
(2008) 02 AHC CK 0150
In the Allahabad High Court

Daya Shankar Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 229
Electricity (Supply) Act, 1948 — Section 79
Evidence Act, 1872 — Section 83
General Clauses Act, 1897 — Section 21
Warehousing Corporations Act, 1962 — Section 18, 20, 23, 42

Citation : (2008) 5 AWC 5263 : (2008) 2 UPLBEC 1535

Hon'ble Judges : Sudhir Agarwal, J; S. Rafat Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioners are Class-I or Class-II employees of U.P. State Warehousing Corporation or U.P. State Agro Industrial Corporation and on attaining the age of superannuation, i.e. 58 years, have been directed to retire, whereagainst they have filed the present writ petitions claiming that they are entitled to continue upto the age of 60 years. Since, common questions of law and facts are involved in all these matters, as requested and agreed by learned Counsel for the parties, these matters have been heard together finally at this stage under the Rules of the Court and are being decided by this common judgement.

2. In all these Petitions, the petitioners are employees of U.P. State Warehousing Corporation (hereinafter referred to as "UPSWC") and have challenged the orders of authorities informing them about their retirement on attaining 58 years of age i.e., the age of superannuation.

3. In Writ petition No. 59708 of 2007, the petitioner is working as Warehouse Superintendent and was to attain age of 58 years on 31.12.2007. Vide order dated 18.6.2007, the Managing Director, UPSWC informed him about his superannuation on 31.12.2007 where against he has approached this Court in

the aforesaid writ petition.

4. In respect to other petitioners, who are employee of UPSWC, the post on which they were working, date of retirement and the date of the order requiring them to retire on attaining the age of superannuation of 58 years (impugned order) is given in the following chart:

Writ Petition No.	Post he held	Date of retirement	Date of order of on attaining 58 years	competent authority	intimating date of retirement
60570 of 2007	Warehouse Superintendent	31.1.2008	31.8.2007	52175 of 2007	Senior Warehouse
31.10.2007	9.10.2007	Superintendent	33681 of 2007	Regional Manager	31.7.2007
25.1.2007	44923 of 2007	Warehouse Assistant	30.6.2007	14.6.2007	39113 of 2007
Warehouse Superintendent	31.8.2007	19.2.2007			

5. The writ petition No. 55780 of 2007 has been filed on behalf of U.P. Agro Adhikari Karmachari Kalyan Samiti challenging order dated 19.5.2007, whereby the State Government has informed the Managing Director, U.P. State Agro Industrial Corporation Ltd. (hereinafter referred to as "UPSAICL") that the State Government has not approved UPSAICL's proposal for extension of age of retirement of their employees from 58 years to 60 years. Therefore, have also sought a writ of mandamus commanding respondents to allow all the members of the petitioner's association to continue in service till the age of 60 years.

6. The facts giving rise to the writ petitions filed by the employees of UPSWC, in brief, are stated hereunder and for the purpose of reference, the writ petition No. 59708 of 2007 is taken up as the leading case.

7. The Parliament enacted Warehouse Corporation Act, 1962 (Act No. 52 of 1962) (hereinafter referred to as "1962 Act") providing for incorporation and regulations of corporations for the purpose of warehouse of agricultural products and certain other commodities and the connected matters thereof. There are two types of Corporations contemplated under 1962 Act, one is Central Warehousing Corporation and another is State Warehousing Corporation. In the present case, we are concerned with the State Warehousing Corporation. Section 18 of 1962 Act empowers the State Government to establish a Warehousing Corporation of the State with the approval of Central Warehousing Corporation and by notification in the Official Gazette. It is not disputed that UPSWC is a State Warehousing Corporation constituted by the State U.P. in exercise of powers u/s 18 of the aforesaid act. A State Warehousing Corporation is a body corporate by the name notified u/s 18(1) having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract. It may sue and may be sued by the name it is notified. The Corporation is provided authorised capital divided into shares. Its power of superintendence and management of affairs vest in a "Board of Directors" constituted as per Section 20 of the Act. The aforesaid Corporation is entitled to appoint such officer and employees as it considers necessary for efficient performance of its functions as provided u/s 23, which is reproduced as under:

23. (1) A State Warehousing Corporation may appoint such officers and other employees as it considers necessary for the efficient performance of its functions.

(2) Every person employed by a State Warehousing Corporation under this Act shall be subject to such conditions of service and shall be entitled to such remuneration as may be determined by regulations made by the Corporation under this Act.

