
(2002) 10 JH CK 0052

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5907 of 2001

Amit Roy Choudhury and Others

APPELLANT

Vs

Metallurgical and Engineering Consultants (India) Ltd.
(MECON) and Others

RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Public Sector Iron and Steel Companies (Restructuring) and Miscellaneous Provisions Act, 1978 — Section 14, 15, 2

Citation : (2002) 10 JH CK 0052

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.S. Anwar and Altaf Hussain, for the Appellant; R.B. Mahto, K.B. Sinha, S. Piperwall and Amitabh, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Petitioners have challenged the Circular dated 31st October, 201 issued under the signature of General Manager (P) of respondent No. 1 Metallurgical and Engineering Consultants (India) Ltd. [in short MECON], whereby the age of superannuation in respect of all categories of its employees i.e. Board level employees and below Board level employees has been reduced from 60 years to 58 years. Petitioners also seek declaration that the aforesaid circular reducing the superannuation age is wholly illegal, arbitrary and without jurisdiction.

2. Petitioners' case is that they were appointed by the erstwhile Hindustan Steel Limited (in short HSL), a Government of India Undertakings and a company incorporated under the Companies Act consists of its units as Bhilai Steel Plant, Rourkella Steel Plant and Durgapur Steel Plant. In 1973. Government of India pursuant to its policy decision formed a new company, namely, Steel Authority of India Ltd. and it was made the holding company for the Central Government Companies functioning in the Steel Sector. A new company known as

Metallurgical and Engineering Consultants (India) Ltd. (in short MECON) also came into existence during this time. The Central Engineering Design Bureau and other department of Hindustan Steel Ltd. were transferred and merged in the said MECON. Since New Company MECON having been formed as subsidiary of Steel Authority of India Ltd. (in short SAIL) it took over the business and other activities of the CEDB and all the employees of CEDB Unit of HSL were advised to join the new company i.e. MECON. It is stated that in view of the chain circumstances, the petitioners and other employees of HSL and CEDB were assured that the terms and conditions of their services who joined MECON would not be less favorable than that in the HSL and that the continuity of the service in the Company would be maintained. In 1978, by virtue of enactment of Public Sector Iron and Steel Companies (Restructuring) and Miscellaneous Provisions Act, 1978, HSL was merged in SAIL and MECON became independent company under the direct administrative control of the Department of Steel, Government of India. Petitioners' further case is that as per the directive of the Department of Public Enterprises of the Government of India giving directions for raising the age of retirement/superannuation for the employee of all Central Government Public Sector Enterprises from 58 to 60 years. The Board of Directors of SAIL in its 248th meeting approved the amendment in Clause 9.5 of the Service Rules of the SAIL. The age of retirement for employees of SAIL was raised to 60 years. However, all of a sudden, the impugned circular was issued by respondent No. 1, MECON, whereby it unilaterally took a decision to roll back the age of superannuation of its employees from 60 years to 58 years vide circular dated 31st October, 2001.

3. The case of the respondent-MECON in the counter affidavit is that by virtue of aforementioned Act of 1978, the HSL stood dissolved and the service condition of MECON was made applicable to all its employees. It is stated that although in 1998 decision was taken for extending the age of retirement from 58 years to 60 years but subsequent to the decision financial health of the company became precarious. The Government of India also came with the proposal for roll back the age of retirement from 60 years to 58 years. After decision of the Government, the matter was reviewed by the Board of Director and it was decided to take up the matter with, the Government for roll back of the age of retirement from 60 years to 58 years. The Government after considering the situation approved the decision and communicated it to the respondents. Respondent's further case is that while giving offer of appointment in MECON to the employees of HSL, it was made clear that all employees who joined MECON will be subject to the Service Rules and Regulations including the Conduct Rules as well as the Administrative Orders and the service conditions of MECON was made applicable to all the employees who joined MECON including the petitioner. It is further stated that petitioners after accepting offer of appointment took all benefits in pursuance to the service condition of MECON. They have also taken several promotions in terms with the Rules and Regulations of MECON and they never made any objection to the application of service condition of MECON.

