

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CONTEMPT PETITION (CIVIL) Nos.1045-1055 of 2018

In

CIVIL APPEAL NO.10276, 10277, 10279, 10281, 10282, 10318, 10319,
10320, 10321, 10324 and 10328 OF 2017

K. Ananda Rao etc.

..... Petitioners

Versus

Sri S.S. Rawat, IAS and ors. etc.

..... Contemnors/
Respondents

WITH

CONTEMPT PETITION (CIVIL) Nos.1873-1891 of 2017

In

CIVIL APPEAL NO.10354-10361 of 2017

WITH

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CONMT.PET.(C) No.1176/2018 in C.A. No.10366/2017

CONMT.PET.(C) No.1177/2018 in C.A. No.10366/2017

CONMT.PET.(C) No.1178/2018 in C.A. No.10366/2017

CONMT.PET.(C) No.1179/2018 in C.A. No.10366/2017

CONMT.PET.(C) No.1181/2018 in C.A. No.12463/2017

CONMT.PET.(C) No.1180/2018 in C.A. No.10366/2017

CONMT.PET.(C) No.1182/2018 in C.A. No.12463/2017

CONMT.PET.(C) No.1183/2018 in C.A. No.10366/2017

CONMT.PET.(C) Nos.959-962/2018 in C.A. No.12464/2017

CONMT.PET.(C) Nos.954-955/2018 in C.A. No.10705-10706/2017

CONMT.PET.(C) No.1064-1066/2018 in C.A. No.12469-12470/2017

CONMT.PET.(C) No.956/2018 in C.A. No.10347/2017

CONMT.PET.(C) No.1130/2018 in C.A. No.12469-12470/2017

CONMT.PET.(C) No.958/2018 in C.A. No.10760/2017

CONMT.PET.(C) No.1067/2018 in C.A. No.10345/2017

CONMT.PET.(C) No.1865/2018 in C.A. No.12457/2017

CONMT.PET.(C) No.1866/2018 in C.A. No.12457/2017

(IA NO.63541/2018)

CONMT.PET.(C) Nos.1141-1165/2018 in C.A. No.10285/2017

CONMT.PET.(C) No.1441/2018 in C.A. No.10760/2017

CONMT.PET.(C) No.1442/2018 in C.A. No.10330/2017

CONMT.PET.(C) Nos.1228-1251/2018 in C.A. Nos.10286-10293/2017

CONMT.PET.(C) Nos.1252-1254/2018 in C.A. No.12866/2017

CONMT.PET.(C) No.1443/2018 in C.A. No.10366/2017

CONMT.PET.(C) No.1444/2018 in C.A. Nos.10366/2017

CONMT.PET.(C) No.1449/2018 in C.A. Nos.10276-10277/2017

CONMT.PET.(C) No.1764/2018 in C.A. No.10285/2017

CONMT.PET.(C) No.1445/2018 in C.A. No.12463/2017

CONMT.PET.(C) No.1448/2018 in C.A. No.10366/2017

CONMT.PET.(C) No.1446/2018 in C.A. No.10366/2017

CONMT.PET.(C) No.1447/2018 in C.A. No.10366/2017

Diary No.40678/2018

Diary No.40697/2018

Diary No.40811/2018

JUDGMENT

Uday Umesh Lalit, J.

1. These contempt petitions allege violation of the judgment and order dated 09.08.2017 passed by this Court in appeals arising out of Special Leave Petition (Civil) No.13623 of 2017 (***A. Veerraju and others Vs. State of Andhra Pradesh and others***) and all connected matters. All the Contempt Petitions give rise to the same questions and are dealt with together. Since Contempt Petition Nos.1045-1055 of 2018, K. Ananda

Rao and Ors Shri S.S. Rawat, IAS, Principal Secretary to Government and Vice-Chairman (FAC) APTWREI Society and Others and Contempt Petition No.1873-1891 of 2017 (K. Paul and ors. etc. vs Ajay Jain and others etc.) were taken as lead matters, the facts pertaining to these two contempt cases are mentioned in detail.

2. Contempt Petition No.1045-1055 of 2018

2.1 The petitioners are employees of Andhra Pradesh Tribal Welfare Residential Educational Institution Society (Gurukulam), hereinafter referred to as the Society. Rule 17 of the Andhra Pradesh Tribal Welfare Resident Educational Institution Society Retirement Rules, 1999 ('1999 Rules' for short) *inter alia* provides for conditions of service of the employees of the Society and according to Rule 17(1) the age of retirement for all employees except Class IV employees is 58 years of age and that of Class IV employees is 60 years. The Society is an institution included in Schedule X of the Andhra Pradesh Reorganization Act, 2014, "2014 Act", for short.

