

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

HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU

AND

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

+ W.A.Nos.441, 492, 496, 500, 502, 508, 510, 512, 514,
516, 523, 527, 533 and 541 of 2021

% 25.09.2023

W.A.No.441 of 2021

#The Vice Chairman and Managing Director,
Andhra Pradesh State Road Transport Corporation,
RTC House, Vijayawada, Krishna District.

... Appellants

Vs.

\$Pragada Vasudevarao,
S/o Papayya, E456337, Aged about 58 years,
Occ: Retd Conductor, C/o Srikakulam Depot-II,
Srikakulam District and 22 others

... Respondents

! Counsel for the appellants : Sri M.Solmon Raju for learned Advocate
General

! Counsel for the Respondents : Sri N.Ashwani Kumar and
Sri G.V.Shivaji

< Gist:

> Head Note:

? Cases referred:

¹ 2017 (3) ALT 1

² 2023 SCC Online SC 1074

³ 2021 SCC Online 466

⁴ (1983) 1 SCC 305

⁵ 1992 (1) SCC 28

⁶ (1983) 1 SCC 305

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
AND
HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

W.A.Nos.441, 492, 496, 500, 502, 508, 510, 512, 514,
516, 523, 527, 533 and 541 of 2021

COMMON JUDGMENT: *(per Hon'ble Sri Justice D.V.S.S.Somayajulu)*

This batch of writ appeals is taken up for hearing with the consent of all the learned counsels appearing for the respective parties.

2. For the appellants, the Advocate General as instructed by Sri M.Solmon Raju appeared. For the respondents/writ petitioners the essential arguments were advanced by Sri N.Ashwani Kumar and Sri G.V.Shivaji.

3. The writ appeals are filed against the common order passed in W.P.No.2350 of 2020 and batch and in W.P.No.19075 of 2019 and batch.

4. The writ petitioners have sought a direction in the nature of a Mandamus declaring the action of the respondents in issuing a notification No.PD-20/2019, dated 30.09.2019 by which the age of superannuation was increased from 58 to 60 years with immediate effect i.e., from September 2019 instead of with retrospective effect

from 02.06.2014. This was contested and the batch of writ petitions were allowed. The learned single Judge held that the notification No.PD-20/2019 dated 30.09.2019 shall be applicable retrospectively from 02.06.2014 with all consequential benefits. Against the same, the present appeals are filed and the matters were argued at length.

5. The facts are not in dispute. Both the parties have relied upon tabulated statements filed in the form of memos which are taken on record. The case law and the written arguments are also taken on record. The important dates and events which are pointed out are set out in the form of tabulated statements, which are as under:

S.No.	Date	Description
1	27.06.2014	The State Government has amended the A.P. Public Employment Regulation of Age of Superannuation Act vide Act No.4 of 2014, wherein, the age of superannuation was enhanced from 58 to 60 years
2	18.06.2016	G.O.Ms.No.112 was issued by the Finance (HRM IV) Dept. clarifying that the Act 4 of 2014 is only applicable to the categories under section 2 (6) of the 1984 Act and that the enhanced age of superannuation from 58 to 60 years is not applicable to PSUs and institutions listed in schedule IX and X of Reorganization Act.
3	07.03.2017	WP order was given by the Composite High Court of AP in W.P.No.18205 of 2016 and batch reported in (2017) 3 ALT 1 (DB), wherein, the GO Ms.No.112, Dt.18.06.2016 was challenged and the Hon'ble Court held that the employees working under the respective PSUs and Institutions cannot claim any right to continue service till attainment of age of 60 years and only upon the request of the

		concerned PSU / Corporation / Society / Institution and thereafter upon the approval of the State Government, the employees shall be eligible for enhancement of superannuation.
4	09.08.2017	The Hon'ble Apex Court has disposed of the appeals (reported in (2019) 17 SCC 364) filed against W.P.No.18205 of 2016 and batch in light of the GO Ms.No.138, Fin (HRM IV) Dept., Dt.08.08.2017.
5	22.08.2017	The Hon'ble High Court of AP disposed W.P.No.19707 of 201 and batch directing APSRTC or the Appellant Corporation to take a decision regarding the enhancement of age of superannuation within 3 months
6	19.06.2018	The Appellant Corporation vide its Resolution No.64/2918 has decided not to enhance the age of superannuation to its employees from 58 to 60 years.
7	24.07.2018	The Hon'ble Apex Court was not inclined to interfere in the orders Dt.22.08.2017 passed by this Hon'ble High Court in W.P.No.19707 of 2017 and batch.
8	14.06.2019	GO Ms.29 was issued by the Transport Dept., thereby an expert committee was constituted to look into the merger of APSRTC in to the Government of AP.
9	03.09.2019	The expert committee has given its report on merger of APSRTC in to the Government of AP.
10	30.09.2019	GO Ms.39 was issued by the Transport Dept., wherein, the State Government has agreed to enhance the age of superannuation of the Appellant Corporation employees from 58 to 60 years pending the formal merger with the State Government.
11	30.09.2019	The Appellant Corporation has enhanced the age of its employees from 58 to 60 years vide its Notification No.PD-20/19
12	16.12.2019	The State Government has introduced a bill vide L.A. Bill No.53 of 2019 in the A.P. Legislative Assembly pertaining to the absorption of employees of the Appellant Corporation into the service of the State Government.
13	27.12.2019	The State Government has brought and Act vide Act No.36/2019 into force

		absorbing the employees of the Appellant Corporation into the service of the State Government.
14	31.12.2019	GO Ms.No.52 was issued by the Transport Department, wherein, all the employees of the Appellant Corporation are absorbed into the Public Transport Department created by the State Government.
15	14.02.2020	W.P.No.4204 of 2020 was filed challenging the notification of the Appellant Corporation Dt.30.09.2019 pertaining to the enhancement of age of superannuation.

6. Learned Advocate General took this Court through the series of events and the documents filed which are mentioned above in the tabulated statement. He also points out that the Judgment of the Division Bench in the Case of **G.Rama Mohan Rao v. Govt. of A.P.**,¹ is conclusive and this Court has to follow the same. He also points out that a subsequent Division Bench in Writ Appeal No.878 of 2022 and batch has also followed the Judgment and passed orders. It is his contention that the conclusions in the case of **G.Rama Mohan Rao** (1 supra) make it clear that the Board of Directors have to amend the Corporation bye-laws, rules and regulations which have to be approved by the State Government and after the rules, bye-laws and regulations are amended in accordance with law, the employees would be entitled to the enhanced age of superannuation. He also points out that the Division Bench clearly pointed out that the decision has to be taken based upon various parameters which are mentioned including

¹ 2017 (3) ALT 1

the financial capacity of the Corporation. Learned Advocate General also pointed out that the employees of the Corporation have also filed W.P.No.19707 of 2017 and batch which was disposed of on 22.08.2017 directing the respondents-Corporation to take a decision whether or not to amend its statutory regulations within three (3) months and further action with regard to the continuation or otherwise of its employees would be taken pursuant to the decision of the Board. After these writ petitions were allowed, the decision of the Board was taken not to enhance the age to 60 years. Thereafter, a committee was appointed to merge the APSRTC with the State Government itself. After the merger was approved, the age of retirement was enhanced by the Government itself to 60 years by G.O.Ms.No.39 dated 30.09.2019. This was followed by notification dated 30.09.2019 by which the age of superannuation was enhanced to 60 years with effect from September, 2019. Learned Advocate General submits that this decision was taken after reviewing of the parameters in line with the Judgment of **G.Rama Mohan Rao** (1 supra) and after looking in to the report of an expert committee. Thereafter, the merger was approved. He submits that these are all matters of policy and that the Court should very lightly interfere in matters of policy. It is his contention that whenever a “date” is decided in matters like this, there will always be some employees who will be losing out since a date has to be necessarily fixed as a cut-off. He

