

(1994) 09 MP CK 0052

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 763 of 1993

Taramati Nandkishore Sharma

APPELLANT

Vs

Cantonment Board and Another

RESPONDENT

Date of Decision : 01-09-1994

Acts Referred:

Cantonments Act, 1924 — Section 280
Cantonments Fund Servants Rules, 1937 — Rule 22, 22(1)
Madhya Pradesh Shiksha Adhiniyam, 1965 — Section 25, 28
Madhya Pradesh Shiksha Regulations — Regulation 71

Citation : (1995) 40 MPLJ 159 : (1995) MPLJ 159

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Advocate : Majid Darbari, for the Appellant; O.D. Sharma, for the Respondent

Judgement

A.R. Tiwari, J.

This order shall also govern the disposal of connected petitions M.P. No. 1078/93 - Smt. Prabha Rathore v. The Cantonment Board and another; M.P. No. 1365/93 - Mrs. R. Amit v. The Cantonment Board and another; M. P. No. 1015/93 - Smt. Shakuntala Shrivastava v. The Cantonment Board; and M. P. No. 1414/94 - Smt. Dulari Jaiswal v. The Cantonment Board and another.

In all these petitions, the core question involved is whether petitioners, teachers/lecturers, in school managed by the Cantonment Board, Mhow (Respondent No. 1) are liable to be superannuated at the age of 58 years or whether they are entitled to continue till attainment of the age of 60 or 62 years and alternatively whether the Officer Commanding-in-Chief, Lucknow (respondent No. 2) is under obligation to sanction retention in service in terms of Rule 22(1) of the Cantonment Fund Servants Rules, 1937 (for short, "Rules"), framed u/s 280 of the Cantonment Act, 1924 (for short, "Act") till the attainment of the age of sixty years so as to push the position at par with State Act/Rules?

Facts first. They lie in a narrow compass and tell the tale in each petition as

under -

(a) M. P. 763/93 - The petitioner, born on 5-3-1935, is MA B.Ed. She is employed as U.D.T. in respondent No. 1's Higher Secondary School, Mhow. This school is recognised by the Board of Secondary Education of Madhya Pradesh and is in receipt of grant-in-aid. The Executive Officer of respondent No. 1 issued retirement notice on 18-1-1993 (Annexure P/11) notifying retirement effective from 31-3-1993. The respondents have opposed the reliefs. .

(b) M. P. No. 1078/93 - The petitioner, born on 8-5-1935, is MA B.Ed. She is employed as a lecturer in the aforesaid school. The Executive Officer of respondent No. 1 served on her retirement notice on 28-4-1993 to convey that she will retire from service on 31-5-1993 (Annexure P/12). The respondents have opposed the petition.

(c) M. P. No. 1365/93 - The petitioner, born in July 35, is MA (English) and MA (Sociology) is employed in school as a lecturer and had charge of Principal from 1-1-1992. She received" retirement notice dated 28-4-1993 for retirement from 31-7- 1993" (Annexure P/11). She applied for further retention but her application was rejected by the respondent No. 1. vide resolution No. 5 of 30-4-1993. Respondents have opposed the petition" through reply of 26-10-1993.

(d) M..P. No. 1015/93 - The petitioner, born on 16-12-1934, is employed in the said school as an Assistant Teacher. She applied for further retention for one year (Annexure P/3). This application was rejected by respondent No: 1 vide Resolution No. 10 of 4-8-1992 (Annexure P/4 and Annexure P/5). She was given notice of retirement on 20-10-1992 to convey that she will retire from service from 31-12-1992 (Annexure P/6). She again applied for retention till 31-12-1994 (Annexure P/11). Respondents have opposed the petition.

(e) M. P. No. 1414/94 -- The petitioner, born on 7-8-1936, is employed in the aforesaid school as U.D.T. and officiated as Head Mistress vide Office Order No. 64 of 11-11-1993 (Annexure P/4) in Girls Middle School. She was given retirement notice on 9-2-1994 to say that she will retire from 31-8-1994 (Annexure P/5). She applied for retention till 31-8-1996 on 4-4-1994 in terms of letter dated 12-9-1972 (Annexure P/10). The application has been forwarded to respondent No. 2 as intimated by letter dated 12-7-1994 (Annexure P/28). Respondents have opposed the petition.

Reliefs as claimed in these petitions may be concatenated as under :-

(a) The retirement notices be quashed.

(b) The respondents be directed to retain petitioners in service till the age of 60 years in accordance with Education Code or 62 years in conformity with Regulation No. 71 of the Board of Secondary Education, 1965.

