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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.877 of 2021

Orissa Water Supply and Sewerage Board *Appellant*
-versus-
Praful Kumar Sethi and Others *Respondents*

W.A. No.878 of 2021

Orissa Water Supply and Sewerage Board *Appellant*
-versus-
Golapa Manjari Pahili and Others *Respondents*

W.A. No.879 of 2021

Orissa Water Supply and Sewerage Board *Appellant*
-versus-
Ashok Kumar Dash and Others *Respondents*

W.A. No.1046 of 2021

Orissa Water Supply and Sewerage Board *Appellant*
-versus-
Pravat Kumar Dash and Others *Respondents*

Advocates, appeared in theses case by video conferencing mode:

For Appellant(s) : Mr. S.N. Das
Addl. Standing Counsel

For Respondents : Mr. Niranjana Biswal, Advocate
Mr. Dayananda Mohapatra Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**JUDGMENT
31.01.2022**

Dr. S. Muralidhar, CJ.

I.A. Nos.2134, 2138, 2136 of 2021 and I.A. No.72 of 2022

1. For the reasons stated in these applications, prayer for condonation of delay in filing the respective appeals is allowed. The I.As are disposed of accordingly.

W.A. Nos.877, 878, 879 and 1046 of 2021

2. These four appeals by the Orissa Water Supply and Sewerage Board (OWSSB) are directed against the order dated 27th July, 2021 passed by the learned Single Judge allowing the writ petitions filed by the Respondent No.1 in each of the writ appeals. In each of the said writ petitions the prayer was for a direction to the Housing and Urban Development Department (HOUIDD), Government of Odisha to enhance the age of superannuation of the said four employees from 58 to 60 years.

3. By the impugned judgment the learned Single Judge has held that there was no justification in the State Government not acting on the recommendation of the Appellant and in discriminating against the writ petitioners who stood on the same footing as other employees of the Appellant in whose case the age of retirement was enhanced from 58 to 60 years. Accordingly, the learned Single Judge issued a mandamus to the HOUIDD as well as the present Appellant to extend to the writ petitioners to the benefit of

enhanced retirement age, refix their pay and other allowances and pay the corresponding amount to each of them within a period of four months from the date of the judgment along with simple interest @ 7% per annum.

4. At the outset, Mr. S.N. Das, learned Additional Standing Counsel for the Appellant submits that in three of the writ appeals i.e. W.A. Nos.877, 878 and 879 of 2021 the three corresponding Respondent No.1 i.e. Praful Kumar Sethi, Golapa Manjari Pahili and Ashok Kumar Dash have already completed the additional period of two years beyond 58 years. As far as the Respondent No.1 (Pravat Kumar Das) in the fourth writ appeal i.e. W.A. No.1046 of 2021 is concerned, has not yet completed 60 years of age.

5. The background facts are that the four employees (who are Respondent No.1 in these writ appeals) of the Appellant OWSSB were not given the benefit of enhancement of the age of superannuation from 58 to 60 years despite the recommendation made by the OWSSB to the State Government pursuant to a resolution passed at the meeting of the Board of the OWSSB held on 25th March, 2015. It is not in dispute that there were no Rules or Regulations with regard to the age of retirement of the employees of the OWSSB.

6. Mr. Das, learned ASC for the Appellant draws attention of this Court to Section 61 of the Orissa Water Supply and Sewerage Board Act, 1991 (OWSSB Act), which reads as under:

“61. (1) In the performance of its duties and discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it from time to time, by the State Government.

(2) If any question arises whether any matter is or is not a matter as respect which the State Government may issue a direction under Sub-section (1) the decision of the State Government shall be final”.

7. Mr. Das submits that although regulations have been made by the OWSSB, there is no specific Regulation as regards the age of retirement. The admitted position therefore is that the Rules concerning the service conditions as applicable to the employees of the State Government would *ipso facto* apply to employees of the OWSSB. Mr. Das points out that it is only on 31st May, 2021 that a Notification was issued by the HOUIDD permitting the increase in the age of superannuation of the employees of the OWSSB from 58 to 60 years. It was stated in the said Notification that it “will take immediate effect”. Therefore, the contention of the OWSSB both before the learned Single Judge as well as this Court is that the Notification is prospective in operation and since the four employees before the Court (i.e. Respondent No.1 in each of the writ appeals) reached the age of superannuation of 58 years prior to the date of the Notification, their prayer cannot be granted. It is submitted, on the strength of the decision of the Supreme Court in *Noida v. B.D. Singhal 2021 SCC Online SC 466* that in matters of policy the Court will not dictate to the State what should be the age of superannuation or the date from which

such decision will become effective. Mr. Das also places reliance on the decisions of this Court in *Sarat Chandra Tripathy v. OFDC 2015 SCC Online 141* and the decision dated 14th July, 2021 of this Court in Writ Appeal No.696 of 2020 (*IPICOL v. Bimbadhar Panda*).

