

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

*Reserved on:- 16.08.2022
Pronounced on:- 15.09.2022*

**WP(C) No. 83/2021
CM No. 243/2021**

1. Nafeesa Zargar Vs. Union Territory of J&K and others

Mr. M. Y. Kuchay, Advocate

Mr. Faheem Nissar Shah, Advocate

Vs

**SWP No. 872/2018
IA No. 1/2018**

2. Abdul Majeed Doshaba Vs. State of J&K and others

Mr. M. M. Dar, Advocate

Mr. Faheem Nissar Shah, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

1. The instant petitions raise akin and analogues issues, as such, are taken up for disposal together. At the outset, the facts those emerges from the petitions in hand are delianded in short separately hereunder:

WP(C) No. 83/2021

2. The petitioner in the instant petition implores for the following reliefs:

“(i) A writ of Certiorari may be passed by virtue of which the impugned order passed by respondent No. 3 vide No. CUJ/1306/8-11 dated 30.04.2020 may be quashed;

(ii) A writ of Mandamus may be issued commanding the respondents to continue service of the petitioner till his superannuation i.e. 60 years.

(iii) Direction upon the respondents to release all the salary and service benefits in favour of petitioner which is due.

(iv) Any of other relief which this Hon'ble Court deem fit and proper in the attending circumstances of the case may also be passed in favour of petitioner.”

3. The reliefs aforesaid are being sought on the premise that the petitioner came to be appointed as Co-operative Education Instructor vide order dated 24.07.1987 issued by respondent No. 3. The date of birth of the petitioner as recorded in the matriculation certificate issued by the Board of School Education is dated 08.05.1962 and that as per the service Rules and Regulations, the petitioner have had to retire at the age of sixty years on the basis of his recorded date of birth.

4. The petitioner is stated to have risen to the rank of Project Officer in the respondents' Department after having put satisfying service in the Department. The respondent No. 3 is stated to have issued order dated 30.04.2022 informing the petitioner about his retirement on 31.05.2020. A legal notice is stated to have been served upon the respondent by the petitioner on 10.08.2022 for rescinding the notice of superannuation, which notice is stated to have not been responded to by the respondents compelling the petitioner to approach Central Administration Tribunal, Jammu Bench, under application No. 62/1302/2020 dated 30.12.2022 which application is stated to have been returned back to the petitioner on account of lack of jurisdiction by the Tribunal with a liberty to approach appropriate forum for redressal of the grievances.

5. Notice dated 30.04.2022 is being impugned in the instant petition *inter alia* on the grounds that the petitioner have had to retire at the age of 60 years in the respondents' Department and that the respondents sought to retire the petitioner at the age of 58 years in violation of Article 14, 16 and 21 of the

constitution and that the impugned notice has been issued without giving an opportunity of hearing to the petitioner.

6. *Per contra*, objections to the petition have been filed by the respondents wherein the contentions raised in the petition are being controverted. It is being stated in the objections that the petitioner has been working in Jammu and Kashmir Corporative Union being an Apex level Company providing Corporative Education and training to the members of the Corporative Societies, as per its by-laws and that the service conditions of the said Corporative Union as also other Corporative Societies are governed by SRO 233 of 1988 dated 08.07.1988 in terms whereof, an employee of the Corporative Union has to retire upon attaining the age of 58 years.

7. It is being further stated that SRO 233 of 1988 dated 08.07.1988 has been issued by the competent authority under the provisions of Jammu and Kashmir Cooperative Societies Act 1989 and that the notice under challenge in the petition has been legally and rightly issued by the respondents. It is lastly stated in the objections that the issue involved in the petition stands settled by this Court in SWP No. 327/2019 titled as “Farooq Ahmad Naik Vs. State of J&K and others”.

SWP No. 872/2018

1. In the instant petition, the petitioner craves for grant of following reliefs:

“(i) Issue an appropriate Writ, Order or Direction where-under the respondents be prohibited from retiring the petitioner from his services from the month of April, 2018 on the basis of SRO 233 of 1988.

