

(2022) 12 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 747 Of 2021, Civil Miscellaneous No. 2196 Of 2021, 3610 Of 2022

Mohammad Yousuf Mir

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 15-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16. 21

Jammu And Kashmir Cooperative Societies Act, 1989 — Section 176

Citation : (2022) 12 J&K CK 0024

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : L. A. Latief, Faheem Shah

Final Decision : Dismissed

Judgement

Javed Iqbal Wani, J

1. The petitioner in the instant petition prays for the following reliefs:

i) Issue an appropriate writ, order or direction in the nature of Certiorari in favour of Petitioner and against the Respondents by quashing the impugned communication bearing no. 205-206 CSM/PUL dated 15.03.2021 addressed by Respondent No.5 to Petitioner.

ii) Issue an appropriate writ, order or direction in the nature of Prohibition, prohibiting the Respondents 1 to 4 from giving effect to the impugned communication dated 15.03.2021 issued by the Respondent No. 5 not only against the mandate of law but also against the already approval granted by the respondent No. 2 vide approval dated 01.08.2019.

iii) Issue an appropriate writ, order or direction in the nature of Mandamus, commanding the Respondents to allow the Petitioner to continue his services as is being performed by him beyond 31.03.2021 on the basis of approval dated 01.08.2019 and allow him to perform the same in future as well and also pay

him all the service benefits including the salary continuously in future as well.

iv) Issue an appropriate writ, order or direction in the nature of Mandamus, commanding the Respondents more particularly Respondents 4 & 5 to produce whole record pertaining to the process initiated by them before issuing communication dated 15.03.2021 before this Hon'ble Court, with further direction to Respondent No. 1 & 2 to seek explanations from Respondent No. 5 as to how he has issued the impugned communication in contravention with the approval granted by the Respondent No. 2 vide approval dated 01.08.2019.

v) The Hon'ble Court may pass any other order or direction, which it deems just and proper under the facts and circumstances of the case.

2. The aforesaid reliefs are being sought on the premise that the petitioner came to be appointed as dailywager and subsequently regularized as Salesman and thereafter promoted to the post of Assistant Manager in the year 2015, and as per the date of birth of the petitioner recorded in his Matriculation certificate, the petitioner had to attain the age of superannuation at the age of 60 years on 14.3.2023, but the respondent no. 5 in disregard to the mandate of law issued a communication impugned in the petition, whereby respondent no. 5 informed the petitioner that he would retire on superannuation on 31.3.2021 after attaining the age of 58 years on 14.3.2021.

3. The impugned communication is assailed in the petition amongst others on the ground that the petitioner had to retire at the age of 60 years in the respondent Society, but the respondents sought to retire the petitioner at the age of 58 years in violation of Article 14, 16 and 21 of the Constitution of India, therefore, the petitioner represented to the respondents against the impugned communication, yet the respondents did not pay any heed to the said representation.

4. Per contra, in their objections the respondents have controverted the contentions raised in the petition by the petitioner, stating that the petitioner was working in Jammu and Kashmir Cooperative Union being an Apex level company providing Cooperative Education and training to the members of the cooperative societies as per its by-laws and that the service conditions of the said Cooperative Union as also other cooperative societies are governed by SRO 233 of 1988 dated 8.7.1988 in terms whereof, an employee of the Cooperative Union has to retire upon attaining the age of 58 years.

5. The respondents in their objections further submit that there is no ambiguity with regard to applicability of SRO 233 dated 8.7.1988 vis-a-vis the employees of Cooperative Societies as far as the retirement age of 58 years is concerned, and this contention finds support in judgment dated 25.2.2019 passed by this court in case titled Farooq Ahmad Naik alias Naikoo versus State and others. It is submitted that the petitioner was working in the Cooperative Supermarket Limited, Pulwama, who in pursuance to the SRO 233 of 1988 and other orders and circular instructions issued by the government of J&K stands retired on

31.3.2021.

Heard learned counsel for the parties and perused the record.

6. Before proceeding to advert to the issues involved in the petition, it would be pertinent to note here that the J&K Cooperative Societies Act came to enacted in the year 1960, however, was repealed by the J&K Cooperative Societies Act, 1989 (hereinafter for short "the Act").

7. The SRO 233 of 1988 dated 08.07.1988 under the Act came to be issued providing for regulating the service conditions of the employees of the Apex Cooperative Institutions. The said SRO, however, came to be saved upon repealing of the Act 1960 in terms of Section 176 of the Act 1989.

8. Reverting back to the case of the petitioner, it is an admitted fact that the petitioner was the employee of the Cooperative Societies/ Institutions subject to the provisions of the Act of 1989 inasmuch as SRO 233 of 1988 in the matter of his service. The petitioner has lodged a claim that he could not be retired at the age of 58 years and that the petitioner has to continue in service till at the age of attaining 60 years, on the strength of SRO 164 of 2014 whereunder the age of retirement of the Government servants working in Government and Semi-Government Departments came to be enhanced up to 60 years.. This is also an admitted position that SRO 233 of 1988 forms a common service Rule for the Cooperative Institution employees and the provisions of the said SRO occupy the field as on date having not been either modified, altered or repealed and in terms of provisions of the said SRO, the petitioner has to superannuate at the age of 58 years. In absence of any alteration, modification or repeal of the provisions of SRO 233 of 1988 by the competent authority by a procedure recognized under law, the petitioner cannot claim to remain in service of the respondents up to the age of 60 years on any ground or any basis including on the strength of SRO 164 of 2014.

9. In view of the aforesaid facts and circumstances, the writ petition is misconceived and entails dismissal. Accordingly, the petition is dismissed without any cost.

10. A copy of the judgment shall be placed on the record file of SWP No. 872/2018 titled as "Abdul Majeed Doshaba Vs. State of J&K and others."