contends that if such a cut-off date is not fixed, it would be impossible for a retirement date to be arrived at in the Corporation. He also submits that the question of discrimination also does not arise in a case like this and the submissions of the learned counsels for the respondents and the conclusion by the learned Judge is wrong for the reason that in matters of policy and with regard to the date of retirement, the employees do not have a vested right to be considered and that the employees who have already retired and those who are in the service as on September, 2019 are a distinct class by themselves. Therefore, the question of discrimination will not arise. He relies on a judgment in the case of ***Dr.Prakasan M.P. and others v. State of Kerala and another***² which is also considered earlier judgment in the case of ***New Okhla Industrial Development Authority (NOIDA) v. B.D.Singhal***³.

7. In reply to this, Sri N.Ashwani Kumar argues that once the age of superannuation was decided to be enhanced based upon the merger, the benefit of the same should be given to the petitioners also. He also points out that State Government had agreed to enhance the retirement age from 58 to 60 based upon the recommendation of the expert committee pending formal merger and did not impose any conditions or a prospective date. On the other hand, the appellant-

² 2023 SCC Online SC 1074

³ 2021 SCC Online 466

Corporation had introduced the cut-off date as September, 2019. He points out that by virtue of the judgment in earlier case of **G.Rama Mohan Rao** (1 supra) that went upto the Hon'ble Supreme Court, the amendment was given retrospective effect. Therefore, it is his contention that as per G.O.Ms.No.102, all the Corporations have to amend their bye-laws and that in view of the language used, in para 5 of the said G.O., the orders should come into force and be made applicable without any pre-conditions. The learned counsel contends that the introduction of cut-off date amounts to discrimination. He also argues at length about the decision of **G.Rama Mohan Rao** (1 supra) and the appeal before the Hon'ble Supreme Court etc. He submitted a brief note also.

8. Sri G.V.Shivaji, learned counsel also argued the matter and filed a written note also. It is his contention also that the learned single Judge rightly interpreted the mandatory nature of the directions issued in G.O.Ms.No.102 and the word used in clause 5 "shall". Therefore, he submits that the Corporation was bound to amend its regulations. Instead of doing so, they differed and later instead of following the said direction fully, they have introduced a cut-off date which is contrary to the earlier directions on the subject. He also relies upon G.O.Ms.No.138 which gave retrospective effect to the dates by amending G.O.Ms.No.102. He submits that by virtue of this G.O. dated 08.08.2017, the orders have come into force with retrospective

effect and all the employees working in a Corporation included in schedules 9 and 10 of the A.P.State Reorganization Act, like the RTC are entitled to the benefit. He, therefore, submits that denial of the benefit to the writ petitioners is contrary to law and is discriminatory. He relies upon the well known judgment of ***D.S.Nakara and others v. Union of India***⁴ to justify his case of unreasonable classification and arbitrariness. Lastly, without prejudice to any of his conditions, learned counsel also submits by relying upon ***Ashok Alias Somanna Gowda and another v. State of Karnataka by its Chief Secretary and others***⁵ that the relief can also be limited to the writ petitioners and not to all other who are similarly placed.

9. In rejoinder, the learned Advocate General submits that the prayer in the writ petition is against a policy decision and is questioning the notification in PD-20/2019. Therefore, he submits that if a declaration is given, it will be applicable to all and the request of the learned counsel for the respondents made in the alternative that it should be limited to the writ petitioners cannot be given. He points out that the recent judgment of the Hon'ble Supreme Court in ***New Okhla Industrial Development Authority (NOIDA)*** (3 supra) and ***Dr.Prakasan M.P.***, (2 supra) are an answer to the issue raised.

⁴ (1983) 1 SCC 305

⁵ 1992 (1) SCC 28

10. **COURT:** It is an admitted fact that by the date the writ petition was filed all the petitioners had retired. The lead case of W.P.No.4204 of 2020 shows that the majority of writ petitioners had retired in 2017 and some other retired in 2018 and 2019. The writ was filed in February, 2020. The chequered history of the decision to enhance the age of superannuation is set out in the tabular statement mentioned above. In the previous round of litigation when the age was enhanced from 58 to 60 years, a big batch of writ petitions were filed which culminated in the decision of **G.Rama Mohan Rao** (1 supra). The findings of this judgment of the Division Bench were not in any way modified or altered by the Hon'ble Supreme Court in the SLP's filed. Since the Government decided to enhance the age and did not contest the matter in this SLP's the Hon'ble Supreme Court did not pass any further orders. Therefore, in the opinion of this Bench, the findings in the case of **G.Rama Mohan Rao** (1 supra) are still good law. This Bench is bound by them. In para 163 of the judgment of **G.Rama Mohan Rao**, the following was held in para 163:

163. Not to provide for an age of retirement at all would be contrary to public interest, because the State or its instrumentalities cannot afford the luxury of allowing its employees to continue in service after they have passed their peak. (*Yeshwant Singh Kothari v. State Bank of Indore*; *K. Nagaraj v. State of A.P.*). The proposition that there ought to be an age of retirement in services is widely accepted as reasonable and rational. The fact that the stipulation, as to the age of retirement,

is a common feature of all services establishes its necessity, no less than its reasonableness. Public interest demands that there ought to be an age of retirement in all services. A common scheme of general application governing superannuation is evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society, and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the employer has to counter-balance conflicting claims while determining the age of superannuation. On the one hand, services under the State or its instrumentalities cannot be deprived of the benefit of the mature experience of senior employees. On the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services, and the younger sections of the society. The balancing of these conflicting claims of different segments of society involves minute questions of policy. These claims involve considerations of varying vigour and applicability. Often, the Court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of a given case. While resolving the validity of policy issues like the age of retirement, it is not proper to put the conflicting claims in a sensitive judicial scale, and decide the issue by finding out which way the balance tilts. That is an exercise which the administrator has to undertake. (K. Nagarajl 11).

In paras 165 and 166, the following was held:

165. If a rule of retirement can be deemed to deprive a person of his right to livelihood, it will be impermissible to provide for an age of retirement at all. That will be contrary to public interest because the State or its instrumentalities cannot afford the luxury of allowing its employees to continue in service after they have passed the point of peak performance. Rules of retirement do not

take away the right of a person to his livelihood : they limit his right to hold office to a stated number of years. (*K. Nagaraj* 11). A government servant/employee of a public sector undertaking has no right to continue in service beyond the age of superannuation and, if he is retained beyond that age, it is only in exercise of the discretion of the Government or the public sector undertaking concerned. (*State of Assam v. Basanta Kumar Das*). Once the age of superannuation is fixed it may be open to the employer, for special reasons, to continue in its employment an employee who has passed that age; but it is inconceivable that when the age of superannuation is fixed, it should be in the option of the employee to continue in service thereafter. (*Guest Keen Williams (P) Ltd. v. P.J. Sterling*).

166. Fixing an age of retirement does not amount to termination of services. (*N. Lakshmana Rao*1). There is no provision which takes away the power of the Government or the public sector undertaking to increase or reduce the age of superannuation. (*Bishun Narain Mishra v. State of U.P.*; *N. Lakshmana Rao*1). Application of the legislative policy decision, to increase the age of retirement of Government employees, to employees of public sector enterprises also depends on many factors that should be taken into account in the light of the peculiar characteristics of each company or corporation or department. It is for the concerned authority to make necessary changes in the rules and regulations after taking into account all relevant aspects. (*Sureshchandra Singh*112).

