
(2013) 02 MP CK 0075
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2804 of 2003

M.T. Shinde

APPELLANT

Vs

M.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2013) 2 MPLJ 399

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Shailesh Mishra, for the Appellant; Anoop Nair and S.K. Nagpal, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—The only controversy involved in the present petition is whether the voluntary retirement of the petitioner could be termed to be after coming into force of the Notification dated 26-12-2000 and according to that Notification, the petitioner would be entitled to grant of benefit of commutation of pension in terms of the policy made pursuance to the aforesaid Notification or his claim would be considered for grant of commutation of pension in terms of the policy which was in vogue prior to coming into force of the Notification dated 26-12-2000. Since the controversy has been put at rest by a Division Bench decision of this Court in Writ Petition No, 857/2001, N.L. Mandhan and others Vs. M.P. State Electricity Board and another, , this petition is heard. Undisputedly, the petitioner was in the employment of the respondent-M.P. State Electricity Board (hereinafter referred to as the Board for brevity) working on the post of Section Officer. The age of superannuation in the establishment of respondent-Board at the initial stage when the petitioner was appointed, was 58 years. However, during the period, when the petitioner completed 58 years in the year 1999 an amendment was made in the age of superannuation of the employees of the Board and the same was extended to 60 years. The petitioner remained in the employment on account of such enhanced age of superannuation. However, for

the personal reasons, the petitioner was not willing to continue in the employment and, therefore, he gave a notice of voluntary retirement from service. The said notice was considered in terms of the Board's Notification dated 3-2-1990 and, accordingly, the voluntary retirement of the petitioner was accepted with effect from 31-12-2000 and such an order was issued on 14-11-2000. Since, the Board was facing certain financial crunches on account of which a policy decision was taken and again the age of superannuation of the employees of the Board was reduced to 58 years. After taking such a policy decision, the Board issued the Notification on 26-12-2000 specifically saying that those who were continued in employment after attaining the age of 58 years because of enhancement in the age of superannuation be immediately retired from service.

2. The petitioner after acceptance of his voluntary retirement made an application for correction in the order of his voluntary retirement which was rejected. The petitioner sought commutation of pension, but treating as if the petitioner has retired under the new Policy made, though the commutation of pension was ordered, but it was done in the manner indicated in the circular dated 2-8-2002. This being so, the petitioner has come before this Court stating that such action on the part of the respondents was not correct and, in fact, he would have been granted the benefit of commutation of pension prior to coming into force of Notification dated 26-12-2000, in terms of the policy made on 30-6-1998. Since this has not been done, the rights of the petitioner are adversely affected.

3. On receipt of the notice of this writ petition, the respondents have filed their return. The respondents have mainly relied on the decision rendered by this Court in the case of N.L. Mandhan (*supra*), it is contended by the respondents that the law is well settled with respect to the application of the Notification dated 26-12-2000. The Division Bench of this Court has categorically said that persons who have retired after 26-12-2000 will be governed by the said order/ Notification and not by the earlier order or Notification. It is, thus, contended that Clause (3) of Notification dated 2-8-2002 would be applicable in the case of petitioner since he has retired on 31-12-2000. Rightful action has been taken by the respondents and, therefore, petitioner is not entitled to claim the benefit of Notification dated 30-6-1998 in the matter of grant of benefit of commutation of pension. Thus, it is contended that the petition is devoid of any substance and deserves dismissal.

4. Heard learned counsel for the parties at length and perused the record.

5. Undisputedly, when the notice of voluntary retirement was given by the petitioner, the Notification dated 26-12-2000 was not in vogue as the order accepting the voluntary retirement of the petitioner itself was issued on 14-11-2000. It is trite that if a notice of retirement is given under the provisions of any Notification, the same is to be decided in terms of the provisions made in the said Notification irrespective of the fact that during the consideration period,

a new Notification has come in force. It is the settled law that new provisions made, would not be applicable in taking decision on such an application or notice of voluntary retirement. This in fact is the effect of the repeal or supersession of a provision which was in operation at the time when the application was made, therefore, the notice of voluntary retirement of the petitioner was taken into consideration and was finally adjudicated when the provision of the Notification dated 26-12-2000 were not in force. The same was decided under the provisions of the old Notification dated 3-2-1990. If that was the situation, merely because the date of superannuation of petitioner on voluntary retirement was fixed after coming into force of the Notification dated 26-12-2000, it cannot be said that settlement of the claim of petitioner would be governed by the Notification dated 26-12-2000. The Division Bench in the case of N.L. Mandhan (supra) has categorically dealt with such a situation in paragraph 16 of the order which reads thus:--

16. We will be failing in our duty if we do not appreciate the submission of Mr. Tankha that this Court has declared the retrospectivity of the Notification as ultra vires but that will be prospectively applicable but the order dated 26-12-2000 whereby the decision has been taken to adopt the order passed by the M.P. State Government, Financial Department Notification No. B-25/13/96/PWC-IV, dated 21-8-1996 and its amendment from time to time vide Notification No. F-25-B-98/PWC-IV dated 7-2-2002 regarding commutation of pension would be applicable to the employees/officers of the Board. It is fairly conceded by Mr. Tankha that the Notification dated 26-12-2000 does not have the status of law as it had not been published in the official gazette. However, proponent Mr. Tankha that after this order has come into existence if an employee or officer has requested for voluntary retirement, he cannot claim commutation on the basis of the earlier order issued on 30-6-1998. We find substantial force in the aforesaid submission for the simple pure reason that a person who had opted for the voluntary retirement on the basis of the order dated 30-6-1998 would stand in a different class whereas the persons who have opted for the voluntary retirement on or after 26-12-2000 shall fit into a different class altogether. It is perceivable that there is intelligible differentia between the two categories. Hence, we unhesitatingly hold that employees/officers who have sought for voluntary retirement after 26-12-2000 will be governed by the said order and not by the earlier order. We say so because by the said time the employees had ample opportunities to know what is the order of the Board and there is no room for playing possum. He who plays possum not only invites the wrath of majesty of law but loses his right in equity.

(underlined by Court)

6. After appreciation of such a finding, no doubt is left that the petitioner was to be granted the benefits which were available to him prior to issuance of Notification dated 26-12-2000. The Scheme made vide order dated 2-8-2002 itself contemplates that employees or officers, who had retired voluntarily before

26-12-2000 will get the commutation of pension as per order dated 30-6-1998. The petitioner though was actually relieved from the services on 31-12-2000, but the voluntary retirement was ordered much before, under the old provision of the Notification, therefore, his commutation of pension would not be governed by the provisions of Notification dated 26-12-2000. Mere effective date of retirement is not sufficient. It has to be seen that on which date the application was made for voluntary retirement and on what date the said application was considered and allowed. The law laid down by the Division Bench is clear in this respect and, therefore, it has to be held that the petitioner would be entitled to get commutation of pension in terms of the order No. 01-13/25 dated 30-6-1998.

7. This being the only limited prayer made, the writ petition is allowed. The respondents are directed to consider the case of the petitioner for grant of commutation of pension in terms of the provisions of Circular dated 30-6-1998 within a period of one month. The arrears so calculated after adjustment of the years, be paid to the petitioner within two months from today. The writ petition stands disposed of accordingly. There shall be no order as to costs.