(c) Instructions issued on 20-5-1988 insisting on adherence to the age of

superannuation as 58 years uniformly be quashed and further retention be held as a legal right in terms of letter of 12-9-1972.

(d) Respondent No. 2 be directed to consider the request for further retention consistent with the position prevailing in the State and compulsion yielded by recognition and grant-in-aid and interception and disposal of such requests by respondent No. 1 be held as without authority of law and ultra vires of its powers.

I have heard M/s K. G. Maheshwari in M. P. No. 1078/93, T S. Bhatia in M. P. No. 1365/93, R. C. Verma in M. P. No. 1015/93, Majid Darbari in M. P. No. 763/93 and M. P. No. 1414/94 for the petitioners and Shri O. D. Sharma for respondents in all these petitions.

Shri Maheshwari submitted that judgment rendered in LPA No. 129/85 on 28-4-1986 by the Division Bench of this Court, taking the view that age of superannuation is 60 years, should prevail even after the order dated 17-12-1992 passed by the Division Bench in M. P. No. 3335 of 1991, declaring the age of 58 years because the later order assumes the character of per incuriam. According to him, earlier judgment is binding. He placed reliance on Ram Jivan Vs. Smt. Phoola (Dead) by Lrs. and Others, and AIR 1991 SC 1893, Sunderjas Kanyalal Bhathija v. Collector, Thane. He further argued that State law prevailed over Rule 22(1) of the Rules in view of Article 372 of the Constitution of India and in that view Rule 22(1) was inapplicable. He further contended that petitioners were entitled to be retained in service till 62 years of age (Annexure P/2A) and that Rule 16 of Grant-in-aid exerted compulsion on respondents to adhere to Education Code. He stated that Education was a subject covered under entry 25 of the concurrent list with effect from 3-1-1977 and in any case letter of 1972 was required to be followed in true spirit for further retention and discrimination in the face of Article 14 was required to be spurned.

Shri Bhatia urged that the petitioners are entitled to benefit of longer tenure on harmonious construction of Regulation 71 and Rule 22(1), letter of 1988 is void, the age of superannuation everywhere is 60 years, respondent No. 1 has no power to reject application for extension/further retention, letter of 1972 is intended to produce harmony between State and Central Laws and has to be pursued, respondents are estopped from retiring such employees on attainment of 58 years of age. Recognition created responsibilities. He placed reliance on M.P.S.R.T.C. Vs. Ramchandra and Others, ; Miss Raj Soni Vs. Air Officer in Charge Administration and another, , M.G. Pandke and others Vs. Municipal Council, Hinganghat, Dist. Wardha and others, M. G. Pandke and ors. v. Municipal Council, Hinganghat.

Shri Verma gave new dimension to the controversy by urging that Rules 3, 4 and 22(1) of Rules mandated retention beyond 58 years of age and the discretion under Rule 22(1) is coupled, with obligation and as such is mandatory. He argued that in such context, "may" meant "must" and "shall" and FR 56, as amended in 1984, tears up the tenebrosity. The thrust of his submission is that State law is

required to be followed as there was no inconsistency. He went on to submit that the letter of 1972 ruled the field even according to paras 11, 12 of the later order of the Division Bench rendered in 1992 and that letter of 1988 was bad in law and was required to be ignored. He asserted that the respondent No. 1 has no power to refuse retention and respondent No. 2 is obligated to decide the matter of retention and further obliged to hear the affected employees if request seemed to be unacceptable. He relied on *Shri Rangaswami, The Textile Commissioner and Others Vs. The Sagar Textile Mills (P) Ltd. and Another*, and 1973 MPLJ 697 : 1973 MPLJ 721, *Agrawal Medical and General Stores, Jabalpur v. State of M. P and Ors.*

Shri Darbari contended that State Law, fixing 60/62 years, prevailed over Central Law in view of Article 372. According to him, Regulation 71, in force from 1965 and Section 28 of the M. P. Shiksha Adhiniyam, 1965, conferred right on the petitioners to continue till 62 years of age and rendered Rule 22(1) of Rules otiose. He submitted that amendment to Rule 31 of Rules since 1-2-1983, Rule 35 of Central Service Pension Rules, FR 56 decisively disapproved of retirement at the age of 58 years. He also urged that alternatively, extension is not discretionary but obligatory and the letter of 1972 is applicable with full vigour for the purpose of further retention in service. He placed reliance on 1983 MPLJ 657 : 1983 J LJ 609 , *Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others*, *Vidya Dhar Pande v. Vidyut Grih Shiksha Samiti and Ors.*; *Mrs. Tara Malik Vs. The State of Madhya Pradesh and Another*, ; *M.G. Pandke and others Vs. Municipal Council, Hinganghat, Dist. Wardha and others*, and *General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another*, *General Officer Commanding-in-Chief v. Subhash Chandra*.

