THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.9399, 10496, 11538, 11634, 11921, 12190, 13018, 13109, 14338, 14390, 15153, 15257, 15418, 15421, 15493, 16188, 16189, 16221, 16245, 16313, 17975, 18217, 18901, 19349, 21799, 23747, 24752, 24754, 26298, 26935 and 27180 of 2021

COMMON ORDER: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court.

Facts of the Writ Petition No.10496 of 2021 are narrated hereunder.

The petitioner No.1 was appointed as Reserve Sub Inspector on 18.05.1992, he was promoted as Assistant Commandant on 17.03.2017 and finally superannuated on 28.02.2021. The other petitioners have also furnished their service details and the fact remains that all of them are retired Government servants.

The submission of the petitioners is that the Ruling Telangana Rashtra Samithi (TRS) Party in the year 2018 has given an assurance at the time of elections for enhancing the age of superannuation of Telangana Government employees to 61 years and the matter was pending for consideration. The petitioners further stated

that His Excellency the Governor of Telangana in a Republic Day Speech given on 26.01.2021 has also made a promise in respect of enhancement of retirement age. The petitioners further stated that the First Pay Revision Commission of Telangana State submitted its Report on 31.12.2020 giving its findings on various aspects including enhancement of pay and retirement age of the employees and one of its recommendation was to enhance the age of retirement from 58 years to 60 years. The petitioners further stated that the Report was submitted on 31.12.2020 and therefore, the age of superannuation should have been enhanced from the date of the Report to the State Government. The petitioners further stated that the State Legislature has passed the Telangana Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2021. The petitioners have reproduced the Statement of Objects and Reasons for introduction of the Bill, which is reproduced as under:-

> "The issue of enhancing the superannuation age for Government employees has been under consideration of the Government for some time for reasons such as increase in the expectancy, health conditions and late entry into Government service due to increase in the qualifying age. The issue was accordingly referred to the First Telangana Pay Revision Commission for examination. The Pay Revision Commission in its Report recommended from 58 years to 60 years. Government have considered the report of the Pay

> Revision Commission and after further consultation with various Employees and Service Associations and due examination of all the relevant factors, decided that it would be appropriate to enhance the age of superannuation for all State Government employees, whose age of superannuation at present is 58 years or 60 years, to 61 years, by suitably amending the Telangana Public Employment (Regulation of Age of Superannuation) Act, 1984."

The petitioners' contention is that in the aforesaid Bill, there was no stipulation in respect of date of enforcement. However, the Telangana Government issued G.O.Ms.No.45, Finance (HRM.III) Department, dated 30.03.2021, appointing 30th day of March, 2021 as the date on which the Telangana Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2021 shall come into force. The petitioners' grievance is that the age of superannuation has been enhanced from 58 years to 61 years with effect from 30.03.2021 and the employees superannuated prior to the aforesaid date have been discriminated and therefore, the Amending Act of 2021 and Government Order, i.e., G.O.Ms.No.45, dated 30.03.2021 are violative of Articles 14, 16 and 20 of the Constitution of India. The petitioners have raised various grounds in challenging the cut-off date fixed under the Government Order and the Amending Act of 2021. The contention of the petitioners is that the Amending Act,

keeping in view the Pay Revision Commission's Report, should have been made applicable with retrospective effect i.e., from 31.12.2020 and the cut-off date as fixed by the State Government, keeping in view the law laid in the case of **D.S.Nakara v. Union of India**[1], is violative of Articles 14, 16 and 20 of the Constitution of India.

It is also argued by the petitioners that once a promise has been made by the State Government for enhancing the age of superannuation from 58 years to 61 years in the year 2018 at the time of Assembly Elections, the State Government cannot deny the benefit of enhancement in retirement age in the light of the promise and the Governor has also made a promise to the employees in respect of enhancement of retirement age, hence, the fixation of cut-off date as 31.03.2021 is bad, illegal and opposed to law in the light of the doctrine of promissory estoppel, the petitioners are also entitled for the benefit of Amending Act and G.O.Ms.No.45, dated 30.03.2021. It has also been argued before this Court that once the Pay Revision Commission has submitted a Report on 31.12.2020 for enhancement of age of superannuation from 58 years to 60 years and as in respect of granting higher pay scale, the Report has been

[1] AIR 1983 SC 130

accepted with retrospective effect, the enhancement in age of superannuation should also have been accepted with retrospective effect, and therefore, the Amending Act and G.O.Ms.No.45, dated 30.03.2021 to the extent the cut-off date has been fixed as 30.03.2021 deserves to be quashed by this Court.

