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(2013) 12 MP CK 0037

In the Madhya Pradesh High Court

Case No : Writ Petition No. 19186 of 2012

Ram Sumiran Mishra APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0037

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

Bench : Single Bench

Advocate : Balaji Akhilwar, for the Appellant; S.M. Lal, Learned Govt. Advocate for Respondent No. 1 and Shri Vivek Rusia, Learned Counsel for Respondents No. 2 and 3., for the Respondent

Final Decision : Partly Allowed

Judgement

K.K. Trivedi, J.—The petitioner, who was working as a Class-IV employee in the establishment of respondent No. 2 and in the employment of M.P. Laghu Udyog Nigam Limited (herein after referred to as ''Corporation''), has approached this Court challenging the notice of superannuation issued to him by the respondents indicating that he would retire on 30.11.2012 on attaining the age of 60 years, alleging that a decision was already taken by the Board of Directors of the respondent Corporation to enhance the age of superannuation of all the Class-IV employees from 60 to 62 years but the petitioner is made to retire prematurely without implementing the said decision. It is contended that in fact the respondent Corporation is an autonomous body, has its own service regulations, therefore, if a decision was taken by the respondents to enhance the age of superannuation of Class-IV employees, such a decision was to be implemented. Instead the matter was referred to the State Government for grant of sanction, though was not necessary and in the garb of such grant of prior sanction, the petitioner has not been given the benefit of enhanced age of superannuation. This being so, the act of the respondents is per se illegal. It is, thus, claimed that the petitioner is entitled to continue in the employment of the respondents till he

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attains the age of superannuation on attaining the age of 62 years, with all consequential benefits. A return has been filed by the respondents No. 2 and 3 denying such allegations and contending inter alia that a resolution was passed by the Corporation and thereafter the matter was referred to the State Government for grant of sanction for enhancement of age of retirement of Class-IV employees from 60 to 62 years on 13.08.2012. However, since no such sanction has been granted as per the prevailing rules, the Class-IV employees have been retired on attaining the age of 60 years. It is contended that the Corporation is a separate corporate entity having its own service rules and, therefore, provisions of the service rules of other Corporation would not be applicable. Since there was no sanction granted by the State for enhancement of the age of Class-IV employees, the action could not be taken and the petitioner has rightly been superannuated from service as per the existing age of superannuation. The respondent No. 1 has simply adopted the return of respondents No. 2 and 3 and has not filed any independent return.

2. First and foremost question is whether the Service Rules made by the Corporation need any prior sanction from the State Government for any change in the said Rules or, the Corporation itself is competent authority to take final decision. For the purposes of demonstrating such requirement of Rules or Regulations, it was the duty of respondents No. 2 and 3 to place on record such provisions of the Regulations or Act to show that prior sanction from the State Government was necessary for granting approval of the action taken for enhancing the age of superannuation of employees of the Corporation. Not a single document is placed on record to show that it was the requirement of law to obtain a prior sanction from the State Government for the purposes of enhancement of the age of employees of the Corporation. Though this writ petition was entertained on 30.11.2012, a return was filed by the respondents No. 2 and 3 stating that the sanction was sought from the State Government for enhancement of the age of superannuation of Class-IV employees in the establishment of respondent No. 2 but the return was not filed by the respondent No. 1 in this respect. This Court directed on 29.07.2013 to the Government Advocate to seek instructions and to file an independent return to show whether such sanction was required under the law from the State or not and if the requirement of law was that such a sanction was to be granted by the State, why action was not taken on the proposal made by the Corporation for such a long time. Instead of filing an independent return, the respondent No. 1 has adopted the return of respondents No. 2 and 3 again without indicating that sanction from the State Government was necessary for enhancement of age of superannuation of employees of the Corporation or not. This makes this Court to consider only the available documents and to give a finding whether such a sanction was necessary or not.

3. Learned Counsel for the petitioner has pointed out that it is nowhere prescribed that any change, amendment or addition in the Regulations of the Corporation could be done only with the prior sanction of the State Government.

