench

Advocate : D.R. Pattanayak, N. Biswal, L. Pattanayak, D.K. Mohanty, S.N. Das, P.K. Bhuyan, S. Mishra

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

1. W.P.(C) No.7460 of 2019, in which the petitioner is working as a Senior Stenographer in the office of the OISIP, JICA, has been filed seeking

following reliefs:-

â??â?¦â?¦â?¦..(i) To quash the impugned notice of retirement dated 29.03.2019 issued by the opposite party no.4 vide Annexure-14.

(ii) To direct the opposite parties more particularly the opposite partyno.1 to allow the petitioner to continue till attainment of 60 years at par with the State

Government employees in view of the provisions of Section 71(a) of the Orissa Service Code read with Clause-12 read with Clause-12 of the Orissa Water Supply

and Sewerage Board Regulation, 1992.

(iii) To direct the opposite parties to grant all service and consequential benefits to the petitioner.â??

Similarly, W.P.(C) No.7461 of 2019, the petitioner of which is working as a receptionist in the office of the Orissa Water Supply and Sewerage Board,

has been filed seeking following reliefs:-

â??â?¦â?¦â?¦ (i) To direct the opposite parties more particularly the opposite partyno.1 to allow the petitioner to continue till attainment of 60 years at par with

the State Government employees in view of the provisions of Section 71(a) of the Orissa Service Code read with Clause-12 read with Clause-12 of the Orissa

Water Supply and Sewerage Board Regulation, 1992.

(ii) To direct the opposite parties to grant all service and consequential benefits to the petitioner.â??

Likewise, W.P.(C) No. 7462 of 2019, in which the petitioner is working as Senior Executive Assistant under the Project Engineering, PMU, Orissa

Water Supply and Sewerage Board, has been filed seeking following reliefs:-

â??â?¦â?¦â?¦..(i) To quash the impugned notice of retirement dated 29.03.2019 issued by the opposite party no.4 vide Annexure-14.

(ii) To direct the opposite parties more particularly the opposite partyno.1 to allow the petitioner to continue till attainment of 60 years at par with the State

Government employees in view of the provisions of Section 71(a) of the Orissa Service Code read with Clause-12 read with Clause-12 of the Orissa Water Supply

and Sewerage Board Regulation, 1992.

(iii) To direct the opposite parties to grant all service and consequential benefits to the petitioner.â??

All the three writ petitions have been filed by the employees of Orissa Water Supply and Sewerage Board with similar reliefs. Therefore, they are

heard together and disposed of by this common judgment which will govern in all the three cases.

2. The factual matrix of the case, in brief, is that Orissa Water Supply and Sewerage Board (OWSSB) (hereinafter referred to as the â??Board?) has

been constituted under Orissa Act 12 of 1991, i.e., the Orissa Water Supply and Sewerage Board Act, 1991 (hereinafter referred to as the â??Act,

1991â?), which was published in the Orissa Gazette notification dated 4th June, 1991. For regulating the service conditions of the employees of the

Board, no separate rules have been framed. After enactment of the Act, 1991, Housing and Urban Development Department issued a notification on 16.08.1993 framing regulation which is called as â??Orissa Water Supply and Sewerage Board Regulations, 1992 (hereinafter referred to as the â??Regulations, 1992â?). So far as salaries, allowances and conditions of service of the of the employees of the Board are concerned, the same are governed under clause-12 of the Regulations, 1992, which clearly provide that the employees are governed by the rules and regulations framed at par with the State government employees. The petitioners were appointed by the Board in exercise of powers conferred under Section 9(1) of the Act, 1991 read with clause-21(1) of the Regulations, 1992. As such, the petitioners were discharging their duties and responsibilities assigned to them by the Board.