8. Mr. Das, however, does not dispute that in respect of the employees of the OWSSB belonging to Group D the benefit of the enhanced age of superannuation was extended by it Board from July 2020 itself even when without waiting for the sanction of the State Government. He also does not dispute that barring these four employees in Group C, all other serving employees of the OWSSB in Group C have got the benefit of enhancement of retirement age from 58 to 60 years.

9. Having considered the above submissions of Mr. Das, having perused the impugned order of the learned Single Judge and the decisions cited this Court is not persuaded that any ground has been made out by the Appellant for interference with the impugned order of the learned Single Judge.

10. In the first instance it should be noted that facts in *Noida v. B.D. Singhal (supra)* were different from the facts of the present cases. There as noted in para 4 of the said decision, there was a separate set of regulations known as Noida Regulations, 1981. Regulation 25 thereof specifically stated that “an employee shall retire at the age of 58 years”. Although Resolutions were passed by the Noida Board recommending that the age of superannuation

of the employees should be increased from 58 to 60 years, there was no acceptance of such recommendation in the first place by the State Government. It was noted that case that the State Government had rejected the original proposal on 22nd September, 2009 and when challenged the Division Bench of the High Court had refused to interfere and the said order had attained finality. Further even after such recommendation, there was no corresponding amendment to Rule 25 of the Noida Regulations 1981. It is in the above circumstances that the Supreme Court reversed the decision of the High Court which had issued a mandamus to the State Government to enhance the age of superannuation.

11. However, as far as the present cases are concerned, there was no refusal of the proposal of the Appellant by the State Government. There was only a delay in conveying concurrence. Secondly, there was no specific Regulation governing the age of superannuation of OWSSB employees. Therefore, unlike the *Noida* case (*supra*), the approval of the State Government did not have to be followed by an amendment to the Regulations. On the other hand, even without waiting for the approval of the State Government OWSSB granted the benefit of the enhancement of the age of superannuation to its Group D employees from July 2020 itself. Therefore, to confine the benefit of enhancement of the age of superannuation to one set of employees and deny it to another was plainly discriminatory and this is what was held by the learned Single Judge.

12. As far as the decision in *IPICOL v. Bimbadhar Panda* (*supra*) is concerned, it was again in a different set of facts. There the issue was the date from which the decision of the State Government concurring with the proposal of IPICOL as regards enhancement of the age of retirement, would become effective. There it was in fact conceded by learned counsel for the State (Appellant) that it is only in cases where there is no separate rule governing the service conditions of State PSU employees, that the benefit of the enhanced age for superannuation applicable to the State Government would ipso facto be applicable to the employees of the PSU. IPICOL has its own set of service rules which had not been amended despite concurrence of the State Government.

13. This Court in *IPICOL v. Bimbadhar Panda* (*supra*) distinguished the decision in *Premalata Panda v. State of Odisha 2015 (II) OLR 214* which involved the employees of the Cuttack Development Authority (CDA), and the facts of which are closer to the facts on hand. CDA had adopted the Orissa Subordinate Service Rules for its employees. Therefore, in *Premalata Panda* (*supra*) the increased age of superannuation for the employees of the State Government was held to be applicable ipso facto to CDA's employees. Just like in the present case, there were no separate set of rules governing the retirement age of CDA employees.

14. The decision of this Court in *Sarat Chandra Tripathy (supra)* is again distinguishable on facts. There the Orissa Forest Development Corporation (OFDC) which had its own set of rules. Moreover, OFDC had not passed a resolution recommending enhancement of the age of retirement.

15. For all of the aforesaid reasons, the Court is also of the view that no error can be found in the impugned judgment of the learned Single Judge. The writ appeals are accordingly dismissed, but in the circumstances, with no order as to costs.

16. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March 2020, modified by Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge