



**HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

**W.P.Nos.2350, 1219, 1656, 21, 2277, 2450, 4204, 4629, 4735,  
5631, 994 of 2020 and W.P.No.19075, 19950 and 20277 of 2019**

**W.P.No.2350 of 2020**

Between:

K.Subbarayudu and 60 others

... Petitioners

And

The State of Andhra Pradesh,  
Represented by its Chief Secretary to Government,  
Secretariat, Velagapudi, Guntur District and 3 others

... Respondents.

JUDGMENT PRONOUNCED ON 16.04.2021

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? - No -
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to  
see the fair copy of the Judgment? - Yes -



**\* THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**+ W.P.Nos.2350, 1219, 1656, 21, 2277, 2450, 4204, 4629, 4735, 5631, 994 of 2020 and W.P.No.19075, 19950 and 20277 of 2019**

**W.P.No.2350 of 2020**

% 16.04.2021

# K.Subbarayudu and 60 others

....Petitioners

v.

\$ The State of Andhra Pradesh,  
Represented by its Chief Secretary to Government,  
Secretariat, Velagapudi, Guntur District and 3 others

.... Respondents

**! Counsel for the Petitioners :** Sri Gada Venkateswarlu

**Counsel for Respondents:** Government Pleader for General  
Administration Department

Sri P.Durga Prasad,  
Standing Counsel for APSTRC

<Gist :

>Head Note:

? Cases referred:

1. 2017(6)ALD103
2. AIR 1957 SC 751
3. AIR 1976 SC 263
4. (2004) 8 SCC 402
5. AIR 2002 SC 1248
6. AIR 1961 SC 1480
7. AIR 2000 SC 3214
8. (1847) 3 MIA 488
9. (1850) 19 LJ Ex 228
10. AIR 1985 SC 964



- 11.(2011) 1 SCC 640
- 12.(2007) 8 SCC 418
- 13.320 US 591, 602 (1944)
- 14.(1996) 5 SCC 268
- 15.(1980) 3 SCC 97
- 16.(2002) 2 SCC 333
- 17.2004 (2) ALD 599 (D.B.)
- 18.AIR 1998 SC 1703
- 19.(2000) 10 SCC 664
- 20.(1991) 3 SCC 11
- 21.(2016) 10 SCC 77
- 22.(2014) 6 SCC 415
- 23.(2019)13SCC24
- 24.AIR 2019 SC 3338
- 25.(1983) 1 SCC 305



**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**W.P.Nos.2350, 1219, 1656, 21, 2277, 2450, 4204, 4629, 4735,  
5631, 994 of 2020 and W.P.No.19075, 19950 and 20277 of 2019  
COMMON ORDER:**

The petitioners in all these petitions are employees in Andhra Pradesh Road Transport Corporation (for short "APSRTC") in different stations. They filed these petitions under Article 226 of the Constitution of India to declare the action of the respondents in issuing Notification No.PD-20/2019 dated 30.09.2019, enhancing the age of superannuation of the petitioners from 58 years to 60 years with immediate effect i.e. from the month of September, 2019 instead of retrospective effect from 02.06.2014 is illegal, arbitrary, discriminatory, contrary to G.O.Ms.No.138 dated 08.08.2017 and in violation of principles of natural justice; consequently, direct the respondents to re-induct the petitioners into service forthwith with all consequential benefits from the date of attaining 58 years and continue them in service until they attain the age of superannuation i.e. 60 years.

In all these petitions, the plea of the petitioners and the respondents is one and the same. Therefore, I find that it is expedient to decide all these petitions by common order treating the Writ Petition No.2350 of 2020 as leading case.

The petitioners have worked in APSRTC and retired from service on attaining the age of superannuation i.e. 58 years instead of 60 years as per G.O.Ms.No.138 dated 08.08.2017. The petitioners discharged their duties to the utmost satisfaction of the superior officers and retired from service on attaining the age of 58 years. The details of petitioners in W.P.No.2350 of 2020 i.e., Name, Employee ID number and designation along with date of retirement



and actual date of superannuation as per G.O.Ms.No.138 dated 08-08-2017 are given below:

S. No.	Petitioner Name& Father's Name	Staff No. (E)	Designation	Date of Retirement	Actual Date of Retirement
1.	Kalla.Subbarayudu S/o. Subbanna	250228	Personnel Officer, Kadapa	30-06-2019	30-06-2021
2.	K.Srinivasulu S/o. Venkataramudu	575350	Conductor, Dharmavaram	31-07-2019	31-07-2021
3.	K.M.B S Khan	400947	ADC Kadiri	31-08-2019	31-08-2021
4.	S.S.R.Prasad, S/o. Ramalingaiah	402527	Conductor, Kadiri	30-06-2019	30-06-2021
5.	C.C.Reddanna S/o.Chandriaiah	575290	Driver, Guntakal	31-07-2019	31-07-2021
6.	C.Adi Reddy S/o.C.Chenna Reddy	400662	S.A(F) Ananthapur	30-06-2019	30-06-2021
7.	N.Jayaramudu S/o.Balakondappa Yadav	401610	D.C. Tadipatri	30-06-2019	30-06-2021
8.	S.Srinivasulu, S/o. S.Puttanna	401603	A.D.C. Tadipatri	31-07-2019	31-07-2021
9.	S.Rajarithnam S/o. Danam	409545	Driver, Tadipatri	30-06-2019	30-06-2021
10.	B.Kullayappa S/o. B.Munaiah	405947	Helper, Dharmavaram	31-08-2019	31-08-2021
11	K.K Murthy	402128	D.C Kalyandurg	30-06-2019	30-06-2021
12.	S.Rahiman, S/o. S.Salar Saheb	402607	Driver, Ananthapur	30-06-2019	30-06-2021
13.	D.V.R. Reddy S/o. D.Narayana Reddy	402592	Conductor, Kadiri	30-06-2019	30-06-2021
14.	M.V.Sekhar S/o. Lakshminarayana	401228	A.D.C. Kadiri	30-06-2019	30-06-2021
15.	T.S.Sai Siva Ram, S/o.T.S.Rao	575167	Conductor, Uravakonda	30-06-2019	30-06-2021
16.	M.S.C. Reddy S/o. M.Narappa Reddy	406083	Driver, Ananthapur	30-06-2019	30-06-2021
17	C.N.Murthy S/o. C.Anjaneyulu	576326	Driver, Hindupur	30-06-2019	30-06-2021
18.	K.L.Murthy, S/o. K.Subbanna	400190	D.C. Penukonda	31-08-2019	31-08-2021
19.	K.Anandappa S/o. K.Ramaiah	575327	Conductor Hindupur	30-06-2019	30-06-2021
20.	B.Balachandrappa S/o. B.Nagappa	110217	D.M. Ananthapur	30-06-2019	30-06-2021
21	K.L.N Prasad	575121	Conductor. Ananthapur	31-08-2019	31-08-2021
22.	P.Amanullah	402590	TI-3. Ananthapur	30-06-2019	30-06-2021
23.	P.H Vali	354200	Conductor,Chilaka luripet	31-07-2019	31-07-2021
24.	P.V.P Reddy	111775	SA (P) RMs. Off., Ananthapur	30-06-2019	30-06-2021
25	B.Radha Krishnaiah S/o.Naranaiah	502425	Conductor Thirupathi	30-06-2019	30-06-2021
26.	V.Srinivasulu S/o.Gurappa	400009	ADC Ananathpur	30-06-2019	30-06-2021
27.	B.V Ramana S/o.Ramanna	405059	Driver Dharmavaram	30-06-2019	30-06-2021
28.	D.Veera Narayana S/o.Veeraiah	114577	S.O.C HO/VJA	30-06-2019	30-06-2021
29	A. Bhupathamma W/o. Kantaiah	550641	Sup., Thirupathi	30-06-2019	30-06-2021
30	C.C Sekhar	112330	T.I -3 Alipiri	30-06-2019	30-06-2021
31.	K.Srinivasulu	550789	Conductor	31-07-2019	31-07-