4. Mr. M.S. Anwar, learned Sr. counsel appearing for the petitioners assailed the impugned circular as being illegal, mala fide and wholly without jurisdiction. Learned counsel firstly submitted that the impugned circular (Annexure-12) is discriminatory because the erstwhile employee of HSL (now SAIL) belongs to a separate cadre and it was in a compelling circumstances under the threat of termination of service of the petitioners joined MECON. However, in 1973 the Chairman gave assurance to all those employees that their service conditions shall not be changed. Learned counsel submitted that the impugned Circular violates the principals of natural justice as well as principles of promissory estoppel causing irreparable loss to the petitioners and other employees. According to the learned counsel after enforcement of 1978 Act, Respondent No. 1, MECON became independent company and u/s 14 of the said Act full protection has been given to the employees of HSL. Lastly learned counsel submitted that neither there is pleadings by the respondents that MECON is sick industry or unviable the impugned circular reducing the age of superannuation from 60 years to 58 years is wholly illegal and mala fide. Learned counsel relied upon some decisions on the question of promissory estoppel. Reference to those decisions of Supreme Court are, 1985 (Suppl) SCC 432 1991 (1) Suppl. SCC 426 and 1993 (1) Suppl. SCC 708.

5. Mr. Ram Balak Mahto, learned senior counsel appearing for the respondents at the very outset submitted that respondent MECON being the employer of the petitioners has every right to alter the service condition of the employees. Learned counsel submitted that MECON is a transferred company as defined in the Act of 1978 and the power has been retained by the transferred company to alter service condition of their employees. Learned counsel submitted that there is no illegality in issuing circular reducing the age of retirement of the employees from 60 years to 58 years with the approval of the Government and the petitioners having no right to challenge the said circular. Learned counsel put heavy reliance on the decision of the Supreme Court in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, Learned counsel also relied upon the decision of the Supreme Court in the case of Suresh Chandra Singh and Ors. v. Fertilizer Corporation of India and Ltd. others 1999 (2) LIC 1680, and in the case of V.K. Judah v. Christion Medical College, 2001 (1) SLR 382.

6. Admittedly, the petitioners joined the services in the erstwhile HSL. Petitioners have annexed copies of their letter of appointment dated 7.8.1971. Clause 5 of the said letter of appointment very clearly stipulates that the age of superannuation shall be 58 years unless the company decides to retain beyond this age. In 1973 after the formation of a new company namely, SAIL which was made holding company for the Central Government Companies, respondent MECON was also formed. As an industrial corollary to the aforesaid restructuring the assets which were under the possession of Central Engineering Design Bureau and other departments of HSL were gradually transferred to MECON. Since MECON has been formed as a subsidiary of SAIL an offer was made to the

employees of HSL to join MECON. Petitioner have annexed copy of the approval of appointment dated 11.6.1973 issued by MECON.

7. Mr. M.S. Anwar, learned senior counsel drawn my attention to the Clause 2 and 4 of the said offer of appointment. Clause 2 states that the appointment in the company will be in continuation of the service in HSL and the company will bear all liabilities on account of leave, leave salary, provident fund contribution, gratuity etc. Clause 4 provides that employees shall be subject to the service rules and regulations including the conduct rules as well as the administrative orders as in force in HSL on the date of issue of offer of appointment. But from perusal of Clause 8 and 9 of the said offer of appointment it appears that it was specifically mentioned that the age of superannuation shall be 58 years. Clause 8 and 9 reads as under :

"(a) Your services shall stand terminated,

(i) On completion of the age of superannuation i.e. 58 years, unless the Company decides to retain you beyond this age.

(ii) at any time by the company without any previous notice if the company is satisfied on Medical evidence that you are unfit and/or are likely to continue to be unfit for efficient discharge of your duties for a considerable time for reasons of ill health, provided always that the decision of the company that you are unfit are likely to continue to be unfit shall be final and conclusively binding on you.

(b) During the period of probation, if any, your services can be Terminated by the company without notice and without assigning any reason and thereafter your services shall be terminable,

(i) by the company without assigning any reason, by giving three months notice or by giving three months" pay in lieu of notice;

(ii) by your giving three months notice of resignation to the company.

All other terms and conditions of your service including Probation, if any, shall be the same as stipulated in the letter of appointment issued by Hindustan Steel Limited."

8. Admittedly, petitioners accepted offer of appointment and joined the service in MECON. In 1978 the new Act namely Public Sector Iron and Steel Companies (Restructuring) and Miscellaneous Provisions Act, 1978 [in short Act of 1978] came into force. By virtue of aforesaid Act the HSL was merged in SAIL and MECON became independent company under the direct administrative control of the Department of Steel, Government of India and HSL became dissolved company and SAIL became and integral company. Section 2(g) of the said Act defines the word "transferred company" which means and includes respondent MECON. Section 2(d) defines "dissolved company", which means and includes HSL. Section 14 and 15 of the said Act lays down the provisions relating to the officers and employees of the dissolved company and the transferred units.

