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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.5672 of 2014**

P.N. Upadhyay, Aged-59 years, S/o Shri B. Upadhyay, working as Junior Assistant at Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit, Urla, District Durg (CG) R/o G-7, Dairy Colony, Krishak Nagar, Chhokara Nala, Raipur P.S.-Telibandha, Raipur, District Raipur (CG)

---Petitioner**Versus**

1. State of Chhattisgarh, through its Secretary, Land and Legislative Affairs Department, Mantralaya, Mahanadi Bhawan, Naya Raipur.
2. The Registrar, Co-operative Societies, Chhattisgarh, H.Q.-Head of the Department Building, Block-B, Second & Third Floor, Naya Raipur
3. The Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit, through its Managing Director, Urla, P.S.-BMY Charouda, District-Durg (CG)

---Respondents

And

Writ Petition (S) No.6667 of 2014

J.R. Bhagat, Aged-61 years, S/o Late Karmu Ram Bhagat, Assistant General Manager, at Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit, Urla, District-Durg (CG) R/o Aman Nagar, Mowa, P.S.-Mowa, Raipur, District-Raipur (CG)

---Petitioner**Versus**

1. State of Chhattisgarh, through its Secretary, Land and Legislative Affairs Department, Mantralaya, Mahanadi Bhawan, Naya Raipur.
2. The Registrar, Co-operative Societies, Chhattisgarh, H.Q.-Head of the Department Building, Block-B, Second & Third Floor, Naya Raipur
3. The Agriculture Production Commissioner, Chhattisgarh, H.Q.-Indrawati Bhawan, Naya Raipur
4. The Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit, through its Managing Director, Urla, P.S.-BMY Charouda, District-Durg (CG)

---Respondents

And

Writ Petition (S) No.2590 of 2014

1. Mohan Lal Dubey, Aged-59 years, S/o Madan Lal Dubey, working As Paricharak At O/o Chhattisgarh Rajya Sahakari Dugdha Mahasangh Maryadit, Urla District Durg (CG) R/o Dairy Colony, Chhokara Nala, Arang Road, Raipur, District Raipur (CG).
2. Mahendra Kumar Bhawar, Aged-59 Years S/o Ram Prasad Bhawar, working As Jeep Driver At O/o C.G. Rajya Sahakari Dugdha Mahasangh Maryadit, Urla District Durg (C.G.) R/o Patel Gali, Mahamai Para Purani Basti Raipur, P.S. Purani Basti Raipur, District Raipur (CG)

---Petitioners

Versus

1. State of Chhattisgarh, through its Secretary, Land and Legislative Affairs Department, Mantralaya, Mahanadi Bhawan, Naya Raipur
2. The Registrar, Co-operative Societies, Chhattisgarh, H.Q.- Head of the Department Building, Block-B, Second & Third

Floor, Naya Raipur

3. The Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit, through its Managing Director, Urla, P.S.-BMY Charouda, District-Durg (CG)

---Respondents

And

Writ Petition (S) No.5671 of 2014

R.S. Sharma, Aged-59 years, S/o Late Gaya Prasad Sharma, working as Assistant General Manager, at Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit, Urla, District-Durg (CG) R/o C/41, Vijayapuram, Chantidih, Bilaspur, District-Bilaspur (CG)

---Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Land and Legislative Affairs Department, Mantralaya, Mahanadi Bhawan, Naya Raipur.
2. The Registrar, Co-operative Societies, Chhattisgarh, H.Q.-Head of the Department Building, Block-B, Second & Third Floor, Naya Raipur
3. The Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit, through its Managing Director, Urla, P.S.-BMY Charouda, District-Durg (CG)

---Respondents

And

Writ Petition (S) No.5700 of 2014

Kishor Kumar Naidu Aged-60 Years S/o Late Rajgopal Naidu

Retired Technician at Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit Urla District Durg (CG) R/o H - 8 Dairy Colony, Krishak Nagar, Chhokara Nala Raipur P.S. Telibandha, Raipur Distriict Raipur (C.G.)

---Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Land and Legislative Affairs Department, Mantralaya, Mahanadi Bhawan, Naya Raipur.
2. The Registrar, Co-operative Societies, Chhattisgarh, H.Q.-Head of the Department Building, Block-B, Second & Third Floor, Naya Raipur
3. The Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit, through its Managing Director, Urla, P.S.-BMY Charouda, District-Durg (CG)

---Respondents

For Petitioners	:	Mr. Rajesh Kesharwani, Advocate in all cases.
For Respondents/State:		Mr.Gary Mukhopadhyay, Dy.G.A.
For Res-C.G. Rajya Sahakari Dugdha Mahasangh Maryadit	:	Mr.Y.S. Thakur, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

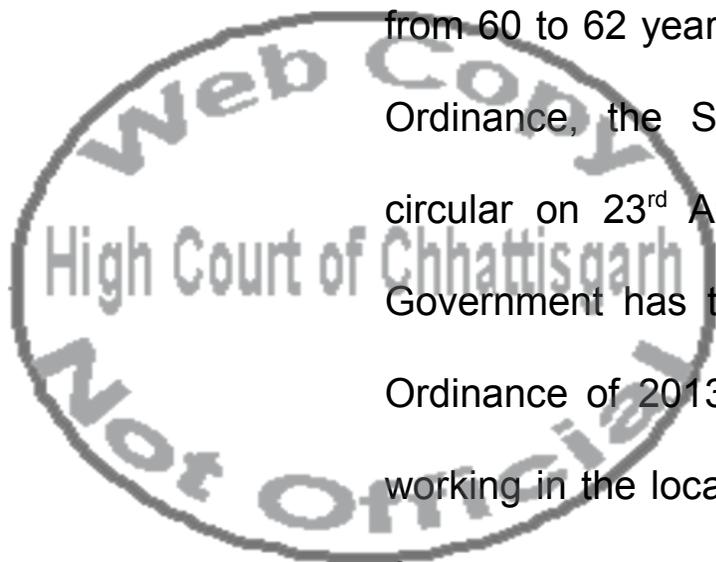
Order on Board

15/12/2015

1. Excellent question that emanates for consideration is nature of Rule making function exercised by the Registrar under Section 55(1) of the Act of 1960 whether it is legislative or administrative in nature and scope of

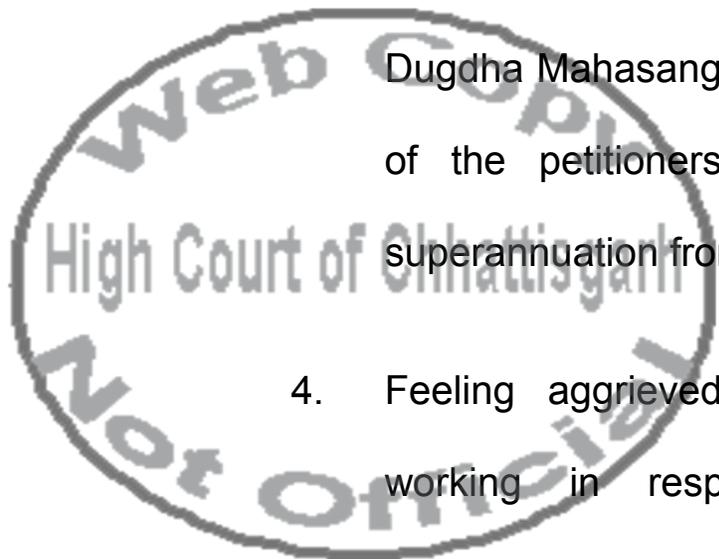
interference by this Court in that function.