	S/o Krishnaiah		Thirupathi		2021
32.	K.V. Rathnam S/o. Venkataiah	505148	Conductor Thirupathi	30-06-2019	30-06-2021
33	T.R Parthasarathi S/o. Munuswamy Chetty	550629	Conductor Thirupathi	31-07-2019	31-07-2021
34	C.Rajagopala S/o.Paradasappa	404403	Mechanic Dharmavaram	30-06-2019	30-06-2021
35	M.V Swamy S/o.Penchalaiah	500188	ADC, Nellore -II	30-06-2019	30-06-2021
36	V.Ganganna S/oHanumanthappa	403341	Conductor Kalyandurg	30-06-2019	30-06-2021
37	J. Simhachalam	104603	Asst. (S) H/O.VJA	30-06-2019	30-06-2021
38	S.V Venkatanarayana S/o. Ramaswamy	405565	Driver Kadiri	30-06-2019	30-06-2021
39	A. Trinadha	107518	DM Atmakur	30-06-2019	30-06-2021
40	S. Sarveswaraiah S/o. Adeppa	425769	Conductor Kurnool-I	30-06-2019	30-06-2021
41	Ch. Venkateswara Rao	101498	ATM-II (IT) HO	31-07-2019	31-07-2021
42.	G.Krishna Murthy	111751	Sup., Penukonda	31-08-2019	31-08-2021
43.	G.L Narayana S/o. Pullaiah	402192	AE (Civil) RMs Off., Kadapha	31-07-2019	31-07-2021
44.	D.Naresh Babu S/o. Govindaiah	500176	AM Puttur	31-08-2019	31-08-2021
45.	B.Balagopal S/o. Jagannadharao	113874	Sec.Officer Thirupathi	31-08-2019	31-08-2021
.46	B.Devasena W/o. Chennaiah	514885	Dy.Sup., Kavali	31-07-2019	31-07-2021
47	Sri Adinarayana	404467	Mechanic Tadipatri	30-06-2019	30-06-2021
48.	Ch. Gopal Krishna Reddy	514449	Driver Atmakur-N	31-07-2019	31-07-2021
49	T.Chandra Sekhar	510747	Conductor Atmakur-N	30-06-2019	30-06-2021
50	K.Sanjevaraidu	401659	Shramic Tadipatri	31-08-2019	31-08-2021
51.	P.Yatheeswar	503134	TTI RMs office Chittore	31-05-2019	31-05-2021
52	S. Meenakshamma D/o. venkataswamy	575884	Conductor ATP	31-05-2019	31-05-2021
53	O.Mohanbabu	404535	Electrician Dharmavaram	31-08-2019	31-08-2021
54	K.V Buchi Babu	775253	Conductor Srikakulam-I	30-06-2019	30-06-2021
55	N. Manmadha Rao	775353	Conductor Srikakulam-I	31-08-2019	31-08-2021
56	Samineni Lakshmi Narasaiah	410279	Conductor Rajampet	31-05-2019	31-05-2021
57	B.Sai Prasad	405587	LH Dharmavaram	31-05-2019	31-05-2021



58	C.Varadaiah	405844	ELECDC Dharmavaram	31-05-2019	31-05-2021
59	VoletiVenkataramana	106260	Dy.Sup. (F) R.M.S Office Cuddapah	31-05-2019	31-05-2021
60	VommiMuninadhudu	405153	Conductor Rajampet	31-07-2019	31-07-2021
61	Ketha Narayana	410747	Conductor Rajampet	31-8-2019	31-08-2021

After bifurcation of Andhra Pradesh State into two states, the Government has issued Orders in G.O.Ms.No.147 Finance (HRM.IV) Department, dated 30.06.2014 enhancing the Age of Superannuation of Government Employees from 58 to 60 years in A.P. Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014 (Act 4 of 2014) as per Sub-Section (2) of the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984, the provisions of the said Act shall apply to the following categories of employees:

- (i) Persons appointed to public services and posts in connection with the affairs of the State;
- (ii) Officers and other employees working in any local authority, whose salaries and allowances are paid out of the consolidated fund of the State;
- (iii) Persons appointed to the Secretariat Staff of the Houses of the State Legislature and
- (iv) Every other officer or employee whose conditions of service are regulated by the rules framed under the proviso to Article 309 of the Constitution of India before the commencement of this Act, other than the Village Officers and Law Officers; whether appointed before or after the commencement of this Act.

After amendment to A.P.Act 4 of 2014, the Finance



Department of State of Andhra Pradesh has issued another G.O.Ms.No.112 Finance (HR.IV-FR) Department dated 18.06.2016 in accordance with IX and X Schedule of A.P. Re-Organisation Act, 2014 amending the Section 3(1) of A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 issued Act 4 of 2014, holding that the every employee of Andhra Pradesh Government shall retire from service on the afternoon of the last day of the month in which he/she attains the age of sixty years i.e. enhancing the age of superannuation from 58 to 60 years of the employees of Public Sector Undertakings. Thereafter, the Government has issued orders vide G.O.Ms.No.102 Finance (HR.IV-FR) Department, dated 27.06.2017 clarifying the issue of age of superannuation of an employee in Clause No.4 and 5 is as follows:

“4. Government after careful examination of the matter hereby accord to give in principle approval to enhance the age of superannuation of employees working in the institutions listed in IX and X Schedule of the Andhra Pradesh Reorganisation Act, 2014 subject to the following conditions;

1. The specific decision to enhance the superannuation age from 58 to 60 years to their employees shall be taken by the Board of Directors / Managing Committee of these legal entities.
2. While doing so, these institutions shall take into consideration their financial position and genuineness of their need to enhance the age of superannuation.
3. In case of Residential Education Societies, the decision should be based on the genuineness of their need and assessment of performance of these societies.
5. These orders shall come into force prospectively from the date of issue of the Orders by competent authorities after amending the relevant regulations / by-laws.”

Aggrieved by the same, different persons approached the Supreme Court on the issue. Thereafter, the Government has issued another G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017, by which, the following amendment is carried;





For	Read
These orders shall come into force prospectively from the date of issue of the orders by competent authorities after amending the relevant regulations / bye-laws.	These orders shall come into force with effect from 02-06-2014. The companies / corporations / societies shall amend their relevant regulations / bye-laws accordingly.

Para-5 of G.O.Ms.No.138 dated 08.08.2017 is as follows:

“5. In furtherance of this amended clause Government hereby order that the employees working in Companies / Corporations / Societies included in the Schedule IX and X of the Andhra Pradesh State Reorganization Act, 2014, shall not be superannuated only on the ground of attainment of 58 years of age. In case such an employee is superannuated on that ground he / she shall be reinstated and continued upto 60 years”.

The Government has decided to merge the APSRTC into A.P. State Government. Accordingly, respondent No.1 has issued Orders in G.O.Ms.No.29 Transport, Roads & Buildings (TR-II) Department dated 14.06.2019 constituted a Committee to study in detail various aspects regarding merger of APSRTC with the Government.

Thereafter, respondent No.1 has issued Order in G.O.Ms.No.39, Transport, Road & Buildings (TR-II) Department dated 30-09-2019 after careful examination of the subject matter i.e. enhancement of age of superannuation of APSRTC employees from 58 to 60 years and agreed to the recommendations of the Expert Committee in option 1 at Para 8.5 i.e. “to enhance the retirement age of APSRTC employees from 58 to 60 years pending formal merger of the Establishment of employees with the Statement Government, directing the 4<sup>th</sup> respondent to take further necessary action in the matter with immediate effect.”