8. The Corporation is empowered to frame regulations u/s 42 of 1962 Act on various subjects, which includes conditions of service and remuneration payable to the officers and other employees of the Corporation. Section 42, which has been placed before this Court by both the parties to substantiate their submissions, is reproduced as under:

42. (1) A warehousing Corporation may, with the previous sanction of the appropriate Government, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for-

(a) the conditions of service of, and the remuneration payable to the officers and other employees of a Warehousing Corporation;

(b) the manner in which, and the conditions subject to which, shares of the Central Warehousing Corporation may be transferred;

(c) the manner in which meetings of a Warehousing Corporation and the Executive Committee thereof shall be convened, the fees for attending such meetings and the procedure to be followed thereat;

(d) the duties and conduct of officers and employees of a Warehousing Corporation;

(e) the powers and duties which may be entrusted or delegated to the managing director of a Warehousing Corporation;

(f) generally, the efficient conduct of the affairs of a Warehousing Corporation.

(3) The appropriate Government may, by notification in the Official Gazette, rescind any regulation which it has sanctioned and thereupon the regulations shall cease to have effect.

9. In exercise of power u/s 42 of 1962 Act, the UPSWC has enacted Staff Regulations, namely, U.P. State Warehouse Corporation Staff Regulations, 1961 (hereinafter referred to as the "Staff Regulations") after obtaining previous sanction of the State Government and by publishing in official Gazette. Regulation 12 provides for age of superannuation of the employees UPSWC as under:

12. Age of superannuation:

Every employee of Class I and II shall retire on attaining the age of fifty eight years and that of Class III shall retire on attaining the age of sixty years:

Provided that no extension in service beyond the age of superannuation shall be allowed except where the interests of the Corporation so require and in consideration of the exceptional and outstanding nature of the work done by any employee, the Board of Directors may with the previous approval of the State Government extend the period of service of any employee in Class I and II beyond the age of superannuation for any period not exceeding two years in the aggregate.

10. In U.P., the State Government in respect to the employees, who are holders of civil posts and are governed by the Rules framed under proviso to 309 of the Constitution, the age of superannuation was extended from 58 to 60 years by amendment of fundamental Rule 56 notified in the Gazette dated 20.11.2002. Claiming parity with the State Government employees, similar demand, it appears, was raised by the employees of various other corporations, statutory bodies and other instrumentalities of the State Government whereupon, it appears that in some, the age of superannuation was enhanced from 58 to 60 years. In respect to UPSWC, the Board of Directors passed a resolution on 22.3.2003 for enhancing age of superannuation from 58 to 60 years for Class-I and Class-II employees and sent a letter dated 23.4.2003 (Annexure-4 to the writ petition) to the State Government seeking its approval so as to make amendment in Regulation-12. Since, no decision was taken by the State Government, it appears, reminders were sent by UPSWC on 2.12.2004 and 7.12.2004. Writ Petition No. 39113 of 2007, thereafter, was filed by Bhagirath before this Court which came up before a Division Bench on 22.8.2007 and while granting an interim order, directing the respondents to continue the petitioner in service till he attains the age of superannuation of 60 years or till the decision is taken by the State Government on the letter of Managing Director, UPSWC, this Court also required the State Government to pass a speaking and reasoned order on the recommendation of the Board of Directors of UPSWC for amending Regulation 12 enhancing age of retirement from 58 to 60 years after taking into account recommendation of 5th Pay Commission and the fact that in respect to some other bodies, age of retirement has already been enhanced.

11. The State Government however, it appears, already had, vide its letter dated 28.3.2007, informed UPSWC that the proposal for extending age of superannuation is not acceptable and thus refused to accord approval. After communication of the order dated 22.8.2007 of this Court passed in the writ petition of Bhagirath, the State Government reiterated its above decision in letter dated 21.8.2007, which was communicated to UPSWC on 7.9.2007. Thereafter, another writ petition No. 44923 of 2007 was filed by Shesh Nath Singh raising a complaint that no reasons have been communicated by the State Government for declining its approval. A Division Bench of this Court passed an order on

20.9.2007 requiring the learned Standing Counsel to produce the reasons, if any, recorded by the State Government while passing order dated 7.9.2007. No such reasons are communicated or placed before this Court.