11. Ultimately, in conclusion, the Division Bench held that the Corporations will have to take steps to secure the approval of the Government for amendment of the bye-laws, regulations and only after

approval, the employees would get the benefit of enhanced age of superannuation.

12. In the case on hand, after this decision was pronounced, employees of the Corporation filed W.P.No.19707 of 2017 and batch. The Division Bench by common order directed the respondent Corporation to take a decision within three months from that date. Thereafter, with a slight delay, on 19.06.2018, a decision was taken by the Board to negative the request and not to enhance the retirement age. The financial status of the Corporation and also the financial impact of the retirement age enhanced with effect from 02.06.2014 were also considered by the Board of APSRTC. It was noted that if the benefit is given and 02.06.2014 is considered for enhancing the retirement age with retrospective effect, the burden would be Rs.878 crores and if the benefit of enhancement is given even on a notional basis, the cost would be approximately Rs.382 crores. Other reasons are also cited by the Board which resolved not to enhance the age. Thereafter, the State decided to merge the Corporation into itself. A committee was appointed to study the various aspects with regard to the merger. The committee gave a report with some options. One out of the two options was accepted by the Government and G.O.Ms.No.39 dated 30.09.2019 was issued agreeing to the recommendation of the committee of the employees from 58 to 60 years pending formal

merger. Immediately thereafter, and on the same day, the impugned order dated 30.09.2019 was issued.

13. It is therefore clear that the procedure stipulated in the case of **G.Rama Mohan Rao** (1 supra) was also followed and that the decision was not a spur of moment decision or a kneejerk reaction. For certain reasons, the Board of the APSRTC decided not to enhance the age of superannuation. Pursuant to the Governments decision of merger, a committee was appointed to study the modalities and it is thereafter only that the decision was taken to enhance the age from 58 to 60 years. This was made applicable from September, 2019.

14. In the opinion of this Court and as mentioned earlier, this is a reasoned thought out decision and it is purely in realm of a 'policy decision'. The judgment cited by the learned Advocate General in the case of **Dr.Prakasan M.P.** is in the opinion of this Court an answer to the argument advanced. In para 9 of this judgment, it is noticed that all the G.Os issued were prospective in nature and the primary G.O. dealt with enhancement of superannuation age. In para 12, the Hon'ble Supreme Court in this decision started its analysis by stating that the age of retirement is purely a matter of policy which lies within the domain of the State Government. In para 12 the following was noticed:

12. In a somewhat comparable case on facts that arose in *New Okhla Industrial Development Authority v. B.D. Singhal*¹², the appellant - Authority (NOIDA) had resolved to recommend enhancement of the age of superannuation of its employees from 58 to 60 years. The said proposal, when sent to the State Government for prior approval, was turned down. This led to the aggrieved employees filing a writ petition before the High Court of Judicature at Allahabad which was allowed and NOIDA was directed to consider the matter afresh and forward its proposal to the State Government for its approval. It was left open to the State Government to consider giving effect to the increase in the age of retirement from the date when NOIDA had resolved to bear the financial burden for the increase of age or from such date as it may consider expedient. This time, the State Government acceded to the proposal received from NOIDA for enhancing the age of retirement to 60 years, but made the said decision prospective. Aggrieved by the refusal of the State Government to make the decision retrospective, the respondents amended the pending writ petition which was allowed by the High Court that struck down the provision of making the decision prospective and directed that such of the respondents who had retired from service by then, would be deemed to have worked till the extended age of retirement, with all consequential benefits. Challenging the said decision, the State of Uttar Pradesh filed a Petition for Special Leave to Appeal under Article 136 of the Constitution of India, which was allowed by this Court with the following observations:

