

(1998) 09 AP CK 0004

Andhra Pradesh High Court

Case No: Writ Petition No. 21568 of 1998 and Batch

V. Gopalakrishnaiah

APPELLANT

Vs

District Co-operative Central
Bank, Kakinada, E.G. District and
others

RESPONDENT

Date of Decision: Sept. 10, 1998

Acts Referred:

- Andhra Pradesh Shops and Establishments Act, 1966 - Section 41(1)
- Andhra Pradesh Shops and Establishments Act, 1988 - Section 10), 2, 2(5, 47, 47(3)
- Constitution of India, 1950 - Article 14, 15, 311
- Industrial Disputes Act, 1947 - Section 18(1)

Citation: (1998) 6 ALD 137 : (1998) 5 ALT 668

Hon'ble Judges: Neelam Sanjiva Reddy, J; N.Y. Hanumanthappa, J

Bench: Division Bench

Advocate: Mr. Ch. Dhanamjaya, for the Appellant; Mr. E.V. Mohan reddy, SC for Co-op.
Central Bank, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.Y. Hanumanthappa, J

1. All these writ petitions have been filed by the employees working in the District Co-operative Central Bank Ltd., of various districts seeking a direction to the respondents in the nature of a writ of Mandamus declaring the action of the respondents in fixing the age of superannuation of the petitioners at 58 years and contrary to the provisions of the Andhra Pradesh Shops and Establishments Act, 1988 (Act 20 of 1988) (for short "the Act", 1988); and for a consequential order directing the respondents to continue the petitioners in service upto the age of sixty (60) years in the respondents-Banks.

2. The point that raises for consideration in all these writ petitions is one and the same. Hence all these writ petitions are clubbed together and disposed of by this common judgment.
3. The facts, in brief, are that the petitioners in these writ petitions are appointed in the respondents/Banks in various districts under various capacities and discharging their duties. It is their contention that they have no managerial, administrative or supervisory-power since their duties are basically clerical in nature, that the petitioners are working within the meaning of Section 2 Clause (S) of Industrial Disputes Act and also as per the provisions of Act, 1988. As per the bye-laws of the respondents/Banks, the age of superannuation is 58 years. It is further submitted that as per Section 47 of the Act, 1988, an employee working in a shop of establishment is entitled to continue upto the age of 60 years and can retire either on medical grounds or for any reason by giving notice of fifteen days to the employer, that the respondents/Bank is an establishment under the Act, 1988, that the provisions of the Act, 1988 will prevail over the bye-laws and the employees working in the establishment are entitled to continue upto 60 years of age. As regards the sugar factories maintained by the Co-operative Societies, the Government itself issued G.O. Ms. No.396, dated 3-9-1990 fixing the age of superannuation at 60 years. There is no rationale in retiring the employees working in the co-operative societies "other than the co-operative sugar factories at the age of 58 years, that the petitioners were issued notices to retire from service at the age of 58 years. Therefore, the petitioners seek a direction from this Court to continue them in service till they attain the age of sixty (60) years.
4. On the other hand, the General Manager of the respondents/Bank filed a counter affidavit contending that even if the provisions of the Act, 1988 are made applicable in the case of petitioners, the petitioners have an alternative statutory remedy and that the provisions of Section 47(3) of the Act, 1988 fixes the age of retirement of the employees governed by the said Act. It is further submitted that the respondents/Bank is not a commercial establishment as defined u/s 2(5) of the Act, 1988, nor is it an "establishment" as defined u/s 2(10) of the Act, 1988. Merely because the provisions of Section 77 of the Act, 1988 are made applicable to the co-operative societies, notwithstanding anything contained in the Act, 1964, it cannot be said to be a Cooperative, Society unless it comes within the definition of a commercial establishment or an establishment as defined in the Act, 1988, that the respondent/Bank makes profits out of its transactions except to the extent specified by the NABARD to meet its establishment charges, that the respondents/Bank does not carry on any commercial transactions of the nature contemplated u/s 2(5) of the Act, 1988, that the respondent/Bank is a Cooperative Bank as defined in part-5 of the Banking Regulations Act, 1949, that though the respondents/Bank is a Co-operative Society, its functioning and administration is governed by the provisions of the Banking Regulations Act, 1949, that the provisions of Section 47(3) of the Act, 1988 cannot be interpreted to mean that to an employee of an

establishment or a commercial establishment is entitled to continue in service upto the age of 60 years, that as per Rule 28(5) of the A.P. Co-operative Societies Rules, 1964 (for short "the Rules, 1964) framed under the Act, 1964, every paid servant or officer of a Society other than those in the last grade service, shall retire from service on the afternoon of the last date of the month in which he attains the age of 58 years, that as per the settlement/agreement dated 15-6-1997 between Andhra Pradesh Co-operative Banks Association and the A.P. Co-operative Bank Employees Federation representing the integrated cadres of employees working in the District Co-operative Central Banks in the state of Andhra Pradesh u/s 18(1) of the Industrial Disputes Act, 1947 provides for the age of retirement of employees of District Co-operative Central Banks on attaining the age of 58 years by implication, that liberty given to the management for grant of extension of service upto the age of sixty years under the settlements of 1970, 77 and 1981 was specifically deleted in 1971 settlement, that, therefore, the petitioners cannot contend that they are entitled to continue in service till they attain the age of 60 years. Therefore, the writ petitions may be dismissed.

