

U.P.State Road Transport Corporation ... vs Naresh Kumar Srivastava And Ors. ... on 4 October, 2018

Author: Anil Kumar

Bench: Anil Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

Reserved

Court No. - 3

Case :- SPECIAL APPEAL No. - 543 of 2014

Appellant :- U.P.State Road Transport Corporation Throu.M.D Lko.& Ors.

Respondent :- Naresh Kumar Srivastava And Ors. 7534(S/S)2012

Counsel for Appellant :- Chandra Shekher Pandey,Ratnesh Chandra

Counsel for Respondent :- C.S.C.,R.S.Chauhan

AND

Case :- SPECIAL APPEAL No. - 544 of 2014

Appellant :- U.P.State Road Transport Corporation Throu.M.D Lko.& Ors.

Respondent :- Mohd. Ahmad Khan & Ors. 5352(S/S)2012

Counsel for Appellant :- Chandra Shekher Pandey,Ratnesh Chandra

Counsel for Respondent :- C.S.C.,Raj Kumar Singh

AND

Case :- SPECIAL APPEAL No. - 545 of 2014

Appellant :- U.P.State Road Transport Corporation Throu.M.D Lko.& Ors.

Respondent :- Yogendra Kumar Saxena And Ors. 6109 (S/S)2012

Counsel for Appellant :- Chandra Shekher Pandey

Counsel for Respondent :- C.S.C.,Raj Kumar Singh

AND

Case :- SPECIAL APPEAL No. - 546 of 2014

Appellant :- U.P.State Road Transport Corporation Throu.M.D Lko.& Anr.

Respondent :- Mohammad Ahmad Siddiqui And Anr. 5721 (S/S)2012

Counsel for Appellant :- Chandra Shekher Pandey

Counsel for Respondent :- C.S.C.,Raj Kumar Singh

AND

Case :- SPECIAL APPEAL No. - 547 of 2014

Appellant :- U.P.State Road Transport Corporation Throu.M.D Lko.& Anr.

Respondent :- Sitaram Singh And Ors. . 6046(S/S)2012

Counsel for Appellant :- Chandra Shekher Pandey

Counsel for Respondent :- C.S.C.,Raj Kumar Singh

AND

Case :- SPECIAL APPEAL No. - 548 of 2014

Appellant :- U.P.State Road Transport Corporation Throu.M.D Lko.& Anr.

Respondent :- Devendra Prasad Goswami & Anr. 7551(S/S)2012

Counsel for Appellant :- Chandra Shekher Pandey,Ratnesh Chandra

Counsel for Respondent :- C.S.C.,R.S.Chauhan

AND

Case :- SPECIAL APPEAL No. - 549 of 2014

Appellant :- U.P.State Road Transport Corporation Throu.M.D Lko.& Anr.

Respondent :- Shiv Veer Singh Bhadauriya And Ors. 6169 (S/S)2012

Counsel for Appellant :- Chandra Shekher Pandey

Counsel for Respondent :- C.S.C.,C.B.Pandey

Hon'ble Anil Kumar,J.

Hon'ble Virendra Kumar-II,J.

(As per Anil Kumar, J.) Heard Sri Ratnesh Chandra, learned counsel for the appellants/ U.P .State Road Transport Corporation and Sri Raj Kumar Singh and Sri C.B. Pandey learned counsel for opposite parties.

With the consent of learned counsel for the parties all the special appeals are clubbed together and decided by a common judgment as the same are arising out of the judgment dated 29.5.2014 passed by learned single judge.

By means of present special appeals, appellants/ U.P .State Road Transport Corporation has challenged the judgment and order dated 29.5.2014 passed by learned Single Judge in Writ Petition No.7534 (SS) of 2012 (Naresh Kumar Srivastava and others Vs. State of U.P. and others) challenged in Special Appeal No. 543 of 2014, Writ Petition No. 5352 (SS) of 2012 (Mohd. Ahmad Khand and another Vs. State of U.P. and others) challenged in Special Appeal No. 544 of 2014, Writ Petition No.6109 (SS) of 2012 (Yogendra Kumar Saxena and others Vs. State of U.P. and others) challenged in Special Appeal No. 545 of 2014, Writ Petition No.5721 (SS) of 2012 (Mohammad Ahmad Siddiqui Vs. State of U.P. and others) challenged in Special Appeal No.546 of 2014, Writ Petition No.6046(SS) of 2012 (Sitaram Singh Vs. State of U.P. and others) challenged in Special Appeal No. 547 of 2014, Writ Petition No.7551 (SS) of 2012 (Devendra Prasad Goswami Vs. State of U.P. and others) challenged in Special Appeal No. 548 of 2015 and Writ Petition No.6169 (SS) of 2012 (Shiv Veer Singh Bhadauriya and others Vs. State of U.P. and others) challenged in Special Appeal No.549 of 2014. All the writ petition were allowed by learned Single Judge.

Sri Ratnesh Chandra, learned counsel for the appellants , in brief, submits that respondents/ writ petitioners were working in Group- C post in U.P. State Road Transport Corporation (hereinafter referred to as "Corporation") and as per Regulation no 37 of the Uttar Pradesh State Road Transport Corporation Employees (other Than Officers) Service, Regulation,1981 (herein after referred as "Regulation,1981") , the age of retirement was 58 years. Keeping in view the age as provided under Regulation no.37 of the Regulation 1981 notice in respect to retirement was served to respondents/ writ petitioners stating therein they have to retire on the date mentioned therein after attaining the age of 58 years, some of them have challenged the notice by filing writ petitions. On 28.11.2001a Government Notification was issued thereby amending the Fundamental Rule 56 of the U.P. Fundamental Rules, Contained in the Financial Handbook , Volume II, Part II-IV and enhancing the retirement age of government servants from 58 to 60 years. So the employees working on Group -C posts in the Corporation had claimed that their retirement age may be enhanced from 58 years to 60 years.

