

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU**

Case: SWP No.3478/2014 & MP No.4718/2014 c/w connected matters.

Date of decision:

21.10.2016

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Nazir Ahmad Wani                      Vs.                      State and another  
c/w connected matters

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**Coram:**

***Hon'ble Mr. Justice B. S. Walia***

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**Appearing counsel:**

For petitioner(s) : Mr. B. S. Manhas, Advocate with  
Mr. Sandeep Singh, Advocate.  
Mr. Amrish Kapoor, Advocate.  
Mr. S. K. Shukla, Advocate.  
Mr. Narinder Kumar Attri, Advocate.  
Ms. Veenu Gupta, Advocate.  
For respondent(s): Mr. Vishal Bharti, Dy. AG for  
Cooperative Department.  
Mr. Adarsh Sharma, Advocate for  
JAKFED.

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| i)  | Whether to be reported in<br>Press/Media    | : Yes/No |
| ii) | Whether to be reported in<br>Digest/Journal | : Yes/No |
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**Judgment**

1. SWP Nos.3478/2014, No.2355/2014, 2394/2014, 1994/2014, 1214/2015, 774/2015, 1550/2015, 1551/2015, 2142/2015, 2111/2015, 2870/2015 & 666/2016 are being decided vide this common judgment as issue involved in all the cases is the same i.e. claim of the petitioners to retire from service on attaining the age of 60 years in terms of the Jammu and Kashmir Cooperative Supply and Marketing Federation Employees

Service Rules, 1975 as also for the issuance of a Writ, order or direction especially in the nature of Mandamus commanding the respondents not to retire the petitioners at the age of 58 years by enforcing the provisions of SRO No. 233 of 1988 dated 08.07.1988.

2. That details of the petitioners in different writ petitions are given hereunder in tabular form :

SWP No.	Name	Post Held	Date of Appointment	Date of attaining the age of 58 years	Remarks
3478 / 2014	Nazir Ahmad Wani	Manager (Gas)	1980	2014	In the absence of D.O.B., age of the petitioner as given in the title of the case has been taken into account for calculating date of superannuation at the age of 58 years.
2394 / 2014	Parshotam Sharma	Asstt. Manager	Not available	30.9.14	
1994 / 2014	Rashpal Singh	Chowkidar	03.05.1990	31.7.14	
774/ 2015	Mangu Ram Gupta	Scale Executive / Jr. Asstt.	1997	31.3.15	
1550 / 2015	Roop Lal Veena Kumari Savinder Singh	Salesman Salesman Jr. Asstt.	Not available	31.5.15 31.5.15 30.6.15	
1551 / 2015	Ranbir Singh	Manager	1979	31.8.15	
2142 / 2015	Tejbir Singh	Asstt. Manager	Not available	31.7.15	
2111 / 2015	Kamlesh Manhas	Jr. Asstt. (OPG)	Not available	31.7.15	
2870 / 2015	Virinder Kumar	Manager	Not available	31.10.15	
666/ 2016	Mangal Singh	Chowkidar	10.07.1989	31.6.16	
1214 / 2015	K. K. Sharma	Manager	1979	30.4.15	
2355 / 2014	Gurmeet Singh	Jr. Asstt.	Not available	31.8.14	

3. That in order to avoid repetition, facts of the case are being taken from SWP No. 3478/2014. Petitioner, therein is a permanent employee of the Jammu and Kashmir Cooperative Supply and Marketing Federation Limited (hereinafter referred to as ‘JAKFED’) and presently holding

the post of Manager (Gas), was appointed in JAKFED in the year 1980. JAKFED is a Cooperative Society registered under the J&K Cooperative Societies Act, 1960, stated to be fully funded by the Government of J&K, besides fully controlled and managed by the Government, its Chief Executive Officer i.e. Managing Director is an officer from the State Government, funds are controlled, proper accounts maintained by the Chief Accounts Officer deputed by the Government of Jammu & Kashmir.