2.1 The Addl. Chief Secretary to Government of Odisha, Finance Department issued a resolution vide notification dated 28.06.2014 in which the age of superannuation of the State Government employees was enhanced from 58 to 60 years with immediate effect. Accordingly, Rule-71(a) of the Orissa Service Code as well as relevant provisions of the OCS (Pension) Rules, 1992 was modified to the above extent. The Government in the Department of Public Enterprises passed a resolution on 02.08.2014, which was published in Orissa Gazette on 18.08.2014, enhancing the age of retirement on superannuation of the employees of the State Public Sector Undertakings from 58 to 60 years subject to fulfillment of conditions mentioned therein. Consequent thereof, many of the Public Sector Undertakings enhanced the retirement age of their employees from 58 to 60 years.

So far as Board is concerned, on 26.08.2014, the EIC-cum-Member Secretary, wrote a letter to the Government for enhancement of retirement age on superannuation of the Board employees, wherein it was specifically mentioned that since there was no service rule made for the Board employees, in absence of that, all the service conditions, rules and regulations would be governed for the employees of the Board at par with State Government employees. As such, as per clause-12 of the Board Regulations, 1992 read with Act, 1991, all the benefits as admissible to the counterparts in the State Government would be extended to each category service/post employees of the Board. In the said letter request was also made to Government for consideration for enhancement of retirement age from 58 to 60 years.

Thereafter, in the minutes of 25th Board Meeting held on 23.03.2015, after discussion with regard to agenda item no.3, it was decided by the Board to enhance the retirement age of its employees on superannuation from 58 to 60 years with immediate effect and accordingly, proposal was sent to the Government for enhancement of the retirement age. Thereafter, on 17.03.2016, request was also made by the Board to the Government for enhancement of retirement age on superannuation of the employees of the Board. In response to the same, a report was called for from the Board with regard to financial implications on account of enhancement of retirement age of the Board employees from 58 to 60 years. As such, the same was complied with and thereafter vide letter dated 02.08.2019 the Finance Department sought information/clarification on certain points, which was also met by the Board. But when the matter was so pending for consideration, notice of superannuation was issued to the respective petitioners on attaining the age of 58 years without extending the age of superannuation till 60 years at par with counterparts of the State Government employees. Hence these applications.

3. Mr. N. Biswal, learned counsel for the petitioners vehemently contended that the petitioners, being the employees of the Board, in absence of service rules regulating their service conditions, are to be regulated under the Orissa Service Code and, accordingly, they have been receiving salaries and other allowances as per the provisions of Orissa Service Code which is applicable to the respective petitioners in view of clause-12 of the Regulations 1992. It is further contended that in view of the amendment made to Rule-71(a) of the Orissa Service Code, there is absolutely no requirement to direct the petitioners to retire at the age of 58 years, rather the resolution passed by the Government on 28.06.2014 enhancing the age of superannuation of the State Government employees from 58 to 60 years, will ipso facto apply on the employees of the Board and, as such, the same does not require any recommendation or approval of the Government. Consequentially, the impugned notice should not have been issued for superannuation of the petitioners on attaining the age of 58 years on the basis of pre-amended Rule-71(a) of the Orissa Service Code. It is further contended that since in respect of the employees of other public sector undertakings, namely, Orissa Small Scale Industries Limited, the benefit has

already been extended from the date of notification itself, the employees of the Board should not have been discriminated in any manner whatsoever

and, as such, the petitioners should not have been asked to retire, when their counterparts in the government are still continuing in service, even though

the petitioners retired on the basis of pre-amended Rule-71(a) of the Orissa Service Code. It is further contended that in absence of any rules

regulating the service conditions of the employees of the Board, no approval would be necessary for adopting the amendment made to the Orissa

Service Code and, therefore, the age of superannuation of the employees of the Board is deemed to have been enhanced from the date such benefit

was granted to the employees of the State Government. Consequentially, he seeks for quashing of the impugned notices issued to the respective

petitioners for retirement on attaining the age of 58 years, and claims that they should be extended the benefits of continuance in service till they attain

the age of 60 years along with consequential service and financial benefits as due and admissible to them in accordance with law.

To substantiate his contention, he has relied upon the judgments of this Court in Premalata Panda v. State of Odisha, 2015 (II) OLR 214;A rdhendu

Sekhar Rath v. State of Odisha, 2019 (II) OLR 418; and Biresh Chandra Giri v. State of Odisha, 2020 (I) OLR 443.