These two sections reads as under.

"14. Provisions relating to officers and other employees of dissolved companies (1) Every officer (not being a director) or other employee holding office immediately before the appointed day in a dissolved company in relation to any undertaking of such company, other than an officer or other employee holding such office in relation to transferred units referred to in Section 6, shall, as from the appointed day, continue to hold office as such in the corresponding unit of the Integral Company by the same tenure and upon the same terms and conditions of service and with the same rights and privileges as to retirement benefits as would have been admissible to him if the company in which he was holding office had not been dissolved and shall continue to do so unless and until such tenure and terms and conditions are duly altered by the Integral Company.

(2) Notwithstanding anything contained in Sub-section (1), rules relating to the conditions of service and Standing Orders applicable to the officers or other employees referred to in Sub-section (1), as immediately before the appointed day, shall continue to apply unless and until they are duly altered by the Integral Company or other authority, as the case may be.

15. Provisions relating to officers and employees of transferred units (1) Every officer or other employees holding office immediately before the appointed day in the transferred unit shall, as from the appointed day, continue to be an officer or other employee of the corresponding unit of the transferee company by the same tenure and upon the same terms and conditions of service and with the same rights and privileges as to retirement benefits as would have been admissible to him if the transferred unit in which he was holding office had not been transferred and shall continue to do so unless and until such tenure and terms and conditions are duly altered by the transferee company.

(2) Notwithstanding anything contained in Sub-section (1), rules relating to the conditions of service and Standing Orders applicable to the officers or other employees referred to in Sub-section (1), as immediately before the appointed day, shall continue to apply unless and until they are duly altered by the transferee company or other authority, as the case may be."

9. From perusal of the aforesaid provisions, it is therefore clear that petitioners are governed by Section 15 of the Said Act which inter alia provides that the employees of transferred unit shall continue to be the employees of the corresponding unit of the transferee company by the same tenure and upon the same terms and conditions of the company and the same rights and privileges as to the retirement. From the aforesaid facts, it is clear that even after the aforesaid act came into force the service conditions of the petitioners particularly the age of superannuation continued to be same i.e. 58 years. It was only in 1998 respondent MECON took a decision to raise the age of superannuation of the employees from 58 years to 60 years. That decision was circulated by office order dated 8.7.1998. This decision appears to have been taken pursuant to the

office memorandum issued by the Government of India. However, in pre session of the aforesaid decision under the chain circumstances respondent MECON issued impugned circular to roll back the age of the superannuation in respect of all categories of employees of MECON from 60 years to 58 years. The only question therefore falls for consideration is as to whether MECON when took a decision to raise age of superannuation can exercise its power again to alter the said decision under the special facts and circumstances to roll back the age of superannuation from 60 years to 58 years. Answer to this question, in my opinion, having regard to the law laid down by the Supreme Court would be in affirmative. The power of the employer may be government or government undertaking to reduce or increase the age of superannuation is always there unless this power is taken away by legislation. The employer has every right to alter the service conditions of the employees.

10. In the case of Suresh Chandra Singh and Ors. v. Fertilizer Corporation of India and Ors., (supra), the Supreme Court while considering a similar question observed as under :

"The third complaint of unequal treatment is that some other PSEs have raised the age of retirement to 60 years. It is admitted that some PSEs have done so. But there are others also who have not done so. In our view each PSE is a separate unit and the principle of equality enshrined in the Constitution cannot be so enlarged as to require exactly similar service conditions in all of them. Each PSE has a right to prescribe its own conditions of employment depending on its own circumstances."

11. In the case of V.K. Judah v. Christian Medical College, (supra), their Lordships considering the question with regard to power of the employer to alter the age of superannuation held as under :

"Fixation of an age for retirement is a common feature of all Services in our country. It is calculated to ensure that the employee is given a chance to serve till he can work efficiently. Equally, the employer should be able to utilize the services of an experienced employee. At the same time, it has to be ensured that there is no stagnation at different levels in the Service. Consequently, an age of retirement is prescribed with the object of counter balancing conflicting interests and claims. In case of civil servants, the age of retirement has been fixed at 58 years with a provision that the employee can be retired even at the age of 50 years or thereafter. In case of certain other services, even higher age for retirement has been fixed. What should be the age? It is a question of policy. It is for the employer to decide. It is not for the Courts to fix it. The Court can intervene only when it is unreasonable. It does not provide a sufficient tenure of service. Otherwise, the occasion for Courts interference does not arise."