4. That in the light of the aforementioned background, it is contended that the State exercises deep and pervasive control over the administrative and financial affairs of the Federation, therefore, JAKFED is an authority under Article 12 of the Constitution of India amenable to the Writ Jurisdiction of the High Court under Article 226 of the Constitution of India.
5. That Bye-Laws of JAKFED inter alia provide for framing of rules to regulate service conditions of employees of JAKFED. Bye Law 31 which is relevant in respect thereto is reproduced hereunder:-

***“31 Bye-Laws Service Rules:***

*The method of recruitment, the condition of service and pay and allowances of employees of the Federation and disposal of disciplinary cases against them shall be governed by the Service Rules framed by the Managing Committee in this respect. The Managing Committee shall have the powers to amend repeal all or any of these rules.”*

6. That in exercise of the powers under Bye Law 31, Management of JAKFED framed the **Jammu and Kashmir Cooperative Supply and Marketing Federation Service Rules, 1975** (hereinafter referred as 'Rules 1975'). Said rules regulate service conditions of the employees of JAKFED. Aforesaid Rules, were in force at the time of appointment of the petitioner. Subsequently, the said rules were amended from time to time by the Managing Committee of the Federation.

7. That rule 2.12(a) of Rules, as was existing in the year 1975 in the Rules as were first promulgated, is reproduced hereunder:-

***“2.12(a)- Every employee appointed to the Service shall retire on attaining the age of 58 years”.***

8. That subsequently, the Managing Committee of JAKFED vide its order dated 15.10.1987 amended Rule 2.12(a) and substituted the same, as under:-

***“Every employee appointed to the Service shall retire on attaining the age of 60 years.”***

9. That in the light of the aforementioned position, it is contended that with effect from 15.10.1987, an employee appointed to the service is to retire on attaining the age of 60 years. Copies of Bye-Laws, Rules as also order dated 15.10.1987 are attached along with the Writ Petition as Annexures- A, B & C respectively. It is also contended that registration, governance and regulations of Cooperative Societies including JAKFED in the State of

J&K were earlier governed by the J&K Cooperative Societies Act, 1960 (hereinafter referred to as 'Act of 1960'). Aforesaid Act remained in force till it was repealed and replaced by the J&K Cooperative Societies Act, 1989 (hereinafter referred as 'Act of 1989'). However, the 1989 Act was only enforced w.e.f. 05.12.1999.

10. That it is also contended that under Section 124 of the J&K Cooperative Societies Act, 1960, Government had promulgated SRO 233 of 1988 dated 08.07.1988 whereby the J&K Cooperative Societies Service Rules, 1988 were issued. The aforesaid Rules though issued in the year 1988 and were applicable to all Societies which were at that time functioning or were to be created. However, it is claimed that said rules were not implemented and remained unenforced. It is further contended that despite SRO 233 of 1988 having been issued by the Government, all Cooperative Societies including JAKFED continued to regulate the service conditions of its employees under its own Bye-Laws and the Service Rules framed there under till 1997 and employees continued to be retired on attaining the age of superannuation i.e. 58 years, but after 15.10.1987 when the age of superannuation was raised to 60, all employees of JAKFED retired on attaining the age of 60 years. However, on the basis of communication issued by respondent No.3 vide No.SS/102(c) dated 19.12.1991, respondent No.2 was directed by the Registrar to comply with the provisions of Rule 13 of SRO 233 of

1988 dated 08.07.1988. Accordingly, the date of retirement was fixed at 58 years. Copy of SRO 233 of 1988 dated 08.07.1988 as also copy of communication from respondent No.3 to respondent No.2 dated 19.12.1991 are attached along with the Writ Petition as Annexures- D & E respectively.

11. That it is the stand of the petitioner that in terms of SRO 233 of 1988 and the aforesaid communication of respondent No.3 to respondent No.2, employees of the JAKFED came to be retired on attaining the age of 58 years though as per Bye-Laws, the age of superannuation had been fixed at 60 years and the said age continued even when the J&K Cooperative Societies Act, 1989 had been enforced w.e.f. 05.12.1999 and SRO 233 of 1988 which was issued under the J&K Cooperative Societies Act 1960 stood repealed. On the basis of the same, it has been contended that under ignorance of the true legal position, the employees of the Federation were retired by respondent No.2 on attaining the age of 58 years instead of 60 years as provided under the Service Rules purportedly to give effect to the communication of respondent No.3 dated 19.12.1991 as also to give effect to Rule 13 of SRO 233 of 1988 i.e. Annexures E & D respectively.
12. That it has also been contended that after the enforcement of the Cooperative Societies Act of 1989 w.e.f. 05.12.1999,