Subsequently, respondent No.4 issued notification No.PD-20/2019, dated 30.09.2019 enhancing the age of superannuation from the existing 58 years to 60 years with immediate effect i.e. from



the month of September, 2019 instead of 02.06.2014 and the very action of the respondent is highly illegal, improper, unjust, arbitrary, discriminatory, contrary to the Orders of the Supreme Court and to the G.O.Ms.No.138 dated 08-08-2017 issued by respondent No.2 and also in violation of Article 14, 16 and 300-A of the Constitution of India.

Later, G.O.Ms.No.112 dated 18.06.2016 was challenged by the employees of various institutions mentioned in Schedule IX and X of 2014 Act by filing Writ Petitions in the High Court of Judicature at Hyderabad for States of Telangana and Andhra Pradesh. The High Court of Judicature at Hyderabad for States of Telangana and Andhra Pradesh by its Judgement and Order dated 07.03.2017 passed in “**G.Rama Mohan Rao v. Government of Andhra Pradesh**”<sup>1</sup> and all connected matters disposed of the matters and concluded as under:

“The earlier G.O.s were issued by the Government of A.P. without these legal entities amending its rules regulations / bye-laws, governing the age of superannuation and without the prior approval of the sole / majority shareholder i.e., the State Government as required under the Articles of Association / byelaws of these legal entities. As the Rules and Regulations, by which the petitioners are governed, stipulate 58 years as the age of retirement, these employees cannot claim any right to continue in service till they attain age of 60 years. It is only if the request of these companies / Corporations / Societies, for amendment of its byelaws / rules and regulations, are approved by the State Government, and the rules / byelaws / regulations are amended thereafter in accordance with laws would their employees then be governed by the enhanced age of superannuation prescribed under the Rules/bye-laws.

Since the Board of Directors / Managing Committees of these wholly or substantially government owned companies / corporations / societies have submitted proposals, the State Government is obligated to consider the request of each of these corporations / companies / societies separately, based on their financial position, superannuation

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<sup>1</sup> 2017(6) ALD 103



etc., and then taken a decision whether or not their request, to enhance the age of superannuation of their employees from 58 to 60 years, should be approved. Suffice, it the Government of A.P. is directed to consider the proposals submitted by each of these corporation / societies / companies, for enhancement of the age of superannuation from 58 to 60 years in accordance with law, and take a decision thereupon at the earliest in any event not later than four months from the date of receipt of a copy of this order.

All the Writ Petitions are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs”.

Aggrieved by the said Judgment, some of the employees of the society challenged said decision dated 07.03.2017 passed in Writ Petitions filed SLP (C) No.13623 of 2017.

The petitioners also referred positive orders passed by the Apex Court in various Special Leave Petitions and Contempt Cases with regard to enhancement of superannuation age for the employees working in the institutions included in IX and X schedules of A.P. Re-Organisation Act, 2014. They will be referred at appropriate stage.

It is further contended that rising of age of superannuation by amending Section 3 of 1984 Act was soon after the bifurcation of the erstwhile State of Andhra Pradesh. The concern as to what would be the situation if the employees were finally allocated to the newly carved State of Andhra Pradesh and the employees by that time had attained the age of 58 years, was dealt with in newly inserted Section 3A in 2014 Act. The principle was to re-induct them in the services under the State of Andhra Pradesh without any break in service. Further, if the employee had not attained the age of 60 years, what would be re-inducted; and in case he has attained the age of 60 years, what would in such cases be conferred upon the employees was notional advantage for the purpose of calculation of



his pensionary benefits as if he had rendered service in the State of Andhra Pradesh.

It is further asserted that the APSRTC is a public sector undertaking, but the respondents clingingly passed the impugned order vide Notification No.PD-20/2019, dated 30.09.2019, enhancing the age of superannuation from 58 to 60 years with immediate effect i.e., from the month of September, 2019 as if the APSRTC will not come under the Public Sector and also contrary to the G.O.Ms.No.138 dated 08.08.2017.

It is further contended that the Committee was formulated for taking over the APSRTC by the Government and treat the employees of APSRTC as State Government employees. The Committee, after detailed study, made the following recommendations.

- (i) To work out the modalities for the merger, the implications relating to this decision and ways to address the arising issues.
- (ii) Feasibility of substituting the present diesel buses with electric buses and the way forward.
- (iii) Addressing the issues of clearance of outstanding dues to employees, accumulated bank and current liabilities.
- (iv) to examine the current cost of operation with break up on all the expenditure items, suggest measures to reduce the expenditure and improve the efficiency parameters.

On 03.09.2019 the expert Committee Members has submitted their report. One of the recommendations of Expert Committee in Option 1 – Merger of APSRTC Establishment with Government of Andhra Pradesh is that the age of superannuation of all employees may be raised to sixty (60) years, on par with the employees of Government of Andhra Pradesh keeping in view of A.P. Public



Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014 (Act 4 of 2014) in which Section 3 of A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 has been amended. The Government after careful examination of the matter agreed to the said recommendation of the Expert Committee in Option 1 at Para (8.5) i.e., “to enhance retirement age of APSRTC employees from 58 to 60 years pending formal merger of the Establishment of Employees with the State Government.” Subsequently, the respondents passed the impugned Order dated 30.09.2019, which is contrary to the G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017, Article 14, 16 and 300-A of the Constitution of India. Therefore, the petitioners approached this Court claiming the relief as stated above.

Respondent No.4 filed counter admitting issue of Government Orders by the State as referred in the affidavit and also notification No.PD-20/2019 dated 30.09.2019 while contending that as per Regulation No.6 (l) (a) of APSRTC Employees (Service) Regulations, 1964 an employee shall retire from service with effect from the afternoon of the last day of the month in which he attains the age of 58 years. All the petitioners are retired employees of the APSRTC which is a statutory Public Sector Undertaking under the Road Transport Corporations Act, 1950. The services of the employees of APSRTC are governed by statutory Rules and Regulations made by the Board of Directors of the APSRTC in exercise of the powers conferred on them under the said Act. The subject matter of the present litigation in W.P.No.4735 of 2020, is squarely covered by the orders of this Court in W.P. No.21468 of 2017 and batch dated 22.08.2017. In compliance with the said orders, the Corporation Board vide their resolution No.64/2018 resolved not to enhance



the age of superannuation of its employees from 58 to 60. When the aggrieved petitioners in W.P.No.21468 of 2017 and batch carried the cases in appeal to the Supreme Court vide SLP(C) No.28036 of 2017 and batch, citing G.O.Ms.No.102 dated 27.06.2017 and G.O.Ms.No.138 dated 08.08.2017, the Apex Court dismissed those SLPs duly upholding the decision of the High Court and the consequential Board Resolution passed by APSRTC in compliance with the orders of this Court. Hence, the present writ petition is liable to be dismissed in limine as the issue has already attained finality.

It is further contended that the G.O.Ms.No.147 dated 30.06.2014, enhancement of retirement age from 58 to 60 years was not applicable to APSRTC Employees. Through the G.O.Ms.No.112 dated 18.06.2016, orders were issued that enhanced age of superannuation cannot be made universally applicable to the employees of Public Sector Undertakings and Institutions listed in IX and X Schedule of AP Re-organisation Act, 2014 until the matter of division of assets and liabilities of the institutions between Andhra Pradesh and Telangana is settled and the allotment of the employees between the two states is finalized. Only on completion of the above issues of bifurcation, the Government of Andhra Pradesh would be in a position to take any policy decision. APSRTC is also placed in the IX schedule of the AP Reorganisation Act and while the conditions of bifurcation issues mentioned as above were still pending, the employees of APSRTC cannot claim enhancement of retirement age to 60 years.