Accordingly, Managing Director of the Corporation on 29.11.2001 written a letter to Secretary (Karmik Vighag) Government of U.P. to clarify the position whether the employees working on the post of Group- C in the Corporation are covered by the Government Notification dated 28.11.2001 or not? In the regard another letter was also written by the Managing Director of the Corporation to Principal Secretary (Transport) on 1.12.2001.

By letter/ order dated 14.1.2002 the State Government has clarified the position that the notification dated 28.11.2001 in regard to enhancement of age of retirement of the government servant from 58 to 60 years is not applicable on the employees working in the Corporation, so on 19.1.2002 General Manager of the Corporation had issued a Circular that the age of retirement of the employee working in the Corporation as per Regulation 37 of Regulation 1981 is 58 years.

Further, there were continuous requests from Public Undertaking/ Corporations in respect to enhancement of age of its employees from 58 to 60 years, so the State Government constituted a Committee in the year 2009. The said committee had examined the matter in respect to enhancement of the retirement age of the employee working in public Undertaking/ Corporation and submits its recommendation not to enhance the age of retirement of the employees of Public Undertaking/ Corporation from 58 to 60 years. So on 29.6.2009 State Government issued a Government Order through Bureau of Public Employees Department , not to enhance the age of employee from 58 t 60 years working in the Public U/ Corporation.

Later on, 20.12.2011, a letter was issued by the State Government interalia stating therein that the age of retirement of the employee working in Public Undertaking/ Corporation would be enhanced if they are in a position to bear the financial burden on account of enhancement of age of retirement then a proposal for enhancement of retirement of age may place before the Board of Director of Public Undertaking/ Corporation and if the same, be forwarded to the concerned administrative department of State Government which shall examine the proposal and if approved then the Public Undertaking/ Corporation may pass an order for enhancement of the age of retirement from 58 to 60 years in its administrative control.

Accordingly on 23.12.2011, Managing Director of the Corporation wrote a letter to Principal Secretary (Transport) Government of U.P. to consider the mater of enhancement of retirement age of the employees working in Group -C post from 58 to 60 years and take a decision at the competent level.

However on 30.3.2012 the Special Secretary, Government of U.P. had issued a letter directing the Managing Director of the Corporation to place the matter a fresh before the Board of Director of the Corporation and forward th resolution so passed by the Board of Directors of the Corporation for necessary action. So, a fresh agenda of enhancement of age from 58 to 60 years was placed by the Board of Director of the Corporation . By letter dated 4.4.2012 it was communicated to the Principal Secretary (Transport) Government of U.P. by the Managing Director of the Corporation. After receipt of said communication, State Government vide order 12.4.2012 enquired about the financial burden due to enhancement of the retirement age of employee of the Corporation from 58 to 60 years . However, looking to the continuous and accumulating losses in the Corporation, the State Government rejected the enhancement of retirement of age of employee of the Corporation from 58 to 60 years vide Government Order dated 16.4.2012.

Again by letter dated 29.4.2012 the then Managing Director of the Corporation wrote a letter to principal Secretary (Transport) Government of U.P., explaining the benefits of the enhancement of the retirement age of employees of the Corporation from 58 to 60 years categorically indicating that by enhancing the retirement age of the employees , the payment of retiral dues of the retiring employees would be deferred for two years which will improve the financial condition and liquidity of the Corporation, various other plans for revival/ strengthening the financial condition of the Corporation were also indicated in the said letter and a request was made for enhancing the retirement age of employees of the Corporation from 58 to 60 years.

In respect to the same, the Principal Secretary (Transport) Government of U.P. directed that the revival/ strengthening plans indicated in the letter dated 29.4.2012 written by Managing Director of the Corporation if approved then the same be sent to the Government .

Thereafter the matter was placed in its 186th meeting held on 2.5.2012 before the Board of Director who approved it. And State Government issued a Government Order dated 24.7.2012 thereby allowing to enhance the retirement age of the employees of the Corporation from 58 to 60 years . The Managing Director of the Corporation issued an order dated 26.7.2012 enhancing the age from 58 to 60 years with immediate affect.

Facts of Special Appeal no. 543 of 2014 (U.P.S.R.T.C. and others Vs. Naresh Kumar Srivastava and others) Petitioners/ respondents, namely, Naresh Kumar Srivastava, Mewa Lal and Rakesh Kumar Tripathi has approached this Court by filing writ petition no.500 (SS) of 2012 (Naresh Kumar Srivastava and others Vs. State of U.P. and others) challenging the impugned notice by which they had sought to be retired from service at the age of 58 years on the ground that the matter in respect to enhancement of retirement age from 58 to 60 years is pending before the State Government.

This Court has disposed of writ petition finally by order 30.1.2012 with the observation that " The retirement of the petitioners will be subject to the decision of the State Government".

