

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3959 OF 2019

[Arising out of SLP (C) No. 29305 of 2008]

Regional Manager, U.P.S.R.T.C. & Anr.

.. Appellants

Versus

Maslahuddin (Dead)

.. Respondents

[**WITH** C.A. No. 3960 of 2019 [@ SLP (C) No. 29295 of 2008] and
C.A. No. 3961 of 2019 [@ SLP (C) No. 29293 of 2008]

J U D G M E N T

M. R. Shah, J.

1. Delay in filing the applications for substitution in SLP (C) No. 29305 of 2008 and SLP (C) No. 29293 of 2008 is condoned. Abatement, if any, is set aside and the applications for substitution are allowed in terms of the prayer made.

1.1 Leave granted.

2. As common question of law and facts arise in these appeals, as such, arising out of the impugned judgment and order passed by

the High Court, all these appeals are being disposed of by this common judgment and order.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 4138 (M/S) of 2005, Writ Petition No. 4139 (M/S) of 2005 and Writ Petition No. 3946 (M/S) of 2005, by which the High Court has dismissed the said writ petitions preferred by the appellants herein – U.P. State Road Transport Corporation and has confirmed the awards declared by the Labour Court holding that the original respondents before the High Court were entitled to be superannuated at the age of 60 years, the original petitioners – U.P. State Road Transport Corporation (hereinafter referred to as ‘the Corporation’) and another have preferred the present appeals.

4. The facts leading to the present appeals in nutshell are as under:

That the respondents herein were the employees as Drivers with the appellant-Corporation on 29.08.1979 initially as temporary employees on a pay scale of Rs.185-DRO-3-215-4-235-6-265. It appears that before the establishment of the appellant-Corporation the pay scale of the employees in the State Government was based

on the recommendations in the years 1971-1973 of the U.P. Pay Commission. That, accordingly when the U.P. State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 (hereinafter referred to as 'the Service Regulations') came into force on 19.06.1981, the pay scales of the employees were classified according to the classification done by the Government. Regulation 8(1) of the Service Regulations provided that an employee whose pay scale was Rs.200/- or more, was placed in Group "C" and an employee whose pay scale was less than Rs.200/-, was placed in Group "D". Regulation 37 of the Service Regulations provided that the employees of Group "C" shall retire at the age of 58 years, while the employees of Group "D" shall retire at the age of 60 years. According to the appellants, after the aforesaid Regulations came into force in the year 1982, the State Government, on the basis of the recommendations of the Second Pay Commission, revised the pay scale and the classification of the posts of all the Government employees according to the Office Memorandum No. 15/140/81-Personnel-1 dated 27.02.1982. It appears that the revision of pay scales and the revision in classification of posts for the State Government employees resulted in much agitation amongst the appellant-Corporation employees

and, therefore, there was a need to revise the pay scales and the classification of the posts of all the employees of the appellant-Corporation. According to the appellants, accordingly in the year 1982, on the basis of the recommendations of the Second Pay Commission, the minimum pay scale of the drivers of the Corporation was revised to Rs.335/- from Rs.200/-. According to the appellants, thereafter the Board of Directors, in exercise of their powers under Regulation 8(b) of the Service Regulations, 1981, vide their Resolutions in 1984-1985 revised the classification of posts of all the employees, including the drivers and the latter were accordingly placed in Group "C" as their pay scale was already revised to Rs.335/- and above at the relevant time. It appears that in view of the recommendations of the Second Pay Commission, a proposal No. 09 by the Regional Manager, the Board of Directors of the appellant-Corporation in their 84th Meeting dated 18.01.1984 in exercise of their powers under Regulation 8(b) resolved to fix the age of superannuation of Drivers and Conductors as 58 years and placed them in Group "C". That vide Resolution No. 1415 of 1985, the Board of Directors resolved that the classification of the posts of all the employees would be revised in view of the recommendations of the Second Pay Commission and that, in the present context, as

the pay scale of the Drivers and Conductors have been revised to Rs.335-8-415-10-495 and above, they would be placed in Group "C". That by notification dated 10.06.1985 of the Managing Director of the appellant-Corporation, the classification of posts of all the employees were revised in view of the above-noted resolution of the Board of Directors. It was also clarified that the revision in classification will be applicable while determining the age of retirement of the employees. According to the appellant-Corporation, accordingly the drivers, including the respondents herein, were placed in Group "C" class of employees and admittedly they had been drawing the salary of Group "C" pay scale till the age of their retirement. That the respondents herein were retired from service on attaining the age of superannuation of 58 years treating and considering them in Group "C". The respondents challenged the order of retirement before the Labour Court. That by a common judgment and award dated 23.09.2004, the Labour Court held that the age of retirement of the concerned workmen-Driver shall be 60 years as they were appointed before 30.06.1982.