It is further contended that the G.O.Ms.No.138 dated 08.08.2018 is not applicable to APSRTC as it does not permit



application of enhancement of age of superannuation to all the employees of the Corporations, Societies etc and it is only a continuation of earlier G.O.Ms.No.102 dated 27.06.2017 in which certain conditions while processing cases stipulated to government on this subject that (i) the decision regarding the enhancement of age of superannuation shall be taken by the Board of Directors/Managing Committees and (ii) while taking such decision, the financial position and genuineness of the need, shall be taken into consideration. In view of the critical financial situation of the Respondent Corporation, the Vice Chairman and Managing Director of APSRTC vide Letter No.IR3/471(10)/2018-PO.III, dated 07.06.2019 represented to the Government of Andhra Pradesh for a solution to the Corporation's financial difficulties viz. clearance of outstanding dues to employees, accumulated bank loans and current liabilities etc. Respondent No.4 admitted about the constitution of committee and recommendations of the committee referred in the affidavit filed by the writ petitioners and also admitted the decision taken by the Government to merge the Corporation into the Andhra Pradesh State Government.

It is further contended that the Government after careful examination of the matter, agreed to the said recommendation of the Expert Committee in Option - 1 at para (8.5) i.e., "to enhance retirement age of APSRTC employees from 58 to 60 years pending formal merger of the Establishment of employees of APSRTC with the State Government, and directed the Vice Chairman and Managing Director of APSRTC to take further action in the matter with immediate effect vide G.O.Ms.No.39 dated 30.09.2019." Accordingly, the Vice Chairman and Managing Director of APSRTC issued Notification. No. PD-20/2019, Dated 30.09.2019 enhancing the age



of superannuation of all employees of APSRTC from the existing 58 years to 60 years with immediate effect from the month of September, 2019. Thus, it is clear that the decision for enhancement of age of superannuation of employees in APSRTC from 58 to 60 is applicable to the employees who are on rolls of the Corporation as on 30.09.2019 with immediate prospective effect. All the employees of APSRTC who retired from the services of the Corporation prior to September 2019 are governed by the Board Resolution No.64/2018 dated 19.06.2018 in view of the aforementioned Apex Court order dated 24.07.2018 in SLP(C) No.26853-26854/2017 and batch. Since all the petitioners in the present batch retired from the service of the Corporation prior to September 2019, they are not eligible for continuation in service beyond the age of 58 years, requested to dismiss the petition.

Petitioners filed rejoinder to the petition reiterating the contentions urged in the petition while refuting the contentions urged in the counter annexing the copies of the Government Orders and orders passed by this Court.

Learned counsel for the petitioners mainly contended that in view of the judgments of Apex Court in SLP (C) No.13623 of 2017, Special Leave Petition (Civil) No.13623 of 2017, SLP(C) No.28036 of 2017 and G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017, the amendment was given retrospective effect and the same is applicable to the Corporations also. Thus, in view of giving retrospective effect i.e. from 02.06.2014, employees of the Companies/Corporations/Societies shall retire only on attaining 60 years age. As such, the age of superannuation is increased from 58 to 60 and the same is accepted by the Supreme Court in the judgments referred above. Consequently, the petitioners are entitled





to claim benefits of service more particularly in terms of G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017 (referred above), but the respondents issued impugned notification No.PD-20/2019 dated 30.09.2019 giving prospective effect to G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017. Therefore, the act of the respondents in issuing impugned notification is illegal and requested to set aside the same and extend all service benefits of enhanced age of superannuation.

Sri P.Durga Prasad, learned Standing Counsel for APSRTC, would contend that in view of the judgment of the Division Bench of this Court in W.P.No.19707 of 2017 and batch and its affirmation by the Apex Court in SLP(C) No.26853-26854/2017, the petitioners are not entitled to claim benefits of enhanced age of superannuation, thereby giving prospective effect to the amendment is not illegal and it is for the Corporation to give effect either prospective or retrospective. Consequently, the petitioners are not entitled to claim any benefits, requested to dismiss the writ petitions.

Considering rival contentions, perusing the material available on record, the point that arose for consideration is:

***Whether the petitioners, who retired from service on attaining age of 58 years of age without giving benefit to the petitioners in terms of G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017 and the earlier orders passed by the Apex Court in judgments (referred supra), are entitled to claim benefit of enhancement superannuation age of 60years? If so, whether the impugned notification No.PD-20/2019 dated 30.09.2019 is liable to be set aside while declaring the same as illegal, arbitrary, holding that the petitioners are entitled to the benefits of enhanced age of superannuation from 58 years to 60 years?***



**P O I N T:**

Undisputedly, all the petitioners in writ petition No.2350 of 2020 have retired from service on attaining age of 58 years in terms of Regulation 6 (1) (a) of the Andhra Pradesh State Road Transport Corporation Employees' (Service) Regulations, 1964 (for short "Regulations, 1964). APSRTC is shown at serial No.26 of Schedule IX annexed to the Andhra Pradesh Reorganisation Act, 2014. Issue of G.O.Ms.No.147 Finance (HRM IV) Department dated 30.06.2014 enhancing age of superannuation of employees of State Government from 58 to 60 years is also not in quarrel. Admittedly, the benefits of G.O.Ms.No.147 dated 30.06.2014 were not extended to the State owned Corporations or public sector undertakings and societies. Therefore, the petitioners being employees in State Road Transport Corporation are not entitled to claim benefits under the said Government Order.

The petitioners in support of their contention that they have retired from service on different dates, they placed on record office orders issued by the officials of different depots of APSRTC. But the retirement of the petitioners is not in quarrel. The only dispute is with regard to denying the enhancement of superannuation age to 60 years as per G.O.Ms.No.102 dated 27.06.2017 as amended by G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017.

The State issued G.O.Ms.No.102 Finance (HR.IV-FR) Department dated 27.06.2017 enhancing the superannuation age from 58 to 60 years to the employees working in the institutions included in IX and X schedules of A.P. Re-Organisation Act, 2014. According to the said Government Order, the Government after careful examination of the matter hereby accord to give in principle approval to enhance the age of superannuation of employees working



in the institutions listed in IX and X Schedule Institutions subject to the following conditions:

1. The specific decision to enhance the superannuation age from 58 to 60 years to their employees shall be taken by the Board of Directors/Managing Committee of these legal entities.
2. While doing so, these institutions shall taken into consideration their financial position and genuineness of their need to enhance the age of superannuation.
3. In case of Residential Education Societies, the decision should be based on the genuineness of their need and assessment of performance of these societies.

Though the G.O.Ms.No.102 dated 27.06.2017 was issued enhancing the age of superannuation to the employees working in the institutions included in the IX and X schedules of A.P.Re-organisation Act, 2014, the APSRTC, which is shown at Serial No.26 of Schedule IX of the A.P.Re-organisation Act, 2014, did not amend its Regulations, 1964. However, Andhra Pradesh Power Generation Corporation Limited issued G.O.O.No.86/J.S.(PER)/2017 dated 29.06.2017 enhancing the age of superannuation from 58 years to 60 years in terms of judgment of the High Court of Judicature at Hyderabad in W.P.No.18205 of 2014 dated 07.03.2017, wherein the Court held as follows:

“The earlier G.Os were issued by the Government of A.P. without these legal entities amending its rules/regulations/byelaws, governing the age of superannuation and without the prior approval of the sole/majority shareholder i.e., the State Government as required under the Articles of Association/byelaws of these legal entities. As the Rules and Regulations, by which the petitioners are governed, stipulate 58 years as the age of retirement, these employees cannot claim any right to continue in service till they attain the age of 60 years. It is only if the request of these Companies/Corporations/Societies, for amendment of its byelaws/rules and regulations, are approved by the State Government, and the



rules/byelaws/regulations are amended thereafter in accordance with law, would their employees then be governed by the enhanced age of superannuation prescribed under the Rules/bye-laws.