It has also been argued that in respect of grant of higher pay scale, City Compensatory Allowance, Consolidated Pay and Family Pension, in the matter of enhancement of gratuity, in the matter of additional quantum of pension, in the matter of contributory pension scheme and in the matter of enhancement of medical facilities etc., various Government Orders have been issued granting the benefit with effect from 01.07.2018 and the contention of the petitioners is that once the Pay Revision Commission recommendations for other benefits are granted with effect from 01.07.2018, the enhancement in the age of superannuation should also be granted from 01.07.2018 and therefore, to that extent the fixation of cut-off date as 30.03.2021 vide G.O.Ms.No.45, dated 30.03.2021 is bad in law and also *ultra vires*.

Learned counsel for the petitioners has placed reliance upon the Judgment delivered in the case of

Purshottam Lal v. Union of India[2]. This Court has carefully gone through the aforesaid Judgment and in the aforesaid Judgment, there were two classes of employees and on August 21, 1957, the Government of India set up a Commission of Enquiry (Second Pay Commission) for Revision of Pay and the Second Pay Commission submitted its Report on August, 24, 1959. Upgradation was granted to a class of employees with effect from July, 1959 and the other class was not granted upgradation from the same date. The Hon'ble Supreme Court has held that once the Government has made reference in respect of all Government employees and if it accepts the recommendations, it is bound to implement the recommendations in respect of all Government employees. It has been further held that if it does not implement the Report regarding some employees only, it commits breach of Articles 14 and 16 of the Constitution of India. In those circumstances in the aforesaid case, it was held that the other employees shall also be entitled for revision of pay from the same date from which the other employees have been granted the benefit of revision. In the present case, no such contingency is involved as the enhanced date of superannuation has been done in respect of all categories of employees and one single cut-off date has been fixed

[2] AIR 1973 SC 1088

again in respect of all categories of employees, i.e., 30.03.2021 and therefore, it does not help the petitioners at all.

The learned counsel for the petitioners also placed reliance on **D.S.Nakara** (supra), but in the aforesaid case also, in respect of pensioners on account of cut-off date fixed by the Government, two classes of pensioners were created and in that case also, the apex Court has held that there cannot be two classes of pensioners and in the present case, there is no such contingency involved. There is only one class of employees and in respect of all employees of the State of Telangana, the date of superannuation has been enhanced. The Government has fixed the same date as the cut-off date for all the categories of employees. Hence, the question of interference by this Court in the peculiar facts does not arise.

The learned counsel for the petitioner also placed reliance upon the Judgment delivered in the case of **B.Prabhakara Rao v. State of Andhra Pradesh**[3]. In the aforesaid case, the Government of Andhra Pradesh decided to reduce the age of superannuation of its employees from 58 years to 55 years in February, 1983

[3] AIR 1986 SC 210

and it was the case of curtailing the age of superannuation. The facts of the present case are distinguishable on facts. In the present case, we are dealing with the enhancement in the age of superannuation and the issue of fixation of cut-off date in the matter of implementation of the Government Order by which the age of superannuation has been enhanced from 58 years to 61 years and therefore, the aforesaid Judgment does not help the petitioners in any manner.

Reliance is also placed by the learned counsel for the petitioners upon the Judgment in the case of **All Manipur Pensioners Association v. State of Manipur**[4]. In the aforesaid case, there was a dispute in the matter of grant of revised pension differently to those who retired after 01.01.1996 and those who retired before 01.01.1996. The present case relates to enhancement in the age of superannuation as already stated earlier. The aforesaid judgment does not help the petitioners.

Reliance is also placed by the learned counsel for the petitioners upon the Judgment in the case of **Savitribai Narsayya Guddapa v. State of Maharashtra**[5]. In the aforesaid case, the revised pay scales of Sixth Pay Commission were made applicable to all the employees from 01.01.2006 but

[4] 2019 (4) ALT 259
[5] 2014 ILJ (Bombay) (5) 76

the revised provisions of pension modified were made applicable to the employees those who stood retired from 27.02.2009 and the benefit was denied to the employees retired between 01.01.2006 to 26.02.2009. The Bombay High Court keeping in view the Judgment delivered in the case of **D.S.Nakara** (supra) has held that the Government Resolution, to the extent of cut-off date, is discriminative and unconstitutional. In the present case, there are no two classes of pensioners and there are no two different dates of retirement for retired employees. The only issue involved is whether the petitioners, who are retired Government servants, are entitled for enhancement in the age of retirement that too after the retirement by making the Government Order and the Amending Act applicable with retrospective affect. Hence, the aforesaid Judgment does not help the petitioners.