12. In the writ petition filed by U.P. Agro Adhikari Karmchari Kalyan Samiti with respect to UPSAICL, the facts with respect to constitution of Corporation etc. are slightly different. UPSAICL is a company registered under the Companies Act, 1956 vide Certificate of Incorporation issued by Registrar of Companies, Kanpur on 29.3.1967. It is wholly owned by the State of U.P. and governed by the Memorandum of Association and Articles of Association registered with the Registrar of Companies under the provisions of the Companies Act, 1956. The UPSAICL has framed rules governing conditions of service applicable to its employees titled as "U.P. State Agro Industrial Corporation Limited (General Service) Regulations, 1984" (hereinafter referred to as "1984 Regulations"). Regulation 4 provides procedure of amendment of the said Regulations, which does not provide any role to the State Government, but Regulation 26 thereof, which provides for the age of retirement specifically provides that age of retirement of any employee shall be 58 years, unless it is enhanced by the Board of Directors with prior approval of the State Government but it shall not be more than two years. Regulation 4 and 26 of 1984 Regulations are reproduced as under:

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26- izR;sd deZpkjh lkekU;r% 58 o"kZ dh vk;q ij lsok ls fuo`Rr gksxk tc rd fd e.My jkT; "kklu ds iwokZuqeksnu ls lsok;kstu dh vof/k u c<+k;s fdUrq fdLh Hkh n"kk esa ,slh o`f) 2 o"kZ ls vf/kd ugh gksxh A

13. The Board of Directors, UPSAICL passed a resolution on 23.1.2007 (Annexure-8 to the writ petition) accepting to increase the age of retirement of its employees from 58 to 60 years and resolved to send the said proposal to the State Government for its approval. Consequently, vide letter dated 3.2.2007 (Annexure-9 to the writ petition), UPSAICL requested State Government to consider its resolution and grant approval so that the Regulations may be amended appropriately enhancing age of retirement of the employees from 58 to 60 years. However, the State Government vide letter dated 19.5.2007 has declined to grant such approval observing that there is no reason to enhance age of retirement of the employees of UPSAICL and it is this order of the State Government, which has been assailed by the petitioners in writ petition No. 55780 of 2007.

14. Though, several counsels have appeared in this bunch of the writ petition on behalf of the petitioners, but in respect to UPSWC, the argument have been advanced mainly by Sri M.D. Singh Shekhar, Senior Advocate, assisted by Sri D.P. Singh Advocate and in the case of UPSAICL, Sri R.N. Singh, Senior Advocate, assisted by Sri Ram Gopal Tripathi has made submissions at length. Other learned Counsels appearing for petitioners have not made individual submissions but have adopted contentions of the aforesaid two senior Counsels. On behalf of the respondents, Sri O.P. Singh, Senior Advocate, assisted by Sri Nripendra Misra has appeared on behalf of UPSWC and Sri S.K. Shukla has appeared on behalf of UPSAICL.

15. Sri M.D. Singh Shekhar, Senior Advocate, contended that in view of the interim order dated 22.8.2007 passed in Writ Petition No. 39113 of 2007, it was incumbent upon the State of U.P. to pass a reasoned order declining its approval and since no such reasoned decision has been taken by the State Government, therefore, in law, it can not be said that the State Government has declined its approval to the proposal of the UPSWC for amending Regulation-12 enhancing age of retirement from 58 to 60 years and, therefore, so long as such a decision is taken by the State Government, the petitioners are entitled to continue till they attain the age of 60 years. In support of his submission that the State Government is obliged to pass a reasoned order, he relied upon *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, He further contended that once the Board of Directors of UPSWC have taken a decision accepting to increase the age of retirement of employees, it was not open to the Managing Director of UPSWC to pass impugned order retiring the petitioners on attaining age of 58 years, since the same would be contrary to the decision taken by the higher authorities and, therefore, by means of the impugned order issued by the Managing Director of UPSWC, which is contrary to the resolution of Board of Directors, the petitioners could not have been retired on attaining the age of 58 years. The impugned orders are wholly without jurisdiction being contrary and in the teeth of the otherwise decision taken by a higher body, namely, Board of Directors. He further contended that in respect to other State Government instrumentalities, companies and statutory bodies, since age of retirement has been increased from 58 to 60 years, therefore, the petitioners are also entitled for a similar treatment and non enhancement of age of retirement in the case of the employees of UPSWC is illegal, arbitrary and violative of Article 14, 16 and 21 of the Constitution of India. Challenging the orders dated 28.3.2007, 21.8.2007 and 7.9.2007 of the State Government whereby it has declined to grant approval for amendment of the Regulations of UPSWC for enhancing age of retirement of Class I and II employees he contended that the same are unreasoned, arbitrary and show non application of mind on the part of the State Government and, therefore, nullity in the eyes of law and liable to be set aside.