When a decision was taken by the Managing Director of the Corporation vide order dated 26.7.2012 in pursuance of Government Order dated 24.7.2012 for enhancing the age of employees of the Corporation working in Group-C posts from 58 to 60 years, the respondents/ writ petitioners after attaining the age of superannuation at 58 years has approached this Court by filing Writ Petition No. 7534(SS) of 2012 (Naresh Kumar Sivastava and others Vs. State of U.P. and others) with the grievance that they may be treated to work and discharge their duties till they attain the age of 60 years Facts of Special Appeal no. 544 of 2014 (U.P.S.R.T.C. and others Vs. Mohammad Ahmad Khan and others) Petitioners/ respondents,namely, Mohd Ahmad Khan and Saleem Akhtar who were working in Group-C post approached this Court by filing writ petition no.577 (SS) of 2012 (Mohd. Ahmad Khan Vs. State of U.P. and others) challenging the impugned notice by which they had sought to be retired from service at the age of 58 years on the ground that the matter in respect to enhancement of retirement age from 58 to 60 years is pending before the State Government, disposed of writ petition finally by order 30.1.2012 with the observation that " The retirement of the petitioners will be subject to the decision of the State Government".

When a decision was taken by the Managing Director of the Corporation vide order dated 26.7.2012 in pursuance of Government Order dated 24.7.2012 for enhancing the age of employees of the Corporation working in Group-C posts from 58 to 60 years, the respondents/ writ petitioners after attaining the age of superannuation at 58 years has approached this Court by filing Writ Petition No. 5352 (SS) of 2012 (Mohd Ahmad Khan and another Vs. State of U.P. and others) with the grievance that they may be treated to work and discharge their duties till they attain the age of 60 years Facts of Special Appeal no. 545 of 2014 (U.P.S.R.T.C. and others Vs. Yogendra Kumar Saxena and others) writ petitioners/ respondents, namely, Yogendra Kumar Saxena, Channu Lal Sachan, Kamleshwar Nath, Jayant Kumar Awasthi, Jagat Singh Yadav Anoop Kumar Saxena, Mohd. Ismail Khan, Mangal

Singh and Khurseed Yar Khan who were retired from service on 30.6.2012, 30.6.2012, 30.6.2012, 30.6.2012 30.4.2012, 30.4.2012, 31.5.2012, 31.5.2012 and 30.6.2012 respectively had filed writ petition No.6109 (SS) of 2012 (Yogendra Kumar Saxena ad others Vs. State of U.P. and others) for quashing of clause 3 of the impugned order dated 24.7.2012 and order dated 26.7.2012 issued by the Managing Director of the Corporation wherein it is provided that this order will be effective with immediate effect and further prayed that they may be treated to work and discharge their duties till 60 years and be paid salary and other consequential benefits to them.

Facts of Special Appeal no. 546 of 2014 (U.P.S.R.T.C. and others Vs. Mohd. Ahmad Siddiqui) Writ petitioner/ respondent- Mohd. Ahmad Siddiqui who retired from service on 30.6.2012 filed Writ Petition No.5721 (SS) of 2012 (Mohd. Admad Siddiqui Vs. State of U.P. and others) thereby challenging the Government Order dated 24.7.2012 and the order dated 26.7.2012 issued by the Managing Director of the Corporation wherein it is said that the order will be effective with immediate effect, further prayed that he may be treated to work and discharge his duties till 60 years and be paid other consequential benefits to him.

Facts of Special Appeal no. 547 of 2014 (U.P.S.R.T.C. and others Vs. Sitaram Singh) Writ petitioner/ respondent- Sitaram after receiving the notice that he is to retire on 31.1.2012 after attaining the age of 58 years approached this Court by filing Writ Petition No.527 (SS) of 2012 alongwith two others, namely, Baleshwar Gupta and Rajnath Vishwakarma, disposed of by order dated 31.1.2012 with the observation that" The retirement of the petitioners will be subject to the decision of the State Government".

Later on, Sitaram individually filed writ petition no. 6046 (SS) of 2012 (Sitaram Singh Vs. State of U.P. and others) challenging the Government Order dated 24.7.2012 and order dated 26.7.2012 issued by the Managing Director of the Corporation by which it was provided that age of Group C employee working in the Corporation be enhanced from 58 to 60 years with immediate effect after his retirement and also prayed that he may be treated on service till the age of 60 years and be paid other consequential service benefit.

Facts of Special Appeal no. 548 of 2014 (U.P.S.R.T.C. and others Vs. Devendra Prasad Goswami) Devendra Prasad Goswami writ petitioner/ respondent filed Writ Petition No.7551(SS) of 2012 (Devendar Prasad Goswami Vs. State of U.P. and others) after his retirement challenging the Government order dated 24.7.2012 and order dated 26.7.2012 issued by Managing Director of the Corporation and also prayed that he may be treated in service till he attains the age of 60 years and be paid salary and other consequential service benefits.

Facts of Special Appeal no. 549 of 2014 (U.P.S.R.T.C. and others Vs. Shiv Veer Singh Bhadauriya and others) Writ petitioners/ respondents , namely, Shiv Veer Singh Bhadauriya , Mahendra Kumar Srivastava, Shiv Singh Yadav, Mohd. Banne Khan, Krishna Kumar Tiwari and Abdul Aziz retired from service on 31.5.2012, 30.6.2012, 30.6.2012, 30.4.2012, 30.4.2012 and 31.5.2012 respectively. After their retirement they filed writ petition No.6169 (SS) of 2012 (Shiv Veer Singh Bhadauriya and others Vs. State of U.P. and others) challenging the Government Order dated 24.7.2012 and order dated 26.7.2012 issued by Managing Director of the Corporation and prayed that they may be

treated to work and discharge their duties till 60 years and be paid other consequential service benefits to them.

