

**HON'BLE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

CWP No. 851 of 2020

Reserved on: 20.07.2020

Decided on: 31.07.2020

CWP No.851 of 2020

Ses Ram

...Petitioner.

Versus

State of H.P. & others

....Respondents.

CWP No.1413 of 2020

Bhagirath Rai

Petitioner.

Versus

State of H.P. & others

....Respondents.

CWP No.1428 of 2020

Kulwant Singh

Petitioner.

Versus

State of H.P. & others

....Respondents.

CWP No.1539 of 2020

Ravinder Kumar

Petitioner.

Versus

State of H.P. & others

....Respondents.

CWPOA No.6382 of 2020

Chhote Lal Sharma

Petitioner.

Versus

State of H.P. & others

....Respondents.

Coram

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Ms Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹ Yes.

For petitioners. :

Mr. Subhash Mohan Snehi, Advocate in CWP
No.851/2020.

Mr. Sudhanshu Jamwal, Advocate, in CWP
No.1413 of 2020.

¹ Whether reporters of the local papers may be allowed to see the judgment?

Mr. Sanjay Kumar Sharma, Advocate in CWP No.1428 of 2020.

Mr. Onkar Jairath and Shubham Sood, Advocates in CWP No.1539 of 2020.

Mr. Bhim Raj Sharma, Advocate in CWP No.6382 of 2020.

For respondents : Mr. Ashok Sharma, Advocate General, with Mr. Vinod Thakur, Mr. Ranjan Sharma, Mr. Desh Raj Sharma, Additional Advocate Generals and Ms. Svaneel Jaswal, Deputy Advocate General, for the respondents/State in all the petitions.

Jyotsna Rewal Dua, Judge.

Office memorandum dated 29.03.2013 enhancing the retirement age of the Blind Government Employees from 58 years to 60 years has been withdrawn by the State vide office memorandum dated 4.11.2019. Aggrieved against this withdrawal, all these petitions have been preferred laying challenge to the office memorandum dated 4.11.2019. Being connected and involving the same issue, all these petitions are taken up together for disposal.

2(i) On 29.03.2013, following office memorandum (in short OM) was issued by the respondents/State enhancing the retirement age from 58 to 60 years in respect of Blind Government Employees:-

“Subject: Regarding enhancement of retirement age from 58 years to 60 years in respect of blind government employees.

The undersigned is directed to refer to the subject cited above and to say that the matter for enhancement in the retirement age from 58 years to 60 years in respect of blind government Employees was under consideration of the Government for some time past. After careful consideration of the matter, the Governor, Himachal Pradesh is pleased to order that the retirement age of the Blind Government Servants is enhanced from 58 years to 60 years with immediate effect.”

2(ii) Seeking parity with Blind Government Servants for enhancement of retirement age, certain petitions were preferred by hearing impaired/locomotor impaired and other State Government Employees with such physical disabilities. One such petition bearing O.A. No.1004 of 2015 filed by a person with ‘impaired hearing’ was allowed by erstwhile H.P. Administrative Tribunal vide judgment dated 10.01.2018, with following operative directions:-

“10. Consequently, the original application is allowed and the respondents are directed to modify the memorandum dated 29.03.2013, Annexure A-6, to the extent that the benefit of enhancement of retirement age is also extended to the hearing impaired also to which category the applicant belongs, from 58 to 60 years as specified under Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The applicant is deemed to be in service till the attained age of 60 years with all consequential benefits.”

2(iii) Writ petition No.1577 of 2018, preferred by the State Government challenging the above extracted decision was

dismissed by this Court on 5.11.2018. While dismissing the writ petition, it was observed that all differently abled persons constituted one homogeneous class falling within the definition of Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. Pursuant to the office memorandum dated 29.03.2013, as applied to Blind Government Employees as well as to certain other categories of differently abled persons, many such employees were allowed to remain in service till they attained the age of 60 years.

2(iv) Following OM was issued on 4.11.2019, whereby office memorandum dated 29.03.2013 was withdrawn in public interest with immediate effect:-

“The undersigned is directed to refer to this department office Memorandum of even number dated 29th March, 2013 on the above cited subject vide which retirement age from 58 years to 60 years in respect of blind Government employees was enhanced. Now after careful consideration of the matter the Governor, Himachal Pradesh is pleased to order that his office Memorandum dated 29.03.2013 be hereby withdrawn with immediate effect, in public interest.”