“22. Whether the age of superannuation should be enhanced is a matter of policy. If a decision has been taken to enhance the age of superannuation, the date with effect from which the enhancement should be made

falls within the realm of policy. The High Court in ordering that the decision of the State government to accept the proposal to enhance the age of superannuation must date back to 29 June 2002 has evidently lost sight of the above factual background, more specifically (i) the rejection of the original proposal on 22 September 2009; and (ii) the judgment of the Division Bench dated 17 January 2012 refusing to set aside the order rejecting the proposal on 22 September 2009 which has attained finality. But there is a more fundamental objection to the basis of the decision of the High Court. **The infirmity in the judgment lies in the fact that the High Court has trenched upon the realm of policy making and has assumed to itself, jurisdiction over a matter which lies in the domain of the executive. Whether the age of superannuation should be increased and if so, the date from which this should be effected is a matter of policy into which the High Court ought not to have entered.**

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24. **Whether the decision to increase the age of superannuation should date back to the resolution passed by NOIDA or should be made effective from the date of the approval by the State government was a matter for the State government to decide. Ultimately, in drawing every cut-off, some employees would stand on one side of the line while the others would be positioned otherwise. This element of hardship cannot be a ground for the High Court to hold that the decision was arbitrary.** When the State government originally decided to increase the age of superannuation of its own employees from fifty-eight to sixty years on 28 November 2001, it had left the public sector corporations to take a decision based

on the financial impact which would result if they were to increase the age of superannuation for their own employees.

25. From time to time the authorities of the State took a decision bearing upon the exigencies of service prevailing in each organisation. The State government had evidently determined that it was for each organisation to consider and determine the impact of the financial burden, and based on that the organisation was to submit a proposal for the approval of the government.

26. The High Court's observation that the Government order on 30 September 2012 increasing the age of superannuation prospectively is arbitrary seems to be based on the premise that the respondent-employees have a vested right to the increase in the age of retirement on the passage of the resolution by NOIDA. However, Section 19 of the Act stipulates that regulations - which would include amendments as in this case - will require the previous approval of the State Government. The employees will have a vested right to the increased age of superannuation only after the service regulations are modified upon approval of the State Government, and from such date as maybe prescribed by the Government. Para 1(ii) of the government order issued on 30 September 2012 clearly and in unambiguous terms states that the order shall come into force prospectively. **The government order can be given retrospective application only if expressly stated or inferred through necessary implication. Therefore, the respondent-employees could not have claimed a vested right that the enhancement in the age of retirement should be made effective from the date on which NOIDA had resolved to submit a proposal for the approval of the government.**”

(Emphasis added)

15. The Hon'ble Supreme Court clearly held in para 17 of **Dr.Prakasan M.P.** (2 supra) as follows:

17. Such a decision lies exclusively within the domain of the Executive. It is for the State to take a call as to whether the circumstances demand that a decision be taken to extend the age of superannuation in respect of a set of employees or not. It must be assumed that the State would have weighed all the pros and cons before arriving at any decision to grant extension of age. As for the aspect of retrospectivity of such a decision, let us not forget, whatever may be the cut-off date fixed by the State Government, some employees would always be left out in the cold. But that alone would not make the decision bad; nor would it be a ground for the Court to tread into matters of policy that are best left for the State Government to decide. The appellants herein cannot claim a vested right to apply the extended age of retirement to them retrospectively and assume that by virtue of the enhancement in age ordered by the State at a later date, they would be entitled to all the benefits including the monetary benefits flowing from G.O. dated 9th April, 2012, on the ground of legitimate expectation.

16. Similarly, if the **New Okhla Industrial Development Authority (NOIDA)** (3 supra) case is seen, it is clear that a similar fact situation with regard to enhancement of retirement age was the core issue. In para 17, the following is found:

17. The High Court while striking down para 1(ii) of the Government Order dated 30 September 2012 to enhance the age of retirement with prospective effect (para 1(ii) of the government order makes this position clear) has directed that the enhancement of the age of retirement must date

back to 29 June 2002. This direction giving retrospective effect to the enhancement in the age of retirement seems to be based on the fact that the original resolution of the Board of NOIDA to enhance the age of retirement was issued on 29 June 2002. In granting this relief, the High Court has formulated two reasons in its judgment:

firstly, the government order dated 30 September 2012 is arbitrary for having increased the age of retirement with effect from the date of the order without giving the benefit to employees who had retired prior to that date; and *secondly*, there was no reason to refuse the benefit of an extension of the age of superannuation retrospectively when the resolution was received by the State government “more than three years back”.