5. The point that arises for consideration in all these writ petitions is "whether an employee working in the State of Andhra Pradesh, whose service conditions, including the appointment, promotion, retirement, termination from service, removal from service etc., are governed by the Rules, 1964, can urge that the employee shall be retired, not as per the rules that have been framed under the Act, 1964, but according to the provisions of the Act, 1988?

6. The petitioners herein not in dispute all are the employees working in various District Co-operative Central Banks, which is a co-operative institution, which has been established as per the provisions of the Act, 1964. Pursuant to the Act, 1964, the Rules, 1964 have been framed. One of the rules viz.. Rule 28(5) of the Rules, 1964 reads as follows:

"(5) Notwithstanding anything contained in the bye-laws special bye-laws, service regulations or common cadre regulations of the Co-operative Societies, every paid servant and officer of a society, other than those in the last grade service, shall retire from service on the afternoon of the last date of the month in which he attains the age of 58 years."

Pursuant to the above said rule, the respondents/Bank took steps to retire the petitioners and other persons similarly situated on their attaining the age of superannuation i.e., at the age of 58 years, since they are not the employees working in the last grade service.

7. According to the learned Counsel for the petitioners that the respondents/Bank is not justified in taking steps to retire the petitioners on their attaining the age of 58 years without noticing the service conditions as contemplated in the Act, 1964 and also governed by the provisions of Act, 1988. According to the learned Counsel for

the petitioners that Section 2(5) of the Act, 1988 defines the "Commercial Establishment", which reads as follows:

"(5) "Commercial establishment" means an establishment which carries on any trade, business, profession or any work in connection with or incidental or ancillary to any such trade, business or profession or which is a clerical department of a factory or an industrial undertaking or which is a commercial or trading or banking or insurance establishment and includes an establishment under the management and control of a Co-operative Society, and establishment of a factory or an industrial undertaking which falls outside the scope of the Factories Act, 1948, and such other establishment as the Government may, by notification, declare to be a commercial establishment for the purposes of this Act but does not include a shop."

8. Section 47 of the Act, 1988 deals with the conditions for terminating the services of an employee, payment of service compensation for termination, retirement, resignation, disablement etc., and payment of subsistence allowance for the period of suspension. Section 47(3) of the Act, 1988 reads as follows:

(3) Every employee who has put in a continuous service of not less than one year shall be eligible for service compensation amounting to fifteen days average wages for each year of continuous employment, (i) on voluntary cessation of his work after completion of 60 years of age; (ii) on his resignation, or (iii) on physical or mental infirmity duly certified by a Registered Medical Practitioner or (iv) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of one year shall not be necessary where the termination of the employment of an employee is due to death or disablement;

Provided further that in case of death of an employee service compensation payable to him shall be paid to his nominee or if no nomination has been made to his legal heir."

9. Section 77 of the Act, 1988 deals with the application of the Act, 1988 to the Co-operative Societies, which reads as follows:

" 77. Application of this Act to Cooperative Societies ."-Notwithstanding anything in the Andhra Pradesh Co-operative Societies Act, 1964, the provisions of this Act shall apply to the Co-operative Societies."

10. Apart from taking us through the above provisions, learned Counsel for the petitioners took us through some of the decisions of this Court. Firstly he relied upon the decision of a learned single Judge of this Court in Kodandam v. Wanaparthi Co-op. Mark Society, 1981 (1) ALT 465; wherein it is held that the provisions of Shops and Establishments Act, 1966 will prevail over the provisions of the Co-operative Societies Act and termination of service of employees of a Co-operative Marketing Society, without following the procedure under the Shops

and Establishments Act, is not valid.

11. Learned Counsel for the petitioners, secondly relied upon a decision of a learned single Judge of this Court rendered in [P.R. Venkataiah Vs. A.P. Co-op. Central Agriculture Development Bank and Others](#), wherein it is held that the provisions of Shops and Establishments Act are applicable to the employees of Co-operative Societies falling under the provisions of the Co-operative Societies Act. Thus, the learned Counsel for the petitioners contends that the action of the respondents/Bank in directing the petitioners to retire from service at the age of 58 years is quite incorrect.

12. Learned Counsel for the petitioners also contended that earlier a Division Bench of this Court (of which, one of us - N. Y. Hanumanthappa, J is a member) in President, B.C.R. Bank Ltd. Nellore v. Dr. Siva Subramanyam, 1997 (4) AID 810 (DB), while interpreting the scope of Section 41(1) of the Shops and Establishments Act; and Rule 28(5) of the A.P. Co-operative Societies Rules Held that an employee of Co-operative Society is governed by the rules made under the Act, 1964 regarding the service conditions, including the superannuation, that the authorities under the Shops and Establishment Act, while deciding the dispute u/s 41(1) of the Shops and Establishments Act, cannot decide whether the rules made under the Co-operative Societies Act governing the age of the superannuation of the employees of the Co-operative Society are followed or not, which requires re-consideration.

