

**W.P. No.18399/2012****06.02.2013**

Smt. G. K. Patel, learned counsel for the petitioner.

Shri M. K. Agrawal, learned counsel for the respondents.

Though the matter is posted for consideration of I. A. No.16764/2012, an application for vacating the stay order dated 7.12.2012, however, since the pleadings are complete, with consent of learned counsel for the parties the matter is heard finally.

Order dated 17.10.2011, is being assailed vide this petition by the petitioner Assistant Grade-II; whereby, he has been retired on superannuation on attaining the age of 58 years w.e.f. 31.07.2012.

Initially, appointed by order dated 22.09.1985 as Office Assistant Grade-III (LDC) in Gramin Vidyut Sahkari Sangh Maryadit, Laundi, District Chhatarpur. The society being constituted under M. P. Cooperative Societies Act, 1960, services of the petitioner were governed by Rules framed by Registrar in exercise of the powers under Section 55 (1) of the 1960 Act. That, Registrar by order dated 1.10.2008, in exercise of his powers under Section 55 (1) of 1960 Act, directed for enhancement of the age of retirement of employees governed by 1960 Act from 58 years to 60 years w.e.f. 30.09.2008.

That said decision was made applicable even to Gramin Vidyut Sahkari Sanstha where the petitioner was

working on the post of Assistant Grade-III, by order dated 05.01.2009, on the basis whereof, vide order dated 21.7.2009 a resolution was passed for enhancing the age of employees of Gramin Vidyut Sahkari Sangh Maryadit from 58 to 60 years.

Grievance of the petitioner is that, though as per the resolution dated 21.7.2009, the petitioner's age of retirement was increased from 58 to 60 years. Contrary to same, the petitioner has been retired on attaining the age of 58 years w.e.f. 31.7.2012. On the contrary respondents have extended the benefit of enhanced age of retirement in favour of drivers/ Class IV employees in Gramin Vidyut Sahkari Samiti, Laundi. Whereas, the same has been deprived to the petitioner on the pretext that the petitioner is Class-III employee. It is urged that while enhancing the age of retirement no distinction has been drawn by the Registrar in respect of employees in Cooperative Societies, therefore, the respondents are not justified in qualifying Class-III and IV employees in respect of age of retirement.

Respondents on being noticed have filed the return wherein it is stated that while in the employment of society prior to 01.02.2008 the retirement age was 58 years and with the merger of the society with Madhya Pradesh Poorv Kshetra Vidyut Vitran Company, the services condition of employees working in the society came to be governed by the Rules applicable in the

respondent/company wherein the age of the employment of Class III employees remain at 58 years. It is accordingly urged that, the action of respondents cannot be faulted with.

The counsel for the parties were heard at length.

Whereas, the petitioner has embedded to his contention that his service conditions were governed by the Rule framed under Section 55 (1) of the 1960 Act. The respondents on their turn have stated that on absorption the service condition prevailing in the company would apply to the petitioner.

However, neither the petitioner nor the respondents could point out from the material on record as to when the services of the petitioner was absorbed with the respondent company and what were the terms and conditions of absorption.

In absence of the terms and conditions of which the services of the petitioner were absorbed it is not possible to adjudge the claim put forth by the petitioner. Therefore, the respondents are directed to examine the claim of the petitioner by giving an opportunity of hearing to the petitioner and if it is established that, the terms and conditions on which the services of the petitioner was absorbed with Madhya Pradesh Poorv Kshetra Vidyut Vitran Company, protected the right which has accrued in favour of the petitioner while employed with the Society,

then, the petitioner be granted the benefit of enhanced age of retirement.

Let a decision to that effect be taken within a period of 30 days from the date of communication of this order. Till then the interim protection granted to the petitioner on 7.12.2012 shall continue to remain in operation.

The petition is finally, disposed of in above terms.  
Cc as per rules.

**(SANJAY YADAV)**  
**JUDGE**

*Loretta*