As all the writ petitions which are on same set of facts so they are clubbed together and decided by learned Single Judge vide order dated 29.5.2014, the relevant portion is quoted as under:-

"The petitioners will be treated to have retired after attaining the age of 60. If they have already completed the age of 60 years they will be entitled to the salary and other benefits including allowances till they have attained the age of 60 years. They will be treated to be in service during this period. The benefit will only be available to the persons who are included in this bunch of writ petitions.

The order dated 24.7.2012 (contained as Annexure no. 1 to the writ petition) the order dated 26.7.2012 (contained in Annexure no. 2 to the writ petition) shall be quashed to the effect which denies the benefit to the petitioners by being prospective in nature. This prospectiveness shall remain intact for others who are governed by that government order."

Sri Ratnesh Chandra, learned counsel for the appellant challenged the order dated 29.5.2014 passed by learned Single Judge on following grounds:-

(a) As per Regulation 37 of the Regulation 1981 the age of retirement of the employees working in Group -C post in the Corporation is 58 years and by means of Government Order dated 24.7.2012 a decision was taken that employee who are working in Group -C post in the Corporation their age of retirement be enhanced from 58 to 60 years and in pursuance of the said Government order , the Managing Director has issued an order dated 26.7.2012 enhancing the age of the employee who is working in Group- C post from 58 to 60 years with immediate effect . The word which are mentioned therein are as under:-

" Yah yaywastha Uttar Pradesh Rajya Sarak Parivahan Nigam me tatkalin prabhav se lagu hogi"

As all the writ petitioners/ respondents had retired from service prior to issuance of Government Order dated 24.7.2012 by which retirement of age has been enhanced from 58 to 60 years and by order dated 26.7.2012 issued by the Managing Director with immediate effect, so they are not entitled to get the benefit of enhancement of retirement age. In this regard, he placed reliance on the following judgments:-

In the case of Tamil Nadu Electricity Board and Another Vs. Status Spinning Mills Limited and another (2008) 7 SCC 353 wherein Hon'ble the Apex Court in para-51 has held as under:-

"51. A distinction must be made between a policy decision and a statute. Whereas prima facie a policy decision may not have any retroactive operation, a statute may have. Only because it affects a past transaction the same by itself, would not come in the way of the legislature in enacting an enactment or the executive Government to exercise its power of subordinate legislation."

In the case of Kusumam Hotels Private Limited Vs. Kerala State Electricity Board and others (2008) 13 SCC 213 wherein in para- 36 Hon'ble the Supreme Court has held as under:-

" 36. In our Constitutional scheme, however, the statute and/ or any direction issued thereunder must be presumed to be prospective unless the retrospectivity is indicated either expressly or by necessary implication. It is a principle of the rule of law. A presumption can be raised that a statute or statutory rule has prospective operation only."

In the case of Dilip Kumar Garg and another Vs. State of U.P. and others (2009) 4 SCC 753, Hon'ble the Apex Court in paras 15,16 and 17 has held as under:-

"15. In our opinion, Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible . The administrative authorities are in the best position to decide the requisite qualifications for promotion from junior Engineer to Assistant Engineer and it is not for this Court to sit over their decision like a court of appeal . The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decision (See Union of India Vs. Pushpa Rani (2008) 9 SCC 242 and Official Liquidator Vs. Dayanand (2008) 10 SCC 1)

16. The decision to treat all Junior Engineers, whether degree-holders or diploma-holders, as equals for the purpose of promotion is a policy decision, and it is well settled that this Court should not ordinarily interfere in policy decision unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case.

17. In Tata Cellular V. Union of India (1994) 6SCC 651 it has been held that there should be judicial restraint in administrative decision. This principle will apply all the more to a rule under Article 309 of the Constitution."

In the case of Delhi Development Authority and another Vs. Joint Action Committee , Allottee of SFS Flats and others, (2008) 2 SCC 672 wherein in paras 64 and 65 Hon'ble the Supreme Court has held as under:-

"64. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the

court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject of judicial review.

65. Broadly, a policy decision is subject to judicial review on the following grounds:-

- (a) if it is unconstitutional;
- (b) if it is de hors of the provisions of the Act and the regulations;
- (c) if the delegatee has acted beyond its power of delegation;
- (d) if the executive policy is contrary to the statutory or a larger policy."

In the case of Director General of Posts and others Vs. K. Chandrashekhar Rao (2013) 3 SCC 310, Hon'ble the Apex Court in para 22 and 26 has held as under:-

"22. From the above Scheme and Office Memorandum, it is clear that where on the one hand, the State had formulated a welfare scheme for compassionate appointments, there on the other, because of limitations of its financial resources it decided to take economic measures by reducing the extent of appointment by direct recruitment from the financial year 2001-2002. Both these matters falling in the domain of the Government and being matters of policy, the Court is hardly called upon to comment upon either of them. These are the acts which fall in the domain of the State and do not call for any judicial interference. All that we propose to hold is that State has to abide by the Scheme it has floated for compassionate appointment.