Reliance is also placed by the learned counsel for the petitioners upon the Judgment delivered in the case of **Central Board of Dawoodi Bohra Community v. State of Maharashtra**[6] and it has been argued before this Court that keeping in view the doctrine of legitimate expectation as a promise was made for enhancement in the age of superannuation and also as the recommendation was

[6] (2005) 2 SCC 673

made by the Pay Revision Commission in its Report, the enhancement in the age of superannuation should have been amended and enforced with retrospective effect.

This Court has carefully gone through all the judgments relied upon by the learned counsel for the petitioners and also taken into account all the grounds raised. It is true that the First Pay Revision Commission, Telangana submitted its report on 31.12.2020 and the recommendations were made in respect of enhancement of pay scales, enhancement of House Rent Allowance, enhancement of City Compensatory Allowance, Advance Increments, Loans and Advances, Leave Benefits as well as in respect of various other benefits including the enhancement of age of superannuation from 58 years to 60 years. The Report submitted by the First Pay Revision Commission, Telangana was not accepted in toto by the State Government even in respect of granting pay scales and other benefits. It is true that higher pay scales were granted based upon the recommendations of the First Pay Revision Commission. However, the benefit of enhancement of age of superannuation was not considered at the relevant point of time by the State Government. The State Legislature has finally amended the Telangana Public Employment (Regulation of Age of

Superannuation) Act, 1984 by enhancing the age of superannuation from 58 years to 61 years and by the Government Order vide G.O.Ms.No.45, dated 30.03.2021, the appointed day has been Notified as 30.03.2021.

In the considered opinion of this Court, the fixation of cut-off date does not warrant any interference as fixation of cut-off date always leave a large number of employees unsatisfied. The petitioners have not been able to establish before this Court as to how it is discriminatory, arbitrary or violative of Articles 14, 16 and 21 of the Constitution of India.

The assurance given by some Ruling Party or by the Chief Minister or even by His Excellency the Governor does not become the law of the land. It is the domain of the Legislature to enact an Act or to amend an Act and the same has rightly been done by the State Legislature by amending the Telangana Public Employment (Regulation of Age of Superannuation) Act, 1984 with the Telangana Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2021 (Act No.3 of 2021).

The issue of promissory estoppel and the issue relating to the policy decision and public function has been considered by the Hon'ble Supreme Court in its

landmark Judgment in the case of **New Okhla Industrial Development Authority v. B.D.Singhal**[7].

In the aforesaid case, the Hon'ble Supreme Court in paragraphs 27 to 34 held as under:-

> "27. The argument of the respondents that the appellant-authority is estopped from claiming that the government order issued on 30 September 2012 cannot be given retrospective effect from 9 July 2012 since the Board resolution proposed an increase in the retirement age of its employees with 'immediate effect' is unsustainable. For the principle of promissory estoppel to apply, one party must have made an unequivocal promise, intending to create or affect a legal relationship between the parties (*Monnet Ispat and Energy Ltd., v. Union of India [(2012) 11 SCC 1]*. The recommendation of NOIDA cannot create or alter the legal relationship since it is subject to the approval of the government. Justice H.L. Gokhale in a concurring opinion in *Monnet Ispat and Energy Ltd.* v. *Union of India* clarified that the principle of promissory estoppel will not apply if the communication issued was either a proposal or a recommendation. The learned judge observed:
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> > *"289. As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification."*
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> (emphasis supplied)
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> 28. In *State of Jharkhand* v. *Brahmputra Metallics Ltd., Ranchi (Civil Appeal Nos.3860-62 of 2020)*, this court

[7] 2021 SCC OnLine SC 466

speaking through of one us (D.Y. Chandrachud J) elaborated on the doctrine of legitimate expectation, which is grounded in fairness and reasonableness. Explaining that there is a legitimate expectation that the actions of the State are fair and reasonable, it was observed:

> *"45. …The state must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public realm. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary state action which Article 14 of the Constitution adopts."*
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> (emphasis supplied)

29. Since the enhancement of the age of superannuation is a 'public function' channelised by the provisions of the statute and the service regulations, the doctrine of promissory estoppel cannot be used to challenge the action of NOIDA. Though NOIDA sought the approval of the State government for the enhancement with 'immediate effect', it never intended or portrayed to have intended to give retrospective effect to the prospectively applicable Government order. The representation of NOIDA could not have given rise to a legitimate expectation since it was a mere recommendation which was subject to the approval of the State Government. Hence, the doctrine of legitimate expectation also finds no application to the facts of the present case.