SRO 233 of 1988 ceased to exist, but still respondents continued to enforce the provisions of the repealed Rules and retired employees on attaining the age of 58 years instead of 60 years and the logic behind enforcing the repealed provisions of SRO 233 of 1988 was that even Government employees discharging the affairs of the State Government were given retirement at the age of 58 years but the State of Jammu & Kashmir had raised the age of superannuation of its employees vide SRO 164 dated 05.06.2014 to 60 years. Copy of SRO 164 is attached along with the Writ Petition as Annexure-F.

13. That it is the stand of the petitioner that on coming into force of SRO 164 of 2014 w.e.f. 05.06.2014, the employees of JAKFED made a representation to the Hon'ble Minister for Cooperatives, J&K, requesting him to allow the employees of JAKFED to retire on attaining the age of 60 years so as to bring uniformity in the service conditions thereby to remove the discrimination vis-a-vis the employees of the Government. Copy of representation to the Minister for Cooperatives is attached along with the writ petition as Annexure-G.

14. That in the light of aforementioned submissions, direction has been sought from this Court to declare that SRO 233 of 1988 had ceased to exist after the enforcement of J&K Cooperative Societies Act, 1989 w.e.f. 05.12.1999 since aforesaid SRO 233 was issued under Section 124 of the

J&K Cooperative Societies Act, 1960 which provided for constitution of a Common Service of the Cooperative Societies, but with the coming into force of the J&K Cooperative Societies Act, 1989 w.e.f. 05.12.1999, the J&K Cooperative Societies Act, 1960 was repealed and under Section 176 of the J&K Cooperative Societies Act, 1989 the Government had been empowered to frame Rules to provide for different matters contained in Section 176 and in pursuance of said power, the Government had framed J&K Cooperative Societies Rules, 2001 and that in terms of Section 5, the Cooperative Societies had been empowered to frame Bye-Laws pertaining to the method of recruitment, conditions of service and the authority to fix, revise and regulate the scales of pay and allowances of the officers and employees of the Society and the procedure to be followed in disposal of disciplinary cases.

15. That in the aforementioned background, it has been contended that pursuant to the J&K Cooperative Societies Rules, 2001 under the J&K Cooperative Societies Act, 1989, the service conditions of the employees including the prescription of age of superannuation had been left to the discretion of the Society, which was at liberty to regulate the same as per Bye-Laws. Accordingly, Rules issued under the Act of 1989 and SRO 233 of 1988, which empowered the Government to prescribe certain conditions of employees of the Cooperative Society including prescribing the age of superannuation were



inconsistent. On the basis of the same, it has been contended that on account of promulgation of Rules of 2001 under the Act of 1989, SRO 233 had ceased to exist and be deemed to have been repealed in terms of Section 177 of the J&K Cooperative Societies Act, 1989. Accordingly, it was contended that since SRO 233 of 1988 was non-existent, as such, the service conditions of the employees of the JAKFED were required to be regulated by Service Rules, which as per the contention of the petitioner, stipulated age of superannuation as 60 years.

16. That it was also contended that even if SRO 233 of 1988 was assumed to be in existence despite the promulgation of the J&K Cooperative Societies Rules, 2001 under the J&K Cooperative Societies Act, 1989, yet Rule 13 of the aforesaid SRO 233 of 1988 alone could not be given effect to unless the government actually constituted a Common Service of employees of all the Cooperative Societies and that even for the purpose of recruitment to this Common Service constituted by the Rules of SRO 233 of 1988, the Government was under obligation to constitute District Selection Board etc. and it was only after the Common Service was constituted, District Selection Boards were set up for the purpose of recruitment and promotion, that the provisions of the Rules including Rule 13 pertaining to retirement on superannuation could be enforced.