16. Sri R.N. Singh, Senior Advocate, advancing his submissions on behalf of the petitioners in writ petition No. 55780 of 2007, however, submitted that UPSAICL is not a statutory body but a company though owned by the State Government,

but there is no requirement either under the Article of Association or Memorandum of Association obliging UPSAICL to prescribe its condition of service applicable to employees only after obtaining prior approval of the State Government. He, therefore, contended that as soon as the decision is taken by the Board of Directors, UPSAICL enhancing age of superannuation of its employees from 58 to 60 years, it would be deemed that the relevant Regulations stood amended and irrespective of the fact as to whether the State Government grants its approval or not, the employees of UPSAICL would be entitled to continue in service till they attain the age of 60 years.

17. On the contrary, learned Counsel for the respondents submitted that admittedly, the service Regulations applicable to the petitioners-employees have yet not been amended as per the procedure prescribed therefore and whatever correspondence has undergone it only shows that an attempt was made to amend the Regulations enhancing age of retirement, but the fact remains that in accordance with the procedure prescribed, the Regulations have not been amended so far. In this view of the matter, in presenti, the petitioners are governed by the Regulations, which prescribe age of retirement as 58 years and, therefore, there is no illegality or error in the orders issued by the authorities of the respondents retiring the petitioners/employees of the respective corporations on attaining the age of 58 years in accordance with the existing Regulations applicable to them.

18. Learned Standing Counsel appearing on behalf of State of U.P. submitted that the power of the State Government to grant approval for the purpose of framing or amending Regulations is in the nature of legislative power and, therefore, the State Government cannot be required to record its reasons for not granting approval for amendment of the Regulations, which are involved in these writ petitions. He submitted that the contention of the learned Counsel for the petitioners that the State Government is obliged to record reasons is thoroughly misconceived inasmuch the said dictum has no application to the power which is in the realm of legislation, whether principal or subordinate or delegated legislation.

19. We have heard learned Counsel for the parties and have seriously pondered over the rival submissions advanced by them and also perused the record as well as various authorities cited at the bar.

20. The first question up for consideration is whether the conditions of service, which are governed by existing statutory provisions can be relaxed or be treated to be modified or amended as per the decision taken by the employer though it has not resulted or converted in amendment of the provisions governing the conditions of service. Secondly, what is the nature of power exercised by State Government with respect to approval for amendment of the Regulations governing conditions of service. Thirdly, whether the State Government can be directed to act in a particular manner for exercise of its power of grant of approval. Fourthly, the incidental and connected aspect of this issue is, whether

the State Government is obliged to pass reasoned and speaking order showing as to why it is not granting approval or is disapproving the proposal for amendment of the Regulations and lastly whether the petitioners are entitled for any relief whatsoever in the existing facts and circumstances of the case.

21. We propose to consider the aforesaid issues in the light of the fact that in respect to UPSWC, the conditions of service are governed by statutory Regulations while in the matter of UPSAICL, the matter is governed by Regulations framed by the employer in its inherent power and though the provisions are termed as Regulations, but they are not statutory in nature and at the most can be said to be contractual but binding on the parties in view of the letter of appointment and conditions of service as agreed upon by them.

22. First we take up the case of the employees of UPSWC. It is not disputed that the Regulations as they exist even today provide age of retirement for Class-I and Class-II employees as 58 years and there is no change therein. The procedure for framing Regulations and its amendment, modification etc. is provided u/s 42 of 1962 Act, which required that a warehouse corporation with the previous sanction of the appropriate Government by notification in the official Gazette may make Regulations not inconsistent with the Act and the Rules framed thereunder. Therefore, three things are required for making Regulations u/s 42, namely, (A) it is to be made by a warehouse corporation, (B) previous sanction of the appropriate Government is necessary and (C) the Regulations shall be made by notification in Official Gazette.