13. As an answer to these contentions, learned Counsel for the respondents/Bank submitted that there is no merit in the contentions raised by Mr. Krovvidi Narasimham, learned Counsel for the petitioners. The service conditions of the employees are governed by the rules framed pursuant to the Act, 1964. Rule 28(5) of the Rules, 1964 envisages that every paid servant and officer of society, other than those in the last grade service, shall retire from service on the afternoon of the last date of the month in which he attains the age of 58 years. Apart from this, it is contended that there is a bipartite settlement between the employees and the employer. In the bipartite settlement, one of the issues is fixing of age limit for retirement is 58 years. It is also contended that an employee, who enters into service of the society shall retire when he attains the age of superannuation, that any continuation in service after superannuation will not confer any right. It is also contended by the learned Counsel for the respondents/Bank that the decisions rendered by the learned single Judges of this Court have no application on facts to the case on hand and further contended that the decision rendered by the Division Bench of this Court stated supra has to be followed in the present case. Thus arguing learned Counsel for the respondents/Bank sought that the writ petitions be dismissed.

14. As far as the rules relating to the service conditions of employees are concerned, the same would be framed by the employer and it is not for the employee to suggest what type of rules the employer shall have to frame. This Court and the

Supreme Court in a catena of decisions held that the employees will accept the job fully knowing the rule position, that after discharging duties for several years, on the verge of retirement or before attaining the age of superannuation, the employees are approaching the Courts raising some objections regarding the age of superannuation.

15. In the case of [Indravadan H. Shah Vs. State of Gujarat and Another](#), the Supreme Court while dealing with Gujarat Judicial Service Recruitment Rules (1961) as amended in 1979, particularly Rules 6(4)(i) and 6(4)(iii)(a) regarding appointment of Assistant Judge, by promotion, it is held that the provisions of Rule 6(4)(i) and Rule 6(4)(iii)(a) of the Gujarat Judicial Service Recruitment (Amended Rules), 1979 are invalid and bad as they are unreasonable, irrational, arbitrary and violating the equality clause envisaged in Articles 14 and 15 of the Constitution of India. However, the issue involved in these writ petitions is not the same as in the Indravadan's case (supra).

16. In the case of [Tejinder Singh and Another Vs. Bharat Petroleum Corpn. Ltd. and Another](#), while dealing with the age of officers of Bharat Petroleum fixed at 58 years and that of clerks at 60 years, the Supreme Court held that there is no discrimination regarding the age of superannuation, since clerical staff and the Officers of the Management staff belong to two separate classifications and that the classification on the basis of reasonable differentia is a well-known basis.

17. In the case of [Kailash Chandra Vs. Union of India \(UOI\)](#), while interpreting the Rule 2046(2)(a) of the Railway Establishment Code, the Supreme Court held that the railway ministerial servant falling within this clause may be compulsorily retired on attaining the age of 55, but when the servant is between the age of 55 and 60, the appropriate authority has the option to continue him in service subject to the condition that the servant continues to be efficient. However, the authority is not bound to retain him even after the servant continues to be efficient as the same is the employer's discretion.

18. In the case of [Parshotam Lal Dhingra Vs. Union of India \(UOI\)](#), the Supreme Court held that:

"In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, in-efficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except

in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service."

19. In the case of [Debendra Prasad Srivastava Vs. The State of Bihar and Others](#), a Division Bench of Patna High Court while explaining the scope of Article 311 of the Constitution of India and Bihar Service Code, particularly Rule 74 of the Bihar Service Code, which speaks about the age of retirement, it is held that "the appellant was bound to superannuate, on attaining the age of 55 years, and the mere fact that he was retained in service thereafter did not confer any right upon him to continue in service for any period beyond the date of retirement. After that date, there could be no question of his dismissal or removal from service, and his services could be terminated at any time when they were no longer required."

20. In the light of the principles laid down in the above decisions of the Supreme Court and also a Division Bench of this Court, it can safely be held that the provisions of Act, 1988 do not give any right to the employees working in the respondents-Banks to continue in services upto the age of 60 years, since the statutory rules provided under the Act, 1964, which governs the service conditions of the petitioners, envisage the age of retirement of an employee working in the respondents/Bank at the age of 58 years.

21. In view of the settled legal position, the point is answered against the petitioners and in favour of the respondents/Bank. "The general rule is an employee has to retire from service on attaining the age of superannuation as per the rules governing his service conditions, but any continuation, beyond the age of superannuation, is the discretion of the employer and that any such continuation, however, fit, capable and efficient, will not confer any right on such employee to continue him in service". The submission made by Mr. C.V. Mohan Reddy, learned Counsel is right that the petitioners are not entitled to agitate that they shall continue in service till they attain the age of sixty (60) years. We are of the view that there is no merit in the contentions raised by the learned Counsel for the petitioners. Hence the writ petitions are liable to be dismissed.