4. Mr. D.K. Mohanty, learned Addl. Standing Counsel appearing for the State-opposite parties contended that though no counter affidavit has been

filed on behalf of the State opposite parties, but fact remains that the age of superannuation of State Government employees has been enhanced by

amending Rule-71(a) of the Orissa Service Code from 58 to 60 years and, as such, the benefit has already been granted to the employees of the State.

It is further contended that the Finance Department passed a resolution on 28.06.2014 and consequentially Public Enterprises Department passed

resolution on 02.08.2014 and, as such, any benefit admissible to any Public Sector Undertakings, that should be in consonance with such resolution. So

far as the benefit admissible to the petitioners is concerned, the Board passed a resolution extending the benefits to its employees, which was pending

before the Government for approval. Consequentially, correspondences were going on and in the meantime the petitioners attained the age of

superannuation, i.e., 58 years, and therefore notices were issued to them which are under challenge in these writ petitions.

5. Mr. S.N. Das, learned counsel appearing for the opposite party no.3-Board, referring to the counter affidavit, unequivocally admitted the facts and

contended that the Government has enhanced the age of retirement from 58 to 60 years pursuant to resolution dated 28.06.2014 and thereafter the

Public Enterprises Department also passed a resolution on 02.08.2014 extending such benefit to the employees of public sector undertakings subject to

fulfillment of the conditions mentioned therein and referring to the same the Board has also in its 25th minutes of meeting held on 23.03.2015 passed

an agenda for enhancement of retirement age of superannuation of its employees from 58 to 60 years and accordingly though correspondences were

made to the Government, no communication was received from the Government with regard to approval of the same. Consequentially, when the

petitioners attained the age of 58 years, notices of superannuation were issued to them which are the subject matter of challenge in these writ

petitions. It is further contended that the Government of Orissa in Housing and Urban Development Department has control over the financial as well

as managerial activities of the Board and, therefore, unless the proposal of the Board for enhancement of retirement age from 58 to 60 years is

approved, the benefit of extension of retirement age from 58 to 60 years cannot be granted to the petitioners. As such, he justifies the action of the

authority in issuance of notices of retirement in favour of the petitioners on attaining the age of 58 years. Referring to the additional affidavit filed by

the Board, it is further contended that vide notification dated 31.05.2021 the Government as well as the Board allowed enhancement of retirement age

of the employees of the Board on superannuation from 58 to 60 years with immediate effect. Therefore, unless the said notification is challenged

before this Court, such benefit cannot be extended to the petitioners. It is further contended that the impugned notices have been issued to the

petitioners on the prevailing rules. Thereby, the claim of the petitioners for enhancement of retirement age cannot be admissible to them and, as such,

the petitioners are not entitled to any benefit as claimed in the writ petitions. Consequentially, he seeks for dismissal of the writ petitions.

To substantiate his contention, he has relied upon the judgments of the apex Court in the cases of State of Punjab v. Buta Singh, (2000) 3 SCC 733

and Ram Swaroop Masawan v. Municipal Council, (1998) 6 SCC 338.

6. Opposite party no.5- OISIP, JICA filed counter affidavit in W.P.(C) No.7460 of 2019 supporting the stand taken by the Board and denied to grant

the benefit to the petitioner as claimed in the said writ petition.

7. This Court heard Mr. N. Biswal, learned counsel for the petitioners, Mr. D.K. Mohanty, learned Addl. Standing Counsel for State-opposite parties

and Mr. S.N. Das, learned counsel for the Board, through virtual mode. Though Mr. P.K. Bhuyan, appeared for opposite party no.5- OISIP, JICA in

W.P.(C) No.7460 of 2019 and filed counter affidavit, but at the time of hearing, he was not present. Since these writ petitions have been filed for

grant of retirement benefits, this Court is not inclined to grant any further adjournment. Consequentially, with the consent of learned counsel for the

parties, these writ petitions are being disposed of finally at the stage of admission.