2.2 The age of superannuation in respect of Government employees under Section 3 of the Andhra Pradesh Public Employment (Regulation of

age of superannuation) Act, 1984 ('1984 Act' for short) was initially 58 years of age. Consequent upon bifurcation of the erstwhile State of Andhra Pradesh, the Government of Andhra Pradesh took a decision on 27.06.2014 to raise the age of superannuation from 58 years to 60 years. Section 3 of 1984 Act was accordingly amended and the age of superannuation was raised to 60 years. Section 3 of the Amending Act was as under:

“3. In the principal Act, after section 3 so amended, the following new section shall be inserted, namely:-

“**Savings.** 3A. subject to the provisions of section 3,-

(1) A Government employee belonging to the State Cadre/Multi-zonal Cadre and who by general or specific order of the Government of India under sub-section (1) of section 77 of the Andhra Pradesh Reorganisation Act, 2014, and serving provisionally in connection with the affairs of the State of Telangana, and if he is finally allotted to the State of Andhra Pradesh by the Government of India under sub-section (2) of section 77 of the said Act, 2014 shall be deemed to be continuously serving in the State of Andhra Pradesh.

(2) A Government employee belonging to the State Cadre/Multi-zonal Cadre falling in the territories of both the State of Andhra Pradesh and the State of Telangana, who by a general or a specific order of the Government of India

under sub-section (1) of section 77 of the said Act, 2014, is serving provisionally and retires on attaining the age of fifty eight years and on his final allotment, subsequently to the State of Andhra Pradesh by the Government of India under sub-section (2) of section 77 of the said Act but before attaining the age of sixty years, shall be re-inducted into service/post with effect from the date of his final allotment to the State of Andhra Pradesh without break in service:

Provided that an employee who attained the age of sixty years before the final allotment to the State of Andhra Pradesh by the government of India, the service rendered in the State of Telangana till the date of his retirement shall be considered notionally as if, he has rendered service in the State of Andhra Pradesh for the purpose of calculation of his pensionary benefits.

(3) The service conditions of the employee of State Cadre/Multi-zonal Cadre working provisionally in the State of Andhra Pradesh and finally allotted by the Government of India under sub-section (2) of section 77 of the said Act, 2014 to the State of Telangana shall be governed by the relevant laws/rules of the State of Telangana on such final allotment.”

2.3 On 02.07.2014 vide Memo No.4179/14/HRM-IV/2014, Finance Department of the Government of Andhra Pradesh issued a Circular clarifying that the enhanced age of superannuation from 58 to 60 years

would not be applicable to the State Public Enterprises and other autonomous Institutions and Training Centres included in the X Schedule of 2014 Act and non-teaching employees of the Universities. Around this time the Society had passed a Special Resolution in the 22nd Board of Governors' meeting for division of Gurukulam and allocation of teaching and non-teaching staff to newly formed States. By proceedings dated 04.07.2014 the Society issued a list of officers and staff provisionally allocated to the new State of Andhra Pradesh. Thereafter in the 23rd Meeting of the Board of Governors of the Society, a Resolution was passed agreeing in principle to enhance the age of superannuation from 58 years to 60 years on par with the Government employees.

2.4 Based on the aforesaid Resolution a letter was sent by the Society to the State requesting for such enhancement of age of superannuation. On 05.08.2015 GO MS No.61 was issued by the Government of Andhra Pradesh, Tribal Welfare (EDN A2) Department raising the age of superannuation from 58 years to 60 years in respect of employees working in the Society. On 07.12.2015, the State Government again issued a Circular directing the managements of all Public Sector Undertakings and Institutions included in the IX & X Schedules of 2014 Act to submit the

proposals regarding change in the age of superannuation. Thereafter by virtue of Resolution i.e. GO MS No.112 issued by the Government of Andhra Pradesh Finance (HR IV – FR) Department on 18.06.2016, the Resolution dated 05.08.2015 was kept in abeyance. The Resolution dated 18.06.2016 was as under:

“5. Government having taken stock of all the above developments and after careful consideration hereby orders that the enhanced age of superannuation cannot be made applicable to the employees of the Public Sector undertakings and Institutions listed in Ninth and Tenth Schedules of A.P. Re-organization Act, 2014 until the matter of division of assets and liabilities of the institution between the state of Andhra Pradesh and Telangana is settled and the allotment of the employees between the two states is finalized for these Public Sector Undertakings/ Institutions. Government would be in a position to take policy decision on the matter only after such process is completed in all respects. Orders issued, if any, by any Department of Public Sector Undertakings/Institutions shall be kept in abeyance with immediate effect.”

2.5 On 28.06.2016, Cir. Memo No.92830/151/HR.IV/2016 was issued by the Government of Andhra Pradesh Finance (HR.IV) Department issuing following clarifications:-

