(1998) 01 CAL CK 0011

In the Calcutta High Court

Case No : Writ Petition No. 875 of 1996

Amal Kumar Paul — APPELLANT

Vs

Steel Authority of India Ltd. and Others — RESPONDENT

Date of Decision : 09-01-1998

Acts Referred:

Citation : 1 CWN 25 : (2001) 3 LLJ 151

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—By an appointment letter dated October 24, 1967, the petitioner was appointed as "Works Metallurgist" at the Ujjain Works of IISCO Stanton Pipe and Foundry Company Ltd., hereinafter referred to as "Stiscon", a subsidiary of Martin Burn Ltd. and he joined his duties with effect from November 11, 1967. In the petitioners letter of appointment it was specifically indicated that his services would be governed by the rules of service for Assistants of IISCO Stanton Pipe and Foundry Company

2. The appointment letter did not mention as to what would be the petitioner''s age of superannuation and there was no mention of such age of superannuation in the service rules for Assistants of STISCON either.

3. In 1972 the management of Indian Iron and Steel Company Ltd., hereinafter referred to as "IISCO", was taken over by the Government of India and steps were, thereafter, taken to rationalise the service conditions of all executives of IISCO and its subsidiaries by the issuance of detailed service conditions contained in Memo 2 No. GM:TS/1 dated July 1, 1973, herein the age of superannuation was mentioned as 58 years. According to the petitioner, he and the other executives of STISCON had no option but to accept the rationalised terms and conditions of service.

4. Subsequently, after the take over of IISCO and its subsidiaries by the Steel

Authority of India Limited, hereinafter referred to as "SAIL" in May, 1978, the Management of IISCO and the Officers'' Association for IISCO arrived at a settlement and entered into an agreement on April 28, 1979, and the same was recorded in the "Final Record Notes of Discussion held, based on the record Notes of discussion dated January 31, 1979 and April 11, 1979", wherein in Clause 12 it was indicated as follows:

"Age of superannuation will be governed by the contract of service of each individual officer provided that if no superannuation age is mentioned in any contract of service with any officer, the age of superannuation would be 60 years if the Officer has joined the company''s service prior to June 1, 1973 and it would be 58 years if he has joined on or after June 1, 1973"

5. According to the petitioner, in keeping with the aforesaid arrangement, several executives of STISCON were given the benefit of superannuating at the age of 60 years.

6. Appearing in support of the writ petition, Mr. Prabir Roy Chowdhury submitted that after the aforesaid agreement was arrived at, by a Circular dated January 1 1980, all the executives of STISCON were informed that conditions of service, allowances and other benefits would be given retrospective effect from April 1, 1979, in keeping with the Record Notes of discussion dated May 9, 1979 and November 23, 1979, signed between the Management of STISCON and the STISCON Officers'' Association.

7. Mr. Roy Chowdhury also referred to an Office Order of August 9, 1981, whereby the petitioner was informed that he would superannuate from the service of the Company in accordance with his initial appointment.

8. Mr. Roy Chowdhury urged that despite the above, the petitioner was served with a Memo dated March 8, issued by the Senior Manager (Personnel) and O.D. informing him that his age of superannuation would be governed by the terms of service conveyed to him vide letter No. GM:TS/1 July 1, 1973, which had been issued in supersession (sic) of all previous contracts/agreements/letter of appointment and that the petitioner would superannuate at the age of 58 years.

9. The said communication is one of the items of challenge in the writ application, since it is the petitioner''s case that the communication of March 18, 1995, was erroneous, being contrary to the agreement which had been arrived at between the management of STISCON and its Officers'' Association and recorded in the Record Notes of discussion dated January 31, 1979 and April 11, 1979.

10. The second branch of the petitioner''s case was with regard to the fixation of the petitioner''s pay and the claim of the petitioner that his basic pay should be fixed at Rs. 7,175 with effect from January 1, 1991, at par with certain executives who had been granted a higher scale, inspite of being junior to the petitioner in rank and despite the fact that petitioner had been given additional responsibilities in the discharge of his duties.

11. Opposing the writ application, Mr. M.M. Lodh submitted that the petitioner was under a mistaken impression that the provisions relating to superannuation at the age of 60 years would have application in his case, since, although, initially no age of superannuation was mentioned in his appointment letter, subsequently when the service conditions of executives of STISCON were rationalised in 1973, after its take over by the Central Government, the age of superannuation was fixed at 58 years which conditions of service were duly accepted by the petitioner himself as would appear from paragraph 2 of the petition.

12. Mr. Lodh submitted that having once accepted his age of superannuation as being 58 years, as far back as in 1973, it was no longer open to the petitioner to challenge the same after an interval of 24 years, without having raised such objection earlier,

13. Mr. Lodh urged that was as agreed upon and recorded in Clause 12 of the said agreement if no age of superannuation was mentioned in any contract of service with any Officer, the age of superannuation would be 60 years, if the Officer had joined the company''s service prior to June 1, 1973, and would be 58 years if he joined on or after June 1, 1973. Mr. Lodh urged that in view of the letter issued to the petitioner on July 1, 1973, upon rationalisation of his services after the take over by the Central Government the petitioner would be required to superannuate at the age of 58 years.

