

(2011) 08 CHH CK 0006
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 1833 of 2011

Qadir Ali	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 55(1)

Citation : (2011) 2 CGBCLJ 164

Hon'ble Judges : Satish K. Agnihotri, J; R.S. Sharma, J

Bench : Full Bench

Advocate : Sushobhit Singh, for the Appellant; M.P.S. Bhatia, Dy. Govt. Advocate for the State and Shri S.C. Verma, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Heard learned counsel appearing for the parties. By this petition, the petitioner seeks to quash the order dated 11.12.2010 (Annexure P-1) passed by the respondent No. 3 in respect of the petitioner. The petitioner, further seeks to declare the order dated 28.12.2006 (Annexure P-2) passed by the respondent No. 2 as ultra vires.

2. Case of the petitioner is that the petitioner was appointed on the post of Vehicle Driver. The service condition of the petitioner is governed by the Zila Sahakari Kendriya Bank Karmachari Seva (Niyaojan, Nibandhan Tatha Karya Sthiti) Niyam, 1982 (for short "the Niyam") and according to Rule 3 of the Niyam, the petitioner has been classified as Class-V employee. Driver, Jamadar, Daftari, Mali, Peon and Chowkidar are graded as class-V. Rule 72 of the Niyam provides for age of superannuation. The age of superannuation of class-V employees is 60 years.

3. According to the petitioner, on 28.12.2006, a decision was taken by the respondent authorities to the effect that except Chowkidar, Jamadar, Peon and

Mali, the age of retirement of other employees would be 60 years. In the said order, the Driver and Daftari were not mentioned, in spite of the fact, that they are also class-V employees. For clarification, the respondent No. 3 made several requests before the respondent No. 2 in respect of the age of superannuation of Driver and Daftari. By letter dated 30.09.2009, the respondent No. 2 informed the respondent No. 3 that there is no ambiguity in the order dated 28.12.2006.

4. Being aggrieved, the petitioner and other similarly situated persons made a request/representation before the respondent authorities, but the same has not been considered. The employees union also represented, but no decision was taken. The petitioner further contended that earlier the petitioner preferred a writ petition challenging the order dated 11.12.2010; however, the same has been dismissed as withdrawn with liberty to file a fresh. Hence, this petition.

5. In exercise of power u/s 55(1) of the M.P. Cooperative Societies Act, 1960, the Registrar framed rules i.e. the Niyam governing terms and conditions of the District Cooperative Central Bank Employees. Rule 72 provides for retirements, wherein, it was directed that class-V employees shall retire on attaining the age of 60 years on superannuation. The said provision was subsequently amended by the Registrar, in exercise of his power u/s 55(1) of the Act on 28.12.2006 (Annexure P-2), whereunder, the age of retirement for Chowkidar, Jamadar, Peon and Mali was fixed as 62 years and the age of retirement of Driver & Daftari along with other employees was determined at 60 years.

6. The contention of learned counsel for the petitioner that the Driver & Daftari also belongs to class-V and, as such, fixing the date of retirement as 60 years for them, when for other employees of class-V. retirement age as 62 years is discriminatory, unreasonable and unconstitutional.

7. Having heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto, it appears that the employer has considered different factors while fixing the age of retirement of Drive and daftari at 60 years. The Driver and Daftari, even if, they belong to class-V, they cannot claim parity with other employees like Chowkidar, Jamadar, Peon and Mail, who are to retire on attaining the age of 62 years, as all the employees belong to different cadre having different responsibility and different functions.

8. In V.K. Sood Vs. Secretary, Civil Aviation and others, , the Supreme Court held that the rules made under proviso to Article 309 are statutory and legislative in character, The Statutory rules thus made subject to law that may be made by the Parliament and the same cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the specific persons or post.

9. In Haryana State Minor Irrigation Tubewell Corporation and Others Vs. Madan Lal Kohli and Others, 8, it was held that if the Corporation has chosen to give a benefit only to class-IV employees and not to class-III employees, no fault can be found with them.

10. By amendment in the Rule 72 of the Niyam, extension of the age of retirement of Chowkidar, Jamadar, Peon and Mali to 62 years, cannot be held as violative of the constitutional provisions as well as discriminatory, arbitrary and unreasonable. The Driver and Daftari belong to different cadre though they may be under one class. Their duties are different than the aforestated employees; thus, it is for the employer to determine the age of retirement of Driver and Daftari, which may be different from other class-V employees. It is neither pleaded nor proved that there was any malice in exercise of power by the Registrar, while making amendment in Rule 72 of the Niyam. Thus, no case has been made out by the petitioner to indicate that there is any violation of either constitutional or any statutory provisions. Accordingly, the writ petition is dismissed. No order as to costs.