Sl. No.	Issue raised by DTA	Clarification of Finance
1	Whether the pensionary benefits	The Pensionary benefits have to be remitted to Andhra Pradesh only, as

	may be remitted to Telangana or to the AP (as stipulated in the G.O. Ms. NO.104, dated 28.08.2015)	the State of Andhra Pradesh has to bear the burden of salary for remaining period of service, payment of pensionary benefits and pension increase (including family pension etc.) after the employee's retirement in A.P.
2	Whether all pensionary benefits mentioned in the G.O.Ms.No.1097, dated 22.06.2000 are to be remitted	The following pensionary benefits drawn by the retired government servant have to be remitted into Government account. 1. Commuted value of pension 2. Retirement Gratuity 3. Encashment of Earned Leave
3	Which period has to be treated as out of employment and which is eligible for compulsory wait	The period from date of retirement to re-induction shall be treated as out of employment period. The period from the date of re-induction to the date of reporting on issue of posting is eligible for compulsory wait.
4	Whether to regularize the out of employment period	The gap period shall be reckoned as interregnum period. During the interregnum period those who retired may get pension or equal to the amount of pension if the pension is not settled.
5	Whether the period of out of employment is considered as service for the purpose of raising annual grade increments, seniority, promotions, AAS and other benefits including pension.	The period of out of employment shall be considered for release of annual grade increment and pension. The monetary benefit of release of increment shall be from the date of re-induction only. The period shall be reckoned for seniority, promotions, AAS.

6	Whether the GIS subscription be recovered in lump sum with interest for the period of out of employment.	It is at the option of the Government servant to continue the GIS benefit, and he/she has to remit back the amount already paid and regulate the gap period by paying the GIS subscription for the period of out of employment.
7	What shall be the procedure for ensuring the stoppage of pension in the other state and cessation of such pension authorization already issued/ to be issued in future by pension issuing authorities.	Once the PPO is issued by the Authorization issuing authority, such PPO shall be cancelled by the same authority. Therefore, the Pension, Payment authority has to return the PPO to the Authorization issuing authority for cancelling PPO. When the case of sanctioning pension arises the pension sanctioning authority shall seek for fresh authorization/ PPO duly following the procedure.
8	Whether it is mandatory to see that the pensionary benefits shall be remitted back, for the purpose of allowing salary bills of the re-inducted employees.	The pensionary benefits shall be remitted back. However in extraordinary situations such proposals may be referred to Finance Department for exemption.
9	While calculating a sum equal to pension whether to take emoluments in RPS, 2010 or RPS 2015 for the period from 01.07.2014 to 31.03.2015.	Based on the pay in RPS 2015 on the date of completion of 58 years of service, the sum equal to pension may be arrived.

2.6 The Resolution dated 18.06.2016 was challenged by the employees of various institutions mentioned in Schedule IX and X of 2014 Act by filing Writ Petitions in the High Court of Judicature at Hyderabad for States of Telangana and Andhra Pradesh. The High Court by its judgment and order dated 07.03.2017 passed in ***G. Rama Mohan Rao and Anr. vs. Government of Andhra Pradesh & Ors. etc.***¹ and all connected matters disposed of the matters and concluded as under:

“The earlier G.O.s were issued by the Government of A.P. without these legal entities amending its rules regulations/bye-laws, governing the age of superannuation and without the prior approval of the sole/majority shareholder i.e., the State Government as required under the Articles of Association/byelaws of these legal entities. As the Rules and Regulations, by which the petitioners are governed, stipulate 58 years as the age of retirement, these employees cannot claim any right to continue in service till they attain the age of 60 years. It is only if the request of these Companies /Corporations/Societies, for amendment of its byelaws/rules and regulations, are approved by the State Government, and the rules/byelaws/regulations are amended thereafter in accordance with law, would their employees then be governed by the enhanced age of superannuation prescribed under the Rules/bye-laws.

¹ 2017(3)ALT 1; 2017(6) ALD 103; (2017) 11 LLJ 535 AP

Since the Board of Directors/Managing Committees of these wholly or substantially government owned Companies/Corporations/Societies have submitted proposals, the State Government is obligated to consider the request of each of these corporations/companies/societies separately, based on their financial position, genuineness of their need to enhance the age of superannuation etc., and then take a decision whether or not their request, to enhance the age of superannuation of their employees from 58 to 60 years, should be approved. Suffice it, if the Government of A.P. is directed to consider the proposals submitted by each of these corporation/societies/companies, for enhancement of the age of superannuation from 58 to 60 years in accordance with law, and take a decision thereupon at the earliest, in any event not later than four months from the date of receipt of a copy of this order.

All the Writ Petitions are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.”

2.7 SLP (C)No.13623 of 2017 was filed, therefore, by some of the employees of the Society challenging said decision dated 07.03.2017. It was submitted by them that a decision had already been taken by the Society for raising the age of superannuation and all that was required to be done was only a formal expression of the decision in the form of an appropriate legislation. While issuing notice on 27.04.2017 this Court passed following interim order:

“In the above circumstances, until further orders, the superannuation in the case of those teachers on attaining the age of 58 years in respondent No.3/Society (Gurukulam) shall be deferred.”

2.8 Special Leave Petition (Civil)Nos.14033-14034 of 2017 preferred by the present contempt petitioners and other connected matters filed by similarly situated employees of the Society thereafter came-up before this Court on 05.05.2017. This Court noted that Special Leave Petition (Civil)No.13623 of 2017 seeking similar relief was already pending. While issuing notice, this Court directed:-

“Until further orders, the superannuation in the case of employees on attaining the age of 58 years in the respondent-institutions shall be deferred.