2. The Chhattisgarh Shaskiya Sevak (Adhivarshiki-Ayu) (Sanshodhan) Ordinance, 2013 (for short “the Ordinance of 2013”) was promulgated on 23rd August, 2013. It was an Ordinance to amend Chhattisgarh Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967 by which the Rule 56 of the Fundamental Rule was amended and age of superannuation of the government servant was enhanced from 60 to 62 years. Thereafter, in compliance of the said Ordinance, the State of Chhattisgarh has issued the circular on 23rd August, 2013 stating inter-alia that the Government has taken a decision that according to the Ordinance of 2013 age of superannuation of employees working in the local bodies namely Municipal Council and Corporation etc. be amended accordingly. The Registrar, Co-operative Societies following the circular of the State Government and in exercise of powers conferred under Section 55(1) of the Chhattisgarh Cooperative Societies Act, 1960 (for short “the Act of 1960”) passed an order dated 30.8.2013 enhancing the age of superannuation of the Co-operative servants from 60 to 62 years subject to approval of the said order by the Board of Directors of the concerned Co-operative Societies.



3. Respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit in its Annual General Meeting dated 4.3.2014 considered the order of the Registrar, Co-operative Societies dated 30.8.2013 and resolved to maintain the age of superannuation of their employees to be 60 years and accordingly, it was informed to the Registrar, Co-operative Societies and by order dated 27.9.2014, respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit rejected the representations of the petitioners for enhancement of their age of superannuation from 60 to 62 years. .

4. Feeling aggrieved, the petitioners, who were earlier working in respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit, have filed these writ petitions questioning the order of the Registrar, Co-operative Societies dated 30.8.2013 as well as order dated 27.9.2014 by which respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit has rejected the representations of the petitioners stating inter-alia that order of the Registrar, Co-operative Societies enhancing the age of superannuation subject to approval of the Board of Directors of the concerned Co-operative



Societies is bad and unsustainable in law and as such, condition of approval from the Board of Directors could not have been inserted by the Registrar, Co-operative Societies in exercise of powers conferred under Section 55(1) of the Act of 1960.

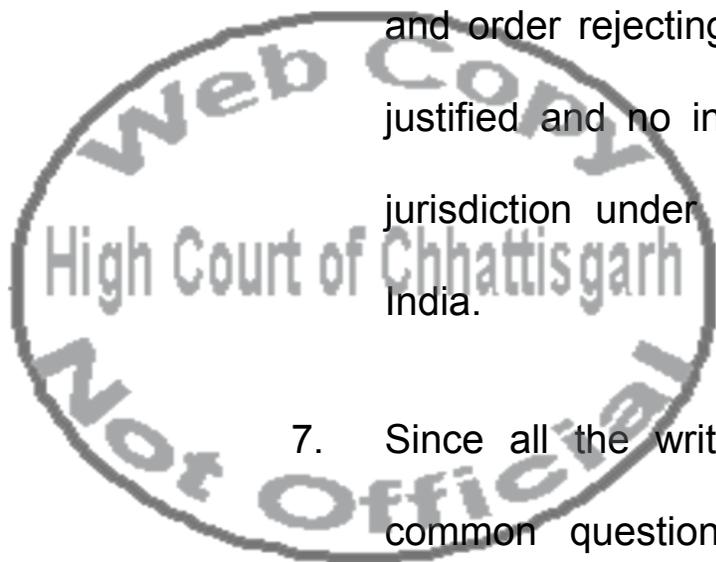
5. Return has been filed by the respondent/State stating inter-alia that the Registrar, Co-operative Societies is justified in enhancing the age of superannuation from 60 to 62 years subject to approval of the Board of Directors. Respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit, which is an autonomous body constituted under the provisions of the Act of 1960 and as such, the order of the Registrar, Co-operative Societies is justified.

6. Respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit has also filed its return stating inter-alia that order of the Registrar, Co-operative Societies enhancing the age of superannuation from 60 to 62 years subject to approval of the Board of Directors is legally supportable and justified as respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit is a body corporate having perpetual succession and a

common seal and therefore, the Registrar, Co-operative Societies is justified in enhancing the age of superannuation from 60 to 62 years subject to approval of its Board of Directors. It has further been stated that the Board of Directors in its meeting took a decision not to enhance the age of superannuation from 60 to 62 years considering the excessive and rising establishment cost and as such, order of the Registrar, Co-operative Societies and order rejecting representations of the petitioners are justified and no interference is called for in exercise of jurisdiction under Article 226/227 of the Constitution of India.

7. Since all the writ petitions involve common facts and common question of law, therefore, they are being considered and decided by this common order.

8. Mr. Rajesh Kesharwani, learned counsel appearing for the petitioners, would submit that the Registrar, Co-operative Societies is absolutely unjustified in enhancing the age of superannuation from 60 to 62 years subject to approval from the Board of Directors and such a order inserting the condition of seeking approval from the Board of Directors to that extent is arbitrary and without authority of law. He



would further submit that the Registrar, Co-operative Societies is competent authority to frame the terms and conditions of employment in a society and the Registrar, could not delegate its power to respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit as the State Government has already issued the circular enhancing the age of superannuation from 60 to 62 years, which is binding on respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit and respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit is the "State" within the meaning of Article 12 of the Constitution of India, therefore, writ petitions be allowed and orders passed by the respondents be quashed.

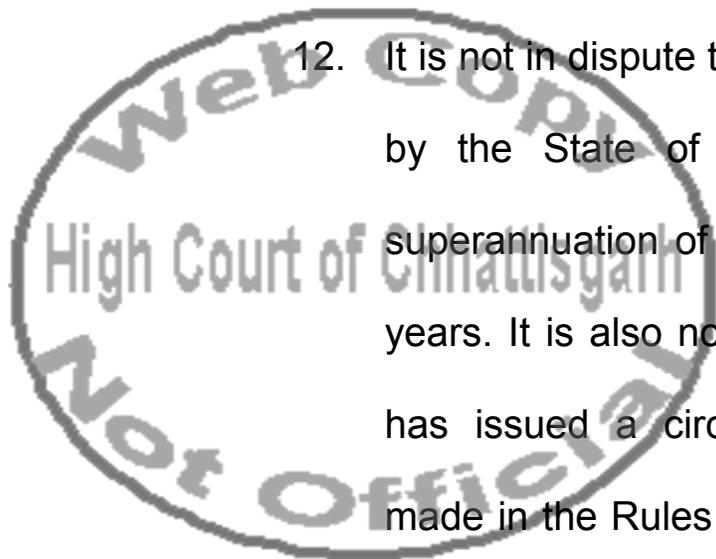
9. Mr. Gary Mukhopadhyay, learned Deputy Government Advocate appearing for the State, would submit that the Registrar, Co-operative Societies is justified in enhancing the age of superannuation from 60 to 62 years in exercise of powers conferred under Section 55(1) of the Act of 1960 as it is for the respective Co-operative Societies to consider and approve the order and to enhance the age of superannuation and therefore, order passed by the Registrar, Co-operative Societies is justified and it is

liable to be maintained.

10. Mr.Y.S. Thakur, learned counsel for respondent-Dugdha Mahasangh would support the impugned order.

11. I have heard learned counsel appearing for the parties, given thoughtful consideration to the submissions raised therein and also gone through the record with utmost circumspection.

12. It is not in dispute that Ordinance of 2013 has been issued by the State of Chhattisgarh enhancing the age of superannuation of the government servant from 60 to 62 years. It is also not in dispute that the State Government has issued a circular that appropriate amendment be made in the Rules governing the service conditions of the employees working in the Corporations and autonomous local bodies to bring uniformity in the age of superannuation and accordingly, the Registrar, Co-operative Societies in exercising the powers conferred under Section 55(1) of the Act of 1960 passed an order dated 30.8.2013 enhancing the age of superannuation of government servant from 60 to 62 years subject to condition of approval of its order by the Board of Directors



of the concerned Co-operative Society. Thereafter, respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit in its General Body Meeting dated 4.3.2014 has taken a decision not to enhance the age of superannuation from 60 to 62 years, which has been communicated to the petitioners rejecting their representation made in that behalf.