5. Feeling aggrieved and dissatisfied with the common judgment and award passed by the Labour Court holding that the age of retirement of the respondents was to be at 60 years and that the

respondents were wrongly retired at the age of 58 years, the appellant-Corporation preferred the writ petitions before the High Court.

5.1 That, by the impugned common Judgment and order, the High Court has dismissed the said writ petitions and has confirmed the Judgment and award passed by the Labour Court.

5.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the appellant-Corporation has preferred the present appeals.

6. Ms. Garima Prashad, learned Advocate appearing on behalf of the appellants-Corporation has vehemently submitted that, in the facts and circumstances of the case, the High Court has committed a grave error in holding that the respective respondents who were working as the Drivers belonged to Group "D" category. It is submitted that, consequently, the High Court has committed a grave error in holding that their age of superannuation shall be 60 years.

6.1 It is vehemently submitted by the learned advocate appearing on behalf of the appellants that the High Court has not properly appreciated and considered the fact that though initially in the year 1979 when the respective respondents were appointed, they were in

the pay scale of Rs.185-DRO-3-215-4-235-6-265. However, subsequently, their pay scale was revised retrospectively and they were placed in the pay scale of Rs.335-8-415-10-495 and, in fact, they were also paid the arrears. It is submitted that, therefore, when their pay scale was revised to Rs.335/- from Rs.200/- with retrospective effect, all the respective respondents-Drivers would fall in Group "C" and, therefore, as per the rules, their age of superannuation would be 58 years.

6.2 Relying upon the rejoinder filed on behalf of the appellants dated 28.03.2019, it is submitted that, in the year 1982, the pay scales of all employees of the Corporation were revised on the basis of the recommendations of the Second Pay Commission. It is submitted that accordingly the pay scale of all the drivers of the Corporation was revised to Rs.335/- from Rs.200/-. It is submitted that the pay scale of the respective respondents was also revised to Rs.335/- w.e.f. the date of their appointment and they received the arrears also for the period from July 1979 to August 1981 [SLP (C) No. 29305/2008]. It is submitted that thereafter on 18.01.1984, the Board of Directors of the Corporation in their 84th Meeting resolved to fix the age of superannuation of the Drivers and Conductors as 58 years and place them in Group "C". It is

submitted that again in their 91st Meeting in the year 1985, the Board of Directors resolved that the classification of posts of all the employees would be revised in view of the recommendations of the Second Pay Commission and that the pay scale of the Drivers and Conductors was again revised to Rs. 335-8-415-10-495 and above and they would be placed in Group 'C'. It is submitted that thereafter, on 10.06.1985, the above resolution was notified and it was clarified that the revision in classification will be applicable while determining the age of retirement of the employees. It is submitted that accordingly, all Drivers, including the respective respondents, were placed in Group "C" class of employees. It is submitted that in fact all the respondents were drawing the salary of Group "C" pay scale till the age of their retirement. It is submitted that all the Drivers, including the respective respondents, were paid the arrears as per the revised pay scale of Rs. 335-8-415-10-495. It is submitted that as the respondents-Divers accepted the revised minimum pay scale to Rs.335/- of Group "C" and have throughout received the salary of Group "C" class of employees, and that their last drawn salary at the time of their retirement was as per the pay scale of Group "C" employees, both the Labour Court as well as the High Court have committed a

grave error in holding the contrary and thereby have materially erred in holding that the age of superannuation of the respective respondents-Drivers was 60 years.

6.3 It is submitted by the learned advocate appearing on behalf of the appellants that even this grievance was raised by the concerned respondents-Drivers belatedly, approximately after six years of the retirement.

6.4 It is further submitted by the learned advocate appearing on behalf of the appellants that, as such, the Division Bench of the Allahabad High Court in a similar matter in a writ petition titled as ***Brij Prasad Tewari v. U.P.S.R.T.C. and Ors.*** filed by the retired drivers of the appellant-Corporation challenging the age of retirement as 58 years, dismissed the said writ petition holding that in the absence of the agreement as to the age of superannuation between the employer and the employee, the same shall be at completion of 58 years of age by the employees.

6.5 Making the above submissions, it is prayed to allow the present appeals.

7. Learned advocate appearing on behalf of the respective respondents-Drivers while supporting the impugned judgment and order passed by the High Court has vehemently submitted that, as

such, the respective respondents-Drivers when they were appointed as the Drivers in the year 1979 were in the pay scale of Rs. 185-DRO-3-215-4-235-6-265. It is submitted that, therefore, all such drivers who were getting the salary less than Rs.200/- were to be placed and/or considered in Group "D". It is submitted that even their pay scale was revised subsequently i.e. after 1982 and in fact the Corporation resolved to fix the age of superannuation of Driver and Conductors as 58 years and place them in Group "C" in the year 1984. It is submitted that, therefore, the resolution dated 18.01.1984 being Resolution No. 1319/1984 resolved to fix the age of superannuation of the Drivers and Conductors as 58 years and to place them in Group "C", would not be applicable retrospectively. It is submitted that, as prior to 1982 or even 1984, the respective Drivers were in the pay scale of Rs. 185-DRO-3-215-4-235-6-265 and their salary was less than Rs.200/-, all of them would fall in Group "D" and therefore, considering the Rules prevailing at the relevant time, their age of superannuation would be 60 years being Group "D" employees.