23. It is not disputed that Staff Regulations have been made in accordance with the procedure prescribed u/s 42 of 1962 Act i.e. after obtaining previous sanction of the State Government vide G.O. dated 28.3.1966. Regulation 12 thereunder provides age of superannuation of Class I and Class II employees as 58 years. For subsequent amendments in Staff Regulations also previous sanction has been communicated by the State Government as and when the amendments have been required to be made. This fact is not disputed by the learned Counsel for the petitioners. It is also not disputed that the Regulations have been made by publication in official Gazette. That being so, we fail to understand unless the aforesaid Regulations are now amended by the competent authority in accordance with the procedure prescribed u/s 42 of 1962 Act, merely on the basis of the proposal or the resolution passed by the UPSWC intending to amend Regulations, how the petitioners can claim any benefit based on such proposal or resolution unless it attains the status of Regulation u/s 42 of 1962 Act having the effect of amending Staff Regulations. At the best, resolution of UPSWC corporation can be said to have the status of draft Regulations or draft amendment of the Regulations which by itself would not have the effect of amending Staff Regulations still procedure prescribed u/s 42 is observed and accomplished. There is no dispute between the parties that neither the State Government has given approval for such amendment enhancing age of retirement from 58 to 60 years, nor such amendment has been published in the

official Gazette.

24. The first principle applicable herein would be when a statute required a thing to be done in a particular manner, then it should be done in that manner alone and not otherwise. The principle was recognized in AIR 1936 253 (Privy Council) and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgements, which we do not propose to refer all but would like to refer a few recent one.

25. In Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, of the judgment the Court held:

It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all.

26. In Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, it was held:

It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.

27. The judgments in Anjum Ghaswala (supra) and Dhananjaya Reddy (supra) laying down the aforesaid principle have been followed in Captain Sube Singh and Others Vs. Lt. Governor of Delhi and Others,

28. In Competent Authority Vs. Barangore Jute Factory and Others, , it was held:

It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning.

29. In State of Jharkhand and Others Vs. Ambay Cements and Another, of the judgment, the Court held:

It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way.

30. Not only the Government in the present case has declined its approval and/or has not granted prior sanction as contemplated u/s 42 but it is also an admitted fact that no publication in official Gazette has been made till date for amending Regulation 12 of Staff Regulations in so far as it prescribes the age of superannuation of Class-I and Class-II employees at the age of 58 years. The effect of non publication in official Gazette where the statute requires has also been considered by a Division Bench in which one of us (Hon"ble Sudhir Agarwal, J.) was a member in judgement dated 23.08.2007 passed in Civil Misc. Writ Petition No. 264 (S/S) of 1999, Vidyut Karyalaya Karmik Sangh, U.P. v. State of U.P. and Ors., wherein it was held as under:

...we have no manner of doubt that 1970 Regulations could have been amended

only when the impugned amendment 1998 would have been published in official gazette and not otherwise. Admittedly, the same having not been published in the official gazette the result is that 1970 Regulations continue to operate in the same manner and in the same form in which they were on the date when the impugned amendment 1998 was prepared by the respondents and the impugned amendment 1998 at the best can be said to be a draft amendment of the regulations but in the absence of publication in the official gazette it did not bring any change or alternation in 1970 Regulations.

31. Where the statute requires publication in the official Gazette, it has been held to be mandatory and failure of publication in official Gazette cannot be taken lightly. Effect could be given only when the provision is made and published in official Gazette. In *B.K. Srinivasan and Others Vs. State of Karnataka and Others*, considering the importance of publication in official Gazette, the Apex Court held:

It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Whether the parent statute prescribes the mode or publication or promulgation that mode must be followed.

32. Again in *I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others*, it was held:

The object of publication in the Gazette is not merely to give information to public. Official Gazette as the very name indicates, is an official document. It is published under the authority of the Government. Publication of an order or rule in the Gazette is the official confirmation of the making of such an order or rule. The version as printed in the Gazette is final. The same order or rule may also be published in the newspapers or may be broadcast by radio or television. If a question arises when was a particular order or rule made, it is the date of Gazette publication that is relevant and not the date of publication in a newspaper or in the media (see *Pankaj Jain Agencies v. Union of India*). In other words, the publication of an order or rule is the official irrefutable affirmation that a particular order or rule is made, is made on a particular day (where the order or rule takes effect from the date of its publication) and is made by a particular authority; it is also the official version of the order or rule. It is a common practice in courts to refer to the Gazette whenever there is a doubt about the language of, or punctuation in, an act, rule or order. Section 83 of the Evidence Act, 1872 says that the court shall presume the genuineness of the Gazette. Court will take judicial notice of what is published there in, unlike the publication in a newspaper, which has to be proved as a fact as provided in the Evidence Act. If a dispute arises with respect to the precise language or contents of a rule or order, and if such rule or order is not published in the Official Gazette, it would become necessary to refer to the original itself, involving a good amount of inconvenience, delay and unnecessary controversies. It is for

this reason that very often enactments provide that Rules and/or Regulations and certain type of orders made thereunder shall be published in the Official Gazette. To call such a requirement as a dispensable one-directory requirement-is, in our opinion, unacceptable.