17. The Hon’ble Supreme Court also held as follows in paras 24 and 26:

24. Whether the decision to increase the age of superannuation should date back to the resolution passed by NOIDA or should be made effective from the date of the approval by the State government was a matter for the State government to decide. Ultimately, in drawing every cut-off, some employees would stand on one side of the line while the others would be positioned otherwise. This element of hardship cannot be a ground for the High Court to hold that the decision was arbitrary. When the State government originally decided to increase the age of superannuation of its own employees from fifty-eight to sixty years on 28 November 2001, it had left the public sector corporations to take a decision based on the financial impact which would result if they were to increase the age of superannuation for their own employees.

26. The High Court's observation that the Government order on 30 September 2012 increasing the age of superannuation prospectively is arbitrary seems to be based on the premise that the respondent-employees have a vested right to the increase in the age of retirement on the passage of the resolution by NOIDA. However, Section 19 of the Act stipulates that regulations - which would include amendments as in this case - will require the previous approval of the State Government. The employees will have a vested right to the increased age of superannuation only after the service regulations are modified upon approval of the State Government, and from such date as maybe prescribed by the Government. Para 1(ii) of the government order issued on 30 September 2012 clearly and in unambiguous terms states that the order shall come into force prospectively. The government order can be given retrospective application only if expressly stated or inferred through necessary implication. Therefore, the respondent-employees could not have claimed a vested right that the enhancement in the age of retirement should be made effective from the date on which NOIDA had resolved to submit a proposal for the approval of the government.

18. In addition, the law on the matter of this Courts power to interfere in matters of policy decision is well settled. This Court does not have either the expertise or wherewithal to decide the issue. The issue of financial implication of the decision is also a matter which the Courts will have to keep in mind and cannot ignore.

19. Therefore, if the decision taken to implement the enhancement is viewed against the above mentioned legal and factual backdrop, it is

clear that it is a reasoned decision. No ground is pleaded or proved to set it aside.

20. As far as the other argument of discrimination based upon ***D.A.Nakara and others v. Union of India***⁶ is concerned, this Court notices that a similar issue was also considered and decided in para 17 of this very same judgment that some employees would be left out in the cold. So is the finding in para 24 of ***New Okhla Industrial Development Authority (NOIDA)*** (3 supra).

21. Therefore, this Court has to hold that in view of the fact situation in this case and the law on the subject, it cannot be said that the action of the appellants in fixing the date of superannuation from September 2019 is contrary to law. In addition, the petitioners were seeking a Mandamus. A Mandamus would only arise when there is a right. As held by the Division Bench in ***G.Rama Mohan Rao*** (1 supra) and the Hon'ble Supreme Court in the above mentioned case, the petitioners do not have a vested right to claim the relief. The relief cannot be limited to the writ petitioners as the prayer is against a decision/policy decision that is applicable to all employees.

22. For this reason also, this Court agrees with the submissions of the appellants and holds that the order of the learned single Judge has to be set aside. The two recent judgments of the Hon'ble Supreme

⁶ (1983) 1 SCC 305

Court have also settled the legal position. It is clear that in cases of enhancement of age of superannuation the petitioners cannot claim it must be from a retrospective date.

23. The writ appeals are therefore allowed. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S.SOMAYAJULU, J

DUPPALA VENKATA RAMANA, J

Date: .09.2023

Note: L.R.Copy be marked.

KLP