26. Despite the fact that the judgment of the Central Administrative Tribunal (for short "the Tribunal") has been upheld by the High Court, we are unable to contribute and sustain the view taken by the Tribunal that the Memorandum dated 16th May, 2001 frustrated the very object of the Scheme for Compassionate Appointment and on that ground alone, it was liable to be declared invalid. As already noticed, both the matters are policy matters of the State and for valid and proper reasons, without infringing the spirit of Article 14 and 16 of the Constitution. The State can frame its policy, where it is for economic reasons, least such decision would be open to judicial review to that extent. In the present case, there is some ambiguity created by issuance of office memorandums dated 16th May, 2001 and 14th June, 2006 and the enforcement of the former vide office memorandum dated 4th July, 2002 in relation to the implementation of Compassionate Appointment Scheme of 1998. Thus, it is not only desirable but necessary that the competent authority should issue comprehensive guidelines squarely covering the issue, but they cannot tamper with the existing rights of the appointees."

Sri Ratnesh Chandra learned counsel for the appellants submits that by the Government Notification dated 28.11.2001 a decision was taken by the Government to enhance the retirement age of the government employees from 58 to 60 years and in pursuance of the same a letter was written by the Managing Director of the Corporation on 29.11.2001 written a letter to Secretary (Karmik Vihag) Government of U.P. to clarify the position whether the employees working on the post of Group- C in the Corporation are covered by the Government Notification dated 28.11.2001 or not?

By letter/ order dated 14.1.2002 the State Government has clarified the position that the notification dated 28.11.2001 in regard to enhancement of age of retirement of the government servant from 58 to 60 years is not applicable on the employees working in the Corporation . Thereafter on 19.1.2002 General Manager of the Corporation had issued a Circular that the age of retirement of the employee working in the Corporation as per Regulation 37 of Regulation 1981 is 58 years.

On 26.6.2009 a letter was issued by which it is provided that the age of retirement of the employee working in Public Undertaking/ Corporation shall be 58 years as per earlier decision.

And on 20.12.2011, a letter was issued by the State Government interalia stating therein that the age of retirement of the employee working in Public Undertaking/ Corporation would be enhanced if they are in a position to bear the financial burden.

By order dated 16.4.2012 the State Government by Government Order dated 16.4.2012 rejected the proposal of enhancement of the retirement age of the employee working in the Corporation in Group-C posts from 58 to 60 years.

Later on Managing Director of the Corporation wrote a letter to principal Secretary (Transport) Government of U.P. has explaining the benefits of the enhancement of the retirement age of employees of the Corporation from 58 to 60 years categorically indicating that by enhancing the retirement age of the employees , the payment of retiral dues of the retiring employees would be deferred for two years which will improve the financial condition and liquidity of the Corporation . Various other plans for revival/ strengthening the financial condition of the Corporation were also indicated in the said letter .

So a Government Order dated 24.7.2012 was issued thereby allowing to enhance the retirement age of the employees of the Corporation from 58 to 60 years . Accordingly, on 26.7.2012 an order was issued by Managing Director that age of retirement of the employees working in Group -C post in the Corporation would be 58 to 60 years with immediate effect.

Accordingly, learned counsel for the appellants argued that learned Single Judge has committed manifest error while passing the judgment and order under appeal presuming and placing reliance heavily on the fact that by order passed in the contempt petition, the Principal Secretary was directed to take decision in compliance of the court's order, failing which he was to appear on 17.4.2012, as such the order of rejection of proposal for enhancement of the retirement age of the U.P. Road Transport Corporation' employees dated 26.4.2012 was passed in great haste so the same

is malice on the part of respondent to the writ petitioner who are the appellants in the present special appeal because in the present case order dated 26.7.2012 was issued by the managing Director of the Corporation for compliance of the order dated 24.7.2012 issued by Principal Secretary (Transport) Government of U.P. . In support of his arguments he has placed reliance on the judgment passed by Hon'ble Apex Court in the case of Purushottam Kumar Jha Vs. State of Jharkhand and others (2006) 9 SCC 458 wherein in paras 22 and 23 has held as under:-

"22.As to mala-fide exercise of power, the High Court held that neither sufficient particulars were placed on record nor the officers were joined as party respondents so as to enable them to make the position clear by filing a counter affidavit. In the absence of specific materials and in absence of officers, the Court was right in not upholding the contention that the action was mala-fide.

23.It is well settled that whenever allegations as to mala fides have been leveled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was mala fide and malicious is not enough. In absence of material particulars, the court is not expected to make 'fishing' inquiry into the matter. It is equally well-established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is "very heavy". Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be 'made than made out' and hence it is necessary for courts to examine it with extreme care, caution and circumspection. It has been rightly described as 'the last refuge of a losing litigant'. [Vide Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800; Ajit Kumar Jog v. Indian Oil Corporation, (2005) 7 SCC 764)."

It is further submitted on behalf of the appellants that after retirement of writ petitioners/ respondents their retiral dues have already been paid to them and if now in view of the judgment passed by learned Single Judge they are to be treated in service till 60 years and are paid their salary and other allowances , the same shall not be in the interest of Corporation as the same will hamper to improve the financial condition and liquidity of the Corporation, various other plans for revival/ strengthening the financial condition of the Corporation. Accordingly, it is submitted by Sri Ratnesh Chandra, learned counsel for the appellants that special appeal may be allowed and the judgment and order passed by learned Single Judge may be set aside.

On behalf of writ petitioners/ respondents the arguments which advanced,in brief, is as under:-

Writ petitioners/ respondents in Special Appeal no. 542 of 2014, 544 of 2014 and 547 of 2014 have earlier approached this Court when they received the notice of retirement that they had to retire from service after attaining the age of 58 years as the matter in respect to enhancement of proposal of retirement was pending before the State Government, no decision has been taken by the State Government, the same was disposed of by learned Single Judge that the retirement of the petitioners will be subject to the decision of the State Government.