33. The judgment in B.K. Srinivasan (supra) was also followed in ITC Bhadrachalam Paper Boards (supra) and in para-15 of the judgment, the Court held:

15. The above decisions of this Court make it clear that where the parent statute prescribes the mode of publication or promulgation that mode has to be followed and that such a requirement is imperative and cannot be dispensed with.

34. We are also fortified from another Division Bench Judgment of this Court passed on 6.2.1998 in Review Application No. 79646 of 1997 in Writ Petition No. 36432 of 1997 Kumar Oxygen Limited v. U.P.S.E.B. and Ors. where referring to Section 79 of Electricity Supply Act, 1948, it was held:

The reference to Section-79 leaves no manner of doubt that amendment can be brought about in the regulation after notification was published in the Official Gazette. Since admittedly no publication took place, the change proposed in the Appellate Forum has not been given effect to by law.

35. The matter can also be considered in the light of Section 21 of the General Clauses Act, 1897, which reads as under:

Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.-Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rule or bye-laws so issued.

36. A modification, amendment etc., therefore, is permissible by exercising the power in the like manner and subject to like sanction and conditions in which the main provision was made initially. Since, Staff Regulations were framed admittedly with the previous sanction of the State Government and by publication in the official Gazette, same can be amended only following the same procedure and not otherwise. Therefore, the proposal/resolution passed by the Board of Directors, UPSWC by no stretch of imagination can be said to have the effect of either amending Regulation 12 of Staff Regulations or to bind UPSWC and its employees to be governed by such resolution/proposal which are inconsistent with the existing provisions contained in Staff Regulations.

37. The proposal/resolution of Board of Directors, UPSWC agreeing to amend Regulation-12 enhancing age of retirement of Class-I and Class-II employees to 60 years, as observed above, at the best, is in the status of draft Regulation. A draft Regulation cannot be acted upon when the statutory Regulations made in accordance with the Act are already operative and holding the field. In Abraham

Jacob and Others Vs. Union of India, and Vimal Kumari Vs. The State of Haryana and Others, , it was held that draft rules may be acted upon to meet urgent situations when no rule is operative.

38. In Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, , the Apex Court considering almost a similar situation held:

A rule validly made even if it has become unworkable unless repealed or replaced by another rule of amended, continues to be in force.

39. In Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others, the Apex Court in para-37 of the judgment observed:

It is now well-settled principle of law that the draft rules can be invoked only when no rule is operative in the field.

40. The logical inference is that if a valid rule is already operative, a draft rule would have no application at all.

41. An interesting situation occurred in Alphonse Cazilingarayar and Ors. v. Inspector General of Police and Ors., (2000) 10 SCC 153 where the Central Administrative Tribunal (Madras Bench) declared Draft Recruitment Rules pertaining to the post of Radio Supervisor (Operations) Grade-I illegal and unconstitutional. In appeal, the Apex Court held that the judgment of the Tribunal setting aside Draft Rules as unconstitutional was totally uncalled for being premature since the Draft Rules were not approved by the State and remained only draft rules. It was open to the Government/Appropriate Authority to consider either to approve draft rules or not or to frame fresh rules and, therefore, there was no cause of action available to anyone to challenge the draft rules. The same could not have the effect of affecting any right of the employees. Till the rules are amended as per the procedure prescribed, any order or decision taken by the authorities for amending or changing Regulations is only an administrative/executive order, which would not confer any right upon either of the parties contrary to the statutory provisions.

42. In Dr. Rajinder Singh Vs. The State of Punjab and Others, dealing with a similar situation, the Court held:

The settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence.