7.1 It is further submitted by the learned counsel appearing on behalf of the respondents that whatever is stated now that their pay scale was revised retrospectively and/or they were paid the arrears

was not placed before the High Court. It is further submitted that there is no material placed on record to substantiate the above.

7.2 Making the above submissions, it is vehemently submitted by the learned counsel appearing on behalf of the respective respondents-Drivers that the impugned judgment and order passed by the High Court is not required to be interfered with by this Court. Therefore, it is prayed to dismiss the present appeals.

8. We have heard the learned counsel appearing on behalf of the respective parties at length. The issue in the present appeals is in a very narrow compass. The short question which is posed for consideration by this Court is whether the respective respondents-Drivers would fall in Group "D" or Group "C"?

8.1 It is required to be noted that all those employees who were getting the salary less than Rs.200/- would fall in Group "D" category. As per the Rules prevailing at the relevant time, the employees getting salary more than Rs.200/- would fall in Group "A", "B" or "C" as per the classification and those who would not fall in either Group "A", "B" or "C" category, they would fall in Group "D" category. As per the Rules prevailing at the relevant time, the age of superannuation of Group "D" employees was 60 years and for

the others, i.e. Group "A", "B" and "C", the age of retirement was 58 years.

8.2 It appears that at the time when the respective respondents-Drivers were appointed, they were in the pay scale of Rs.185-DRO-3-215-4-235-6-265 and under the normal circumstances they would fall in Group "D" category and therefore their age of superannuation would be 60 years. However, it is required to be noted and so stated in the rejoinder affidavit filed on behalf of the appellant-Corporation dated 28.02.2019 that in the year 1982 the pay scale of all the employees of the Corporation was revised, including the Drivers, and the pay scale of the Drivers of the Corporation was revised to Rs.335/- from Rs.200/-. It is further stated that the pay scale of the respondents was also revised to Rs.335/- w.e.f. the date of their initial appointment and they were also paid the arrears from the date of their initial appointment till August, 1981. It is further stated in the affidavit that, in the year 1984, it was resolved to fix the age of superannuation of the Drivers and Conductors as 58 years and place them in Group "C". It is also further stated that, in the year 1985, the Board of Directors resolved that the classification of posts of all the employees would be revised in view of the recommendations of the Second Pay

Commission and that the pay scale of the Drivers and Conductors was again revised to Rs. 335-8-415-10-495 and above and that they would be placed in Group "C". It is further stated that the above resolution was notified on 10.06.1985 and it was also clarified that the revision in classification will be applicable while determining the age of retirement of the employees. It is stated that accordingly all the drivers, including the respondents herein, were placed in Group "C" class of employees as they were drawing the salary of Group "C" pay scale till their age of retirement. It is further stated that, pursuant to the above notification, all the drivers, including the respondents, were paid the arrears on the revised pay scale of Rs. 335-8-415-10-495.

8.3 Learned counsel appearing on behalf of the appellants has produced before this Court the service record of one or two respondents to substantiate the above and in support of their case that the drivers were paid the arrears on revision of their pay scale. There is no further counter on behalf of the respondents to the rejoinder filed on behalf of the appellant-Corporation. Therefore, the averments in the rejoinder on behalf of the appellant-Corporation had gone uncontroverted.

8.4 In view of the above, both the Labour Court as well as the High Court have committed a grave error in holding that the respective respondents-Drivers were in Group "D" category and that their age of superannuation would be 60 years. As the pay scale of the respective respondents-Drivers was revised to Rs.335-8-415-10-495 with retrospective effect and in fact they were paid the arrears also, thereafter it was not open for the respondents-Drivers to contend that as per their original pay scale, their salary was less than Rs.200/- on the pay scale of 185-DRO-3-215-4-235-6-265, they would be in Group "D" category. Once having taken the advantage of the revised pay scale retrospectively and that their pay scale was revised to Rs. 335-8-415-10-495 with retrospective effect and they were paid the arrears which the respective respondents accepted, in that case, they would fall in Group "C" category and, therefore, considering the Rules, their age of superannuation would be 58 years and not 60 years, as contended on behalf of the respective respondents-Drivers. Therefore, the appellant-Corporation rightly retired/superannuated the respective respondents-Drivers on completion of 58 years of age.

9. In view of the above and the reasons stated above, all these appeals succeed and the impugned common judgment and order

passed by the High Court is hereby quashed and set aside. In the facts and circumstance of the case, there will be no order as to costs.

.....J.
[L. NAGESWARA RAO]

.....J.
[M. R. SHAH]

New Delhi,
April 16, 2019.