In the meantime, writ petitioners/ respondents all the above noted special appeal has retired from service and after attaining the age of 58 years. The State Government by order dated 16.4.2012 rejected the case of the employees of the Corporation that they are not entitled to discharge their duties upto the age of 60 years. However, later on due to subsequent development which has been taken by way correspondence between the Managing Director and the State Government , an order dated 24.7.2012 was issued by the State Government thereby enhancing the retirement age of employees working the Corporation in Group- C posts from 58 to 60 years. Consequently, Managing Director of the Corporation has issued an order dated 26.7.2012 thereby enhancing the retirement age of the employee working in Group- C post from 58 to 60 years. Even if it is mentioned in the order dated 26.7.2012 issued by the Managing Director of the Corporation that the same will be effective with immediate effect. The same cannot debar the case of the writ petitioners/ respondents claiming the relief that they may be treated to work and discharge their duties till 60 years and be paid salary and other consequential benefits because earlier their writ petition was disposed of that the retirement of the petitioners will be subject to the decision of the State Government.

So far as Special Appeal No.545 of 2014, 546 of 2014, 548 of 2014 and 549 of 2014 are concerned, the writ petitioners/ respondents in the instant matter approached this Court after retirement challenging the Government Order dated 24.7.2012 passed by State Government and the order dated 26.7.2012 passed by Managing Director of the Corporation with the prayer that they may be treated to work till 60 years and be paid other consequential service benefits to them . In support of his arguments, he has placed reliance on the judgment given by Hon'ble the Apex Court in the case of Harvindra Kumar Vs. Chief Engineer, Karmik and others AIR 2006 SC 365 and in the case of State of U.P. Vs. Dayanand Chakrawarty and others decided on 2.7.2013 passed in Civil Appeal No. 5527 of 2012.

It is submitted by learned counsel for the respondents that there is no illegality or infirmity in the impugned judgment passed by learned Single Judge, so the special appeals filed by U.P. State Road Transport Corporation may be dismissed.

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

Writ petitioners/ respondents who were working on Group-C posts in the Corporation their service conditions are governed by Regulation 37 of the Regulation 81 reads as under:-

"37. Retirement on attaining the age of Superannuation- An employee of Group "C" shall retire on attaining the age of 58 years and that of Group "D" shall retire on attaining the age of 60 years:

Provided that if the date of retirement fall on or after the second day of the month, the date of retirement shall be the last day of the month."

Further the provisions of Rule 56(a) of the Uttar Pradesh Fundamental Rules contained in the Financial Handbook, Volume II, Part II-IV reads as follows:

"Rule 56(a).Except as otherwise provided in other clauses of this rule every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He may be retained in service after the date of retirement on superannuation with the sanction of the government on public grounds which must be recorded in writing but he must not be retained after the age of sixty years except in very special circumstances."

In the year 2001, the State Government vide its Official Order No.1098/A□/2001 dated 28th November, 2001informed of its intention to amend clause (a) of Rule 56.

Consequently, Rule 56(a) was amended by "The Uttar Pradesh Fundamental (Amendment) Rules, 2002" vide Notification dated 27th June, 2002, which came into force on 28th November, 2001.

As per the amended clause (c) of Rule 56, the age of superannuation of the State Government employees was enhanced from 58 years to 60 years, which reads as follows:

"Rule 56(a).Except as otherwise provided in this rule, every government servant shall retire from service on he afternoon of the last day of the month in which he attains the age of sixty years.

Provided that a Government servant whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

Provided further that a Government servant who has attained the age of fifty eight years on or before the first day of November, 2001 and is on extension in service shall retire from service on expiry of his extended period of service."

In the instant matter so far as Special Appeal no. no. 542 of 2014, 544 of 2014 and 547 of 2014 are concerned, in the said matter writ petitioners/ respondents approached this Court by filing writ petitions challenging the impugned notice by which they had sought to be retired from service at the age of 58 years on the ground that the matter in respect to enhancement of retirement age from 58 to 60 years is pending before the State Government, disposed of writ petition finally by order 30.1.2012 with the observation that " The retirement of the petitioners will be subject to the decision of the State Government".

Thereafter the State Government rejected the proposal of Board of Directors for enhancement of retirement of age of employee of the Corporation from 58 to 60 years vide Government Order dated

16.4.2012.

And writ petitioners/respondents had retired from service at the age of 58 years.

When Government Order dated 24.7.2012 issued by the State Government enhancing the age of retirement from 58 to 60 years and order dated 26.7.2012 has been issued by Managing Director of the Corporation for enhancement of age of the employee working in Group-C of the Corporation from 58 to 60 years with immediate affect, again filed writ petitions before this Court ,allowed by order dated 29.5.2014 under challenged in the aforesaid special appeals.

So far as Special Appeal No.545 of 2014, 546 of 2014, 548 of 2014 and 549 of 2014 are concerned, in the said mater writ petitioners/ respondents have raised their grievance after retirement from services at the age of 58 years by filing writ petitions on the ground that in view of Government Order dated 24.7.2012 passed by the State Government as well as the order dated 26.7.2012 passed by Managing Director of the Corporation , they may be deemed to be in service upto the age of 60 years and may be paid all other consequential benefits to them upto the age of 60 years. Subsequently , the same was allowed on 29.5.2014 under challenge in the present special appeals.