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In the Memorandum of Association and Articles of Association also no such condition is mentioned as has been pointed out by the learned Counsel for the petitioner. A document dated 14.12.1972 has been placed on record as Annexure P-4 with the writ petition making averments that in the year 1972 an enhancement of age of superannuation of Class-IV employees was done from 58 to 60 years and such an order was issued only after a decision of the Board of Directors of the Corporation without there being any sanction of the State Government. It is contended that this particular document shows that there was no need of obtaining prior approval from the State Government before making change in the age of superannuation of the employees of the Corporation. Though specific pleadings in this respect have been made in paragraph 5.4 of the writ petition describing the said document but such facts are not denied by the respondents as they have admitted in paragraph 2 of the return of respondents No. 2 and 3 that the contents of paragraphs 5.1 to 5.6 of the writ petition are not denied since they are the matters of record. Thus, it has to be accepted that earlier enhancement of the age of superannuation of the persons like petitioner was done by the respondent Corporation by taking an action on the decision of the Board of Directors. No prior sanction from the State Government was thus required as the same was not taken in the year 1972 itself.

4. Now coming to the fact whether the age of superannuation of the persons like petitioner could be treated to be enhanced. For the said purpose, the respondents themselves have placed on record the resolution and decision by the Board of Directors of the Corporation on 15.06.2012 in its 260th Meeting. The resolution passed by the Board of Directors reads thus :

The simple meaning of this would be that the age of superannuation was to be treated as enhanced by the decision taken by the Board of Directors and a formal order of enhancement was to be issued by the Managing Director. Something added in Agenda No. 1 as is placed on record as Annexure R-4 directing that before enhancement sanction from the State Government be obtained, cannot be a rightful decision as there was no provision shown under the law in which it was the requirement of obtaining prior sanction from the State Government. The age of superannuation of Class-IV employees was to be made effective from the date the decision was taken by the Board of Directors. The lapse on the part of the respondents themselves makes it clear that the petitioner was sought to be retired prematurely whereas the enhanced age of superannuation of a Class-IV employee of the Corporation would be 62 years and he could not have been superannuated on 30.11.2012, on the other hand, he should have been allowed to remain in employment up to 30.11.2014. This being a folly on the part of the respondents, the petitioner is unnecessarily made to suffer.

5. Now the question is whether the command can be issued to implement the decision of the Board of Directors of the Corporation with retrospective effect. In such circumstances, it has to be held that even the decision of the Board of Directors was not implemented by the Managing Director of the Corporation. If

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there was no requirement under the law to seek prior approval from the State Government, it was the duty on the part of the Managing Director to issue necessary orders immediately as was done in the case when the age of superannuation was enhanced in the year 1972. Had it been done in rightful manner, the petitioner would not have been superannuated from the service prematurely. That would have saved so much inconvenience of the petitioner as well. It is also to be seen that the petitioner has approached this Court expeditiously without any loss of time and has filed the petition on 07.11.2012, which came up for hearing on 30.11.2012. Even on that date the interim relief could have been granted to the petitioner but since he has not been granted an interim relief, at least the petitioner cannot be put to loss. The order passed by the Board of Directors has to be implemented with retrospective effect as the decision was taken long back. However, the decision of the Board of Directors is to be implemented and unless it is implemented, it will not become a rule. The enhancement of age of superannuation would be though in terms of the decision of Board of Directors taken much earlier but prospective as the orders are to be issued by the Managing Director in this respect. However, it would be proper for this petitioner to grant him relief since he has approached the Court expeditiously.

6. In view of the aforesaid reasons, this writ petition is allowed in part. The respondent Managing Director and the Corporation would regularize the period of the petitioner with effect from 1st December, 2012 till the date on which the order of implementation of the decision of the Board of Directors for enhancement of the age of superannuation of Class-IV employees is issued as re-employment in service and would extend the benefit of enhanced age of superannuation to the petitioner only, in terms of the orders passed by the Board of Directors. The consequential benefits of such continuance of service be also granted to the petitioner. The petition succeeds to the extent indicated herein above. However, there shall be no order as to costs.

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