(ii) Issue a Writ, Order or Direction in the nature of Mandamus, commanding the respondents to allow the petitioner to remain in service and retire him at the age of 60 years i.e. on 12.04.2020 as per SRO 164 dated 05.06.2014 read with the proposal forwarded by respondent No. 2 on the basis of decision taken by Board of Directors forming part of this writ petition.

(iii) Issue a Writ, Order or Direction in the nature of Mandamus, commanding the respondents to produce whole record with respect to any process initiated by them for continuation or discontinuation of the petitioner from services before this Hon'ble Court for its kind perusal and appropriate orders and also direct the respondents that while allowing the petitioner to remain in service he be paid continuously salary as is being paid to him by the said respondents as on today.

(iv) The Hon'ble Court may pass any other order or direction, which it deems just and proper under the facts and circumstances of this case.”

2. The aforesaid reliefs are being sought on the premise that the petitioner came to be appointed in the respondent-Society as Accountant in the year 1981 and pursuant to the decision of the respondents dated 05.01.1982, formally appointed vide order dated 18.01.1982. The date of birth of the petitioner in the service record is stated to have been recorded as 12.04.1960 on the basis of matriculation certificate. The respondents are stated to have prepared establishment statement of all the employees working in the respondent-Society dated 20.03.2002 and 31.03.2009 reflecting therein, besides, the date of birth of the petitioner as 12.04.1960 and the date of retirement as April, 2018.

3. The petitioner is stated to have promoted as Manager vide order dated 09.01.2013 and placed under suspension vide order dated 25.07.2017 challenged

by the petitioner in SWP No. 1294/2017 before this Court, which is stated to be pending. It is being stated that the Government issued SRO 164 dated 05.06.2014 enhancing the age of retirement of the Government servants in service on 01.06.2014 as 60 years while amending the Article 226(1) of the J&K Civil Services Regulations.

4. The services of the petitioner are stated to be governed by the SRO 223 of 1988 whereunder the age of retirement is stated to have been prescribed as 58 years. It is being stated that upon coming into being of amendment carried out in J&K Civil Services Regulations in respect of age of retirement, the petitioner and his co-employees through Union filed a representation for applying the said amendment to their case as well, while effecting amendment in SRO 233 of 1988. The said representation is stated to have been forwarded by respondent No. 2 to respondent No. 1 with recommendation vide letter dated 13.04.2015 whereupon the Board of Directors is stated to have considered the matter and recommended the enhancement of the age of the superannuation of the employees of the Cooperative Societies from 58 years to 60 years vide communication dated 21.01.2016. A draft amendment of SRO 233 is also stated to have been drawn.

5. It is being next stated that the respondents, however, did not take a decision in this regard, thus, necessitating the filing of the instant petition having been filed *inter alia* on the grounds that the petitioner has a right to continue in service of the respondents beyond the age of 58 years upto the age of 60 years and that the co-employees of the petitioner have had filed petitions before this Court wherein their retirement came to be stayed allowing them to remain in

service of the respondents upto 60 years and that the respondents cannot discriminate the petitioner vis-à-vis employees of Government Departments including autonomous bodies who have been ordered to retire at the age of 60 years instead of 58 years, notwithstanding, the petitioner been under suspension.

6. *Per contra*, objections to the petition have been filed by the respondents wherein the contentions raised in the petition are being resisted *inter alia* on the premise that SRO 233 of 1988 provides for common service Rules for the Corporative Institution employees regulating their service conditions wherein 58 years age has been prescribed as retirement age and that the provisions of the said SRO have neither been amended nor superseded, although, recommendation for amendment have had been made. It is being stated that the petitioner in terms of SRO 233 had to retire on 30.04.2018 at the age of 58 years.