2(v) The result of OM dated 4.11.2019 was that retirement age of blind government employees, which was earlier enhanced to 60 years was again brought back to 58 years.

As a necessary corollary, all categories of differently abled persons, who were either enjoying or intended to seek the benefit of OM dated 29.03.2013 were also similarly affected. Therefore feeling aggrieved against the withdrawal of office memorandum dated 29.03.2013 by OM dated 4.11.2019 bringing the retirement age from earlier enhanced 60 years back to 58 years, these petitions have been preferred.

3. We have heard learned counsel for the parties and gone through the record.

3(i). At the outset, it may be noticed that OM dated 29.03.2013 was issued by State in exercise of its Administrative/Executive Power. Therefore, there was no legal embargo upon the respondents/State to withdraw the same by subsequently issuing another office memorandum on 4.11.2019. The administrative or executive power of the respondents/State to issue OM dated 4.11.2019 cannot be questioned.

3(ii) Learned counsel for the petitioners relied upon following para of the judgment in (2007) 6 SCC 196 titled **Union of India vs. A.S. Gangoli & others:-**

“11. There is considerable force in the submission of the appellant. Varying periods of weightage are added to the

qualifying service of defence service officers to compensate for, or offset the disadvantage of early age of superannuation in defence service. The weightage of 7 years for a Group Captain is because he normally retires from Air Force Service at a comparatively early age of 52 years. If a Group Captain is permitted to prematurely retire so that he can be permanently absorbed immediately in a public sector undertaking where the retiring age is 58 or 60, the need to provide weightage disappears. Further, special provisions were made for such retirees under the circulars dated 17.3.1986 and 19.2.1987. They directed that premature retirement, to take up employment under PSUs, with the permission of the Government, will not entail forfeiture of service or retirement benefits. In such cases, the officer is deemed to have retired from the date of premature retirement and eligible to receive the retirement benefits, enumerated in those circulars. Therefore, the decision not to extend the benefit of weightage to those who retired prematurely for immediate permanent absorption in a PSU or autonomous body is a matter of policy of the government supported by logical reasons. So long as such policy is not manifestly arbitrary and does not violate any constitutional or statutory provision, it is not open to challenge."

This judgment has no applicability for determining the point involved in the instant case. Also the judgment delivered by this Court in CWP No.1577/2018 was in the backdrop of facts as they existed at that time, where the State by way of OM dated 29.3.2013 had enhanced the retirement age of its blind employees from 58 to 60 years. Since all persons with physical disabilities constituted a homogeneous class, therefore, the benefit of enhancement in the age of superannuation extended by erstwhile H.P. Administrative Tribunal to certain other categories of persons with disabilities, was upheld.

Situation in these writ petitions is different. State has now withdrawn OM dated 29.03.2013. OM dated 29.03.2013 cannot be saved on the strength of judgment delivered in CWP No.157/2018.

3(iii) A three judge Bench of Hon'ble Apex Court in ***State of Uttar Pradesh and others Vs. Hirendra Pal Singh & others***, reported in (2011) 5 SCC 305, quashed the interim orders of the High Court, which had directed the Government to restore 62 years as the age of superannuation for Government pleaders. Hon'ble Apex Court held that fixation of the retirement age falls within exclusive domain and competence of the State and that Courts should not interfere with such decision, unless they were unconstitutional. Relevant extracts from para-8 are as under:-

"8. So far as the issue of reduction of age from 62 to 60 years is concerned, it has not been brought to the notice of the High Court that it is within the exclusive domain of the State Government to reduce the age even in Government services. So in case of purely professional engagement, the age could validly be reduced by the State Government unilaterally."

In the afore referred judgment, previous judgments in ***Bishun Narain Misra Vs State of U.P.*** (AIR 1965 SC 1567), ***Roshan Lal Tandon Vs. Union of India*** (AIR 1967 SC

1889), **K. Nagaraj Vs. State of A.P.** (AIR 1985 SC 551), were

also noticed as per following extracts:-

*“9. A Constitution Bench of this Court in **Bishun Narain Misra v. The State of Uttar Pradesh & Ors.**, AIR 1965 SC 1567 held that new rule reducing the age of retirement from 58 to 55 years could neither be invalid nor could be held to be retrospective as the said rule was a method adopted to tide over the difficult situation which could arise in public services if the new rule was applied at once and also to meet any financial objection arising in enforcement of the new rule.*