Needless to say that in case any employee has retired only on the ground of attaining the age of 58 years, such employees shall be reinstated and continued in service until further orders, but in no case, beyond 60 years.

We also make it clear that this order will apply to all similarly situated employees under the respondent-institutions whether they are the petitioners before this Court or not and, therefore, those similarly situated persons need not travel to this Court.

Tag with SLP (C) No.13623 of 2017.”

2.9 Later, one more similar matter i.e. Special Leave Petition (Civil)No.14860 of 2017 came-up before this Court and while issuing notice on 09.05.2017 following order was passed by this Court:-

“The employees in the respondent-institutions shall not be superannuated only on the ground of attainment of 58 years of age. In case, any such has been superannuated on that ground, such employee shall be reinstated and continued upto the age of 60 years, subject to the result of the Special Leave Petition.”

2.10 While the challenge was thus pending, G.O.Ms.No.102 dated 27.06.2017 was issued by the Government of Andhra Pradesh, Finance (HR.IV-FR) Department. After considering the matters, the Government decided to give in-principle approval for enhancement of the age of superannuation. The relevant portion of the Order was as under:-

“4. Government after careful examination of the matter hereby accord to give in-principle approval to enhance the age of superannuation of employees working in the institutions listed in IX and X Schedule Institutions subject to the following conditions:

1. The specific decision to enhance the superannuation age from 58 to 60 years to their employees shall be taken by the Board of Directors/Managing Committees of these legal entities.

2. While doing so, these Institutions shall take into consideration their financial position and genuineness of their need to enhance the age of superannuation.
3. In case of Residential Education Societies, the decision should be based on the genuineness of their need and assessment of performance of these societies.
5. These orders shall come into force prospectively from the date of issue of the orders by competent authorities after amending the relevant regulations/byelaws.
6. Any order issued by any department which is repugnant to this order shall be deemed to have been modified or superseded to the extent of repugnancy.”

2.11 All the aforementioned matters, the lead matter being Special Leave Petition (Civil)No.13623 of 2017, thereafter came-up before this Court on 31.07.2017. The State had prayed for time to file its affidavit-in-reply. This Court directed the State to respond to certain issues in the affidavit-in-reply and directed the matters to be listed on 09.08.2017. Relevant portion of the order reads as under:-

“In the counter affidavit it shall be mentioned as to why those who are similarly situated as those covered by the order dated 05.05.2017 have not been granted the same benefit. We also make it clear that in case the order dated 05.05.2017 has not been implemented, the benefits due to the beneficiaries covered by the said order shall be

deemed to have been in service from the date of the order and those responsible for non-implementation shall be personally liable for the consequences.”

3. Contempt Petition Nos.1873-1891 of 2017

3.1 The petitioners had originally joined the services of the erstwhile Andhra Pradesh Electricity Board (APSEB) and their service conditions were regulated by the Andhra Pradesh State Electricity Board Service Regulations. APSEB was reorganized into Andhra Pradesh Transmission Corporation Ltd. (APTRANSCO), Andhra Pradesh Power Generation Corporation Ltd. (APGENCO), Andhra Pradesh Central Power Distribution Company Ltd. (APCPDCL), Andhra Pradesh Southern Power Distribution Company Ltd. (APSPDCL) and Andhra Pradesh Eastern Power Distribution Company Ltd. (APEPDCL), collectively referred to as the Power Utilities. The services of the petitioners were thereafter transferred to the Power Utilities. After Section 3 of 1984 Act was amended to raise the age of superannuation to 60 years as stated above, the Power Utilities had taken a decision on 29.06.2014 to implement the orders of the Government and continue the service of all employees who were to attain the age of 58 years as on 30.06.2014 upto 60 years.

3.2 On 23.12.2014 a letter was written by the State Government informing APGENCO, APEPDCL and APSPDCL that the Pay Revision Commission had agreed for enhancement of the age of superannuation from 58 years to 60 years on par with the employees of the State Government. On 28.10.2015 a letter was addressed by the State Government to APTRASCO, APGENCO, APEPDCL, APSPDCL that the proposal for enhancement of age of superannuation of the employees of Power Utilities would be considered after issuance of orders by the State Government on demerger of the respective corporations and after the process of final allocation of the employees was completed and after due examination of viability of the corporations.

3.3 Thereafter, on 26.11.2015 an Advisory Memo bearing no.459/PE.II/A1/2015 was issued by the State Government to all the departments to keep the orders, if any, issued for enhancement of the age of superannuation of the employees of public undertakings in abeyance pending orders formulating the policy in that behalf. The relevant portion of the Memo was as under:

“4. In view of the facts and circumstances supra, the government has decided to examine the matter holistically and in its totality and thereafter adopt a uniform policy in the matter relating to the extension of the age of superannuation of the employees of the

Public Sector Undertakings in the State of Andhra Pradesh.

