

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 19.04.2023

Pronounced on: 26.04.2023

WP(C) No.78/2020

MOHAMMAD MAQBOOL BHAT & ORS. ...PETITIONER(S)

Through: - Mr. M. M. Dar, Adv.
with Mr. Zaffar Mehdi, Advocate.

Vs.

UT OF J&K & OTHERS ...RESPONDENT(S)

Through: - Mr. Faheem Nisar Shah, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners through the medium of present petition are essentially challenging Rule 13 of the Jammu and Kashmir Cooperative Societies Service Rules, 1988, issued vide SRO 233 whereby age of superannuation of Cooperative Societies registered under the Jammu and Kashmir Cooperative Societies Act, has been fixed as 58 years. The petitioners have also sought a direction upon the respondents to take a formal decision upon the proposal forwarded by the Committee constituted by the Government in terms of Order No.Adm/1487-92 dated 28.10.1995. A further direction has been sought upon the respondents restraining them from giving effect to Rule 13 of SRO 233 of 1998 until the recommendations of the Committee are considered by the respondents.

2) As per case of the petitioners, they are working in different Cooperative Societies holding different posts on substantive basis. It has been submitted that the petitioners made a representation to the Government to make suitable amendment to SRO 233 of 1998 which governs the service conditions of the employees of Cooperative Societies so as to ensure security of services of the employees. Accordingly, a Committee was constituted by the Government vide order dated 28.10.1998. The Committee is stated to have considered the matter after holding discussions and a unanimous decision was taken by the members of the Committee that SRO 233 of 1998 requires amendment for bringing uniformity in Service Rules of employees of Cooperative institutions with other State Government employees. A formal proposal in this regard was made by the Committee vide its communication dated 4th January, 1997.

3) It is case of the petitioners that despite submission of report by the Committee along with proposed amendments to SRO 233 of 1998 no action was taken by the Government. The matter is stated to have been discussed in the Cabinet but no formal action has been taken by the respondents. It has been submitted that most of the employees of the JAKFED, which is also a Cooperative Society, have been adjusted by the Government but representation of the petitioners seeking their adjustment has not evoked any response from the respondents. The petitioners are stated to have addressed a number of communications

and representations to the different officials of the Government, President and Prime Minister of India but to no avail.

4) It has been submitted that instead of taking a decision on the recommendations of the Committee which, *inter alia*, provide for amendment to Rule 12 of SRO 233 of 1998, the respondents are implementing the said rule and retiring the employees of the Cooperative Societies at the age of 58 years though vide SRO 164 of 2014, the age of retirement in case of employees of the Government has been raised to 60 years.

5) In short, the grievance of the petitioners is that as per the recommendations of the Committee constituted by the Government, Rule 13 of SRO 233 of 1998 is required to be amended so as to bring the age of superannuation of the employees of Cooperative Societies at par with the age of superannuation of Government employees and until such a decision is taken, the employees of Cooperative Societies should not be superannuated at the age of 58 years.

6) The respondents have contested the writ petition by filing a reply thereto. In their reply, the respondents have submitted that no cause of action has accrued in favour of the petitioners. According to respondents, in terms of Rule 176(1) of the J&K Cooperative Societies Act, the power to make rules or to carry out amendment to the rules vests with the Government. It has been submitted that SRO 233 dated 8th July, 1998, whereby the Jammu and Kashmir Cooperative Societies

Service Rules, 1988, have been notified, has been issued by the Government in exercise of its powers under Section 124 of the Jammu and Kashmir Cooperative Societies Act, 1960. It has been further submitted that as per Rule 13(1) of the said Rules, the age of superannuation of the employees of the Cooperative Societies has been fixed as 58 years.

7) The respondents have, while admitting that a Committee was constituted to suggest amendments to SRO 233 of 1998, submitted that the recommendations of the Committee have not been accepted by the Government/competent authority till date. On this ground, it is urged that no right has accrued in favour of the petitioners to seek implementation of report of the Committee.

8) I have heard learned counsel for the parties and perused the record of the case.

9) The only issue which is required to be determined in this case is as to whether any right has accrued in favour of the petitioners to seek a direction upon the respondents to amend Rule 13 of SRO 233 of 1998 thereby bringing the age of superannuation of the employees of Cooperative Societies at par with the age of superannuation of Government employees on the basis of the recommendations of the Committee constituted by the Government for the purpose of suggesting amendments to aforesaid SRO.

10) As per Section 176 of the J&K Cooperative Societies Act, the rule making power has been vested with the Government. Clauses
WP (C) No.78/2020

(XIV) and (XV) of sub-section (2) of Section 176 of the said Act vests power with the Government to frame rules for constitution of a common service or services of officers and other employees of the Cooperative Societies and to frame rules prescribing the qualification, remuneration, allowances, recruitment and other conditions of service of such officers and other employees. It is in exercise of this power, that the Government has framed the Jammu and Kashmir Cooperative Societies Service Rules, 1988, notified vide SRO 233 of 1998.

11) As already noted, Rule 13(1) of the Rules provides that the employees of Cooperative Societies shall superannuate at the age of 58 years. Any amendment or alteration in any of the aforesaid Service Rules including Rule 13(1) has to be carried out by the Government in exercise of its powers under Section 176 of the J&K Cooperative Societies Act. There is no other mode or method known to law whereby amendment can be carried out to the Service Rules notified vide SRO 233 of 1998.

12) The petitioners have invoked writ jurisdiction of this Court and sought a direction upon the respondents to amend Rule 13(1) of the Rules on the basis and on the strength of recommendation of the Committee constituted by the Government. It is an admitted position that the said recommendation has not been accepted by the Government/competent authority as on date. Unless the said recommendation is accepted by the Government and consequent changes are made in the Rules, the right to seek a direction against the

respondents would not mature in favour of the petitioners. A mere recommendation by a Committee which has not been accepted by the competent authority does not give a right to the petitioners to seek a mandamus upon the respondents to amend the rules. The petitioners cannot, merely on the basis of recommendation of the Committee, seek parity in their service conditions with the service conditions of Government employees. It is a settled law that the Cooperative Societies are autonomous institutions governed its own rules and regulations. The employees of the Cooperative Societies cannot seek parity in service conditions with the employees of the Government, unless approved by the Board of Directors.

13) For the foregoing reasons, I do not find any merit in contentions raised by the petitioners. The petition lacks merit and is dismissed accordingly. Notwithstanding dismissal of this writ petition, the respondents shall be at liberty to take a decision on the recommendations made by the Committee constituted by the Government and make appropriate amendments to the Rules notified vide SRO 233 of 1998.

(Sanjay Dhar)
Judge

SRINAGAR
26.04.2023
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No