Shri Sharma dubbed entire exercise as one of futility and irrelevance. He contended that petitioners are appointed under the Rules and their services are undoubtedly governed by the Rules. Rule 22(1) fixed the age of Superannuation as 58 years, there is no challenge to the validity of this rule, all arguments contrary to this legal provision are rejectable, order passed in M. P. No. 3335/91 is a binding precedent and inevitably governs the fate of these petitions, further retention depends on many factors and there is no question of consideration by respondent No. 2 unless respondent No. 1 found the case fit and passed resolution for recommendation, even then respondent No. 2 has the right to refuse sanction for further retention and letter of 72 is superseded by letter of 88. He thus prayed for dismissal of all the petitions.

Except petitioner of M. P. No. 1414/94, all petitioners have crossed the age of 58 years but have continued in service beyond the age of 58 years on the basis of restraint orders issued by this court in respective petitions.

Voice of chorus does not necessarily vindicate sonority. There has to be tone and tune of truth. At times litigation presents keen tussle between applicability or non-applicability of a particular point which may make or mar the issue and in consequence between a lie and truth. C. H. Surgeon observed elegantly that -

"A lie travels round the world While truth is putting on her boots."

Teachers are character-builders or so should they be. In *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, *Miss A Sundammal v. Govt. of Goa*; it is held that -

"Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers."

They should not be denied benefits of social justice. She or he occupies the place of pride and can show the path to meet the creator, the Almighty. Yet at least six factors stare in the face -

(a) Rule 22(1), which governs the service fixes the age of superannuation as 58 years and further retention upto maximum period of 60 years of age depends on sanction of Officer Commanding the Command.

(b) The position has been settled by the order passed in M. P. No. 3335/91 after consideration of earlier judgment rendered in LPA 129/85.

(c) Rule 22(1) is not challenged as unconstitutional or power to sanction for retention is not criticised as "unguided" or "arbitrary".

(d) At least three petitioners applied, as noted above, for further retention/extension in service in terms of Rule 22(1) and the other two joined the remaining three to contend that respondent No. 2 was under legal compulsion to sanction retention till 60 years of age at least in conformity with letter of 1972. The step and stand sowed the seed of destruction of other points in certain terms. The approach or attack, as I see, is not alternate, but inconsistent. No one can protect oneself from rains or sun under a torn umbrella.

(e) Union of India is not impleaded as a respondent.

(f) State of M. P. is not impleaded as a respondent although pleas were orchestrated on "Education Code" of M. P., State Laws, recognition, responsibility on grant-in-aid. pension rules and Article 14 of the Constitution of India.

Stage is now set to quote certain provisions and points. Relevant part of Rule 22(1), provides as under-

(a) "22. (1) No servant shall be retained in the service of a Board after he attains the age of fifty-eight years except with the sanction of the Officer Commanding-in-Chief, the Command, in respect of servant other than lower grade servants, or of the Board in respect of lower grade servants. But retention in service of a servant other than a lower grade servant, or a lower grade servant, after he has attained the age of fiftyeight years may be sanctioned by the Officer Commanding-in-Chief, the Command or the Board, as the case may be, for a period not exceeding one year at a time and subject to such directions as the

Central Government may from time to time issue, but under no circumstances shall a servant be retained in service after he attains the age of sixty years."

(b) Circular of 1972 contains as under :-

"I am directed to refer to the provisions of Rule 22 of the Cantonment Fund Servants Rules, 1937 and to say that the Central Government is pleased to direct that the cases of retention in service of teachers of Cantonment Board schools beyond the age of 58 years till the age of 60 years should be dealt with in the light of the provisions contained in the Education Code or other relevant regulations framed by the Government of the State in which the Cantonment is situated."

(c) Circular of 1988 instructs the authorities as under :-

"Government have decided that the age of superannuation of teachers working in Central Government . Departments and organisations may be uniformly fixed at 58 years provided the teachers who have already been granted the benefit of retirement at the age of 60, may continue with the benefit but the future incumbents may retire at the age of 58 years.