8. For just and proper adjudication of the cases, in hand, relevant provisions of law governing the field are quoted below:-

Â â??Pre-Amended: RULE-71(a) : Retirement of Government Servant:

(a) Except as otherwise provided in the another clauses of this rule the date of compulsory retirement of Government servant on the 31st March, 1939 Class IV

Government Servant, is the date on which he or she attains the age of 58 years subject to the condition that a review shall be conducted in the respect of the

Government servant in the 55 years of the age in order to determine whether he or she should be allowed to remain in service upto the date of the completion of

the age of 58 years of retired on completing the age of 55 years in public interest.â??

â??Amended: RULE-71(a) : Retirement of Government Servant:

Government of Odisha Instruction

(F.D. Resolution No.19408/F, Dated 28.06.2014)

Sub: Enhancement retirement age on superannuation of State Government employees.

As per Rule 71 (a) of the Odisha Service Code, a Government servant (except Group-D employee) shall retire in the afternoon of the last day of the month in which

he completes the age of 58 years.

There is significant improvement in average life expectancy in recent years. The retirement age of Central Government employees has been revised to 60 years.

Some State Governments have also followed the principle adopted by the Government of India in enhancing the retirement age of their employees.

Government after careful consideration have decided to enhance the retirement age of State Government employees on superannuation from 58 (fifty eight) to 60

(sixty) years. This will take immediate effect.

The Relevant provisions under Rule-71 of the Orissa Service Code as well as provisions in relevant rule of the OCS (Pension) Rules, 1992 in this connection, shall

be deemed to have been modified to the above extent. Necessary amendments to the above rules shall be issued in due course.â??

â??Section 9 (1) of Orissa Water Supply and Sewerage Board Act, 1991 reads as under:-

9.(1) The Board may appoint such officers and employees as it considers necessary for the efficient performance of its duties and discharge of its functions against

posts sanctioned by the State Government.â??

â??Clause-12 of Orissa Water Supply and Sewerage Board Regulation, 1993 reads as under:-

12. Salaries and allowances and condition of service of the employees of the Board-

(1) The employees of the Board shall be entitled to such salaries and allowances as admissible to their counterparts in the State Government in respect of each

category of service or post.

xxx xxx xxxâ??

9. In view of the aforesaid provisions, it is made clear that admittedly the State Government has enhanced the retirement age of its employees from 58

to 60 years and so far as employees of Public Sector Undertakings are concerned, they have also availed the benefit of enhanced retirement age from

58 to 60 years, pursuant to the Government of Odisha, Public Enterprises Department?s resolution dated 02.08.2014, which was published in Orissa

Gazette on 18.08.2014, subject to fulfillment of conditions mentioned therein. Since the age of retirement in respect of State Government employees

was extended, the Board took steps on 26.08.2014 requesting the State Government for enhancement of retirement age of its employees from 58 to

60 years and, as such, it was specifically mentioned in the said letter that in

absence of any service rule made for the Board employees, all the service conditions, rules and regulations shall be governed for the employees of Board at par with State Government employees. As such, emphasis was laid to clause-12 of Regulations, 1992 read with Act, 1991 and stated that all the benefits as admissible to the counterparts in the State Government shall be extended to each category service/post employees of the Board. When that request was pending, in the minutes of 25th Board meeting held on 25.03.2015, in agenda no.3, a resolution was passed to enhance the retirement age of the Board employees from 58 to 60 years with immediate effect and the same was also placed before the Government for approval. As there were no rules and regulations with regard to service conditions of Board employees and as the State Government rules are applicable, in the event of enhancement of retirement age of State Government employees, it should have been extended to the Board?s employees forthwith. Instead of doing so, dilly dally tactics has been adopted in usual bureaucratic manner for moving the file from table to table and from top to bottom, without any reason, causing delay in enhancement of retirement age of Board employees. Pursuant to notification dated 31.05.2021, though the age of superannuation of Board employees has been enhanced from 58 to 60 years, but there is no valid and justifiable reason made available in the additional affidavit filed by opposite party no.3, as to why such delay has been caused for enhancement of retirement age of the employees of the Board from 58 to 60 years, save and except mentioning that since Housing and Urban Development Department is the administrative department of the Board, after the approval is made by the department, the benefit has been extended. But that ipso facto cannot disentitle the petitioners from getting the benefit, as they have approached this Court well within time and, as such, when the matter is subjudice before this Court, the benefit admissible to them cannot be denied.