Moreover, in the case of Harwindra Kumar (supra) Hon'ble the Apex Court in in para 11 and 12 has held as under:-

"11. For the foregoing reasons, we are of the view that so long Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the Nigam with the previous approval of the State Government to make suitable amendment in Regulation 31 and alter service conditions of employees of the Nigam, including their age of superannuation. It is needless to say that if it is so done, the same shall be prospective.

12.For the foregoing reasons, the appeals as well as writ petitions are allowed, orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the Civil Appeals and petitioners of the Writ Petitions would superannuate upon completion of the age of 58 years are set aside and it is directed that in case the employees have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary for the remaining period up to the age of 60 years which must be paid to them within a period of three months from the date of receipt of copy of this order by the Nigam. There shall be no order as to costs."

In the case of Dayanand Chakrawarti and others (supra) after taking into consideration the law laid down by Hon'ble Apex Court earlier in the case of Harwindra Kumar (supra) has held as under:-

"In Harwindra Kumar case the Division Bench decision on which the appellant places reliance was challenged. Orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the civil appeals and the petitioners of the writ petitions would superannuate upon completion of the age of 58 years were set aside and it was directed that in case have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of years by virtue of erroneous decision taken by the Nigam for no fault of theirs. They would be entitled to payment of salary for the remaining period up to the age of 60 years which was to be paid to them within a period of three months from the date of receipt of copy of this Court's order by the Nigam."

In the meantime, a large number of employees of the Nigam, who were forced to retire on attaining the age of 58 years, preferred writ petitions and sought benefit of the directions given by this Court in Harwindra Kumar (supra) . The matter ultimately, moved before this Court in Chairman, Uttar Pradesh Jal Nigam vs. Jaswant Singh & others, 2006 (11) SCC 464. While dismissing the appeal this Court observed:

"16 Therefore, in case at this belated stage if similar relief is to be given to the person who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others. We have been given a chart of those nine persons, who filed writ petitions and obtained stay and are continuing in service. They are as follows:

- 1.shri Bhawani Sewak Shukla
- 2.Shri Vijay Bahadur Rai
3. Shri Girija Shanker
4. Shri Yogendra Prakash Kulshresht
5. Shri Vinod Kumar Bansal
6. Shri Pradumn Prashad Mishra 16 Page17
- 7.Shri Banke Bihari Pandey

8. Shri Yashwant Singh

9. Shri Chandra Shekhar And the following persons filed writ petitions before retirement but no stay order was granted:

1.Shri Gopal Singh Dangwal (WP No. 35384 of 2005vide order dated 5.5.2005)

2.Shri R.R. Gautam (WP No. 45495 of 2005 vide order dated15-6-2005)

17. The benefits shall only be confined to above mentioned persons who have filed writ petitions before their retirement or they have obtained interim order before their retirement.The appeals filed against these persons by the Nigam shall fail and the same are dismissed. Rest of the appeals are allowed and orders passed by the High Court are set aside.There would be no order as to costs."

Further in the case of Dayanand Chakrawarty (supra) in para 34,35, 36 ,37 and 38 has held as under:-

"34. In Harwindra Kumar vs. Chief Engineer, Karmik and others(Supra), this Court while allowing the employees of Nigam to continue till the age of 60 years in view of Regulation31,ordered that no recovery shall be made from those who continued up to the age of 60 years.This Court further observed that the employees who have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, would also be entitled to payment of salary for the remaining period up to the age of 60 years.

35. In Chairman, U.P. Jal Nigam vs.Radhey Shyam Gautam, 2007 (11) SCC 507, following the decision in Harwindra Kumar(supra) case, this Court held that the employees of 30 Page 31 the Nigam shall be entitled for full salary for the remaining period up to the age of 60 years.

36. However, in U.P. Jal Nigam vs. Jaswant Singh 6 (11) scc 464 this Court allowed the benefits of arrears of salary only to those employees of the Nigam who had filed writ petitions and denied the same to others who have not moved before a court of law.

37. In view of the orders passed by this Court in Harwindra Kumar(supra), Radhey Shyam Gautam(supra) and Jaswant Singh(supra), it was not open to the High Court to rely on some other decision of this Court, ratio of which is not applicable in the present case for determining back wages of respondents restricting it to be 20% of the basic salary. 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.

38. In these cases as we have already held that Regulation 31 shall be applicable and the age of superannuation of employees of the Nigam shall be 60 years; we are of the view that following consequential and pecuniary benefits should be allowed to different sets of employees who were ordered to retire at the age of 58 years:

(a) The employees including respondents who moved before a court of law irrespective of fact whether interim order was passed in their favour or not, shall be entitled for full salary up to the age of 60 years. The arrears of salary shall be paid to them after adjusting the amount if any paid.

(b) The employees, who never moved before any court of law and had to retire on attaining the age of superannuation, they shall not be entitled for arrears of salary. However, in view of Regulation 31 they will deem to have continued in service up to the age of 60 years. In their case, the appellants shall treat the age of superannuation at 60 years, fix the pay accordingly and re-fix the retirement benefits like pension, gratuity etc. On such calculation, they shall be entitled for arrears of retirement benefits after adjusting the amount already paid.

(c) The arrears of salary and arrears of retirement benefits should be paid to such employees within four months from the date of receipt of copy of this judgment."