1. Therefore, till the orders formulating the policy regarding the extension of the age of superannuation of the employees of the Public Sector Undertakings in the State of Andhra Pradesh are issued by the Government, all Secretariat, Departments, including the Water Resources Department, are advised to keep the orders, if any issued, of enhancement of the age of superannuation from 58 years to 60 years of the employees of Public Sector Undertakings under their administrative control, in abeyance with immediate effect.”

3.4 After the disposal of Writ Petition Nos.18205 of 2014 and all connected matters (***G. Rama Mohan Rao and Anr. vs. Government of Andhra Pradesh etc.***) on 07.03.2017 as stated above, writ petition filed by the petitioners namely W.P. (C) No.25937 of 2015 and all connected matters were disposed of by the High Court on 21.03.2017. Thereafter the petitioners filed Special Leave Petition No.21854 of 2017 on 28.07.2017, which was tagged with the matters which were to come up on 09.08.2017.

4. In the meantime, the matter was under consideration of the State Government. On 08.08.2017 G.O.Ms.No.138 was issued by the Government of Andhra Pradesh, Finance (HR.IV-FR) Department. The background facts were noted in said Order as under:-

“The G.O.Ms.No.102 dated 27.06.2017 was issued giving State Government’s approval in-principle and conditional consent for extension of superannuation of 60 years to employees of institutions listed in the IX and X schedules of AP Reorganization Act of 2014. The conditions were laid down for the detailed examination of the working of the various Companies/Corporations/Societies and their financial capabilities so as to decide whether they are financially viable or not. The orders were to come into force prospectively after such examination. Also the Andhra Pradesh Public Employment (Regulation of age of Superannuation) Act, 1984 amended by Act No.4 of 2014 of the State Government would not automatically apply to the schedule IX and schedule X institutions as they are separate legal entities with their own Acts and Rules. Any decision on enhancement of superannuation age of employees would have to be taken by the board of directors/managing committees. As the State Government is the majority stakeholder, its approval of the decision of the governing body becomes necessary. After this, the rules/bye-laws of these institutions need to be amended to give effect to the decision. Any extension of retirement age would come into effect only from the date of issue of orders by the competent authorities. It follows therefore that the orders would be prospective.

2. Another reason for state government taking time on the issue was the fact that the matter of division of assets and liabilities of these institutions is still pending and the employees also have not been allocated between the States of Telangana and Andhra Pradesh. At this juncture enhancing the superannuation age for the employees would have complicated matters, because of which, more employees would opt for Institutions in Andhra Pradesh which would affect their viability.”

The Order further noted that the challenge was pending in this Court. The Order stated that after reconsideration of the issue, the Government had decided to amend the G.O.Ms.No.102, Finance (HR.IV-FR) Department, dated 27.06.2017 and for the expression, *“these orders shall come into force prospectively from the date of issue of the orders by competent authorities after amendment the relevant regulations/bye-laws”* appearing in G.O.MS.No.102, the following expression was substituted:-

“These orders shall come into force with effect from 02.06.2014. The Companies/Corporations/Societies shall amend their relevant regulations/bye-laws accordingly.”

Para 5 of the said Order dated 08.08.2017 further stated:

“5. In furtherance of this amended clause Government hereby order that the employees working in Companies/ Corporations/Societies included in the Schedules IX and X of the Andhra Pradesh State Reorganization Act, 2014, shall not be superannuated only on the ground of attainment of 58 years of age. In case such an employee is superannuated on that ground he/she shall be reinstated and continued upto 60 years.”

5. All the Special Leave Petitions thereafter came next day before this Court i.e. on 09.08.2017 and while disposing of the appeals after granting leave, the following order was passed:

“5. The appellants approached this Court with certain grievances regarding their continuance in service upto 60 years of age.

6. According to the Government Companies/ Corporation/Societies where they have been working and which are included in the Schedules IX and X of the Andhra Pradesh Reorganization Act of 2014, since the Government had not granted approval to the recommendation for continuance upto 60 years of age, they would not be entitled to continue until and unless the Government takes a decision.

7. When the matters reached this Court, this Court in some cases had granted an interim order for continuance upto 60 years of age.

8. Be that as it may, learned counsel appearing for the State of Andhra Pradesh has today brought to our notice an order dated 08.08.2017 issued by the Government of Andhra Pradesh whereby such employees have been granted the benefit of continuance upto 60 years of age. It has been ordered that the “said order dated 8.8.2017 shall come into force with effect from 02.06.2014.”

9. In that view of the matter, we do not think it necessary to retain these appeals in this Court any further. The stand of the Government is very clear. The Government Order dated 08.08.2017 permitting the employees to continue upto the age of 60 years has come into effect with effect from 02.06.2014. Therefore, all employees who have superannuated on account of attainment of age of 58 years on 02.06.2014 or thereafter are entitled to the protection of their service upto 60 years of age and naturally to all consequential benefits arising therefrom.