14. Mr. Lodh urged that in view of the terms and conditions of service set out in the said letter of July 1, 1973, which were duly accepted by the petitioner over all these years, it could no longer be contended by him that his age of superannuation would be 60 years and that the principles of natural justice had been violated in that the Memo dated March 8, 1995, had been issued without giving the petitioner an opportunity of hearing.

15. Mr. Lodh then contended that in a similar writ application filed by one Mr. Sujan Malick, another executive of STISCON, being Matter No. 329 at 1995, a learned Judge of this Court had by his judgment and order dated January 15, 1996, held that since the age of superannuation of the petitioner therein had been mentioned as 58 years in the letter issued to him on July 1, 1973, the notice informing the petitioner that he would superannuate at 58 years, had been correctly issued.

16. Mr. Lodh urged that having regard to the said decision where the issues involved were identical to those involved in this case and since the Rules applicable to those officers whom the petitioner had named in paragraph 4a of the writ petition were different and were governed by the Rules of Service for Indian Officers of Martin Burn Limited and Associated Companies, the same could not be made a ground for the petitioner to claim benefits similar to those extended to such officers.

17. In fact, it was urged by Mr. Lodh that under Rule 10 of the above mentioned

rules, an officer was liable to retire on completion of 58 years, but it was upto the company at its absolute discretion to grant further extension. Mr, Lodh submitted that in the case of the said Officers, the aforesaid Rules had been made applicable and their services, therefore, were extended till 60 years at the discretion of the company.

18. Mr. Lodh urged that the writ petition was misconceived, having been filed almost 24 years after the letter of July 1, 1973, had been issued to the petitioner and the terms and conditions set out therein had been accepted by him.

19. Replying to Mr. Lodh''s submissions, Mr. Roy Chowdhury urged that merely because the petitioner had not raised any objection to the terms and conditions of service as contained in the letter of July 1, 1973, upon rationalisation of the services of the executives of STISCON, it could not be urged that the same amounted to acquiescence and that the petitioner was, therefore, estopped from contending that his age of superannuation would be 60 years as per his initial appointment and as agreed upon between the management of STISCON and its Officers'' Association,

20. Referring to the judgment of ShREE RANG MISHRA, J. in matter No. 329 of 1995, Mr. Roy Chowdhury urged that in another case, being C.O. No. 200520 of 1993 Kartick Chandra Roy v. Steel Authority of India Ltd. and Ors., a completely different view was taken on account of the stipulation contained in Clause 12 of the agreement referred to above, it was pointed out that in the said case SHYAMAL KUMAR SEN, J. by his judgment dated August 10, 1994, was of the view that as the Officer had joined his duties prior to June 1, 1973, his age of superannuation would be 60 years and not 58 years and had been contended on behalf of the respondents therein.

21. Having regard to the agreement arrived at between the management of STISCON and its Officers'' Association, as recorded in the Final Record Notes of Discussion based on the Record Notes of Discussion dated January 31, 1979 and April 11, 1979, and also having regard to the two judgments referred to above, it would perhaps be prudent to reconsider the implications of Clause 12 of the said agreement in relation to the letter of July 1, 1973, containing the terms and conditions of service of the petitioner after rationalisation.

22. I am not inclined to accept Mr. Lodh''s submissions that not having raised any objection to the letter of July 1, 1973, the petitioner is estopped from contending that the age of superannuation as indicated therein is not applicable to him. In any view, it is immaterial whether the petitioner had raised any objection or not to the letter of July 1, 1973. To my mind, what is important is whether the said letter stood superseded by the subsequent agreement arrived at between the Management of STISCON and its Officers Association or whether the said letter could be given effect to in harmony with the provisions of Clause 12 of the said agreement.

23. Clause 12 of the agreement which has been extracted above indicates that

the age of superannuation would be governed by the contract of service of each individual officer and that if no superannuation age is mentioned in any contract of service with any officer, the age of superannuation would be 60 years if the officer had joined the Company''s service before June 1, 1973 and it would be 58 years if he had joined on or after June 1, 1973.

24. Significantly, no mention has been made in the aforesaid clause to the officer''s age of superannuation being controlled by the terms of his initial appointment. Instead, it has been indicated that if no superannuation age is mentioned in any contract of service with any officer the age of superannuation would be either 58 or 60 years depending on when such officer joined the company''s service. In the absence of anything indicated to the contrary, the phrase "any contract of service" would , appear to include the letter of July 1, 1973, where the age of superannuation is fixed at 58 years.

25. Accordingly irrespective of whether any objection had been raised or not by the petitioner in respect of the letter of July 1, 1973, the petitioner''s age of superannuation would be 58 years even in terms of Clause 12 of the agreement referred to above on which the petitioner has chosen to rely.

26. The second branch of the petitioner''s case was not ultimately pressed.

27. The Writ application, therefore, fails and is dismissed.

28. There will be no order as to costs.

29. All parties to act on a signed copy of the operative portion of this judgment on the usual undertaking.

