
(2014) 12 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 2465, 4368, 5231, 7693, 8253, 8637, 8838 and 10002 of 2014

Sarfraj Ali and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2015) 2 CDR 621

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Hanuman Choudhary, Advocates for the Appellant; G.K. Garg, Senior Counsel and Anita Agarwal, Advocates for the Respondent

Judgement

Bela M. Trivedi, J.—In all these eight petitions, the petitioners who are the employees of the respondent Alwar Zila Dugdh Utpadak Sahkari Sangh Limited, Alwar (hereinafter referred to as the said Society) have challenged the action of the said respondent, in not enhancing the age of superannuation of the petitioners from 58 years to 60 years, in view of the circular dated 17.09.2008 issued by the respondent Registrar, Rajasthan Co-operative Societies, Government of Rajasthan and have further prayed to continue the petitioners in service with all consequential benefits. The Coordinate Bench in some of the matters like S.B.C.W.P. No. 4368/2014 had passed the ex-parte order that if the petitioners eventually succeed, the respondents shall be liable to pay the petitioners salary, emoluments, etc. for the period during which they would be held entitled to continue in service. The Court in S.B.C.W.P. No. 5231/2014 by way of ex-parte ad-interim order had directed that the petitioners shall not be retired on attaining the age of 58 years on 31.03.2014 and shall be continued in service subject to final order. In some of the matters like S.B. Civil Writ Petition Nos. 8253/2014 and 8838/2014, the Court had directed the respondents to continue the concerned petitioners in service, while issuing the notices to the respondents.

2. For the sake of convenience, the facts of the writ petition No. 4368/2014 are taken into consideration for deciding all the petitions.

3. The case of the petitioners in nutshell is that they were the employees of the respondent society and were retired from service as per the order dated 10.12.2012, at Annexure-1. According to the petitioners, the respondent Nos. 2 & 5 had passed the resolutions in compliance of the order passed by the Supreme Court that the age of superannuation of their employees shall be enhanced from 58 to 60 years, and had forwarded the said proposal to the respondent No. 3 for his approval. However the respondent No. 3 did not grant the approval on the ground that the respondent No. 5 Society had accumulated losses of Rs. 972.98 lacs. The petitioners being aggrieved by the said order had filed the writ petitions being No. 12865/2013 and others, which came to be disposed of by the High Court vide the order dated 24.02.2014, in which the respondent No. 3 was directed to pass appropriate orders on the proposal sent by the respondent No. 5 Society within 30 days from the date of receipt of the order. The respondent No. 3 accordingly passed the order of 27.03.2014 by holding that it was not in the interest of the society to enhance the age of superannuation, as the society had accumulated the loss of Rs. 972.98 lacs. Hence the petitioners have filed the present petitions.

4. However, the respondent No. 5 in its reply has contended that the petitioners having attained the age of superannuation have already retired and no cause of action had survived thereafter in the present petitions. It has been further contended that there being accumulated losses, the respondent No. 3 Registrar, did not grant the proposal of the respondent No. 5 to increase the age of superannuation and hence the respondent No. 5 in its meeting held on 04.06.2014 had decided to keep age of superannuation at 58 years only.

5. It is sought to be submitted by the learned counsel Mr. Hanuman Choudhary for the petitioners that Board of Directors of the respondent No. 5 had earlier taken the decision in the meeting dated 25.07.2013 to increase the age of superannuation, considering the circular dated 17.09.2008 issued by the respondent No. 3 and forwarded the same to respondent No. 3 for his approval, however the respondent No. 3 has not granted the approval on the flimsy ground that the respondent No. 5 Society had the accumulated losses. According to Mr. Choudhary, the balance sheets of last three years of the respondent No. 5 society showing the accumulated loss, were only an eyewash and that the society was in fact making profits only. He further submitted that the respondent No. 2-RCDF being the apex body of Milk Societies including the respondent No. 5, the decision taken by the respondent No. 2 to increase the age of superannuation of its employees was binding to the respondent No. 5 also. Relying upon the decision of this Court in case of Dairy Karamchari Union and Others Vs. The State and Others and in case of Dharami Lal Dama v. State of Rajasthan & Ors., 2009 (I) WLC 540, he submitted that the petitioners should be deemed to be continued in service till the age of 60 years.

