

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 14957 OF 2014

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Sukanta Chandr Mohanty, Petitioner

- versus -

State of Orissa and others Opp. Parties

For Petitioners : M/s. K.P. Mishra, S. Mohapatra,
T.P. Tripathy, L.P. Dwivedy.

For Opp.Parties : M/s. P.K. Lenka, A.K. Moharana,
P.K. Routray,
(for opposite party no.3)

Mr. B. Senapati, Addl. Government Advocate.

P R E S E N T :

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing: 19.03.2015 | Date of Judgment: 31.03.2015

Dr. B.R.Sarangi, J. The petitioner, who was working as Senior Assistant in the establishment of Odisha Police Co-operative Syndicate, Cuttack and attained the age of superannuation on 31.08.2014, seeks for a direction to continue in the post till completion of 60 years of age pursuant to resolution dated 28.06.2014 passed by the Government in Finance Department and to extend all the consequential service benefits as due and admissible in accordance with law.

2. The short fact of the case, in hand, is that the Odisha Police Co-operative Syndicate Ltd., Cuttack is registered under the Bihar and Orissa Co-operative Societies Act, 1953. To regulate the service condition of the employees of the Societies, in exercise of the power conferred under Section 33-A of the Orissa Co-operative Societies Act, 1962 (in short, "the Act, 1962"), Rules have been framed called "Staff Service Rules of Orissa Police Co-operative Syndicate, 1990"(in short the "Staff Service Rules"). In the said Rules, the age of superannuation has been prescribed as 58 years in respect of the categories of the employees like that of the petitioner. Accordingly, notice was issued on 21.07.2014, vide Annexure-1 relieving the petitioner from the service in the afternoon of 31.08.2014 on attaining the age of superannuation as his date of birth is 18.08.1956. Prior to such notice issued vide Annexure-1, the Government of Orissa in Finance Department issued a Resolution on 28.06.2014 enhancing the retirement age of State Government employees on superannuation from 58 years to 60 years. In view of the enhancement of age of retirement of the State Government Employees, pursuant to Resolution dated 28.06.2014, vide Annexure-2, the petitioner claims that similar benefit has to be extended to the employees of the Society enhancing the age of superannuation from 58 to 60 years. Hence this application.

3. Ms. S. Mohapatra, learned counsel for the petitioner submits that since the Government of Odisha in its Finance Department has passed the Resolution enhancing the retirement age on superannuation of State Government employees from 58 to 60 years vide Annexure-2, similar benefit should be extended to the petitioner, in view of the fact that the proposal of the Society has been sent to the Registrar Co-operative Societies on 31.07.2014 for amendment of the Staff Service Rules by enhancing the age of superannuation of its employees from 58 years to 60 years. During pendency of the case since the petitioner retired from service, he may be extended the benefit of continuance of service till 60 years. This Court passed an interim order on 27.08.2014 that the superannuation of the petitioner shall remain subject to the result of the writ petition. It has also been indicated that the pendency of the writ petition shall not be a bar for the opposite parties to take final decision in the matter of increase of the age of superannuation. In compliance to the said order the Registrar, Co-operative societies by Letter dated 29.09.2014 enhanced the retirement age to 60 years in exercise of power conferred under Section 33-A of the Act, 1962. Since the decision has already been taken for enhancement of age from 58 to 60 years on 29.09.2014, the same benefit should be extended to the petitioner by allowing him to discharge his duty till he attained the age of superannuation.

4. Mr. B. Senapati, learned Addl. Government Advocate for the State strenuously urged that the petitioner cannot stand on same footing as that of the State Government employees as admittedly, he is an employee of the Society and his service is regulated under the Staff Service Rules of the Society framed in exercise of power conferred under Section 33-A of the Act, 1962 and Rules framed thereunder. Since the Staff Service Rules prescribes the age of superannuation as 58 years and by the time the petitioner has retired from service, there was no decision available enhancing the age of superannuation of the employees of he said society, even the subsequent decision will not apply to the petitioner as he is already superannuated from service and therefore, this Court should not interfere with the same.