*10. In **Roshan Lal Tandon v. Union of India & Ors.**, AIR 1967 SC 1889, a similar view has been reiterated by this Court observing that emoluments of the Government servant and his terms of service could be altered by the employer unilaterally for the reason that conditions of service are governed by statutory rules which can be unilaterally altered by the Government without the consent of the employee. (See also **B.S. Vadera v. Union of India & Ors.**, AIR 1969 SC 118; **The State of Jammu & Kashmir v. Triloki Nath Khosa & Ors.**, AIR 1974 SC 1; **B.S. Yadav & Ors. v. State of Haryana & Ors.**, AIR 1981 SC 561; and **State of Jammu & Kashmir v. Shiv Ram Sharma & Ors.**, AIR 1999 SC 2012).*

*11. In **K. Nagaraj & Ors. v. State of Andhra Pradesh & Anr. etc.**, AIR 1985 SC 551, this Court examined the amended provisions of Andhra Pradesh Public Employment (Regulation of Conditions of Service) Ordinance, 1983 by which the age of retirement was reduced from 58 to 55 years and this Court upheld the amended provisions being neither arbitrary nor irrational. The court further rejected the submission of the appellants therein that the said amended provisions would have retrospective application taking away their accrued rights. (See also **State of Andhra Pradesh etc. etc. v. S.K. Mohinuddin etc. etc.**, AIR 1994 SC 1474).*

12. In view of the above, it is evident that even in government services where the terms and conditions of service are governed by the statutory provisions, the Legislature is competent to enhance or reduce the age of superannuation. In view of the above, it is beyond our imaginations as why such a course is not permissible for the appellant-State while fixing the age of working of the District Government Advocates.”

3(iv) It is well settled that in order for executive instructions to have the force of statutory rules, it must be shown that they have been issued either under the authority

conferred on the State Government by some statute or under some provision of the constitution providing therefore. In the instant case the OMs in question have not been issued either under the authority conferred on the State Government by some statute or under some provision of the constitution, therefore, it has to be held in the nature of administrative instructions and not statutory rules. Petitioners have no vested right to remain in Government employment upto the age of 60 years. Their entitlement to continue upto the age of 60 years was only under OM dated 29.03.2013, which stands withdrawn vide office OM dated 4.11.2019. Both the office memorandums were issued by the State in exercise of its administrative power. In (2004) 1 SCC 592, titled ***Sureshchandra Singh and others Vs. Fertilizer Corporation of India Ltd and other***, Hon'ble Apex Court held that the Courts cannot issue a writ for enforcement of administrative instruction and that office memorandums are only administrative directions not having force of law.

In P.U. Joshi and others Vs. Accountant General and others (2003) 2 SCC 632, it was held that question relating to constitution pattern, nomenclature of posts,

cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions is all within the exclusive discretion and jurisdiction of the State subject to the limitation or restriction envisaged in the Constitution of India.

3(v) Petitioners cannot insist for continuing in service upto the age of 60 years on the strength of OM dated 29.03.2013. This OM did not create any right much-less any vested right in their favour. It cannot be enforced in exercise of writ jurisdiction of this Court. More so when this OM has been withdrawn by the State by issuing another OM. The respondents/State had the power to issue the OM as well as the power to withdraw it later by issuing another OM. It has not demonstrated before us that OM issued on 4.11.2019 was unconstitutional.

The fixation of retirement age of persons with disabilities is within the domain of the State Government. Vide earlier OM dated 29.03.2013 the retirement age for the blind government employees was enhanced from 58 to 60 years. Benefit of OM dated 29.03.2013 was later accorded to certain other categories of differently abled persons. However OM dated

4.11.2019 has withdrawn OM dated 29.03.2013. As of now, age of retirement of persons with disabilities is 58 years. It is not the case of the petitioners that they have been discriminated with any other category. It is not the case of the petitioners that they have not been paid for the work they did while in service beyond the age of 58 years. It is also not the case of the petitioners that recovery of any kind is being effected from them pursuant to OM dated 4.11.2019. It is not the case of the petitioners that they have any vested right to continue in service till the age of 60 years. Petitioners have failed to point out as to how OM dated 4.11.2019 is illegal, arbitrary or unconstitutional.

Therefore we find no merit in these writ petitions and the same are dismissed accordingly. The parties are left to bear their own costs. Pending application(s), if any, shall also stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Jyotsna Rewal Dua),
Judge

July 31, 2020
(rohit)