The C.F.S.R. 1937 already provide for the retirement age at 58 years. As such, no amendment to these rules is necessary. The Government decision may please be communicated to all Cantt. Boards, in your jurisdiction for necessary action.

This supersedes all our previous instructions to the contrary, if any, issued on the subject."

(d) The Division Bench of this Court held in M. P. No. 3335/91 as under:-

"A bare reading of Rule 22 makes it clear that age of superannuation is fifty eight years has been fixed by statutory rules. The latter part of the rule only permits grant of extension beyond fiftyeight years and upto the limit of sixty years. Instructions can be issued by the Central Government only in relation to the latter part of the rule, namely on the subject of grant of extension. The circular of 1972 quoted above, therefore, is on the subject of considering the cases of teachers for extension beyond the age of fiftyeight years. The directions in the circular provide for taking into consideration the relevant service regulations in the Education Code and the laws prevalent in the State where the Cantonment is situated. Even if the contention of the petitioner is accepted that subsequent circular of the year 1988 (Ex. D/12) issued by the Ministry of Defence does not supercede the circular of the Central Government issued under Rule 22, under the earlier circular the petitioners can claim only a right of being considered for extension in the light of the relevant service regulations and Education Code prevalent in the concerned State where the Cantonments are situated. The contention advanced on behalf of the petitioners cannot be accepted that the circular results in change of age of superannuation from 58 years. We also cannot read the decision of the learned Single Judge and that of the Division Bench in the Letters Patent Appeal, cited above, as laying down a proposition

that an executive instruction issued by the Central Government under the latter part of the Rule 22 can override the first part of the statutory rule fixing the age of superannuation as fiftyeight years. It is hard to accept that the circular changes age of superannuation from 58 to 60 years at par with the teachers in the State. Such interpretation would be in violation of the Rule 22 and would nullify the first part of Rule 22 which fixes the age of superannuation."

In Kamlabal Ghoshi's case (supra), there does not appear to be any claim for quashment of letter/circular of 20-5-1988, although the Division Bench eventually directed that applications shall be considered on the basis of 1972 Circular. In the instant cases, relief is specifically sought for incineration of letter/circular of 20-5-1988. This however, cannot be considered because it rests on the linchpin of Government decision but Government is not impleaded as a party. Obviously this plea cannot be considered in petitions so framed. The circular contains a significant recital as under:-

"This supersedes all our previous instructions to the contrary, if any, issued on the subject."

Even the impact of this direction does not seem to have been debated before the Division Bench. However, as I discuss hereafter, I find that these two circulars are not conflicting and do not and cannot override the provision of law. Both the Circulars of 1972 and 1988 are not found to be expressed or authenticated in terms of Article 77 of the Constitution. However, it is stated that it is Government's decision.

Rule 22(1) has two parts. First one begins with a Command that "No servant shall be retained in the service of a Board after he attains the age of fifty years except with the sanction of the Officer Commanding-in-Chief, the Command" and second part speaks of power of such officer to sanction retention for one year at a time but not beyond the age of sixty years, subject to such directions as the Central Government may from time to time issue. This is why directions contained in circular of 1972 and letter of 1988 became relevant for proper exercise of the powers envisaged by later part of this provision. In other words, the officer in matter of discretion to sanction retention after 58 years and till 60 years of age is free but not very free. Directions thus operate as fetters perhaps to maintain uniformity in all cantonments in this behalf and conformity with rules.

In my view, there is no apparent repugnancy between circulars of 1972 and 1988. The circular, did no more than to emphasise, in the face of judgment of LPA No. 129/85, the position of Rules. It does not intend to interfere with discretionary power for retention/extension. The circular of 1972 also spoke of the topic of "retention" and highlighted the need to deal with the subject in the light of the provisions contained in Education Code or other relevant regulations framed by the Government of the State in which the Cantonment is situated. Even this circular carried no command to read down para 22(1) and visualise it as altering the age from 58 to 60. Both the circulars did not travel beyond the

scope of Rule 22(1). There is no diacritical dimension.

In fact, directions or instructions, executive in nature, cannot override the provision of Rule framed u/s 280 of the Act. In *Paluru Ramkrishnaiah and Others Vs. Union of India (UOI)* and *Another, Paluru Ramkrishnaiah v. Union of India*, it is held that -

"It is thus apparent that an executive instruction could make a provision only with regard to a matter which was not covered by the Rules and that such executive instruction could not override any provision of the Rule. Notwithstanding the issue of instruction dated 6th November, 1962 therefore, the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed. Since Rule 8 in the instant case prescribed a procedure for making promotion the said procedure could not be abrogated by the executive instruction dated 6th November, 1962."