13. In this case, the Registrar Co-operative Societies in exercising the powers conferred under Section 55(1) of the Act of 1960 in its wisdom passed an order dated 30.8.2013 which states as under:-

“क्रमांक/समन्वय/2013/5292 रायपुर, 30 अगस्त, 2013
:: आदेश ::

छ0ग0शासन, वित्त विभाग के परिपत्र क्रं/361/एफ-2013/17-0004/वि0/नि0/चार/2013 दिनांक 26/08/2013 के परिप्रेक्ष्य में, मैं ए0के0 टोप्यो, पंजीयक सहकारी संस्थाएं, छत्तीसगढ़, छ0ग0 सहकारी सोसाइटी अधिनियम 1960 की धारा 55(1) के अंतर्गत प्रदत्त अधिकारी का प्रयोग करते हुए, समस्त वर्ग की सहकारी समितियों के सेवायुक्तों हेतु सेवानिवृत्ति आयु 60 के स्थान पर 62 प्रतिस्थापित करता हूँ। किंतु ऐसे सेवायुक्त जो सेवावृद्धि/पुनर्नियुक्ति/संविदा नियुक्ति पर हैं, उनके मामलों में यह आदेश लागू नहीं होगा क्योंकि वे इस संशोधन के पूर्व विद्यमान उपविधि/सेवानियम के अंतर्गत अधिवार्षिकी आयु पूर्ण कर चुके हैं।

उक्त आदेश संस्था के बोर्ड में रखा जाकर अनुमोदन उपरांत प्रभावशील होगा।

यह आदेश आज दिनांक 30/08/2013 को मेरे हस्ताक्षर एवं कार्यालयीन मुद्रा से जारी किया गया।

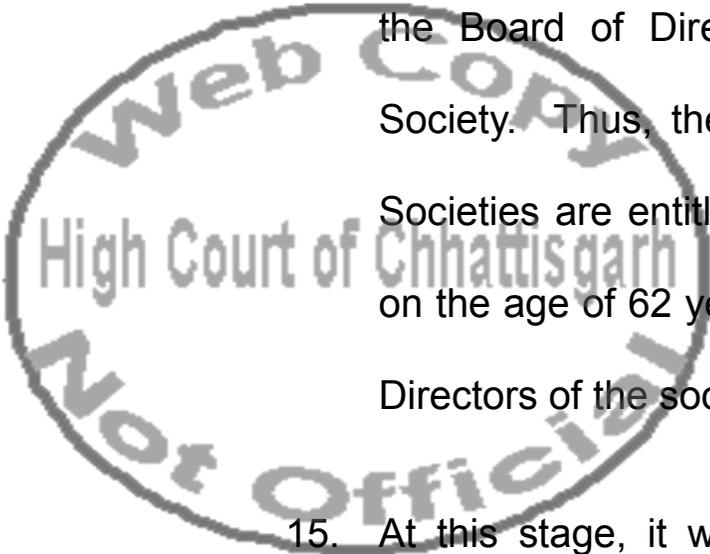
(ए०के० टोप्पो)
पंजीयक
सहकारी संस्थाए, छत्तीसगढ.
रायपुर, दिनांक 30 अगस्त, 2013

14. The above-stated order passed by the Registrar, Co-operative Societies clearly shows that age of superannuation of the employees working in the Co-operative Societies has been enhanced from 60 to 62 years subject to the condition that it has to be approved by the Board of Directors of the concerned Co-operative Society. Thus, the persons working in the Co-operative Societies are entitled to superannuate from their services on the age of 62 years subject to approval of the Board of Directors of the society in which they are working.