10. In the case of Buta Singh mentioned supra, on which reliance has been placed on behalf of opposite party no.3, the apex Court held that the employees are not entitled to claim benefits which became available at much later date to retiring employees by reason in change in service rules. But the said principle has no application to the present context, in view of the fact that pursuant to amendment made to the Orissa Service Code in Rule-

71(a) enhancing the retirement age of employees of the State Government from 58 to 60 years and, as such, in view of the Board?s letter dated

26.08.2014 that in absence of any service rule made for the Board employees, all the service conditions, rules and regulations shall be governed for the

employees of Board at par with State Government employees, the day the State Government enhanced the retirement age of its employees, that itself

is applicable to the employees of the Board. More so, the reliance placed on the notification dated 31.05.2021 is an inter-departmental communication

between opposite party no.1 and opposite party no.3 just to regularize the anomaly. But that ipso facto cannot have any impact on the service

conditions of the employees of the Board, in view amendment to Rule-71(a) of Orissa Service Code enhancing the retirement age from 58 to 60

years.

11. In the case of Ram Swaroop Masawan mentioned supra, on which reliance has also been placed by opposite party no.3, the apex Court held that

the employee would superannuate in accordance with the rules which were applicable at relevant point of time. There is no dispute with regard to

such proposition of law, but by the time the petitioners had been issued with the notices, their service conditions were changed by amending Rule-

71(a) of the Orissa Service Code by enhancing the age of superannuation from 58 to 60 years. Thereby, the petitioners are entitled to continue till they

attained the age of superannuation, i.e., 60 years. By not extending the benefit of enhancement of retirement age from 58 to 60 years on the plea that

inter-departmental communication was going on between opposite party no.3 and opposite party no.1, the employees of the Board cannot be made to

suffer. But fact remains, the petitioners, for having not discharged the duties for the enhanced period from 58 to 60 years because of some obvious

reason or fault of opposite party-Board, cannot be disentitled to get the benefit as due and admissible to them in accordance with law.

12. In the case of Harwindra Kumar v. Chief Engineer, Karmik, AIR 2006 SC 365, the apex Court in paragraphs-9, 10 and 11 of the judgment held

as under:

â??9. Reference in this connection may be made to a decision of this Court in the case of V.T. Khanzode and others v. Reserve Bank of India and another, AIR

1982 SUPREME COURT 917. In that case, under Section 58(1) of the Reserve

Bank of India Act, powers were conferred upon the Central Board of Directors of

the Bank to make regulations in order to provide for all matters for which provision was necessary or convenient for the purpose of giving effect to the provisions

of the Act which section in the opinion of their Lordships included the power to frame regulation in relation to service conditions of the bank staff. In that case,

instead of framing regulations, the bank issued administrative circulars in relation to service conditions of the staff acting under Section 7(2) of the Reserve Bank

of India Act which was a general power conferred upon the bank like Section 15(1) of the present Act. It was laid down that ""there is no doubt that a statutory

corporation can do only such acts as are authorized by the statute creating it and that, the powers of such a corporation cannot extend beyond what the statute

provides expressly or by necessary implication."" It was further laid down that ""so long as staff regulations are not framed under Section 58(1), it is open to the

Central Board to issue administrative circulars regulating the service conditions of the staff, in the exercise of power conferred by Section 7(2) of the Act."" As in

the said case, no regulation was at all framed under Section 58 of the Reserve Bank of India Act, as such, the administrative circulars issued by the Central Board

of Directors of the Bank under Section 7(2) of the Reserve Bank of India Act in relation to service conditions were held to be in consonance with law and not

invalid.