5. Mr. A.K. Moharana, learned counsel for opposite party no.3 strenuously urged that the petitioner's service being regulated as per the Staff Service Rules of Orissa Police Co-operative Syndicate, 1990, basing upon which notice was issued under Annexure-1 and he having been retired from service on attaining the age of superannuation i.e. 58 years, on 31.08.2014, the decision taken by the Registrar, Co-operative Society on 29.09.2014 enhancing the age of superannuation from 58 to 60 years, will not apply to him inasmuch as the decision of the Registrar of the Co-operative Societies dated 29.09.2014 in Annexure-A/2 is prospective in nature, as it has not

been specifically stated that it will apply retrospectively. Therefore, by the time the decision under Annexure-A/2 dated 29.09.2014 was issued, the petitioner has already superannuated from service on 31.08.2014 and the resolution of the State Government is not applicable and therefore, the claim made by the petitioner to retire on attaining the age of 60 years is absolutely a misconceived one. Therefore, the question of allowing the petitioner to retire at the age of 60 years does not arise. Accordingly, he seeks for dismissal of the writ petition.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, the admitted fact is that the petitioner was serving under the opposite party no.3, which is a society and a separate entity and his service condition has been regulated as per the provisions of the Staff Service Rules of Orissa Police Co-operative Syndicate, 1990, which is approved by the opposite party no.2. After the enhancement of retirement age of the State Govt. employees by the Government of Orissa pursuant to Resolution vide Annexure-2, the management of the Society furnished the proposal to enhance the age of retirement of its employees from 58 to 60 years, which was pending for consideration before the State Government. At this point of time, the petitioner was issued a notice of superannuation allowing him to retire at the age of 58 years on 31.08.2014. Challenging such notice, the petitioner has filed this

petition. Along with the writ petition, the petitioner has also filed a Misc. Case bearing Misc. Case No. 13333/2014 seeking stay of operation of the impugned notice dated 21.07.2014 under Annexure-1. While entertaining the said application, though notice was issued, this Court passed an interim order vide order dated 27.08.2014 directing that the superannuation of the petitioner in the meanwhile shall remain subject to the result of the writ petition. In the meantime the petitioner has already retired from service on 31.08.2014. On consideration of the proposal submitted by the Society, the opposite party no.2 in his Order no. 17747 dated 29.09.2014 enhanced the age of superannuation from 58 to 60 years in respect of employees all the Co-operative Societies in exercise of the power conferred under Section 33-A of the Act, 1962 excepting the employees of the Co-operative Societies (OSCB, DCCB and PACS) from the date of signing of the said order, but the petitioner has already retired prior to the order issued by opposite party no.2, i.e. prior to 29.09.2014. The said order is applicable prospectively and the petitioner cannot claim enhancement of age of superannuation i.e. at the age of 60 years.

7. Now coming to the effect of the interim order passed by this Court that the superannuation of the petitioner in the meanwhile shall remain subject to the result of the writ petition.

8. In **Ashok Leyland Ltd. v. State of Tamil Nadu**, (2004) 3 SCC 1, the apex Court held that “**Subject to**”, is an expression whereby limitation is expressed. The order is conclusive for all purposes.

9. In **M.V. Shankar Bhatt v. Claude Pinto**, AIR 2004 SC 636 taking into account the general meaning of “**Subject to**” described in Collin’s English Dictionary, the apex court held that “subject to” means, under the condition that; we accept, subject to her agreement.

10. As per Black’s Law Dictionary, 5th Edn., the expression “**Subject to**” means liable, subordinate, subservient, inferior, obedient to: governed or affected by: provided: answerable for.

11. In **Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and E.T.I.O.**, AIR 2007 SC 1984, the apex Court held ordinarily the expression ‘**subject to**’ conveys the idea of a provision yielding place to another provision or other provisions subject to which it is made.

12. The interim order was that the superannuation of the petitioner shall be subject to the result of the writ petition. In view of the interpretation given by the apex Court in the aforesaid decision, even if an interim order was passed, the same is dependant upon the final order to be passed in the writ petition. The decision to enhance

the age of retirement to 60 years in respect of the employees of all the Co-Operative Societies excluding the employees of the Co-Operative Societies mentioned at Sl.No.3 of the aforesaid decision was taken on 29.09.2014 after the date of superannuation of the petitioner, i.e., on 31.08.2014 and was directed to take immediate effect, that means it shall apply prospectively. This Court in **Raghunath Das v. State** (W.P.(C) No.20381 of 2014 disposed of on 12.11.2014) has already decided that the resolution of the Government will apply prospectively. Therefore, the said benefit cannot be extended to the petitioner even though the proposal was sent by the Society while he was continuing in service. Mere submission of proposal by the Society while the petitioner was in service, does not confer any right on him to claim continuity in service till he attains the age of 60 years. The proposal requires approval by the competent authority under Section 33-A of the Act, 1962. The same having been done much after the age of superannuation of the petitioner, the petitioner is not entitled to get the benefit of continuance of service till he attains the age of 60 years.

13. For the foregoing reasons, this Court finds no merit in the writ petition. Accordingly, the same is dismissed. No cost.

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Dr. B.R.Sarangi, J.

Orissa High Court, Cuttack
 The 31st March, 2015/Ajaya