6. Per contra, the learned senior counsel Mr. G.K. Garg for the respondent No. 5 vehemently submitted that the petitioners having already retired from service on their attaining the age of superannuation, no such ex-parte ad-interim relief in the nature of mandatory direction to continue the petitioners in service should have been granted by the Court. Pressing into service various provisions contained in the Rajasthan Co-operative Societies Act 2001 (hereinafter referred to as the said Act), and Rules 2003 framed thereunder, he submitted that the service conditions of the employees of the respondent No. 5 Society are governed by the bye laws and the society could not change the same without the approval of the Registrar, and that in the instant case, the Registrar having not approved the proposal of the respondent, No. 5 Society to increase the age of superannuation and that the respondent No. 5 having huge accumulated loss, it was not in the interest of the Society to increase the superannuation age of its employees. The learned senior counsel has also relied upon various judgments of the Hon"ble Supreme Court, to substantiate his submissions that the Courts cannot formulate the policy as to the age of superannuation of the employees of the institution.

7. Before adverting to the rival contentions raised by the learned counsels for the parties, it would be beneficial to refer to the legal position settled by the Apex Court in the catena of decisions as regards the scope of interference by the Courts in the matter of policy more particularly with regard to the extension of the age of superannuation. In case of B. Bharat Kumar and Others Vs. Osmania University and Others, , the Apex Court has held in para 19 as under:--

"19. Learned counsel also argued, to a great extent, the desirability of the age of superannuation being raised to 60 or 62 as the case may be. We again reiterate that it is not for this Court to formulate a policy as to what the age of retirement should be as by doing so we would be trailing into the dangerous area of the wisdom of the Legislation. If the State Government in its discretion, which is permissible to it under the scheme, decides to restrict the age and not increase it to 60 or as the case may be 62, it was perfectly justified into doing so."

8. Relying upon the said decision, the Apex Court in case of Indian Institute of Technology Vs. Raja Ram Verma and Others, , has observed in para 27 as under:--

"27. It has been held by this Court, more than once, that prescribing the age of retirement is a managerial function and such decisions are taken by the management of the concerned institute on consideration of various aspects. One of the most predominant consideration is the need of the institute, its functional requirements and efficient management of its manpower. These are the areas where the Court should not normally venture, and the judgment in this area should be best left with the authorities who are in-charge of running or managing such institutes. However, if the Court finds that the policy in fixing the age of retirement was not based on any intelligible criterion or is founded on such a basis which are patently unreasonable and perverse, the Court has a bounden

duty to interfere and direct the concerned management to proceed on a reasonable basis."

9. Even in the case, wherein the retirement age was reduced by the Government from 58 to 55, the Apex Court in case of K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, , while negating the submission to the effect that by reducing the age of retirement, the Government employees were deprived of their right to livelihood, had observed that if a rule of retirement can be deemed to deprive the persons of his right to livelihood, it will be impermissible to provide for a age of retirement at all. That will be contrary to public interest because the State cannot afford the Courtesy of allowing its employees to continue in service after they have passed the point of pick performance. Rules of retirement do not take away the right of a person to his livelihood, they limit his right to hold office to a stated number of years.

10. In case of Harwindra Kumar Vs. Chief Engineer, Karmik and Others, , the Apex Court held inter-alia that so long as the statutory regulations are not amended, the service conditions of the employees of the Nigam, including their age of superannuation, could not be altered.

11. In the light of the aforesaid settled legal position, let us examine the relevant provisions of the said Act and of the Rules 2003 framed thereunder. As per Section 7 of the said Act, the registration of a Co-operative Society would render it a body cooperate by the name under which it is registered, having perpetual succession and a common seal. As per Section 8, the functions of every cooperative society are regulated by a set of bye laws registered under the said Act, with regard to the subject matter enumerated in Schedule B, and no amendment therein is valid unless such amendment has been registered by the Registrar under the provisions of the Act. Schedule B provides for the subject matter of the bye laws, which include conditions of service of the employees. Further Section 123 empowers the State Government to make Rules to carry out the purposes of the Act, with regard to the matters mentioned therein, including the matter with regard to the conditions of services of the employees of the Society. The Rule 39 of the said Rules provides that the conditions of service including discipline and control of the employees of the societies shall be such as specified by the Registrar.