15. At this stage, it would be appropriate to notice Section 55(1) of the Act of 1960 which provides as under:-

“55. Registrar’s power to determine conditions of employment in societies.-(1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.”

16. In order to consider the question raised herein, it would be appropriate to trace out the nature of rule making power of



the Registrar as provided under Section 55(1) of the Act of 1960. The said power could either be legislative or administrative.

17. Way back in the year 1987, Their Lordships of the Supreme Court in the matter of **Union of India and another v. Cynamide India Limited and another**¹ pointed out distinction between legislative, administrative and quasi judicial power as under:-

“7.....A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy”. “Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.” It has also been said: “Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class” while, “an adjudication, on the other hand, applies to specific individuals or situations”. But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past

¹ (1987) 2 SCC 720

and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts.....”

18. Delineating the nature of power exercised by the Registrar under Section 55 of the Act of 1960 and to issue orders in the matter of **Hemant Kumar Ganga Prasad Gupta v.**

President, District Co-operative Central Bank Ltd. And

others², the Division Bench of the Madhya Pradesh High

Court speaking through Hon'ble the Chief Justice G. P.

Singh held as under:-

“9.....The power to make rules and issue orders under Section 55 conferred on the Registrar is in the nature of nature of a legislative power which is delegated to him by the Act.....”

19. Similarly, in the matter of **Bikal Bihari Soni and others v.**

State of M. P. and others³, the Madhya Pradesh High

Court has held that rule making function of the Registrar is

legislative in nature. The report states as under:-

“Section 55(1) of the M.P. Co-operative Societies Act is in two parts. First part permits the Registrar to frame Rules from time to time

² 1983 M.P.L.J. 461

³ 1986 M.P.L.J. 347

governing the terms and conditions of employment in a society or class of societies. The second part requires the society or class of societies to which the rules are applicable, to comply with the Order that may be issued by the Registrar in this behalf. The first part is really the rule making authority conferred upon the Registrar whereas the second part is the Order making authority of the Registrar. Rule making function is legislative in nature. As far as the order making power is concerned such power is generally used to describe the exercise of executive power or to take judicial or *quasi-judicial* decisions. These two powers are separate and for distinct purposes.”

20. Likewise, it has further been held by the Full Bench of Madhya Pradesh High Court in the matter of **Sevaram Totaram Pargir v. Board of Revenue, M. P. , Gwalior and another**⁴ that the rules framed under Section 55(1) of the Act of 1960 are statutory in nature and they cannot be equated with the bye laws framed for internal management by holding as under:-

“3.....In exercise of powers under Section 55(1) of the Act, Rules have been framed relating to the terms of employment and working conditions of employees of the co-operative Central Bank of Madhya Pradesh. It is well settled that where a statute authorizes either the government or any other authority to frame rules and the rules are so framed, the rules would have the force of statute. They will be deemed to have been incorporated as part of the statute. The rules framed under Section 55(1) of the Act would, therefore, be statutory.....”

4 1983 M.P.L.J. 645

21. The principle of law that emerges from the aforesaid decisions is that the rule making function of the Registrar under Section 55 of the Act is legislative in character duly delegated to him by the Act of 1960. Now the question would be scope of interference by this Court in the legislative power exercised by the Registrar by passing an order impugned laying down age of superannuation of Co-operative servants to be 62 years subject to approval by the Board of Directors of the concerned Co-operative Society in view of Section 31 of the Act of 1960.

22. Scope of interference in the legislative function has been pointed out by the Supreme Court authoritatively in the matter of **Sundarjas Kanyalal Bhatija and others v. The Collector, Thane, Maharashtra**⁵, following statement of law of the report is relevant as under:-

“23.....It must be noted that the function of the government in establishing a Corporation under the Act is neither executive not administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. In the present case the government did

⁵ AIR 1990 SC 261

publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs".