Since the Board of Directors/Managing Committees of these wholly or substantially government owned Companies/ Corporations/Societies have submitted proposals, the State Government is obligated to consider the request of each of these corporations/companies/societies separately, based on their financial position, genuineness of their need to enhance the age of superannuation etc, and then take a decision whether or not their request, to enhance the age of superannuation of their employees from 58 to 60 years, should be approved. Suffice it, if the Government of A.P. is directed to consider the proposals submitted by each of these corporations/societies/companies, for enhancement of the age of superannuation from 58 to 60 years in accordance with law, and take a decision thereupon at the earliest, in any event not later than four months from the date of receipt of a copy of this order.”

In pursuance of the orders passed by the High Court of Judicature at Hyderabad (referred supra) and based on the representations of employees working in the Andhra Pradesh Public Sector Undertakings to extend the provisions of G.O.Ms.No.147 dated 30.06.2014 with effect from 02.06.2014, the Government of Andhra Pradesh accorded in principle approval to enhance the age of superannuation of employees working in the institutions listed in IX and X schedules of A.P.Re-organisation Act, 2014 subject to certain conditions and orders laid down in G.O.Ms.No.102 Finance (HR.IV-FR) Department dated 27.06.2017. Thus, the employees in the Andhra Pradesh Power Generation Corporation Limited are enjoying the benefits of enhanced age of superannuation, but the same is not extended to the RTC employees.

Initially, the Managing Director of APSRTC refused to enhance the age of superannuation on various grounds and passed resolution No.64/2018 dated 19.06.2018 on the following reasons.

- A. Current Financial Status:
- (i) there are outstanding loans amounting to Rs.2,918 crores
  - (ii) various current liabilities amount to Rs.964 crores



(iii) incurred a cumulative loss of about Rs.3,105 Crores from 2014-15 to 2018-19 (till May, 2018)

B. Number of employees already retired: 8336 from June, 2014 till May, 2018 of whom 4,117 have already attained even 60 years of age and hence, are unemployable while the remaining 4,219 retired employees are within 1 to 24 months from attaining 60 years.

C. The financial impact if the retirement age is enhanced to 60 years with retrospective effect from 02.06.2014 would be about Rs.878 crores if arrears are to be paid or about Rs.382 Crores if the benefit is to be extended even on notional basis.

D. If the enhancement of retirement age is with prospective effect, it is likely to provide temporary relief by the postponement of retirement benefits of about Rs.500 Crores over next two years, but increases the cost on personnel by Rs.8 Crores per annum.

E. The current cost on personnel is about 45% at about Rs.2,782 Crores in 2017-18.

F. The average annual financial impact DA revisions and increments amount to about 9% increase.

G. The Revision of Pay Scales due from 01.04.2017 will further add to the cost on personnel anywhere from about Rs.300 Crores to Rs.540 Crores per annum

H. From the date of last revision of the-bus fares on 24.10.2015, the HSD oil price increased by Rs.25.31 per litre till date resulting in the corresponding Increase in the expenditure on HSD amounting to about Rs.846 Crores whichs absorbed by the Corporation till 31.05.2018.

I. The Corporation has been paying about Rs.297 Crores towards MV Taxes per annum

J. Considering the nature of business of the Corporation, there is the requirement of maintaining high standards of health of 86% of the workforce comprising of Drivers, Conductors, Mechanics and shramiks, whose jobs are strenuous.

As the Government in G.O.Ms.No.102 dated 27.06.2017 laid down certain guidelines referred above, the APSRTC passed the above resolution (referred above) refusing to enhance the age of superannuation from 58 to 60 years assigning the above reasons.

However, the Government of Andhra Pradesh issued G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017 enhancing the age of superannuation from 58 to 60 years with effect from 02.06.2014 to the employees working in the State Public Sector



Undertakings and Institutions included in Schedule IX and X of the A.P.Re-organisation Act, 2014 while referring to G.O.Ms.No.102 Finance (HR-IV-FR) Department dated 27.06.2017. In the said G.O.Ms.No.138 dated 08.08.2017 the Government issued amendment to para 5 of the G.O.Ms.No.102 dated 27.06.2017, which is as follows:

For	Read
These orders shall come into force prospectively from the date of issue of the orders by competent authorities after amending the relevant regulations / bye-laws.	These orders shall come into force with effect from 02-06-2014. The companies / corporations / societies shall amend their relevant regulations / bye-laws accordingly.

In view of this amendment by G.O.Ms.No.138 dated 08.08.2017, the employees who are working in the public sector undertakings, Corporations etc. included in schedule IX and X of the Andhra Pradesh Reorganisation Act, 2014 are entitled to the benefit of the enhanced age of superannuation with effect from 02.06.2014.

As per unamended G.O.Ms.No.102 dated 27.06.2017 the orders of enhancement of superannuation age would come into force prospectively from the date of issue of the orders by competent authorities after amending the relevant regulations/bye-laws. Whereas, as per amended G.O.Ms.No.102 dated 27.06.2017 by G.O.Ms.No.138 dated 08.08.2017 the orders shall come into force with effect from 02.06.2014, that means amendment is given retrospective effect from the date of bifurcation of the State and directed the Companies, Corporations shall amend their relevant regulations accordingly. The language employed in the amended portion of G.O.Ms.No.102 dated 27.06.2017 indicates that the Companies/Corporations/Societies shall amend their bye-laws, it means, it is mandatory. Instead of amending regulations in terms of



G.O.Ms.No.102 dated 27.06.2017 as amended by G.O.Ms.No.138 dated 08.08.2017, the Principal Secretary to Government issued G.O.Ms.No.39 Transport, Roads, Buildings (TR.II) Department dated 30.09.2019 enhancing the age of employees of APSRTC from 58 to 60 years on par with the employees of Government of Andhra Pradesh with a direction to the Vice Chairman and Managing Director, APSRTC, to take further necessary action.

G.O.Ms.No.39 Transport, Roads, Buildings (TR.II) Department dated 30.09.2019 is not clear, whether the benefit is given prospectively or retrospectively. If G.O.Ms.No.39 dated 30.09.2019 is read with G.O.Ms.No.102 dated 27.06.2017 as amended by G.O.Ms.No.138 dated 08.08.2017, it must be given retrospective effect and the APSRTC shall amend the Regulation No.6 in terms of the Government Orders referred above giving retrospective effect from 02.06.2014, but till date, it appears that the Regulation 6 is not amended and in fact, as on date there is no need to amend the Regulation 6 since the APSRTC is merged in the State Government and the employees of APSRTC are deemed to be employees of Government of Andhra Pradesh.

The main endeavour of the petitioners is that when the Government issued G.O.Ms.No.102 dated 27.06.2017 and G.O.Ms.No.138 dated 08.08.2017 directing the respondents to amend the regulations of the concerned Corporations included in Schedule IX and X of the Andhra Pradesh Reorganisation Act, 2014, the Chairman and Managing Director ought to have amended the Regulations, 1964 immediately after issue of G.O.Ms.No.138 dated 08.08.2017 giving retrospective effect to amendment, but they did not do so. However, the excuse of the APSRTC is that the financial condition of the APSRTC is bad and not in a position to bear the



burden of enhanced age of superannuation as mentioned in Resolution No.64 of 2018.

If G.O.Ms.No.102 dated 27.06.2017 as amended by G.O.Ms.No.138 dated 08.08.2017 are read together, still, the public sector undertakings shall examine the issue taking into consideration of three conditions prescribed in paragraph No.4 of the G.O.Ms.No.102 dated 27.06.2017.

Taking advantage of the conditions contained in paragraph No.4 of the G.O.Ms.No.102 dated 27.06.2017, resolution No.64/2018 dated 19.06.2018 was passed denying the enhancement of age of superannuation by the Managing Director. But, before merger of APSRTC into State Government, G.O.Ms.No.39 dated 30.09.2019 was issued enhancing the age of superannuation from 58 to 60 years to the employees working in APSRTC.