12. In view of the above statutory provisions, it is clear that the respondent Society which is a Cooperative Society registered under the said Act, is governed by the set of bye-laws with regard to the subject matter enumerated in Schedule-B of the said Act, and that no amendment in the said bye laws would be valid unless the said amendment is registered by the Registrar under the said Act. It is also clear that the subject matter with regard to the conditions of service of the employees, is one of the subject matters which the society may incorporate in its bye laws. Further, as per Rule-39 of the said Rules, notwithstanding contained in such bye laws, conditions of service including the discipline and control of the employees of the societies would be only such which are specified by the

Registrar. It is not disputed that bye-laws of the Society in question have not been amended for enhancing the superannuation age of its employees from 58 to 60 years, nor the respondent-Registrar has specified such service condition for the employees of the society as contemplated in Rule 39 of the said Rules.

13. It was sought to be contended that in similar matters pertaining to the employees of the other Milk Society, the Division Bench of this Court in case of Dairy Karamchari Union & Ors v. R.K. Trashal & Ors., D.B. Civil Contempt Petition No. 156/2011, and others had held that since the respondent Milk society was the member of the respondent RCDF, which is the Apex Society, the decision of RCDF would be binding to the milk society. According to the learned counsel for the petitioners, since the RCDF had taken the decision to enhance the age of superannuation, the said decision would also be binding to the respondent-Milk Society. In this regard, it is required to be noted that in the said decision, the Division Bench had directed the RCDF and the Societies to consider the question of enhancing the age of superannuation from 58 to 60 years, however the said order having been challenged by one Ajmer Zilla Dugdh Utpadak Sahakari Samiti before the Apex Court by filing the Civil Appeal No. 7946 of 2012, the Apex Court had modified the said order of the Division Bench and directed the said Ajmer Zilla Dugdh Utpadak Sahakari Samiti, Rajasthan Cooperative Dairy Federation and Others to reconsider the issue of enhancement of age from 58 to 60 years, bearing in mind the communication of the Registrar dated 17/9/2008, and the clarification made thereof. The Apex Court in the said order had also made it clear that it shall be open for the federation and the societies to take final decision without being influenced by the decision of the High Court. In view of the said order passed by the Apex Court, there remains no doubt that the observations made by the Division Bench to the effect that RCDF was the Apex Society and the various societies being the Signatories of the RCDF were bound by the decision of the RCDF, were not accepted, and the societies had to take the decision for enhancement of the superannuation age of their employees taking into consideration the communication of the Registrar dated 17.09.2008 only. If the Apex Court had" accepted the contention that the decision of the RCDF was binding to all the societies who were its members, the Apex Court would not have directed the societies to take decision in the light of the communication of the Registrar dated 17.09.2008. Even otherwise, as per the definition contained in Section 2(aa) of the said Act, the Apex Society means a society whose core object is to provide facilities for the operation of other societies affiliated to it. There is nothing in the said Act to suggest that the decisions taken by the Apex Society would be binding to the other societies affiliated thereto, more particularly the decision pertaining to the condition of service of the employees of the other societies affiliated to it.

14. So far as the facts of the present case are concerned, it is not disputed that the petitioners have already retired as per the order dated 10/12/2012 - Annexure-1. The petitioners have not challenged the bye laws of the respondent-society in which the conditions of service have been stipulated. Though it is true

that at one point of time, the respondent society had decided to enhance the age of superannuation from 58 to 60 years, the respondent-Registrar having not approved the said decision of the society and having observed that the respondent society had huge accumulated losses, and it was not in the interest of society to increase the age of superannuation, vide the letter dated 27/3/2014, the respondent society had subsequently taken the decision based on the said communication of the Registrar, not to increase the said age of superannuation. Thus, it could not be said that the respondent society had acted arbitrarily or illegally in not enhancing the age of superannuation. Even otherwise, as per the settled legal position stated hereinabove, prescribing age of superannuation is a matter of policy decision and the Courts should not interfere in such policy decisions, which are taken by the Management of the concerned Institute after considering various aspects. In that view of the matter, it is held that the petitioners have no right to continue in the service of the respondent society, after having reached the age of superannuation prescribed in the bye-laws of the society. The petitions therefore being devoid of merits deserve to be dismissed and are accordingly dismissed. Copy of this order be placed in each of the petitions.