Manifestly, the order, passed in M. P. No. 3335/91, authoritatively answers the question and should govern the fate of these petitions.

This is why Shri Maheshwafi, aware of the hurdle, argued that the order is per incuriam. The success of petitioners thus inescapably depends on the answer to this question. The position of law in this behalf is that whenever later decision is rendered in ignorance or forgetfulness of prior decision, which is conflicting and binding, then such later decision is taken to be given per incuriam and does not then bind later Court. Testing on this proposition it is noticed that later order has not only referred but considered former judgment. This then perishes the plea of per incuriam.

Similarly, recourse to Article 372 is manifestly unhelpful. Article 254, indicates the doctrine of "pith and substance". It contains as under :

"254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the concurrent list, then subject to the provisions of clause (2) the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State; shall to the extent of the repugnancy, be Void.

(2) Where a law made by the Legislature of a State.....with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent prevail in that State :

Provided that nothing in this clause shall prevent Parliament from" enacting at any lime any law with respect to the same matter including a law adding to,

amending, varying or repealing the law so made by the Legislature of the State."

In Australian Federal Constitutional Law by Collin Howard, Second Edition (1972) at page 27, it was stated that where both a Commonwealth Law and a State Law are in terms applicable to a given set of facts, and they produce conflicting legal results on those facts, the Commonwealth law applies and not the State Law. In *Blackley v. Devondale Cream (Vic.) Pvt. Ltd.* (1968) 117 CLR 253, a State wages determination prescribed a minimum rate of pay for certain work which was also covered by a Commonwealth award. The Commonwealth prescribed a lower minimum rate. It was held that there was a direct inconsistency because on the same facts the two laws produced different entitlements. The award rate, therefore, prevailed over the State's determination.

The Supreme Court in *Miss Raj Soni Vs. Air Officer in Charge Administration and another, Raj Soni v. Air Officer in charge*; declared the entitlement of retirement at the age of 60 years only in the absence of regulation, bye-laws or policy decision. It was observed that -

"The respondent management has not produced any Rules or bye-laws either framed by the management itself or otherwise to show that there was any uniform provision for retirement of teachers at the age of 58 years."

In the cases on hand, Rule 22(1) envisaged uniform provision and circulars of 1972 and 1988 also highlighted the doctrine of uniformity. The contention, in the face of the aforesaid decision and order of M. P. No. 3335/91, turns out to be inutile, and futile. In *State of Madhya Pradesh Vs. Hari Datt Sharma*, the judgment of M. P. State Administrative Tribunal, allowing claim of 60 years of age, was set aside and claimant was held liable to retire at the age of 58 years in conformity with relevant "rules". Any other submission is like locating a black cat in a dark room.

What then emerges is that age of superannuation is 58 years and not 60 or 62 years and Rule 22(1) has to be permitted to prevail. However, the respondent No. 2 is empowered to sanction retention upto 60 years of age in instalments subject to directions of the Central Government. The later part is not indicative of right coupled with obligation. It is enabling power which is evidently discretionary. However, discretion has to be proper. Lord Mansfield stated in classic terms in *John Wike's case* (1770) 4 Burr 2528 that discretion meant sound discretion governed by law and guided by rules, not by honour. No material is placed on record to show any infirmity in this behalf.

Retention beyond the age of superannuation i.e. extension in service, is not a matter of entitlement or right. Respondent No. 1 can retain only on sanction from respondent No. 2. There is no question of hearing in this behalf. Refusal generated no discrimination. Rule 22(1) does not even provide for submission of applications by individuals. Recognition or grant- in-aid or provisions on Education Code and State Laws or other provisions of Rules did not and could not destroy or dilute the verve and vigour of Rule 22(1). Luculently, it is for the rule-

making authority to think of "change" in tune with State law and rules, or to provide by enactment further rules to guide the course of sanction. Without this, it is futile to assimilate. It is extremely unpalatable to treat unequals equally or equals unequally. If problem is critical, behaviour should not be hypocritical. No material is placed on record to show any type of discrimination or vitiation so far as the servants of the Boards are concerned.