30. The reliance placed by the respondents on *Dayanand Chakrawarthy* (supra) to argue that they were willing to work till they attained the age of sixty years but were not permitted to, and thus the principle of 'no work no pay' would not be applicable is misplaced. In *Dayanand Chakrawarthy*, the issue before the two judge Bench of this court was whether prescription of different ages of retirement based on the mode of recruitment under the UP

Jal Nigam (Retirement on attaining Age of Superannuation) Regulations, 2005 was unconstitutional for violating Article 14 of the Constitution. This court held that the differential superannuating age was discriminatory. However, by virtue of Regulation 31 of the UP Jal Nigam Services of Engineers (Public Health Branch) Regulations, 1978 the service conditions of State government employees is applicable to the UP Jal Nigam employees. Therefore when the Jal Nigam through an Office memorandum had resolved that the age of retirement for its employees shall be fifty eight years, though it was sixty years for State government employees, it was set aside by this court in *Harwinder Kumar* v. *Chief Engineer, Karmik [(2005) 13 SCC 300]*. In *Harwinder Kumar* and the subsequent cases (*U.P Jal Nigam* v. *Jaswant Singh (2006) 11 SCC 464*; *U.P Jal Nigam* v. *Radhey Shyam Gautam [(2007) 11 SCC 507*)] involving the age of retirement of the UP Jal Nigam employees, this court had held that employees who had approached the courts shall be entitled to full salary until the age of sixty years. It was in this context that a two judge bench of this court speaking through Mukhopadhaya J made the following observation in *Dayanand Chakrawarthy*:

> *"48. …We observe that the principle of "no pay no work" is not applicable to the employees who were guided by specific rules like Leave Rules, etc. relating to absence from duty. Such principle can be applied to only those employees who were not guided by any specific rule relating to absence from duty. If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of "no pay no work" shall not be applicable to such employee."*

31. In *Dayanand Chakrawarthy,* the court directed payment of arrears deeming the employees to have worked till sixty years in spite of no interim order being issued in that regard because (i) the Office Memorandum was held *ultra vires*; (ii) *Harwinder Kumar*, *Jaswant Singh*,

and *Radhey Shyam Gautam* had already held that the age of retirement of the Jal Nigam employees shall be 60 years unless a regulation prescribing a lower retirement age is issued in terms of Regulation 31, and had extended this benefit to all the parties who had filed writ petitions. Therefore, the above observation must be read in the context of the distinct factual situation in the case.

32. The argument of the employees that since they had moved the Chief Minister with a representation in August 2012 before their date of superannuation which was to fall at the end of the month and that they should have the benefit of the enhancement in the age of superannuation has no substance. On 31 August 2012, the respondents moved the High Court but no interim relief was granted to them and they attained the age of superannuation. They have not worked in service thereafter. Since the High Court's judgment dismissing the challenge to the government order dated 30 September 2012 has attained finality, the submission cannot be accepted.

33. For the above reasons, we allow the appeals and set aside the impugned judgment and order of the Division Bench at Lucknow of the High Court of Judicature at Allahabad dated 25 January 2018 in WA No 43780 of 2012. The Writ Petition shall in consequence stand dismissed. There shall be no order as to costs.

34. Pending application(s), if any, stands disposed of."

The Hon'ble Supreme Court, while deciding the aforesaid case, has taken into account the doctrine of legitimate expectation and therefore, keeping in view the Judgment delivered by the apex Court in the aforesaid case and the law laid down by the Hon'ble Supreme Court, this Court is of the considered opinion that fixation

of cut-off date in the matter of grant of enhancement of age as 30.03.2021 does not warrant any interference.

In the case of **New Okhla Industrial Development Authority** (supra), the State of Uttar Pradesh has acceded to the proposal for enhancement of age of superannuation of its employees of New Okhla Industrial Development Authority from 58 years to 60 years prospectively and a Division of the High Court of Judicature at Allahabad set aside the decision of the State Government to give prospective effect to the enhancement of age of superannuation and in exercise of its power of judicial review under Article 226 of the Constitution of India directed that the retrospective effect be given to the Government Order from 29.09.2002. The Hon'ble Supreme Court has set aside the order passed by the Division Bench of Allahabad High Court and therefore, this Court also in the light of the aforesaid, does not find any reason to interfere with the Amending Act No.3 of 2021 and the Government Order vide G.O.Ms.No.45, dated 30.03.2021, keeping in view all the facts and grounds raised by the petitioners and to direct the State to grant the benefit of the Amending Act and the Government Order with retrospective effect.

Resultantly, the writ petitions are dismissed. Miscellaneous petitions, if any pending, shall stand dismissed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

A.RAJASHEKER REDDY, J

05.11.2021
Pln

Note: LR copy be marked.
(By Order)
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