17. That on the basis of the aforementioned submissions, it has been contended that the respondents could not take up a single provision out of SRO 233 of 1988 and apply the same to the prejudice of the employees of the Cooperative Societies including JAKFED. Accordingly, it has been contended that the forced retirement of the petitioner at the age of 58 years would amount to termination from service before his attaining the age of superannuation i.e. 60 years as prescribed by the Service Rules of JAKFED, that it was well settled law that the service of an employee could not be curtailed by the employer without following the due process of law. Even otherwise, after issuance of SRO 164 of 2014, there was no reason to discriminate with the employees of JAKFED, particularly when all employees of the Government as also employees of other Cooperative Societies were superannuating at the age of 60 years.

18. That in the aforementioned background, the petitioner sought the following reliefs:-

**i) Writ, order or direction in the nature of Writ of Mandamus commanding the respondents to retire the petitioner on attaining the age of 60 years in terms of Jammu and Kashmir Cooperative Supply and Marketing Federation Employees Service Rules, 1975 particularly Rule 2.12(a) as amended vide order of the Managing Committee dated 15<sup>th</sup> October, 1987;**

**ii) Writ, order or direction in the nature of Writ of Mandamus commanding upon the respondents not to retire the petitioner prematurely on attaining the age of 58 years by enforcing the provisions of SRO 233 of 1988 dated 8<sup>th</sup> July, 1988 which has since been ceased to be in existence after being repealed by the Jammu and Kashmir Cooperative Societies Rules 2001 issued under the Jammu and Kashmir Cooperative Societies Act 1989;**

**iii) Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be granted in favour of the petitioner and against the respondents along with cost of the petition."**

19. That service condition's of employees of JAKFED are regulated in accordance with the *Jammu and Kashmir Cooperative Supply and Marketing Federation Employees Service Rules, 1975*. The same have been framed under Bye-Law 31 of the Jammu and Kashmir Cooperative Supply and Marketing Federation Limited. Bye-Law 31 has been reproduced above, as per which, the method of recruitment, condition of service etc. are governed by the Services Rules framed by the Managing Committee, which has the powers to amend, repeal all or any of the rules. As per Rule 2.12(a), the age of retirement of every employee appointed to the service was initially fixed at 58 years. Subsequently, the Managing Committee of JAKFED in

exercise of the powers under Bye-Law 31 vide its order dated 15.10.1987 (Annexure-C) modified Clause 2.12(a) so as to enhance the age of retirement from 58 to 60 years. The functioning of Cooperative Societies including JAKFED was earlier regulated in accordance with the provisions of the J&K Cooperative Societies Act, 1960 and the same remained in force till it was repealed and replaced by the J&K Cooperative Societies Act, 1989. However, the J&K Cooperative Societies Act, 1989 was enforced only w.e.f. 05.12.1999. The Government in exercise of its power under Section 124 of the J&K Cooperative Societies Act, 1960 had promulgated SRO 233 of 1988 dated 08.07.1988 whereby J&K Cooperative Societies Service Rules, 1988 were issued. As per the petitioners, the aforesaid Rules although were issued in the year 1988, yet all Cooperative Societies including JAKFED continued to regulate service condition of its employees as per its Bye-Laws and Service Rules framed there-under till 1987 and employees were retired on attaining the age of 58 years i.e. the then age of superannuation, but after 15.10.1987 when age of superannuation was raised by JAKFED vide Annexure-C, to 60 years, all employees of J&KFED were retired on attaining the age of 60 years. However, on the basis of communication i.e. Annexure-E dated 19.12.1991 issued by respondent No.3, respondent No.2 was directed by the Registrar, Cooperative Society J&K, to comply with the provisions of Rule 13 of SRO 233 of 1988 dated

08.07.1988 and, accordingly, the date of retirement was fixed at 58 years, but it was provided that in exceptional cases where the Board of Directors found that a particular employee was exceptionally outstanding, such employee could be considered for employment upto the age of 60 years.