As per Rule 3, FR and Supp. Rules and CCS (Conduct) Rules, 1964 shall, so far as they are not consistent with these Rules, be deemed to apply. Rule speaks of requirement of servants and fixation of salaries. Here, obviously Rule 22(1) as regards, age and retention, shall prevail as State laws are inconsistent. Provision for retention docs not alter basic point. Rule 1(2) mandates that "They (Rules) shall apply to all persons employed by any Cantonment Board in India." Rule 22(1) thus intends to achieve uniformity for all persons employed by all Cantonment Boards in India. Rule 31, as amended by SRO 51 dated 1-2-1983 provided that the provision of CCS (Pension) Rules, 1972 shall govern grant of Pension and Gratuity to eligible servants subject to modifications as enumerated thereunder. Significantly, it did not cover the topic of age of superannuation.

Lord Denning put it elegantly in *Breen v. Amalgamated Engineering Union*; (1971) 1 All ER 148 and Supreme Court stated in *Khudiram Das Vs. The State of West Bengal and Others*, that in a Government laws "there is nothing like unfettered discretion immune from judicial reviewability." Fairness, founded on reason, is the essence of the guarantee epitomised in Article 14. If the power has been exercised improperly or mistakenly so as to impinge unjustly on legitimate rights or interests of the subject, then Courts must so declare. The Courts stand between the executive and the subject alert, alert to see that discretionary power is not exceeded or misused. Lord Atkin highlighted that aspect. *Liver Sidge v. Anderson* 1942 AC 206 is instructive and indicator of the amplitude of the power available with the Courts. No case is made out for issuance of directions in terms of later part of Rule 22(1). Vitiating or voidness is not demonstrated.

In the face of order of Division Bench, I could have said "monosyllabic no" to these petitions in one para but I opted to deal with the question at some length in view of the industry of learned counsel of both the sides. Yet I find that there is nothing to dimidiate or dilacerate. Rule 22(1) positively prevails. It called the tune "Ab antiqu" i.e. from 1937 "Da capo".

In the result, I clarify the position as under -

(a) Petitioners are held liable to be superannuated at the age of 58 years on the basis of Rule 22(1) as it stands today, and have no legal right to continue till 60 or 62 years of age on parity of position existing for the employees of the State.

(b) Respondent No. 1 is under legal obligation only to consider applications as and when presented for sanction for retention/extension in service justly and fairly well before the date of superannuation of the concerning servants and

when found fit, to recommend and forward the proposals to respondent No. 2 for consideration of sanction for retention in conformity with Rule 22(1) on the basis of directions of the Central Government and for passing proper orders again before actual retirement on completion of age as fixed. There is no occasion for respondent No. 2 to exercise the power without recommendation and request from respondent No. 1. Factors like fitness, usefulness and requirements are to be determined by Cantonment Board and none else in terms of Rule 4 which reads as under :-

"Subject to the provisions of the Act and of the Rules made thereunder every Board shall determine what servants are required for the proper and efficient execution of its duties and shall fix the salaries to be paid to such servants out of the Cantonment Fund".

Role of respondent No. 2 comes into existence thereafter in terms of Rule 22(1). Retention/extension is not claimable as of right. Even on recommendation of respondent No. 1, respondent No. 2 on his proper discretion may refuse to sanction further retention in larger interest of the institution etc. No material is placed on record to show infringement of Rule 4 or vitiation or discrimination in this behalf.

As regards the petitioner of M. P. No. 1414/94, it is stated by the learned counsel for the respondents that the application (Annexure P/10) seeking further retention in service has already been rejected by the respondent No. 2. No vitiation in this behalf has been pointed out. The petitioner of M. P. No. 1414/94, was, however, entitled to know the result of her pending request for sanction of retention in service. Unnecessary delay is undesirable. But absent order of sanction by respondent No. 2, she had no automatic right to retain the post.

Arguments, as chronicled in paras 6 to 9 above, are thus non-meritorious and rejected. Authorities, as noted above, do not apply in the face of order of M. P. No. 3335/91 and Miss Raj Soni Vs. Air Officer in Charge Administration and another, Six factors, chronicled in para 13 above, join the pleas and aorta of arguments.

I have bestowed assiduity as part of courts' duty but find that contentions as urged, deserve to fail in this assize. Some petitioners said that FR 22(1) did not apply while others stated that it applied but needed to survive in neighbourhood of State Laws. I heard discordant notes and noticed cachexy. Reliefs as noted in para 4 above thus deserve to be and are accordingly denied.

In the ultimate analysis, this petition, as also connected four petitions, as particularised above, fail and are dismissed but without any order as to costs. Period in excess of the age of superannuation passed in view of restraint orders may be regularised either by sanction of retention or reemployment, if permissible, as far as first four petitioners are concerned.

A copy of this order shall be placed in the record of each of the aforesaid

petitions.