10. In the present case, as Regulations have been framed by the Nigam specifically enumerating in Regulation 31 thereof that the Rules governing the service

conditions of government servants shall equally apply to the employees of the Nigam,it was not possible for the Nigam to take an administrative decision acting

under Section 15(1) of the Act pursuant to direction of the State Government in the matter of policy issued under Section 89 of the Act and directing that the

enhanced age of superannuation of 60 years applicable to the government servants shall not apply to the employees of the Nigam. In our view, the only option for

the Nigam was to make suitable amendment in Regulation 31 with the previous approval of the State Government providing thereunder age of superannuation of its employees to be 58 years, in case, it intended that 60 years which was the enhanced age of superannuation of the State Government employees should not be

made applicable to employees of the Nigam. It was also not possible for the State Government to give a direction purporting to Act under Section 89 of the Act to

the effect that the enhanced age of 60 years would not be applicable to the employees of the Nigam treating the same to be a matter of policy nor it was

permissible for the Nigam on the basis of such a direction of the State Government in policy matter of the Nigam to take an administrative decision acting under

Section 15(1) of the Act as the same would be inconsistent with Regulation 31 which was framed by the Nigam in the exercise of powers conferred upon it under

Section 97(2)(c) of the Act.

11. For the foregoing reasons, we are of the view that so long Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of

government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the Nigam with

the previous approval of the State Government to make suitable amendment in Regulation 31 and alter service conditions of employees of the Nigam, including

their age of superannuation. It is needless to say that if it is so done, the same shall be prospective.â??

13. In State of U.P. v. Dayanand Chakrawarty, AIR 2013 SC 3066, the apex Court has taken note of the Harwinder Kumar (supra) and held that

so long as Regulation-31 is not amended, 60 years which is age of superannuation of the Government employees shall be applicable to the employees

of the Nigam. It is further held that it was not possible for the Nigam to take an administrative decision pursuant to the direction of the State

Government in the matter of policy issued under Section 89 of the Act and directing that the enhanced age of superannuation of 60 years applicable to

the Government servants shall not apply to the employees of the Nigam. In view of such finding of the apex Court, the Nigam cannot act on the basis

of the State Government orders on 29.09.2009 providing uniform age of superannuation as 58 years. Accordingly, the apex Court allowed the age of employees of Nigam to continue till the age of superannuation in view of the Regulation 31 and ordered that no recovery shall be made from those

who continued till the age of 60 years. It is further observed by the apex Court that the employees who have not been allowed to continue after

completing age of 58 years by virtue of the erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary

for the remaining period up to the age of 60 years.

14. This Court, in Premalata Panda mentioned supra, has also taking into consideration the judgment of apex Court in the case ofC hairman, Uttar

Pradesh Jal Nigam v. Radhey Shyam Gautam, (2007) 11 SCC 507, finally in paragraph-16 held as under:

â??16. Keeping in view the law laid down by the apex Court in Dayanand Chakrawarty (supra), this Court is of the opinion that the following consequential

and pecuniary benefits should be allowed to different sets of CDA employees including the petitioner who were ordered to retire at the age of 58 years and this

Court so directs.

(a) The employees, who moved the Court of law irrespective of the fact whether interim order was passed in their favour or not, shall be entitled to full salary up to

the age of 60 years and arrear salary shall be paid to them after adjusting the amount, if any, paid.

(b) The employees, who never moved before any Court of law and had retired on attaining the age of superannuation, shall not be entitled for arrears of salary.

However, they will be deemed to be continuing in service up to the age of 60 years. In their case, the CDA shall treat their age of superannuation as 60 years, fix

the pay accordingly and re-fix the retirement benefits like pension, gratuity etc. On such calculation, they shall be entitled to arrears of retirement benefits after

adjusting the amount already paid.

Â (c) Needless to say that the arrears of salary and arrears of retirement benefits should be paid to such employees within a period of six months from the date of

receipt of copy of the judgment.

(d) SoÂ Â farÂ Â asÂ Â theÂ Â petitionerÂ Â is concerned, since she had approached this Court before completion of 58 years of age and during pendency of the writ petition, she was made to retire on attaining the age of 58 years, this Court directs the opposite party no.2 to bring her back into service forthwith and

allow her to continue till she attains the age of 60 years and grant all the consequential service and financial benefits as due and admissible to her in accordance

with law.â??

