

(2003) 06 CHH CK 0002
In the Chhattisgarh High Court
Case No : Writ Petition No. 1882 of 2003

Radheshyam Yadu

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-06-2003

Acts Referred:

Chhattisgarh Panchayat Service (Recruitment and General Conditions Services) Rules, 1999 — Rule 33(1), 33(2)
Constitution of India, 1950 — Article 226, 227

Citation : (2003) 2 CGLJ 6 : (2003) 3 MPHT 63

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : Y.C. Sharma, for the Appellant; Sanjay K. Agarwal, Dy. A.G., for the Respondent

Judgement

L.C. Bhadoo, J.—Heard.

2. By this petition filed under Articles 226/227 of the Constitution of India the petitioner has challenged the order dated 6-6-2003 (Annexure P-1) passed by the respondent No. 2 by which it has been ordered that under Rule 33 of Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999, on attaining the age of superannuation the petitioner would be deemed to be retired from 30th June, 2003.

3. Learned Counsel for the petitioner submits that the petitioner is working as Accountant in Zila Panchayat, Mahasamund. As per the Rules prevailing in the department he is entitled to continue till the completion of 60 years of age. The respondent No, 1 has earlier issued a memo/order 8-4-2002 (Annexure P-2) and directed the respondent Nos. 2 and 3 to send proposals with regard to allowing benefit of Fifth Pay Commission, pension and age of superannuation. In compliance of the said order dated 8-4-2002 the Zila Panchayat, Mahasamund has passed a resolution on 25th February, 2003 and agreed to extend the age of superannuation of Class-III employees from 58 years to 60 years and Class-IV

employees from 60 years to 62 years. Learned Counsel for the petitioner further submitted that without taking the consent of the Executive Committee the order impugned dated 6-6-2003 has been issued by the Chief Executive Officer (respondent No. 2) and on the representations (Annexures P-3 and P-4) made by the petitioner no action has been taken by the respondents. The main contention of learned Counsel for the petitioner is that since the respondent No. 1 has already invited proposals vide order/memo dated 8-4-2002 and in compliance of that order/memo the respondent No. 2 has passed the resolution on 25-2-2003 and agreed to extend the age of superannuation of the Class-III employee from 58 to 60 years, the order impugned is contrary to the said resolution, arbitrary, illegal and not sustainable in the eyes of law and as per Rule 33 of the Rules, 1999 the petitioner is entitled to continue till completion of the age of 60 years.

4. In this connection Rule 33 of the Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 is relevant which reads as under :--

"Rule 33. Age of Superannuation.--(1) The age of superannuation for Panchayat employees other than teaching staff and Class-IV employees, shall be 58 years. For teaching staff and Class-IV employees age of superannuation shall be 60 years.

(2) In exceptional cases with the prior permission of prescribed authority Panchayat can extend the age of superannuation of any of its employee for maximum period of two years : Provided that extension of more than one year will not be sanctioned at a time."

5. Abare perusal of the above provision reveals that as per Sub-rule (1) age of superannuation for Panchayat employees other than teaching staff and Class-IV employees shall be 58 years, and in the present case admittedly, the petitioner is neither a teaching staff nor a Class-IV employee therefore for him being Class-III employee the age of retirement is 58 years. Sub-rule (2) of Rule 33 provides that in exceptional cases with the prior permission of prescribed authority, the Panchayat can extend the age of superannuation of any of its employee for a maximum period of two years. This sub-rule does not give absolute right to an employee to continue beyond the age of retirement as prescribed in Sub-rule (1). The concerned Panchayat can extend the age of any of its employee for two years only in exceptional cases that too with the permission of Prescribed Authority and for that purpose the Panchayat would have to make out an exceptional case and for making out an exceptional case the Panchayat has to look into (i) whether the petitioner's age of superannuation is to be extended in public interest looking to the exigency of work, (ii) the past service record as well as the conduct of the employee, and (iii) whether his continuation is necessary for a particular work. Thus Sub-rule (2) does not give absolute right to any employee to claim for extension of his age of superannuation. Even this sub-rule does not give any power to the respondents to extend the age of retirement of a particular employee as per their sweet will or ordinarily without meeting the requirement and spirit of sub-rule.

6. It is true that the petitioner has made representations to the respondents but it is for them to take a decision as to whether the petitioner's services are required to be extended as per Sub-rule (2) or not and that decision of the respondents must take in an objective manner.

7. Since the respondent No. 2 has already issued the order for retiring the petitioner w.e.f. 30-6-2003 on attaining the age of superannuation, i.e., 58 years as provided under Sub-rule (1) of the Rule 33 of the Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999, and the order impugned does not reflect that the case of the petitioner comes within the purview of Sub-rule (2) of the Rule 33, in the opinion of this Court no right accrues to the petitioner to claim for extension of his age of superannuation.

8. In the result, the petition has no force, it is misconceived which is liable to be and is dismissed. Consequently, M.W.P. No. 1700/2003 for ad-interim relief and I.A. No. 5622/2003 also stand disposed of.