
(1994) 03 AHC CK 0090
In the Allahabad High Court
Case No : Special Appeal 800 of 1993

Artificial Limbs Manufacturing Corporation of India	APPELLANT
Vs	
Som Pal Singh	RESPONDENT

Date of Decision : 24-03-1994

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 10, 11, 12, 13(1), 13(2)

Citation : (1994) 2 AWC 789 : (1994) 3 UPLBEC 1508

Hon'ble Judges : V.K. Khanna, Acting C.J.; S.S. Sodhi, J

Bench : Division Bench

Advocate : Tarun Agarwala and Sudhir Chandra, for the Appellant; B.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—The controversy here is with regard to the applicability of the additional matters included in the model standing orders by amendment in the schedule to the industrial employment (standing orders) Act 1946 (here in after referred to as the Act") after certification of standing orders of an industrial establishment. It arises in the present case, in the context, of the provision pertaining to the transfer of employees, which was not there in the model standing orders when the standing orders of the Appellant corporation were certified under the Act in 1976 but came to be incorporated in the model standing orders subsequently, by their amendment. This amendment being of January 17, 1983.

2. The point in issue arises from the transfer of the Respondent Som Pal Singh, Senior Assistant with the Appellant Corporation, from Kanpur to Calcutta. The contention put forth and which prevailed with the learned single Judge, being, that in the absence of any provision regarding transfer in its certified standing orders, the Appellant Corporation could not pass the impugned order transferring the Respondent from Kanpur to Calcutta. Great stress was, in this behalf, also

laid upon the fact that in its draft standing orders the Appellant Corporation had made provision for the transfer of its employees, but it was disallowed by the appellate authority, under the Act, by its order of November 30, 1977.

3. The proposition canvassed by the Counsel for the Appellant, Mr. Sudhir Chandra, Senior Advocate, was that, as a plain reading of the provisions of the Act would show that all matters set out in the schedule to the Act were required to be provided for in the draft standing orders and further that the model standing orders were to be deemed to have been adopted by the industrial establishment till its standing orders were finally certified, it must logically follow that until certified standing orders are modified to incorporate the additions to the model standing orders, such additions must be deemed to have been adopted by the industrial establishment concerned and shall thus be applicable to it. It was on these premises argued that the Appellant Corporation had the requisite power and authority to transfer the Respondent Som Pal Singh.

4. To give the relevant factual back-ground, the Appellant Corporation is a Company registered under the Indian Companies Act 1956. Its aim being to establish Units and Offices all over the Country. It has since set up centers at New Delhi, Bhubaneshwar, Bangalore, Calcutta and Madras. Later, at the meeting of the Board of Directors held in September, 1993, it was decided to set up 13 new centres at various other places in the Country.

5. It was sometime in the year 1976 that the Appellant Corporation submitted its draft standing orders for certification, to the certifying Officer. Provision was made in these draft standing orders for the transfer of employees. The certifying Officer, by his order of December 24, 1976, approved the provision but only to a limited extent. This provision was, however, wholly deleted by the Appellate authority, by its order of November 30, 1977, on the ground that it did not figure in the schedule to the Act. This is where matters stood until 1983 when the schedule to the Act WAS amended and specific provision was made therein for transfer of employees.

6. As regards Respondent Som Pal Singh, it was on June 25, 1976 that a letter of appointment (Annexure-1) for the post of Typist Clerk was issued to him. Clause 6 thereof specifically stipulated that he may, at the discretion of the Management, be required to serve anywhere in India, Som Pal Singh accepted this appointment on these terms and was consequently appointed as Typist Clerk on July 23, 1976.

7. Turning now to the provisions of the Act it will be seen that the expression "Standing Orders" has been defined to mean "Rules relating to matters set out in the schedule." Sub-section 2 of Section 3 renders it imperative that provision be made in the draft standing orders for every matter set out in the schedule which may be applicable to the industrial establishment and further that where model standing orders have been prescribed the draft standing orders shall, so far as is practicable, be in conformity with such model.