20. That although not placed on record in SWP No.3478/2014, yet order (Annexure-E) dated 30.04.1992 in SWP No. 1551/2015 records that in view of the Resolution by the Managing Authority in its meeting held on 27.12.1991, the retirement age of JAKFED employees had been fixed at 58 years instead of 60 years. Copy of the said order was marked to Authorities other than the Registrar, Cooperative Society J&K. Annexure-E in SWP No.3478/2014 is the communication from the Registrar, Cooperative Society, J&K to the Managing Director, JAKFED. Although Annexure-E in SWP No.1551/2015 has not been marked to the Registrar, Cooperative Society, but in view of the contents of Annexure-E dated 19.12.1991 from Registrar Cooperative Society to the Managing Director, JAKFED, it is apparent that Annexure-E in SWP No.1551/2015 dated 30.04.1992 resolving that the managing authority in its meeting held on 27.12.1991 had fixed the age of retirement of its employees at 58 instead of 60 years was passed pursuant to the directions of the Registrar, Cooperative Societies, as contained in Annexure-E in SWP No.3478/2014.

However, the fact remains that the competent authority, as per Bye-Law 31 of the Bye Laws of the Jammu & Kashmir Cooperative Supply & Marketing Federation Ltd., took the decision to amend the age of retirement of its employees by fixing it at 58 years instead of 60 years.

21. That the plea that the employees of JAKFED came to be retired on attaining the age of 58 years though the service rules provided age of retirement as 60 years, cannot be accepted as factually correct for the simple reason that as per the petitioners as per Bye-Law 31, the method of recruitment, condition of services of employees of the Federation is to be regulated as per Service Rules to be framed by the Managing Committee, which has the power to amend or repeal or any of the Rule. Order (Annexure-E) dated 30.04.1992 in SWP No.1551/2015 records the decision of the Competent Authority i.e. Managing Committee to fix the age of retirement of its employees at 58 years instead of 60 years. Therefore, the plea that SRO 233 of 1988, which was issued under the J&K Cooperative Societies Act, 1960 was repealed on the coming into force of the J&K Cooperative Societies Act, 1989 w.e.f. 05.12.1999, consequently, even SRO 233 of 1988, which was issued under the J&K Cooperative Societies Act, 1960 had stood repealed is of no avail to the petitioners.
22. That the contention that despite SRO 233 of 1988 having ceased to exist on the repeal of the J&K Cooperative

Societies Act, 1960 on the coming into force of the J&K Cooperative Societies Act, 1989 w.e.f. 05.12.1999, the employees were illegally retired on attaining the age of 58 years also does not stand to reason, for the simple reason that it was always open to the competent authority i.e. Managing Committee as per Bye-Law 31 of the Bye Laws of the Jammu & Kashmir Cooperative Supply & Marketing Federation Ltd., to amend the age of retirement and to raise the same in case of its employees from the existing age of 58 years as was done in terms of Annexure-C dated 30.04.1992 in SWP No.1551/2015.

23. The plea that age of retirement of 58 years was fixed under SRO 233 of 1988 at 58 years was on account of Government Employees also then retiring at the age of 58 years and in view of the decision of the Government of J&K to raise the age of superannuation of Government Employees vide SRO 164 of 2014 dated 05.06.2014 to 60 years (vide Annexure-F), there was no reason to discriminate between employees of the Government and JAKFED; and that in the circumstances, representation Annexure-G had been made to the Minister for Cooperatives J&K, but no action had been taken on the aforesaid representation and since the petitioner was to retire shortly thereafter and being aggrieved of enforcement of SRO 233 of 1988, non-adherence to Service Rules of 1975 as amended in the year 1987, the petitioner(s) had invoked the writ jurisdiction of this

Court. However, plea is devoid of any merit. The mere fact that the age of superannuation has been raised vide Annexure-F dated 05.06.2014 by the Government for government servants from 58 to 60 would not of its own confer a right on the employees of JAKFED to seek a direction to be allowed to continue in service upto the age of 60 years. The decision, whether the age of retirement of its employees is to be 58 or 60 years, is to be regulated in terms of Bye-Law 31 of the Bye Laws of the Jammu & Kashmir Cooperative Supply & Marketing Federation Ltd., exclusively as per decision of the Managing Committee of JAKFED. In terms of order (Annexure-E) dated 30.04.1992 in SWP No.1551/2015, it is clear that the Managing Committee of JAKFED took a decision on 27.12.1991 to fix the age of superannuation of its employees at 58 years instead of 60 years in its meeting held on 27.12.1991.