10. The appeals are, accordingly, disposed of.”

6. Thereafter, Contempt Petitions were filed by the employees submitting *inter alia* that in terms of the order dated 09.08.2017 all consequential benefits arising out of raising the age of superannuation had to be extended to those who had superannuated on attaining age of 58 years on or after 02.06.2014. According to the petitioners the “consequential benefits” would and must include all back wages even for the period the petitioners had not actually worked in their respective organizations. Reliance was placed on the decision of this Court in ***B. Prabhakar Rao and ors. vs. State of Andhra Pradesh***² where certain directions were issued after the age of superannuation was raised from 55 years to 58 years. This Court directed in para 23 as under:-

“23. Finally we come to the question of the relief to be granted. We find that C1.3(1) of Ordinance No.24 of 84 and Sec.4(1) of Act No.3 of 1985 may easily be brought to conform to the requirements of Art.14 of the Constitution by striking down or omitting the naughty word ‘not’ from those provisions. We may possibly achieve the same object by striking down the whole of c1.3(1) of the Ordinance and Sec.4(1) of the Act but then the question may arise whether the rest of the Act would be sufficient to bring in these who have been excluded. We think that the safer course would be to strike down the offending word ‘not’ from these provisions. That we have such power is clearly laid

² 1985 (Supp) SCC 432

down in Nakara's case³ where the court directed the deletion of some words from the offending clause and directed it to be read without those words. To make matters clear and to put them beyond dispute, we give the following directions in exercise of our powers under Art.32 and 142 of the Constitution:

“1. All employees of the Government, public corporations and local authorities, who were retired from service on the ground that they had attained the age of 55 years by February 28, 1983 or between February 28, 1983 and August 23, 1984, shall be reinstated in service provided they would not be completing the age of 58 years on or before October 31, 1985.

2. All employees who were compelled to retire on February 28, 1983 and between February 28, 1983 and August 23, 1984 and who are not eligible for reinstatement under the first clause, shall be entitled to be paid compensation equal to the total emoluments which they would have received, had they been in service, until they attained the age of 58 years, less any amount they might have received ex-gratia or by way of pension etc. or under the Interim orders of this Court. They will be entitled to consequential retiral benefits.”

7. After notices were issued by this Court, the State filed its affidavit in reply. It was submitted that in terms of GO No.138 dated 08.08.2017, Order was issued titled as Procg.Rc.No.B3/Legal/SLPs-even-2017/2018 on 11.06.2018. By this Order, following instructions were issued for

³ D.S. Nakara vs. Union of India - (1983) 1 SCC 305

regularization of gap period in respect of retired and re-inducted employees of the society due to enhancement in age of superannuation:

1. “The gap period will be regularized as leave to which they are eligible (EL/HPL) by the Principals concerned and in case no leave is due, the period should be treated as EOL. The Principals are hereby authorized to issue necessary orders for regularizing the gap period of the employees strictly complying with the above instructions. They should personally verify the fulfilment of prescribed conditions before issuing orders.
2. If the gap period is treated as eligible leave, the Annual Grade Increment will be sanctioned as per eligibility. If the leave period is treated as EOL, the date of Annual Grade Increment will be postponed accordingly.
3. If, E.L. and H.P.L. encashment amount or any other retirement benefits for which he/she was not entitled due to his/her reinstatement into the service has been paid to the individual at the time of his/her initial retirement (i.e. on completion of 58 years of age), the said amount shall be recovered from the individual and remit to the Society funds with proper entry recorded in the Service Register, by 30.06.2018. For any excess drawal/non-recovery of EL/HPL encashment/other such amounts, in respect of any individual, the Principal concerned will be held responsible.”

8. In these contempt petitions the arguments were led by Mr. P.S. Patwalia, learned Senior Advocate which were adopted by the other learned Counsel appearing for the petitioners. It was submitted:-

(a) The Government order dated 08.08.2017 clearly stipulated that the employees working in entities included in Schedules IX and X of 2014 Act would not be superannuated only on the ground of attainment of 58 years of age and if any such employee was superannuated on that ground, he/she would be reinstated and continued upto 60 years.

(b) This Order was given retrospective effect from 02.06.2014 and a direction was issued to all the companies/corporations/societies to amend their relevant regulations or byelaws accordingly.

(c) In terms of aforesaid order dated 08.08.2017, the matters stood disposed of by this Court on 09.08.2017. The operative direction that all employees who had superannuated on account of attainment of age of 58 years on 02.08.2014 or thereafter were entitled to “the protection of their services upto 60 years of age and *inter alia* to all consequential benefits arising therefrom” was clear that all benefits arising out of enhancement in age must logically flow in favour of the employees.

(d) The effect of said order would mean that such employees would always be treated to be in service till they had attained age of 60 years and as such the “consequential benefits” must include back wages and full emoluments for the period that the employees were not allowed to work.