G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017 was issued directing the concerned authorities to amend the relevant regulations/bye-laws of the institutions included in schedule IX and X of the Andhra Pradesh Reorganisation Act, 2014 amending G.O.Ms.No.102 Finance (HR.IV-FR) Department dated 27.06.2017. The language employed therein is indicative of direction to the concerned, to amend the regulations governing the services of those institutions. The use of word 'shall' raises a presumption that the particular provisions is imperative as held in "**State of U.P. v. Manbodhan Lal Srivastava**"<sup>2</sup> and "**Govindlal Chagganlal Patel v. Agriculture Produce Market Committee**"<sup>3</sup>. But this *prima facie* inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such

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<sup>2</sup> AIR 1957 SC 751

<sup>3</sup> AIR 1976 SC 263





construction. There are numerous cases where the word 'shall' has, therefore, been construed as merely directory. (Vide: **U.P.State Electricity Board v. Shiv Mohan Singh**<sup>4</sup> and "**State of Karnataka v. Sareen Kumar Shetty**<sup>5</sup>")

The word 'shall' is ordinarily mandatory, but it is sometimes not so interpreted if the context or the intention otherwise demands (See: **Sainik Motors v. State of Rajasthan**<sup>6</sup>).

When a statute employed the word 'shall', prima facie it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. (See: **Basavraj R.Patil v. State of Karnataka**<sup>7</sup>)

If different provisions are connected with the same word 'shall', and if with respect to some of them the intention of the legislature is clear that the word 'shall' in relation to them must be given an obligatory or a directory meaning, it may indicate that with respect to other provisions also, the same construction should be placed. If the word 'shall' has been substituted for the word 'may' by an amendment, it will be a very strong indication that use of 'shall' makes the provision imperative.

The words 'shall and may' are construed imperatively. **Lord Brougham** pointed as follows:

"If the words are it 'shall and may' be so and so done, by such and such officer and body then the word 'may' is held in all soundness of construction to confer, a power but the word 'shall' is held to make that power, or the exercise of that power compulsory. (Vide: **Queen v. Alloparao**<sup>8</sup>). Similarly, the words 'shall and

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<sup>4</sup> (2004) 8 SCC 402

<sup>5</sup> AIR 2002 SC 1248

<sup>6</sup> AIR 1961 SC 1480

<sup>7</sup> AIR 2000 SC 3214

<sup>8</sup> (1847) 3 MIA 488



lawfully may' are in their ordinary import obligatory. (See: **Chapman v. Milvain**<sup>9</sup>)

The use of the word 'shall' with respect to one matter and use of word 'may' with respect to another matter in the same section of a statute, will normally lead to the conclusion that the word 'shall' imposes an obligation, whereas the word 'may' confers a discretionary power. But that by itself is not decisive and the court may having regard to the context and consequences come to the conclusion that the part using 'shall' is directory. (See: **Ganesh Prasad Shah Kesari v. Lakshmi Narayan Gupta**<sup>10</sup>)

In view of the law settled by the Apex Court (referred supra), it is clear that while interpreting the word 'shall', the Court has to examine the legislative intention in employing the word 'shall' to find out whether it is mandatory or directory?

In the present case, initially, the age of superannuation of the State Government Employees was increased from 58 to 60 years. Thereafter, the employees of the institutions included in Schedule IX and X of the Andhra Pradesh Reorganisation Act demanded for extending the same benefit to them including the APSRTC. In G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017, the Government specifically stated as follows:

"The G.O.Ms.No.102 dated 27.06.2017 was issued giving State Government's approval in- principle and conditional consent for extension of superannuation of 60 years to employees of institutions listed in the IX and X schedules of AP Reorganization Act of 2014. The conditions were laid down for the detailed examination of the working of the various Companies /Corporations / Societies and their financial capabilities so as to decide whether they are financially viable or not. The orders were to come into force prospectively after such examination. Also the Andhra Pradesh Public Employment (Regulation of age of Superannuation) Act, 1984 amended by Act No.4 of 2014 of the State Government would not

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<sup>9</sup> (1850) 19 LJ Ex 228

<sup>10</sup> AIR 1985 SC 964



automatically apply to the schedule IX and schedule X institutions as they are separate legal entities with their own Acts and Rules. Any decision on enhancement of superannuation age of employees would have to be taken by the board of directors / managing committees. As the State Government is the majority stakeholder, its approval of the decision of the governing body becomes necessary. After this, the rules / bye – laws of these institutions need to be amended to give effect to the decision. Any extension of retirement age would come into effect only from the date of issue of orders by the competent authorities. It follows therefore that the orders would be prospective.

Another reason for state government taking time on the issue was the fact that the matter of division of assets and liabilities of these institutions is still pending and the employees also have not been allocated between the states of Telangana and Andhra Pradesh. At this juncture enhancing the superannuation age for the employees would have complicated matters, because of which, more employees would opt for Institutions in Andhra Pradesh which would effect their viability.”

In view of the reasons mentioned in G.O.Ms.No.138 Finance (HR.IV-FR) Department dated 08.08.2017 i.e. demand by the employees working in Schedule IX and X of the Andhra Pradesh Reorganisation Act, 2014, the State amended the G.O.Ms.No.102 dated 27.06.2017. Following the same, Andhra Pradesh Power Generation Corporation Limited issued G.O.O.No.86/J.S.(PER)/2017 dated 29.06.2017. Thus, the Government has decided to extend the benefit of enhancement of superannuation age to the employees working in the institutions included in Schedule IX and X of the Andhra Pradesh Reorganisation Act, 2014 with retrospective effect from 02.06.2014 as per G.O.Ms.No.138 dated 08.08.2017. Therefore, the intention of the Government is clear that they intend to extend the benefit irrespective of their viability and other conditions imposed in paragraph No.4 of G.O.Ms.No.102 dated 27.06.2017.

If the word ‘shall’ employed in the amendment to G.O.Ms.No.102 dated 27.06.2017 by G.O.Ms.No.138 dated 08.08.2017 is read along with the conditions specified in paragraph



No.4 of G.O.Ms.No.102, it is difficult to harmonize both the clauses i.e. paragraph No.4 and 5 of G.O.Ms.No.102 and paragraph No.5 of G.O.Ms.No.138 dated 08.08.2017. In such case, the Court has to take into consideration the legislative intention in issuing a direction to amend the regulations/bye-laws of Companies/Corporations/Societies included in IX and X schedules of the Andhra Pradesh Reorganisation Act, 2014. Applying the principles laid down in the above judgments to the present facts of the case and tracing the legislative intention from various Government Orders, the managements of those institutions have to extend the benefit of enhanced age of superannuation in view of the language employed in amendment of paragraph 5 of G.O.Ms.No.102 dated 27.06.2017 by G.O.Ms.No.138 dated 08.08.2017. In view of the constructive language used in amendment to paragraph No.5 of G.O.Ms.No.102 dated 27.06.2017, the managements of those institutions are bound to amend the regulations/bye-laws governing the service conditions of employees working in those institutions. Instead of implementing the direction, the respondents issued the impugned notification extending the benefit to the employees working in the APSRTC prospectively. Such amendment is contrary to the intention of the legislature in amending G.O.Ms.No.102 dated 27.06.2017 by G.O.Ms.No.138 dated 08.08.2017, it amounts discriminating the employees working and worked in one institution which is prohibited under Article 14 of the Constitution of India.

Enhancement of age of superannuation is a policy matter of the State, such policy matters cannot be given effect by the managements of the institutions included in schedule IX and X of the Andhra Pradesh Reorganisation Act, 2014 except to implement those directions in strict sense.