8. Next, Section 4 of the Act provides that standing orders shall be certified only if provision is made for every matter set out in the schedule, which is applicable to the industrial establishment and further that the standing orders are also otherwise in conformity with the provisions of the Act. There is then Section 5 which deals with the certification of standing orders.

9. The crucial provision to note here is Section 12-A of the Act which reads as under:

Temporary application of model standing orders:--(1) Notwithstanding anything contained in Sections 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation u/s 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of Section 9, Sub-section (2) of Section 13 and Section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in Sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujrat or the Government of the State of Maharashtra.

10. The learned single Judge construed the said Section 12-A to mean that the model standing orders could have only temporary application i.e. during the period commencing from the Act becoming applicable to an industrial establishment and ending with the date on which its standing orders are finally certified. In the present case, therefore, the learned Judge ruled that as the standing orders had been certified, the model standing orders, as amended thereafter, could not, by virtue of this provision of law be made applicable. It was however observed that the Appellant Corporation could now, on account of the "amendment in the schedule" seek modification of its certified standing orders, but until this was done and the standing orders were so modified, the Appellant Corporation could not pass the impugned order transferring the Respondent Som Pal Singh, either on the basis of his letter of appointment or on the model standing orders, as amended.

11. A similar view has been expressed by the High Court of Karnataka in M.C. Raju Vs. Executive Director, There according to the certified standing orders, the age of retirement was 55 years. The model standing orders were subsequently amended to prescribe 58 years as the age of retirement. The workman claimed the benefit of this increase in the age of retirement by virtue of this amendment in the model standing orders. It was observed that the transitory period prescribed in Section 12-A had been provided there with precision. It did not speak of any date of amendment in the rules or the Act and the reference there to the standing orders was only to the first standing orders and consequently the amended model standing orders would not automatically become applicable. It

was, therefore held that until the existing standing orders were modified, the amended model standing orders could not be applicable.

12. In so construing the provisions of Section 12-A, support was sought to be taken from Section 10 of the Act which bars the modification of the standing orders until the expiry of six months from the date on which the standing orders or the last modification thereof, came into operation. It was said that the automatic applicability of the amended model standing orders, after certification of standing orders, would run counter to these provisions of the said Section 10.

13. The view expressed by the learned single Judge as also in M.C. Raju's case (supra) cannot, with respect, be accepted as being in consonance with the clear legislative intent, as it emerges from a plain reading of the provisions of the Act. The manifest legislative objective that stands out, being that all industrial establishments must have applicable to them, one or the other standing orders i.e. either the model standing orders or the certified standing orders. As pointed out earlier that there is the specific and mandatory requirement, as laid down in Sub-section 2 of Section 3, that provision must be made in the draft standing orders for every matter set out in the schedule and Section 4 fortifies this, by saying that the standing orders shall be certifiable only if provision is made therein for all matters set out in the schedule to the Act. This mandate can obviously be complied with only if the matters newly added to the schedule, too are applicable to industrial establishments, irrespective of the industrial establishment concerned having or not having certified standing orders.

14. Turning to the reference to Section 10, its provisions can by no means be read to bar the applicability of the amended model standing orders until the newly added matters to the schedule are incorporated in the certified standing orders. To go by its provisions, read) in isolation, it would mean that as no modification in the certified standing orders is permissible for six months, even to incorporate the amended model standing orders, there would be a six months bar. To construe it in this fashion would clearly be imputing absurdity to the legislature, which cannot be countenanced.

15. Harmonious construction of the provisions of the Act clearly implies that until and unless a matter included in the model standing orders by their amendment, after certification of standing order of an industrial establishment, is included by modification in the certified standing orders, the model standing orders as amended shall be applicable to it.

16. There can thus be no escape from the conclusion that the provisions in the model standing order pertaining to transfer were applicable to the Appellant Corporation and its employees and in terms thereof, and keeping in view also the terms of the letter of appointment of the Respondent Som Pal Singh, the impugned order of transfer suffers from no legal infirmity and is thus valid and legal.

17. This appeal is therefore hereby accepted and the impugned judgment of the

learned single Judge set aside. There will however be no order as to costs.