9. Shri Basava Prabhu S. Patil, learned Senior Advocate appeared for the alleged contemnors in Contempt Petition (C) Nos.1045-1055 of 2018 and in Contempt Petition (C) Nos.1873-1891 of 20017. Mr. Parag P. Tripathi, learned Senior Advocate appeared for alleged contemnors in matters pertaining to Andhra Pradesh Housing Corporation, namely, Contempt Petition (C) No.1130 of 2018 in C.A. No.12469-70 of 2017. The learned Senior Advocates as well as other learned Advocates appearing in connected matters submitted:

(a) Initially special leave petitions pertaining to the employees of the Society alone had come up before this Court in which Orders dated 27.04.2017, 05.05.2017 and 09.05.2017 were passed. In other matters relating to the employees of other institutions/entities no orders were passed and those matters were simply tagged with the matters pertaining to the Society. Consequently, no notices were issued to respondent(s) in those matters which came to be finally disposed of on 09.08.2017.

(b) In the light of the facts leading to the issuance of G.O. dated 08.08.2017, all matters were disposed of without going into the merits. Such disposal would mean and imply that the protection afforded by various policy documents leading to said GO dated 08.08.2017 was found to be adequate.

(c) In any case expression “consequential benefits” occurring in the order dated 09.08.2017 cannot be given the expanded meaning and scope as was contended by the contempt petitioners. The Policy Documents on record which culminated in the G.O. order dated 08.08.2017 had sufficiently clarified as to what benefits would be given to the employees after enhancement of superannuation age from 58 years to 60 years.

(d) Mr. Parag P. Tripathi, learned Senior Advocate relied upon the decision of this Court in ***Sureshchandra Singh and others v. Fertilizer Corporation of India Ltd. and others***⁴.

10. It is true that the initial orders dated 27.04.2017, 05.05.2017 and 09.05.2017 were passed in matters pertaining to the employees of Gurukulam

⁴ (2004) 1 SCC 592

or Society. All these orders were ex-parte orders. Insofar as the employees of the Society are concerned, it was submitted before this Court on 27.04.2017 that a decision had already been taken by the Society for raising the age of superannuation and all that was required to be done in the matter was only a formal expression in the form of an appropriate legislation. The expression in the order dated 05.05.2017 that the protection afforded would apply “to all similarly situated employees under the respondent institutions” was only in respect of the employees of the Society and not in relation to employees of all the other entities mentioned in Schedules IX and X of 2014 Act. As a matter of fact, no notice was issued in any matter apart from the matters pertaining to the Society and all such other matters were simply tagged with the main bunch of cases which came up before this Court and were disposed of on 09.08.2017. The learned Advocates appearing for the alleged contemnors are right in their submission that insofar as entities other than the Society were concerned, the order dated 09.08.2017 was not passed after due notice to them. Nonetheless the State was definitely represented before this Court on 09.08.2017 and was heard. We do not therefore, deem it appropriate to decide these Contempt Petitions purely on this issue and, therefore, proceed to consider the merits and

whether there has been any violation of the directions issued by this Court on 09.08.2017.

11. The raising of age of superannuation by amending Section 3 of 1984 Act was soon after the bifurcation of the erstwhile State of Andhra Pradesh. The concern as to what would be the situation if the employees were finally allocated to the newly carved State of Andhra Pradesh and the employees by that time had attained the age of 58 years, was dealt with in newly inserted Section 3A in 2014 Act. The principle was to re-induct them in the services under the State of Andhra Pradesh without any break in service. Further, if the employee had not attained the age of 60 years, he would be re-inducted; and in case he had attained the age of 60 years, what would in such cases be conferred upon the employees was notional advantage for the purpose of calculation of his pensionary benefits as if he had rendered service in the State of Andhra Pradesh.

12. After the policy decision was taken on 05.08.2015 to raise the age of superannuation from 58 years to 60 years in respect of employees of Society, that decision was kept in abeyance by Resolution dated 18.06.2016. This Resolution states that the Government had taken stock of all the developments

and had decided that the issue regarding enhancement of age of superannuation in respect of employees of the entities and institutions listed in IX and X Schedule of 2014 Act would be taken only after the issue of division of assets and liabilities of the concerned institutions between the two States was settled and the allotment of employees was finalized. This was followed by GO dated 28.06.2016 which dealt with issues like how after re-induction of the employees pursuant to enhancement of age of superannuation, the period that the employees were out of employment, was to be dealt with. Such period was referred to as the interregnum period or gap period, and was then dealt with under various heads. These developments are indicative that it was always in contemplation that if an employee had superannuated on attaining the age of 58 years and was thereafter re-inducted in service with superannuation age being 60 years, he would not be entitled to any salary or normal emoluments for what was referred to as the interregnum period or gap period, but would be entitled to certain notional benefits stipulated therein.

13. Even after the disposal of petitions by the High Court, the matter was receiving the attention of the State Government which is evident from GO dated 08.08.2017. It referred to the background facts including the requirement to have the concerned rules or regulations regarding the service conditions of

employees in establishments in Schedule IX and X to be amended after due approval by the Government and after consideration whether such establishments were finally capable and viable. One of the factors which was recited was about that the issue of division of assets and liabilities was still pending and that the allocation of the employees was not yet finalized. The GO modified the earlier decision dated 27.06.2017 to the extent it had made such decisions prospective and now gave retrospective effect from 02.06.2014. It thus undoubtedly relaxed conditions as regards the requirement to have the rules and regulations amended after due approval by the Government. It further stated that if an employee was retired on attaining age of 58 years, he/she shall be reinstated and continued upto 60 years. However, this GO dated 08.08.2017 did not in any way depart from or dilute the principles as to what would be the situation in case of interregnum period or gap period as was specifically referred to and dealt with in memo dated 28.06.2016. The situation becomes quite clear by further instructions issued on 11.06.2018 which again referred to gap period.