12. Now I will discuss the decisions cited by Mr. M.S. Anwar, learned senior counsel for the petitioner. In the Case of B. Prabhakar Rao and Ors. v. The State of Andhra Pradesh and Ors. 1985 (Suppl.) SCC 432, the fact of the case was that

in 1983 the Government of Andhra Pradesh decided to reduce the age of superannuation of its employees from 58 years to 55 years. The Government also issued directives to local authorities and public Corporation under its control to do likewise. In order to give effect to their policy, the Government amended the fundamental rules. The said action of the Government was challenged and considering injustice caused to the employees, the superannuation age was restored to 58 years by the Government after Supreme Court decision. But in view of the delay in Supreme Court judgment, statutory amendments made raising age of 58 years prospectively to give effect to the agreement. Person attaining age of 55 years during the interregnum between the reduction and restoration of age were excluded from the benefits of enhanced age of amendment. In that context the Supreme Court held that retirement of such person during the interregnum period is arbitrary and discriminatory.

13. In the case *S.P. Dubey v. Madhya Pradesh Road Transport Corporation and Anr.* (1991) Suppl. (1) SCC 426, the facts of the case was that petitioner was the employee of Central Province Transport Services Limited. The Board of Directors of the Company by resolution fixed the age of superannuation of all its employees except drivers as 60 years. The Company was purchased and taken over by the State of Madhya Pradesh by Notification dated 31.8.1985 with specific assurance that service conditions of the company employees will not be adversely affected. Subsequently, direction was issued by the State Government u/s 34 of the Road Transport Corporation Act providing that such employees will be subject to such assurance as may have been given to them by the State Government. The age of retirement of the employees of the transferred company was 60 years which was subsequently fixed at 58 years. In the facts of the case the Supreme Court held that Government's assurance incorporated in the direction u/s 34 is binding. Hence retirement age of 60 years enjoyed by the transferred employees can not altered to their disadvantage by the Corporation.

14. In the case of *M.G. Pandke and Ors. v. Municipal Council Hinganghat District Wardha and Ors.*, 1993 (Suppl.) 1 SCC 708, the Supreme Court was considering the question as to when reduction of age of retirement will be held as discriminatory. In that case that appellant joined the service as teacher prior to November, 1, 1956 in the High School run by the Municipal Council District Wardha. The said district was part of the then State of Madhya Pradesh and the Service conditions of the appellants were governed by the Provisions of Madhya Pradesh Secondary Education Act, 1951. In the regulation framed under the said Act the age of superannuation of the teacher was 60 years. In the facts of the case, their lordship held that condition of service regarding age of retirement of such teachers thus governed by the Code as enforced by the Regulation. Therefore bye-laws of Hinganghat Municipal Council providing 58 years age of retirement would not be applicable to the appellant teachers.

15. In the instant case, as noticed above, petitioners joined the service in the erstwhile H.S. Ltd. where the age of superannuation was 58 years and the same

was specifically mentioned in the letter of appointment. After the petitioners joined the services of the respondents their service conditions with regard to age was not altered. It is only in 1998 respondents MECON took decision raising age of superannuation of the employees from 58 years to 60 years but that decision was not given effect to as the decision was taken pursuant to Office memorandum issued by the Government of India. But subsequently taking into consideration financial condition of the Company, Government of India case with a proposal to roll back the age of retirement from 60 years to 58 years. After the decision of the Government, the matter was reviewed by the Board of Directors and it was decided to take up the matter with the Government to roll back the age of retirement from 60 years to 58 years. The Government after considering the situation approved the decision and communicated it to the respondents. In such situation decisions relied upon by the petitioner are not applicable in the present case.

16. Taking into consideration the facts of the case and the law discussed herein above, I do not find any strong reasons to interfere with the impugned circular dated 31.10.2001 issued by the respondents reducing the age of superannuation from 60 years to 58 years. For the aforesaid reason, there is no merit in this writ application which is accordingly dismissed.