Thus, the scope of interference in the legislative function is extremely limited and only question to be examined while dealing with challenge to the legislative function is whether statutory provisions have been complied with or not.

23. The determination of the nature of function exercised by the Registrar under Section 55 of the Act and scope of interference by this Court in legislative function in jurisdiction under Article 226 of the Constitution of India brings me back to the question as to whether the petitioners have made out a case for interference in the order passed by Registrar, Co-operative Society dated 30.08.2013. The petitioner has simply pleaded that the order of the Registrar enhancing the age of superannuation of the co-operative servant from 60 to 62 years making the said enhancement subject to approval of the Board of Directors is illegal. The petitioners have

neither pleaded nor established that any statutory provisions have not been complied with or violated by the Registrar while exercising the power under Section 55(1) of the Act of 1960, as held by the Supreme Court in the matter of **Sundarjas** (Supra). Therefore, the condition imposed by the Registrar making the enhancement of age of superannuation subject to approval of the Board of Directors is in accordance with law and it cannot be held to be illegal merely because it does not suit to the interest of the petitioners.

24. There is an additional reason for upholding the order of Registrar. The Registrar passed the impugned order on 30.08.2013, thereafter, the general body of respondent No.3 in its meeting dated 04.03.2014 considered the order of the Registrar and decided to maintain the age of retirement as it is. It is settled law that alteration in the age of retirement by the employers is a matter of executive policy and is permissible for sufficient and cogent reasons as has been held by the Supreme Court in paragraph 45 of the judgment in the case of **M. P. Vidyut Karmachari Sangh v. M. P. Electricity Board**⁶, relying on **K. Nagaraj v. State of A. P.**⁷, **Osmania University v. V. S.**

6 (2004) 9 SCC 755

7 (1985) 1 SCC 523

Muthurangam⁸, L. Lakshmana Rao v. State of Karnataka⁹ and Chandra Singh v. State Rajasthan¹⁰.

25. The determination of above-stated question brings me to next question as to whether the order passed by respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit resolving and deciding to maintain the age of superannuation from 60 is justified ?

26. Respondent-Chhattisgarh Rajya Sahkari Dugdha Mahasangh Maryadit is a body corporate duly established and constituted under Section 31 of the Act of 1960, has considered the order of the Registrar, Co-operative Societies in its proper prospective and has clearly reached into conclusion that on account of excessive and rising establishment expenses Dugdha Mahasandh decided to maintain the age of superannuation of the employees working in their Mahasandh to 60 years as it is and not to enhance the age of superannuation to be 62 years. It has already been held in foregoing paragraph and that enhancement in age of retirement is a matter of Executive policy and the petitioners have failed to demonstrate the

8 (1997) 10 SCC 741

9 (1976) 2 SCC 502

10 (2003) 6 SCC 545

arbitrariness and illegality in the order of the Registrar and Dugdha Mahasangh passed in this regard. I do not see any illegality either in the order of the Registrar or in the order rejecting representations, warranting interference by this Court in exercise of jurisdiction under Article 226/227 of the Constitution of India.

27. As a fall out and consequence of the aforesaid discussion, all the writ petitions being without substance are liable to be and are hereby dismissed but without imposition of cost(s).



B/-

**Sd/-
(Sanjay K. Agrawal)
JUDGE**

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.5672 of 2014

Petitioner

P.N. Upadhyay

Versus

Respondents

State of Chhattisgarh and others

And other connected matters

HEAD-NOTE

(English)

The function of the Registrar under Section 55 (1) of the C.G. Co-operative Societies Act, 1960 is legislative in nature.

(हिन्दी)

छ.ग. सहकारिता अधिनियम, 1960 की धारा 55 (1) के अंतर्गत पंजीयक का कार्य विधायी प्रकृति का है।

