**(2013) 07 MP CK 0340**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition No. 7300 of 2012

Chintu Lal APPELLANT

Vs

M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd. and Others RESPONDENT

**Date of Decision :** 19-07-2013

**Acts Referred:**
Constitution of India, 1950 — Article 16, 226

**Citation :** (2013) 07 MP CK 0340

**Hon'ble Judges :** Sujoy Paul, J

**Bench :** Single Bench

**Advocate :** D.P. Singh, for the Appellant; Rinkesh Goyal, for the Respondent

**Final Decision :** Allowed

# Judgement

Sujoy Paul, J.—In this petition filed under Article 226 of the Constitution, the petitioner has challenged the order, Annexure P-1, whereby the respondents have retired him on attaining 58 years of age. The contention of the petitioner is that earlier he was an employee of a cooperative society. His services were merged in the respondent-department. One condition of absorption was that the age of retirement of the petitioner would be the same which is applicable to employees of the society from where he was absorbed. Shri D.P. Singh submits that by order dated 1.10.2008 the service conditions of the employees of the society are revised and there age of superannuation is enhanced from 58 years to 60 years. Accordingly, the petitioner is entitled to continue till 60 years. He relied on a recent order passed by the Principal Seat in Writ Petition No. 2204/2012 (Chaturbhuj Singh vs. M.P.S.E.B.) dated 10.7.2012.

2. Per Contra, Shri Rinkesh Goyal opposed the relief and submits that when the petitioner was absorbed, the age of superannuation was 58 years and, therefore, he is not entitled for any benefit. Although he relied on certain judgments including M.P. Vidyut Karamchari Sangh Vs. M.P. Electricity Board, in the considered opinion of this Court, the said judgment has no application in the facts and circumstances of the present case. In the said case, the governing

provision/M.P. Industrial Employment (Standing Orders) Act, 1961 was containing a provision regarding age of retirement. The Apex Court opined that alteration in the age of retirement by the employer is a matter of executive policy which can be based on sufficient and cogent reasons.

3. In the present case, the simple question is whether the petitioner is entitled to get parity with Chaturbhuj Singh (supra) and whether as per condition of absorption, he is entitled to continue till 60 years.

4. The Coordinate Bench in Chaturbhuj Singh (supra) opined that the amendment dated 1.10.2008 is prospective and is made applicable to the petitioner who is in service. The finding in Chaturbhuj Singh (supra) is as under"-

After hearing learned counsel for the parties this Court is of the opinion that such stand taken by the respondents cannot be accepted. Firstly W.P. No. 13374/2004 decided on 15/12/2011 was dismissed only because the petitioner in that case had attained the age of superannuation in the year 2004 whereas the amendment in the age of superannuation had come into force w.e.f. 01/10/2008. This Court has rightly held that since the amendment was prospective it would not be applicable in case of a person who had retired much before the coming into force of such amendment in the age of superannuation. Secondly if the amendment was made when the petitioner was in service it would be applicable for him also and it cannot be said that the petitioner would not be entitled to continue in service up to the age of 60 years. If this is allowed, it will amount to hostile discrimination of the petitioner against the voice of Article 16 of the Constitution of India.

Consequently, the order of respondents can not be sustained. The same is hereby quashed. Since the petitioner is continuing in service, he will remain in employment till he attains the age of superannuation at the age of 60 years. The respondents to settle all the claims of the salary etc. of the petitioner within a period of 2 months.

The Writ Petition is allowed and disposed of.

The petitioner is similarly situated qua Chaturbhuj Singh (supra). I am bound by and in respectful agreement with this judgment. Accordingly, this petition deserves to be and is hereby allowed. The impugned order, Annexure P-1, is set aside. The respondents are directed to reinstate the petitioner with all benefits within 30 days. No costs.

 