So far as the case of Dayanand Chakrawarty (supra) is concerned, the question which was involved in the said matter before Hon'ble the Apex Court are:

"(i) Whether two different age of superannuation of 58 and 60 years can be prescribed for the employees similarly situated , including members of the same service, solely on the basis of their source of entry in the service.

(ii) Whether the Uttar Pradesh Jal Nigam (Retirement on attaining the age of superannuation) Regulation, 2005 fixing two different age of superannuation for similarly situated employees of Jal Nigam are discriminatory and ultra vires under Article 14 of the Constitution of India."

And Factual matrix of the case are as follows:

"A department, known as Public Health Engineering (hereinafter referred to as the "PHED") was created during the British period for performing all the works related to public health engineering including sewerage and water supply. Just before the independence, the State of United Province created a Local Self Government Engineering Department (hereinafter referred to as the "LSGED") which was

converted from PHED. All the engineering works of Local Self Government were entrusted to the said new created department"

In view of the above said factual background Hon'ble the Apex Court in the case of Dayanand Chakrawarty (supra) after placing reliance on its earlier judgment in para 38 (a) and (b) has laid down the conditions in respect to payment of salary and other allowances in regard to controversy involved in respect to age of retirement of the employees.

In the present case controversy in question stands on different footing as all the respondents/writ petitioners were working in the Corporation and their services are governed by Regulation 37 of Regulation 1981 wherein the age of Group-C employee of the Corporation is 58 years.

So far as respondents/ writ petitioners in Special Appeal no. no. 543 of 2014, 544 of 2014 and 547 of 2014 are concerned, although they initially approached this Court by filing writ petitions challenging the impugned notice by which they had to be retired from service at the age of 58 years, finally disposed of by order dated 30.1.2012 with the observation that the retirement of the petitioners will be subject to the decision of the State Government.

By Government Order dated 16.4.2012 the State Government has rejected the proposal of Board of Directors for enhancement of retirement of age of employee of the Corporation from 58 to 60 years. And the said respondents/ writ petitioners retired from service after attaining the age of 58 years as per Regulation 37 of Regulation 1981.

When the age of employees working in the Corporation was enhanced in view of Government Order dated 24.7.2012 issued by State Government in pursuance of which the Managing Director of the Corporation has enhanced the age of retirement of Group- C employees working in the Corporation has enhanced from 58 to 60 years with immediate effect, aforesaid respondents/ writ petitioners again filed writ petition with the grievance that they may be treated that they had worked and discharged their duties upto the age of 60 years, consequential benefit may be paid.

So far as Special Appeal No.545 of 2014, 546 of 2014, 548 of 2014 and 549 of 2014 are concerned, the writ petitioners/respondents approached this Court after their retirement from service by filing writ petitions when the Government Order dated 24.7.2012 issued by the State Government and the order dated 26.7.2012 issued by the Managing Director of the Corporation by which age of retirement of Group-C employees working in the Corporation was enhanced from 58 to 60 years .

Thus, all the respondents/ writ petitioners already retired from service as per the age of retirement of Group-C employees provided under the Regulation 37 of Regulations,1981 i.e. prior to the date of enhancement of age from 58 to 60 years on 26.7.2012.

It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. (See Sangram Spinners Vs. Regional Provident Fund Commissioner-I, AIR 2008 SC 739) In the case of State Bank of India and others Vs. Yogendra Kumar Srivastava and others, AIR 1987SC 1399 Hon'ble the Apex Court

has held that it is now well settled that unless the statute, under which the rules are framed by the rule making authority does not specifically authorise the making of rules with retrospective effect, such authority cannot frame any rule with retrospective effect.

The same view was again reiterated by Hon'ble the Supreme Court in the case of N.T. Bevin Katti and others Vs. Karnataka Public Service Commission and others, AIR 1990 SC 1233 wherein after placing reliance on its earlier judgment passed in P. Ganeshwar Rao and others Vs. State of Andhra Pradesh and others, AIR 1988 SC 2068 has held that it is a well accepted principle of construction that a statutory rule or Government Order is prospective in nature.

Hon'ble the Apex Court in the case of Chandra Singh Vs. State of Rajasthan, (2003) 6 SCC 545 after placing reliance on its earlier judgment in the case of Boppana Venkateswaraloo, AIR 1953 SC 49 has categorically held that the orders affecting substantive right could be made under such law only after it comes into force and not in anticipation thereof.

In the instant case the Managing Director of the Corporation to enhance the retirement age of Group-C employee working in the corporation from 58 to 60 years by order dated 26.7.2012 with immediate effect (Tatkalik Prabhav Se) So in view of the legal position, as stated herein above, enhancement of retirement age will be applicable from 26.7.2012, not prior to said date .

Admittedly in the present case , all the respondents/ writ petitioners already retired from service prior to 26.7.2012 after attaining the age of superannuation as provided in Regulation 37 of Regulation 1981 , so they are not entitled for the relief as claimed by them.

Accordingly, the judgment and order dated 29.5.2014 passed by learned Single Judge is liable to be set aside.

In the result, the special appeals (special appeal nos. no. 543 of 2014, 544 of 2014, 545 of 2014, 546 of 2014, 547 of 2014 ,548 of 2014 and 549 of 2014) are allowed and the judgment and order dated 29.5.2014 passed by learned Single Judge is set aside.

No order as to cost.

(Virendra Kumar-II,J.) (Anil Kumar,J.) Order Date :- 04.10.2018 dk/