14. Since all these issues were not canvassed before this Court and were not gone into by this Court on 09.08.2017, the question that arises is whether the expression “consequential benefits” occurring in the order dated 09.08.2017

must be given the interpretation that the employees were entitled to all salaries and emoluments for the period that they had not even worked in their respective organisations? The order dated 09.08.2017 does not indicate that any such aspect of the matter was in contemplation of this Court or the matter was addressed from this stand point. In the absence of any discussion, it is very difficult to say that this Court had thought of granting something which was in excess of what was contemplated in various policy documents culminating in the GO dated 08.08.2017. Those policy documents were not overridden or in way found to be inoperative. As a matter of fact, they were not even referred to.

15. In this background we need to consider the expression “consequential benefits” in said order dated 09.8.2017. The contempt petitioners submit that going by the law laid down by this Court in **B. Prabhakar Rao**² and particularly direction No.2 therein the financial benefits in the nature of salary and other emoluments must be given to the employees even for the period that the employees had not worked. But the situation in **B. Prabhakar Rao**² was completely different. There, the issue was only regarding raising of age of retirement from 55 years to 58 years. In the present case the decision of raising the age of superannuation was more or less contemporaneous with bifurcation

of the erstwhile State of Andhra Pradesh. The division of assets and liabilities was still to be undertaken. The issue of allocation of employees in various institutions in the erstwhile State was also to be finalized. And lastly, there was a clear direction issued by this Court invoking powers under 142 of the Constitution of India. No such power was invoked or exercised while passing the order dated on 09.08.2017.

16. In ***Sureshchandra Singh***⁴, this Court dealt with somewhat similar issue. After enhancement of the retirement age of the Central Government employees from 58 years to 60 years, the employees working in Public Sector Undertakings/Enterprises also raised similar demand on the principle of parity. The matter was considered by this Court in paragraph 5 as under:

“5. Here the Government of India took a policy decision to increase the retirement of Central Government employees. Application of that decision in respect of employees of public sector enterprises is dependent upon so many factors that are to be taken into account in the light of the peculiar characteristics of each company or corporation or department. So the first OM itself provides that the order will come into force only with effect from the date of notification of amendment to the relevant rules and regulations. So it is for the authority concerned to make necessary changes in the rules and regulations after taking into account all the relevant aspects. Immediately after the first OM dated 13-5-1998 the Department of Public Enterprises, Ministry of Industry, Government of India

issued OM dated 19-5-1998 wherein the modalities of the implementation of the first OM in this Department was detailed. Here it is pertinent to note that the OM dated 19-5-1998 is not an instruction issued in the name of the President. On the other hand, it was issued by the Department of Public Enterprises, which is advisory in nature. It accorded a broad discretion to the corporations or companies for the implementation of the enhanced retirement age after taking into account all the relevant factors. Pursuant to this direction the Board of Directors of FCIL took the decision not to increase the retirement age of its employees. The relevant factors that prevailed upon the Board of Directors are fully set out in its resolution and they are: that the Company is one of the highest loss-making company in the country; that the accumulated loss till the relevant date was to the tune of Rs 5049 crores; that the Company is incurring financial losses of roughly Rs 2.35 crores everyday; that the Company has no capacity to pay salaries to its employees; that the Company was referred to BIFR and was declared as sick on 6-11-1992; that as on the relevant date the Company has the negative net worth to the tune of Rs.4316.21 crores and; that the Company has surplus manpower; that it is not taking any new employees but on the contrary it is making conscious efforts to reduce the surplus manpower.”

17. Thus, purely on the principle of parity the employees of the institution or entities in Schedule IX and X of 2014 Act could not demand the benefit of enhancement of the age of superannuation from 58 years to 60 years. That benefit came to be conferred under policy documents and finally by the GO dated 08.08.2017. Thus, the source was in those policy documents and

naturally the extent of benefits was also spelt out in those instruments issued by the Government. The Circular dated 28.06.2016 which was more or less adopted in proceedings dated 11.06.2018 must be taken to be the governing criteria in respect of such employees. Unless and until that governing criteria was departed from specifically, mere expression “consequential benefits” would not entitle the concerned employees anything greater than what was contemplated in the policy documents issued by the State Government.

18. We, therefore, do not find any violation of the orders passed by this Court and dismiss these contempt petitions. It goes without saying that every employee, who is similarly situated would be entitled to the benefits conferred by policy documents referred to above but not for salary and other emoluments for the period they had not actually worked.

19. We are grateful for the assistance rendered by all the learned counsel.

.....J.
(Uday Umesh Lalit)

.....J.
(M.R. Shah)

New Delhi,
March 07, 2019.