A decision whether the age of superannuation should be 58 or 60 years is a matter of policy, and such policy decisions can be changed by the Government for just and valid reasons. The power to lay policy includes the power to withdraw the earlier policy or to change it. (Vide: ***Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd.***<sup>11</sup>). The action of the Government cannot be declared illegal, arbitrary or ultra vires the provisions of the Constitution merely on the ground that the earlier policy had been given up, changed or not adhered to. It cannot also be attacked on the plea that the earlier policy was better suited to the prevailing situation. (See: ***Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal***<sup>12</sup>). Whether the policy should be altered or not is a matter for the Government to decide. (Vide: ***Federal Power Commission v. Hope Gas Co.***<sup>13</sup>). When the Government is satisfied that a change in the policy is necessary in the public interest, it would be entitled to revise the policy and lay down a new policy. It is equally entitled to issue or withdraw or modify the policy. The Court would not bind the Government to a previous policy. (Vide: ***P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India***<sup>14</sup>). The Court cannot strike down a policy merely because there is a variation. Consistency is not always a virtue. What is important is to know whether irrational and extraneous factors foul. There can be no quarrel if a policy is revised. The wisdom of yesterday may obsolesce into the folly of today, even as the science of old may sour into the superstition now, and vice versa. (Vide: ***Tamil Nadu Education Dept. Ministerial & General Subordinate Services Assn. v. State***

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<sup>11</sup> (2011) 1 SCC 640

<sup>12</sup> (2007) 8 SCC 418

<sup>13</sup> 320 US 591, 602 (1944)

<sup>14</sup> (1996) 5 SCC 268



**of T.N.**<sup>15)</sup> Unless any illegality is committed in the execution of the policy, or the same is contrary to law or malafide, a decision bringing about change cannot, per se, be interfered with by the Court. (Vide: **BALCO Employees' Union (Regd.) v. Union of India**<sup>16</sup>; **Irrigation Development Employees Association v. Govt. of A.P.**<sup>17)</sup>

The right of the State or of its instrumentality to change its policy decisions from time to time under changing circumstances cannot be disputed, and it is an integral part of democratic process. This Court in the exercise of its jurisdiction under Article 226 of the Constitution of India, while considering the validity of a Governmental policy, cannot weigh the pros and cons of the policy or scrutinize it to test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on even sound reasoning. (Vide: **Irrigation Development Employees Association v. Govt. of A.P.** (referred supra). One of the inputs in formulating and reformulating Governmental policies may be availability or lack of resources. Since the purse of the State is not under the control of the Court, it will not transgress into the field of policy decision. (Vide: **Irrigation Development Employees Association v. Govt. of A.P.** (referred supra) and “**State of Punjab v. Ram Lubhaya Bagga**<sup>18</sup>; “**Narmada Bachao Andolan v. Union of India**<sup>19</sup> and “**Union of India v. Tejram Parashramji Bombhate**<sup>20)</sup>”).

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<sup>15</sup> (1980) 3 SCC 97

<sup>16</sup> (2002) 2 SCC 333

<sup>17</sup> 2004 (2) ALD 599 (D.B.)

<sup>18</sup> AIR 1998 SC 1703

<sup>19</sup> (2000) 10 SCC 664

<sup>20</sup> (1991) 3 SCC 11



In “**State of H.P. v. Rajesh Chander Sood**<sup>21</sup>” the Supreme Court held that the State Government, which had introduced 'the 1999 Scheme', had the right to repeal the same; employees of corporate bodies, who were extended the benefits of 'the 1999 Scheme', were not employees of the State Government; the 1999 Scheme' was, therefore, just a welfare scheme introduced by the State Government with the object of ameliorating the financial condition of employees who had rendered valuable service in State owned corporations; when and how much is to be paid as wages (or allowances) to employees of an organization is also a policy decision; so also, post-retiral benefits; all these issues fell in the realm of executive determination; the Court had no role therein; the conditions of service including wages, allowances and post-retiral benefits of employees of corporate bodies, must necessarily be determined administratively, on the basis of relevant factors; and financial viability is an important factor in such consideration.

Considering those judgments, the Division Bench of the High Court of Judicature at Hyderabad in “**G.Rama Mohan Rao v. Government of Andhra Pradesh**” (referred supra) concluded that it is for the Government to take policy decision and on taking such decision, legal entities included in Schedule IX and X of the Andhra Pradesh Reorganisation Act, 2014 has to amend the regulations/bye-laws governing the service conditions of their employees.

Thus, from the above discussion, it is clear that the policy decision was taken by the State to extend the benefit to the employees of the Corporation included in Schedule IX and X of the Andhra Pradesh Reorganisation Act, 2014. In such case, the

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<sup>21</sup> (2016) 10 SCC 77



management of legal entities have no option except to amend the regulations/bye-laws as directed by the State. Taking advantage of conditions in paragraph No.4 of G.O.Ms.No.102 dated 27.06.2017, the APSRTC issued notification impugned in the writ petition giving prospective effect from the date of issue of notification, which is contrary to the intention of the legislature and the policy decision taken by the Government by amending G.O.Ms.No.102 dated 27.06.2017 by G.O.Ms.No.138 dated 08.08.2017. Thus, the notification impugned in the writ petitions is not only contrary to the legislative intention to extend the benefit of enhancement of superannuation age to the employees working in the institutions included in Schedule IX and X of the Andhra Pradesh Reorganisation Act, 2014 and also contrary to the policy decision taken by the Government for such enhancement of age of superannuation of those employees with retrospective effect. The notification impugned in the writ petitions is allowed to sustain, it would nullify the policy of the Government and the policy became otiose or rendered useless. Therefore, the notification impugned in the writ petitions giving prospective effect is invalid, arbitrary and contrary to the policy decision taken by the Government.

The Division Bench of the High Court of Judicature at Hyderabad in “**G.Rama Mohan Rao v. Government of Andhra Pradesh**” (referred supra) discussed about the applicability of the enhanced age of superannuation to the Companies/Corporations/Societies and noted the principle laid down by the Apex Court in “**State of Rajasthan v. C.P. Singh**”<sup>22</sup>, an employee cannot be deprived of the benefits of the enhanced age of retirement on account

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<sup>22</sup> (2014) 6 SCC 415





of the amendments made in the Regulations subsequent to the States Reorganization; and, consequent to the reorganization of the State, employees of State Public Enterprises in the State of Andhra Pradesh are entitled to the benefit of the enhanced age of superannuation of 60 years.

Finally, the Division Bench of the High Court of Judicature at Hyderabad in “**G.Rama Mohan Rao v. Government of Andhra Pradesh**” (referred supra) held that the judgment in “**State of Rajasthan v. C.P. Singh**” (referred supra) has no application to the facts of the case in “**G.Rama Mohan Rao v. Government of Andhra Pradesh**” (referred supra) and held as follows:

“The question which arises for consideration in these Writ Petitions is whether the 1984 Act, and the amendment made thereto by the 2014 State Act, are applicable to employees of Public Sector Undertakings. No such question arose for consideration in C.P. Singh (supra). It is only if the concerned public sector undertakings, had amended their rules/bye-laws making the provisions of the 2014 State Act applicable to its employees, would the age of retirement of employees of these legal entities have stood extended to 60 years. It is also not as if employees of these PSUs were asked to exercise their option, and they had chosen to be governed by the 2014 State Act. Even otherwise neither the 1984 Act nor the 2014 State Act provide for the exercise of options by employees of PSUs. Reliance placed by the petitioners on C.P. Singh (supra) is, therefore, misplaced.”

However, the observations made by the Division Bench is clear that if the rules governing the service conditions of the employees are amended giving retrospective or prospective effect, they are entitled to claim such benefit of enhanced age of superannuation.

In “A.Veerraju v. The State of Andhra Pradesh (Civil Appeal No.10273 of 2017 (Special Leave Petition (C) No.13623 of 2017) the Apex Court concluded as follows:



“8. Be that as it may, learned counsel appearing for the State of Andhra Pradesh has today brought to our notice an order dated 08-08-2017 issued by the Government of Andhra Pradesh whereby such employees have been granted the benefit of continuance upto 60 years of age. It has been ordered that the “said order dated 08-08-2017 shall come into force with effect from 02-06-2014”.

