
(2019) 04 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 822 Of 2019, IA No. 01 Of 2019

Madan Lal And Another

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Jammu And Kashmir Cooperative Societies Act, 1960 — Section 13
Jammu And Kashmir Civil Services Regulations Volume-I — Article 226(1)

Citation : (2019) 04 J&K CK 0022

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Rakesh Chargoitra

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. The petitioners have approached this Court seeking quashing of circular dated April 20, 2015 issued by Registrar, Cooperative Societies, J&K Jammu stating that the age of retirement of the employees is 58 years. Further prayer has been made for quashing of the orders dated March 30, 2019 providing that the petitioners shall retire w.e.f April 30, 2019, on attaining the age of superannuation i.e., 58 years. Further prayer has been made to allow the petitioners to continue till the age of 60 years as provided in the office order dated September 12, 2015 issued by the General Secretary, J&K Cooperative Union Limited, Jammu.

2. Learned counsel for the petitioners submitted that the petitioners had been working in the office of respondent No.2 i.e., The Jammu and Kashmir Cooperative Union Ltd., Jammu. They are governed by the Jammu and Kashmir Cooperative Societies Act, 1960 (hereinafter referred to as 'the 1960 Act?'). The age of retirement therein has been provided as 58 years. It was in terms of the age of retirement in the government services. Vide notification dated June 5,

2014 the State amended the Jammu and Kashmir Civil Services Regulations Volume-I in Article 226(1). From June 1, 2014 the age of retirement was increased to 60 years. Hence, the petitioners were entitled to the same benefit. They should be allowed to continue till the age of 60 years as the matter pertaining to increase in age of retirement is pending consideration with the State Government. In support of his arguments, reference was made to two earlier orders passed by this Court on 06-02-2018 in SWP No.197/2016 titled as Joginder Singh and ors. Vs. State of J&K and ors., and dated 25-02-2019 passed in SWP No.327/2019 titled as Farooq Ahmad Naik Vs. State of J&K and ors.

3. Learned counsel further submitted that the petitioners may be allowed to work and they will not draw any salary till such time the Government takes a decision regarding increase of their age. If final decision of the State is in favor of the petitioners they may be given the salary otherwise they will not claim the same.

4. After hearing learned counsel for the petitioners I do not find any merit in the submissions made. The 1960 Act, which govern the establishment in which the petitioners are working. Section 13 thereof, which deals with retirement and resignation provides that persons appointed to the service shall retire on attaining the age of 58 years or on the date the Society in which he was initially appointed, ceases to function. Relevant part of the provisions is extracted below:

"13. Retirement and resignation.-(1) Persons appointed to the service shall retire on attaining the age of 58 years or on the date the Society in which he was initially appointed, ceases to function. In the event of the Society being wound up, the services of the employee of that Society may, as far as practicable be utilized in any other Society by the Selection Board."

5. The petitioners in the present petition have prayed for quashing of a circular dated April 20, 2015 issued by the Registrar Cooperative Societies which only reiterates what is provided under the statutes namely the 1960 Act. Two other orders challenged are merely informing the petitioners and the other branches in the office about the date of superannuation of the petitioners, as a consequence of the circular issued by the Registrar Cooperative Societies. Implementation of the office order issued by General Secretary of the Union has been sought which ordered enhancement of age of the employees of the Union from 58 to 60 years. As to under what authority of law the General Secretary of the Cooperative Union could enhance the age which is statutorily provided under the 1960 Act could not be justified. Once the age at which the petitioners are proposed to be retired is statutorily provided under the 1960 Act, this Court cannot direct that the petitioners should be allowed to continue on the post till they attain the age of 60 years or till the matter is decided by the Government. This all be depend upon the amendment, if any, carried out in the 1960 Act and the intent thereof nothing can be foreseen at this stage and the petitioners can be granted benefit which does not flow to them in terms of legal position existing today.

6. At the time of hearing, reference was made to orders passed by this Court in

Joginder Singh and Farooq Ahmad Naik cases (supra). A perusal of the orders passed shows that while referring the earlier order passed in SWP No.82/2017 on 11.12.2017 titled as Surinder Singh Vs. State of J&K and ors., the petition was disposed of in the same terms. Stand of the learned counsel for the State was recorded therein that the matter was under active consideration of the State. Reference was made to meeting held on 22.08.2017. Despite direction by this Court on 27.11.2017 to take final decision within a period of six to eight weeks, nothing has been done till date and the State counsel had argued therein that till such time final decision is taken by the State no right accrues to the petitioners therein. The orders so passed will not come to the rescue of the petitioners in the facts and circumstances of the case as noticed.

6. For the reasons mentioned above I don't find that the petitioners have been able to make out any case for interference in the writ petition seeking enhancing their age of retirement, beyond the period prescribed under the 1960 Act. Till such time the 1960 Act is amended no rights can flow to the petitioners. Even the argument that the petitioners are ready to work for this period without salary, also deserves to be noticed and rejected for the reason that this could would not like to pass order which in a way may be termed as Begar taken from the petitioners, without payment of any salary.

7. In light of my aforesaid discussions, I do not find any merit in the present petition and the same is, accordingly dismissed.