15. In M. Nagraj v. Union of India, (2006) 8 SCC 212, the apex Court held that the constitutional principle of equality is inherent in the rule of law.

The rule of law is satisfied when the laws are applied or enforced equally, that is, even-handedly, free of bias and without irrational distinction. The

concept of equality allows differential treatment but it prevents distinctions that are not properly justified.

16. In Ashutosh Gupta v. State of Rajasthan, (2002) 4 SCC 34, the apex Court held that the doctrine of equality before law is a necessary corollary

to the concept of the rule of law of the Constitution.

17. In Gauri Shankar v. Union of India, (1994) 6 SCC 349, the apex Court held that under our Constitution Article 14 prescribes equality before

law. But the fact remains that all persons are not equal by nature, attainment or circumstances and therefore a mechanical equality before law may

result in injustice. The principle of equality of law means not that the same law should apply to everyone, but that a law should deal alike with all in one

class; that there shall be equality of treatment under equal circumstances. It means that equals should not be treated unlike and unlikes should not be

treated alike. Likes should be treated alike. Similar view has also taken in State of Karnatak v. B. Suvarva Malini, (2001) 1 SCC 728.

18. In Food Corporation of India v. Bhanu Lodh, (2005) 3 SCC 618, the apex Court held that the question of discrimination will arise only as

between persons who are similarly, if not identically situated.

19. In Faridabad CT Scan Centre v. Director, General of Health Services, (1997) 7 SCC 752, the apex Court held that the importance of Article

14 is that, its benefit accrues to every person in India, whether he is a citizen or not. We are a country governed by Rule of Law. Our Constitution

confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before Law and equal protection

of the Laws.

20. In K.R. Laxman v. Karnatak Electricity Board, (2001) 1 SCC 442, the apex Court held that when a provision is challenged as violative of Article

14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it and having ascertained the

policy and object of the Act, the Court has to apply dual test namely whether the classification is rational and based upon an intelligible differentia

which distinguished persons or things that are grouped together from others and that are left out of the group and whether the basis of differentiation

has any rational nexus or relation with its avowed policy and objects.

21. This Court in Ardhendu Sekhar Rath, mentioned supra, taking into consideration the judgments of the apex Court, quashed the order of cancelling

extension of retirement age of the petitioners therein and directed to extend the benefits of retirement age from 58 to 60 years and also to pay the

dues as admissible to them in accordance with law.

22. In Biresh Chandra Giri, mentioned supra, this Court, relying upon the principles laid down in Premalata Panda (supra), also extended the benefits

of retirement age from 58 to 60 years and consequentially directed the authorities to extend the benefit along with interest at the rate of seven percent

per annum.

23. Applying the above principles of law laid down by the apex Court as well as this Court to the present context, this Court does not find any

justification not to extend the similar benefits to the petitioners, who are working under the Board and whose service conditions are regulated by the

rules and regulations applicable to the State Government employees. As such, the petitioners, having stood in the same footing and because of some

administrative lapses on the part of the administrative department, the authority cannot deny them the benefits of extension of such retirement age

from 58 to 60 years. Consequentially, the notices of retirement issued to the petitioners on attaining the age of 58 years cannot sustain and the same

are liable to be quashed and are hereby quashed. The opposite parties are directed to extend to the petitioners the benefits of retirement age from 58

to 60 years, and re-fix their pay and other allowances, as due and admissible to them in accordance with law, within a period of four months from the

date of passing of this judgment along with interest at the rate of 7% per annum.

24. In the result, the writ petitions are allowed. However, there shall be no order

as to costs.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the judgment

available in the High Court?s website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide

Court?s Notice No.4587, dated 25th March, 2020 as modified by Court?s Notice No. 4798 dated 15th April, 2021.

â?¦â?¦â?¦â?¦â?¦.â?¦â?¦â?¦â?¦..