43. In Ashok Lanka and Another Vs. Rishi Dixit and Others, the Court held:

We are not oblivious of the fact that framing of rules is not an executive act but a legislative act; but there cannot be any doubt whatsoever that such subordinate

legislation must be framed strictly in consonance with the legislative intent as reflected in the rule-making power contained in Section 62 of the Act. (para- 57)

44. Very recently, a similar controversy with respect to the appointment of Heads of Department in State University came up for consideration before a Division Bench in which one of us (Hon'ble Sudhir Agarwal, J.) was also a member in Prof. Kalawati Shukla (Smt.) and Ors. v. State of U.P. and Ors. 2008 (1) ADJ 209. There statute 2.20 of Gorakhpur University framed in exercise of power u/s 50 of U.P. State Universities Act, 1973 provided that the senior most teacher in each department in the University shall be the Head of Department. State Government issued a G.O. dated 24.7.2007 providing that the Head of Departments in the University shall be by rotation and for the said purpose required Universities to take steps for amendment of the concerned Statutes. The statute, in fact, were not amended. The University acting as per the decision of the Government contained in the G.O. dated 24.7.2007 issued orders appointing Head of Departments by roaster instead of senior most teacher. This Court, following an earlier Division Bench decision in Ankur Yadav v. State of U.P. and Ors. 2007 (10) ADJ 10 held that unless the statute is amended, no action could have been taken according to the Government Order dated 24.7.2007. The Court quoted the following observation of the Division Bench in Ankur Yadav (supra):

...the Statutes of the University framed under the Act would govern the field and so long as the Statutes are not amended, no person can be appointed in the University governed by the act and the Statutes framed thereunder by ignoring the qualification prescribed thereunder. No amount of proposal, acceptance, waiver, acquiescence etc. either by the University or the State Government would have the effect of amending the Statutes unless the Statute as such is amended in accordance with the procedure prescribed u/s 50 of the Act....

It is not disputed that the First Statute of the University was not amended in the manner provided u/s 50 of the Act till the date the petitioner was appointed and thus principle of estoppel, waiver or acquiescence would not apply against law....

45. If the contention of the learned Counsel for the petitioner is accepted that once the resolution has been passed by the Board of Directors, UPSWC for making amendment in the Regulations, the petitioners are entitled for the benefit as per the said resolution irrespective of the fact whether the said resolution is sanctioned by the State Government for the purpose of making amendment in the Regulations as it would amount to making the procedure prescribed u/s 42 redundant. It is a well recognized principle of interpretation of statute that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render some part or the words of a provision redundant or otiose should be avoided. In Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , the Court observed that "statutes have to be construed so that every word has a place and everything is in its place..." In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat and Ors. AIR 2003 SC 1201 the Apex Court in para 36 of the

judgment held:

It is also a well settled principle of law that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render a particular provision redundant or otiose should be avoided.

46. Thus, considering the matter in the light of the above, we have no manner of doubt that since Regulation 12 of Staff Regulations has not been amended as per the procedure prescribed u/s 42 of 1962 Act, mere resolution of the Board of Directors of UPSWC would not confer any right upon the employees of UPSWC to continue in service beyond 58 years.

47. Now, we come to another aspect of the matter. Whether State Government while required to accord previous sanction is obliged to record reasons and what is the nature of power exercised by the State Government in according previous sanction for the purpose of framing of Regulations u/s 42 In our view, the power exercised by the State Government by the State Government u/s 42 of 1962 Act is in the realm of subordinate legislation and, therefore, requirement of recording reasons for exercise or non exercise of power cannot be imported therein. It is true that unlike principal legislation made by the State or Central legislature, the subordinate or delegated legislation is open for challenge on certain wider grounds, but that would not place it at par with executive orders where the requirement of recording reasons has been imported as a facet of principles of natural justice. No person can claim a vested right for legislation of something. May be, the proposed prospective legislation is beneficial to him, yet so long as the legislation has not come into existence in accordance with the procedure prescribed in law, no person can come to a Court of law complaining for legislating or non legislating something by the authorities exercising delegated legislative power with the submission that it must record its reasons for doing or refusing to do so. The requirement of previous sanction u/s 42 can not be said to be a mere formality. The State Warehouse Corporation though is a statutory body, but it is made available finances by the State Government. Therefore, the State Government is well within its right to consider the question as to whether it must accord sanction for a particular regulation considering every aspect of the matter including financial implications etc. If the approval is not granted, in our view, even a writ petition seeking mandamus commanding the State Government to accord approval would not be maintainable. A Somewhat similar procedure has been prescribed for framing rules for the staff of the High Court under Article 229(2) of the Constitution whereunder the power of framing rules by the Hon"ble Chief Justice in so far as it relates to salaries, allowances, leave or pensions is subject to the approval of the Governor of the State. In State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others, , the Apex Court held that the power of the State Government to grant approval is not mere formality and it is open to it to grant approval or not and for the said purpose, no writ of mandamus would lie.