24. That as per the objections filed, apart from taking other preliminary objections, it has been contended that it was only the General Body/Board of Directors, which was the competent authority to take decision with regard to age of retirement of its employees and mere fact that SRO 164 of 2014 provided for retirement age of 60 years to government employees would not confer any right in favour of the petitioners. Besides, the age of superannuation of employees of JAKFED, which had been increased to 60 years pursuant to decision dated



14.07.1987 i.e. Annexure-C in SWP No.1551/2015 was after taking into account all aspects of the matter, reduced by the competent authority to the age originally fixed under the Rules i.e. 58 years in terms of recommendation of Registrar, Cooperative Societies, J&K vide its communication dated 19.12.1991.

25. That apart from the above, it has been contended that JAKFED was in serious financial crunch for the last close to two decades and there was already huge outstanding liabilities running into crores of rupees towards JAKFED employees. Relevant extract of the stand of JAKFED in the reply filed, is reproduced hereunder:-

“It is humbly submitted that in the Cooperative Societies Act, General Body/Board of Directors is the only competent body to take decision/decide the age of retirement besides taking other policy decisions of the society. As already submitted hereinabove that the SRO 164/2014 has been extended to the government employees and to the employees working in the cooperative societies and besides this, otherwise any such like policy decision can only be taken by the elected Board of Directors of JAKFED and by none else.

That besides above submission, otherwise also, the retirement age enhanced from the age of 58 years to 60 years in pursuance of Managing Authority decision dated 14<sup>th</sup> July, 1987 with regard to Clause 2.12(a) Section 2 of Rules and Regulations of the Jammu & Kashmir Cooperative Supply and Marketing Federation Ltd., again relegated/reduced to the original age i.e. 58 years as recommended and accordingly conveyed by the

Registrar, Cooperative Societies, J&K, Jammu vide communication dated 19.12.1991 which was duly accepted and approved by the Managing Authority of the Answering Respondent Federation in its 255<sup>th</sup> meeting held on 27.12.1991 at Agenda Item No.4 as well as by the SRO 233 of 1988 issued in exercise of power vested to the Government under Section 124 of the J&K Cooperative Societies Act.

It is also not out of place to mention here that besides all above submitted facts and circumstances, the answering respondent/JAKFED has been in financial crunch for the last more than two decades and there is huge outstanding liabilities running into crores of rupees towards the JAKFED employees CPF, different Fertilizer companies i.e. M/S NFL, M/S KRIBHKO, IFFCO etc.”

26. That on the basis of the same it is, clear that the competent authority i.e. the Managing Committee of JAKFED was not inclined to enhance the age of superannuation of its employees from 58 years to 60. It has categorically been denied that the age of superannuation as per the rules in JAKFED was fixed at 60 years. The decision to enhance the age from 58 to 60, was again modified to bring it to 58 years vide the Resolution of the Managing Committee of JAKFED in its meeting held on 27.12.1991.
27. The plea that not allowing the petitioners to continue upto the age of 60 years amounts to termination from service is without any basis in view of the categorical stand of the respondents that the petitioners are liable to be retired at

the age of 58 years i.e. the age of superannuation as per the rules applicable. In view thereof, I find no merit in the writ petitions and the same are, accordingly, dismissed.

28. That in the circumstances, the petitioners shall not be entitled to count service beyond the age of 58 years for purpose of working out retiral benefits as permissible as per rules applicable. Although the petitioners have been allowed to continue in service beyond the age of 58 years i.e. the age of retirement as stipulated by the Managing Authority of the JAKFED and having taken work from the petitioners, the petitioners would be entitled to salary for the period they have worked even beyond the age of 58 years upto the date of dismissal of the writ petitions. No order as to costs.
29. **COA(S) No.426/2014** also stands disposed of.
30. Copy of this order /judgement be placed on each file.

( **B. S. Walia** )  
**Judge**

Jammu  
21.10.2016  
\*Narinder\*