9. In that view of the matter, we do not think it necessary to retain these appeals in this Court any further. The stand of the Government is very clear. The Government Order dated 08-08-2017 permitting the employees to continue upto the age of 60 years has come into effect with effect from 02-06-2014. Therefore, all employees who have superannuated on account of attainment of age of 58 years on 02-06-2014 or thereafter are entitled to the protection of their service upto 60 years of age and naturally to all consequential benefits arising therefrom”.

In view of the said findings, the State agreed to extend the benefit of enhanced age of superannuation to the employees of APSRTC only.

SLP (C) No. 13623 of 2017 was filed by some of the employees of the Society challenging said decision of the Division Bench of the High Court of Judicature at Hyderabad in “**G.Rama Mohan Rao v. Government of Andhra Pradesh**” (referred supra). It was submitted by them that a decision had already been taken by the Society for raising the age of superannuation and all that was required to be done was only a formal expression of the decision in the form of an appropriate legislation. While issuing notice on 27.04.2017 the Apex Court passed following interim order:

“In the above circumstances, until further orders, the superannuation in the case of those teachers on attaining the age of 58 years in Respondent No. 3/Society (Gurukulam) shall be deferred.



Similarly, in a contempt case between “**K.Ananda Rao v. S.S.Rawat**”<sup>23</sup> the Apex Court after noting the amendment to G.O.Ms.No.138 dated 08.08.2017, concluded as follows:

“Thus, purely on the principle of parity the employees of the institution or entities in Schedule IX and X of 2014 Act could not demand the benefit of enhancement of the age of superannuation from 58 years to 60 years. That benefit came to be conferred under policy documents and finally by the GO dated 08.08.2017. Thus, the source was in those policy documents and naturally the extent of benefits was also spelt out in those instruments issued by the Government. The Circular dated 28.06.2016 which was more or less adopted in proceedings dated 11.06.2018 must be taken to be the governing criteria in respect of such employees. Unless and until that governing criteria was departed from specifically, mere expression "consequential benefits" would not entitle the concerned employees anything greater than what was contemplated in the policy documents issued by the State Government.”

Learned Standing Counsel for APSRTC would contend that in view of the judgment of Division Bench in “**G.Rama Mohan Rao v. Government of Andhra Pradesh**” (referred supra), confirmed by the Apex Court, the petitioners are disentitled to claim the benefits.

In “A.Veerraju v. The State of Andhra Pradesh (Civil Appeal No.10273 of 2017 (Special Leave Petition (C) No.13623 of 2017) the Apex Court concluded that the benefit shall be extended to all the employees from 02.06.2014 onwards, with all consequential benefits. Therefore, the financial condition and other conditions specified in paragraph No.4 of G.O.Ms.No.102 dated 27.06.2017 became otiose in view of paragraph No.5 of G.O.Ms.No.138 dated 08.08.2017, and lost its importance. Therefore, the contention of the learned standing counsel for APSRTC that the financial condition of the Corporation is weak is more or less become insignificant or irrelevant for extension of age of superannuation of employees working in APSRTC in view of

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<sup>23</sup> (2019)13SCC24



paragraph No.5 of G.O.Ms.No.138 dated 08.08.2017 since it is based on policy decision taken by the State.

Thus, it is clear from the judgment of the Apex Court in the judgments (referred supra), the petitioners are entitled to the benefit of policy decision taken by the State and in view of the amended G.O.Ms.No.102 dated 27.06.2017 by G.O.Ms.No.138 dated 08.08.2017 the petitioners are entitled to claim benefits of enhanced age of superannuation with effect from 02.06.2014. Therefore, the petitioners are entitled to claim benefit of G.O.Ms.No.102 dated 27.06.2017 as amended by G.O.Ms.No.138 dated 08.08.2017 retrospectively from 02.06.2014 with all consequential benefits as held by the Apex Court in “A.Veerraju v. The State of Andhra Pradesh (Civil Appeal No.10273 of 2017 (Special Leave Petition (C) No.13623 of 2017).

The petitioners contended that failure to extend the benefit to the employees retired after 02.06.2014 is discriminatory and relied on the judgment of the Apex Court in “**All Manipur Pensioners Association v. The State of Manipur**”<sup>24</sup>. In the said judgment, short question which is posed for consideration before the Apex Court is, whether in the facts and circumstances of the case, the decision of this Court in the case of “**D.S. Nakara and Ors. vs. Union of India (UOI)**”<sup>25</sup> shall be applicable or not, and in the facts and circumstances of the case and solely on the ground of financial constraint, the State Government would be justified in creating two classes of pensioners, viz., pre-1996 retirees and post-1996 retirees for the purpose of payment of revised pension and whether such a

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<sup>24</sup> AIR 2019 SC 3338

<sup>25</sup> (1983) 1 SCC 305



classification is arbitrary, unreasonable and violative of Article 14 of the Constitution of India or not? While referring to several judgments, the Apex Court observed as follows:

“In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counterproductive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension Rules being statutory in character, since the specified date, the Rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14.

That is the end of the journey. With the expanding horizons of socio-economic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion: "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date" in impugned memoranda, Exs. P-1 & P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Ex. P-1, the words:

that in respect of the government servants who were in service on March 31, 1979 and retiring from service on or after that date and in Ex. P-2, the words:

“the new rates of pension are effective from April 1, 1979 and will be applicable to all service officers who became/become non-effective on or after that date" are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date,



irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.”

Finally, the Apex Court concluded as follows:

“Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes, viz., one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension, In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form a one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a very classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to



one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.”

Thus, the division of employees in two different categories, who retired pre 1996 in the facts of the above judgment is arbitrary.

In the present facts of the cases also, the respondents divided the employees, who retired from service on attaining superannuation age i.e. prior to 30.09.2019 and after 30.09.2019 on account of financial constraints referred in Resolution No.64/2018 dated 19.06.2018. But if the principle laid down in the above judgment is applied to the present facts of the cases, it amounts to discrimination of employees, who retired between 02.06.2014 and 30.09.2019 and the persons, who are in service after 30.09.2019, and such discrimination is arbitrary.

The Supreme Court made it clear in Special Leave Petition (Civil) No.14033-14034 of 2017 that “in case any employee has retired only on the ground of attaining the age of 58 years, such employees shall be reinstated and continued in service until further orders, but in no case, beyond 60 years”. The Apex Court further made it clear that “this order will apply to all similarly situated employees under the respondent-institutions whether they are the petitioners before this court or not and, therefore, those similarly situated persons need not travel to this Court.” But, the respondents did not adhere to the directions issued by the Apex Court in various



orders referred above, issued the impugned notification, such act of the respondents can be described as ***schadenfreude***. Therefore, such discrimination of employees dividing into two groups amounts to arbitrary exercise of power by the respondents and it is contrary to the directions issued by the Apex Court in various Special Leave Petitions and contempt cases referred in the earlier paragraphs. Accordingly, the point is answered in favour of the petitioners and against the respondents.

In the result, the writ petitions are allowed setting aside the impugned notification No.PD-20/2019 dated 30.09.2019 holding that the petitioners are entitled to claim benefit of G.O.Ms.No.102 dated 27.06.2017 as amended by G.O.Ms.No.138 dated 08.08.2017 retrospectively from 02.06.2014 with all consequential benefits. Consequently, the respondents are directed to reinstate the petitioners into service with immediate effect, if they are below the age of 60 years. No costs

Consequently, miscellaneous petitions pending if any, shall also stand dismissed.

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**JUSTICE M. SATYANARAYANA MURTHY**

16.04.2021

Note:

L.R. Copy to be marked.

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