48. There is another obstacle blocking the road of petitioners for getting any

relief in these writ petitions. They have challenged various orders whereby the State Government has declined to grant sanction for amendment of Regulation-12 of Staff Regulations. Even if the aforesaid orders passed by the State Government are held to be bad being non speaking, that per se would not result in granting sanction to UPSWC having the effect of amendment of Regulation-12 enhancing age of superannuation of Class-I and Class-II employees of UPSWC from 58 to 60 years. The Regulations would stand amended only when the previous sanction is accorded by the State Government and, thereafter, the amendment is published in Official Gazette. Therefore, at present, and, according to the existing Regulation-12 of Staff Regulations, which governs conditions of service of the employees of UPSWC, the Class-I and Class-II employees are liable to retire on attaining the age of 58 years. The petitioners have already attained the said age and, therefore, even otherwise, no relief can be granted to them. Their claim that in the absence of any sanction by the State Government, they should be held to be entitled to continue upto 60 years of age based on the resolution of the Board of Directors is clearly misconceived inasmuch a mere resolution of Board of Directors of UPSWC would not result in amending statutory regulations framed u/s 42 of 1962 Act and, therefore, the relief as sought by the petitioners, being in the teeth of the existing Regulation-12 of Staff Regulations, cannot be granted by this Court.

49. The further submission of Sri M.D. Singh Shekhar that the order of the Managing Director retiring petitioners on attaining the age of superannuation is contrary to the resolution of the Board of Directors and, therefore, is without jurisdiction, in our view, is also misconceived and is being noted to be rejected for the reason that the same is consistent and in accordance with Regulation-12 of Staff Regulations as are existing till date and, therefore, cannot be said to be illegal or erroneous in any manner. The resolution of the Board of Directors of UPSWC is not enforceable on its own since it is a proposal for amending Regulations-12 of Staff Regulations and so long as amendment does not take place in accordance with the procedure prescribed u/s 42 of 1962 Act, mere resolution of Board of Directors would not authorise Managing Director to act contrary to statutory Regulations. The submission, therefore, is absolutely baseless and is rejected.

50. Therefore, the petitioners, who are employees of UPSWC, in our view, are not entitled to claim any relief since, they have no right to continue in service beyond 58 years and, therefore, their writ petitions are devoid of merit.

51. Now we come to the writ petition pertaining to UPSAICL. There also, the Regulations though not statutory but being part of the conditions of service of the employees, it is not disputed by the petitioners that the same are binding upon the employees of UPSAICL. That being so, unless the same are also amended in accordance with the procedure prescribed therein, it cannot be said that there is any different condition of service providing a higher age of superannuation contrary to the existing Regulations entitling the petitioners to

continue in service till 60 years of age. Regulation 26 specifically provides that the age of superannuation cannot be extended without prior approval of the State Government. Therefore, in the absence of any such approval under Regulation 26, the age of superannuation continued to be 58 years, the petitioners are liable to retire on attaining the age of 58 years. Moreover, even under Regulation 4, before amending the Regulation, a procedure has been prescribed which has to be followed by UPSAICL and it is nobody's case that the said procedure has been followed having the effect of amending Regulation 26 in any manner. In view thereof, the petitioners, who are employees of UPSAICL are also not entitled to continue beyond 58 years merely on the basis of a resolution passed by the Board of Directors for increasing the age of retirement from 58 to 60 years.

52. However, it is made clear that in case, any employee has continued beyond 58 years under interim order passed by this Court and has been paid salary, it would not be equitable to recover the same from such employee and, therefore, respondent shall not make any recovery from any of the petitioners, but it is also made clear simultaneously that for all other purposes, the petitioners shall be deemed to have been retired on attaining the age of 58 years and their continuance, if any, beyond 58 years pursuant to the interim order of this Court would not confer any benefit upon them.

53. In view of the aforesaid discussion, subject to above direction, all the writ petitions being devoid of merit, are dismissed. The interim order, if any, shall stand vacated.

54. There shall be no order as to costs.