7. It is being further stated that the petitioner had been placed under suspension after having been found involved in serious discrepancies and misappropriations in the respondent-Society. The provisions of the SRO 164 dated 05.06.2014 enhancing the retirement age of 58 years to 60 years while amending J&K Civil Services Regulations, are stated to have not been made applicable to the employees of Corporative Societies whose service conditions are stated to be regulated and governed by SRO 233 of 1988. It is being lastly stated that a circular dated 11.07.2020 came to be issued by respondent No. 2 clarifying that SRO 233 of 1988 stands saved upon repeal of J&K Corporative Act, 1960 and that under sub Rule II of Rule (1) of the Corporative Societies Service Rules, 1988, the provisions of the SRO 233 of 1988 stands applicable to

all societies presently functioning or having been created, while providing as follows in the relevant portion of Rule 13(1) of the said Rules **“persons appointed to the service shall retire on attaining the age of 58 years or on the date the society in which he was initially appointed ceases to function”**.

Any decision regarding enhancement of the age limit for retirement of the employees of corporative institutions has been treated to be unilateral from the incompetent authority and deemed to be filed.

8. **Heard learned counsel for the parties and perused the record.**

9. Before proceeding to advert to the issues involved in the petition, it would be pertinent to note here that the J&K Corporative Societies Act came to enacted in the year 1960, however, was repealed by the J&K Corporative Societies Act, 1989 (hereinafter for short “the Act”).

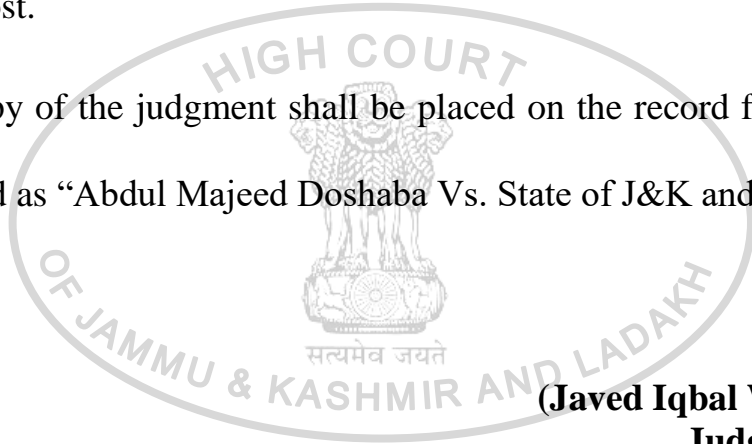
10. SRO 233 of 1988 dated 08.07.1988 under the Act came to be issued providing for regulating the service conditions of the employees of the Apex Corporative Institutions. The said SRO, however, came to be saved upon repealing of the Act 1960 in terms of Section 176 of the Act 1989.

11. Reverting back to the case of the petitioners, it is an admitted fact that the petitioners are the employees of the Corporative Societies/Institutions subject to the provisions of the Act of 1989 inasmuch as SRO 233 of 1988 in the matter of their services. The petitioners have lodged a claim that they could not be retired at the age of 58 years and that the petitioners have to continue in service till at the age of attaining 60 years, on the strength of SRO 164 of 2014 whereunder the age of retirement of the Government servants working in Government and Semi-Government Departments came to be enhanced upto 60

years. This is also an admitted position that SRO 233 of 1988 forms a common service Rule for the Corporative Institution employees and the provisions of the said SRO occupy the field as on date having not been either modified, altered or repealed and in terms of provisions of the said SRO, the petitioners have to superannuate at the age of 58 years. In absence of any alteration, modification or repeal of the provisions of SRO 233 of 1988 by the competent authority by a procedure recognized under law, the petitioner cannot claim to remain in service of the respondents upto the age of 60 years on any ground or any basis including on the strength of SRO 164 of 2014.

12. In view of the aforesaid facts and circumstances, the writ petitions are misconceived and entail dismissal. Accordingly, the petitions are dismissed without any cost.

13. A copy of the judgment shall be placed on the record file of SWP No. 872/2018 titled as “Abdul Majeed Doshaba Vs. State of J&K and others.”



(Javed Iqbal Wani)
Judge

SRINAGAR
15.09.2022
Shivalee

Whether the order is speaking : Yes
Whether the order is reportable: No