**(1996) 05 GAU CK 0043**

**In the Gauhati High Court**

**Case No :** Civil Rule No. 4341 of 1991

Bansidhar Sarma and Others — APPELLANT

Vs

Certifying Officer and Others — RESPONDENT

**Date of Decision :** 10-05-1996

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14
Industrial Disputes Act, 1947 — Section 12(3), 9A
Industrial Employment (Standing Orders) Act, 1946 — Section 4

**Citation :** (1997) 1 GLR 351

**Hon'ble Judges :** J.N. Sharma, J

**Bench :** Single Bench

**Advocate :** A. Dasgupta and B.M. Sarma, for the Appellant; B.P. Borah, P.K. Borah and S.K. Das, for the Respondent

**Final Decision :** Allowed

## Judgement

J.N. Sarma, J.—This writ application has been filed challenging the retirement of the Petitioners at the age of 50 and with further prayer to give effect to the settlement dated 22.1.91 and for a direction to reinstate the Petitioners and allow them to continue till the age of superannuation is reached according to the settlement. There are as many as 23 Petitioners and all of them are permanent employees of the Assam Co-operative Jute Mills Limited at Silghat which is duly owned and controlled by the State of Assam and as such the same is an authority Under Article 12 of the Constitution of India and all these Petitioners, it is claimed, were to retire at the age of 50. Earlier the age of retirement of the workers of the Mill was fixed at 58 years. But subsequently by virtue of a standing order certified by the Labour Commissioner, Assam under the provision of Industrial Employment Standing Older Act, 1946 (herein-after called the Act), the age of superannuation was arbitrarily fixed at 50 years of age and in pursuance of the said standing order the Petitioners were forced to retire at the age of 50 years. That thereafter a conciliatory settlement was arrived at on 12.1.91. By the settlement the age of superannuation was fixed at 55 years. But the Petitioners were not reinstated and as such this writ application.

2. I have heard Shri A. Dasgupta, learned advocate for the Petitioners and Shri P.C Deka, learned advocate for the Respondents. Section 4 of the Act of 1946 provides the conditions for certification of standing orders. It inter-alia, provides as follows:

(i) Provision is to be made therein for every matters set out in the Schedule which is applicable to the Industrial establishment; and

(ii) The standing orders are otherwise inconformity with provisions of this Act.

3. The law is that the terms of the employment specified in the standing order is preferred other to corresponding terms in contract of service, while adjudging unfairness or reasonableness of any standing order, the Certifying Officer should consider the social interest in the claims of employer and the social interest in the demands of workmen. Where a standing order certified by the Certifying Officer contains a Clause relating to superannuation not provided by the Schedule of the Act nor by the model standing order such certification can not be a valid certification. In the Schedule the following matters are to be provided in the Standing Orders under this Act:

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or badlis.

2. Manner of intimating to workmen periods and hours of work, holidays, paydays and wage rates.

3. Shift working.

4. Attendance and late coming.

5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.

6. Requirement enter premises by certain gates and liability to search.

7. Closing and reopening of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising there-from.

8. Termination of employment and the notice thereof to be given by employer and workmen.

9. Suspension or dismissed for misconduct and acts or omissions which constitute misconduct.

10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents servants.

11. Any other matter which may be prescribed.

4. So a bare perusal of the 11 items will show that the age of superannuation can not be provided in the standing orders. No doubt certified standing orders are statutory prescribed the conditions of service shall be deemed to be incorporated in the contract of employment of each employee, that is employer if any rule framed by Company read with standing orders absolute or invalid discretion on the employer to allow or disallow a rightful claim of the employees, that would be unfair and unreasonable as also arbitrary subject to test of Article 14, If a standing order is not fair or reasonable, this Court in exercise of its power to declare ineffective and infer possible. If the Certifying Officer finds that some of the provisions of the standing orders relate to matters which are included in Schedule or finds that some of the provisions are unreasonable and it is his duty to refuse to certify the same. The Parliament has laid this mandatory duly of the Certifying Officer which he must discharged in a fair and in a quasi-judicial manner See 1977 LabIC 575 (All) The Air Gases Mazdoor Sangh and Ors. v. Indian Air Gases Limited Varanasi and Ors. Respondents relying on AIR 1963 S.C. 439. On this background let us have a look at the pleadings in the instant case.

5. Clause 23 of the standing order which is Annexure-A to the writ application provides as follows:

23 SUPERANNUATION

Every worker shall retire from service on completing the age of 50 years, Intension for a maximum of 5 years may be given at the discretion of the (Management, provided the employee is certified by a registered Medical Practitioner as desires such extension of service period.

6. In paragraphs 4, 5 and 6 it is stated as follows:

4. That ii is well scaled principle of law, that the age of superannuation of an Industrial workers is either 60 year or 58 years. Whether it would be 58 or 60 it depends on several factors. It the workers are provided with retire benefits like pension etc., in that event the retirement age is fixed at 58 years. If they are not provided with any pensionary benefits in that event the retirement age is fixed at 60 years of age. That apart it also depends on regional factors as in Delhi and Bombay trend is to fix the age of retirement at 60 years whereas in West Bengal the said trend is at 58 years. This principles of fixation of retirement age is based on several Supreme Court decision. Whatever the case is, the retirement age should not fix at below 58 years of age. But in the instant case, the Petitioners were forced to retire at 50 years of age. After their retirement a settlement was arrived at where by the retirement age has been extended to 55 years, Even then the effect of the said extension of retirement age has not been given to the Petitioners.

5. That the Petitioners beg to state that during their tenure of service, the management introduced a new standing order. This standing order was certified by the Certifying Officer, the Respondent No. 1 on 18.8.88. The Petitioners beg to

state that they were governed by a Standing Order which came in force in 1971-1972. This new standing order was introduced without serving any notice as contemplated u/s 9A of the Industrial Dispute Act, 1947. That apart the Standing Order will govern the matter which are specified in Schedule 1 of the Act. The Schedule I does not authorize the concerned authority to deal with the matter of retirement age. Despite this clear provisions, by Clause 23 of the said Standing Order, the age of superannuation has been fixed at 50 years of age.

A copy of the said Standing Order is annexed hereto and marked as Annexure-A.

6. That pursuant to Clause-23 of the aforesaid standing order notice of retirement were served on the Petitioners on 30.11.90. By this notice the Petitioners were informed that they would attain 50 years of age on 31.12.90 and they would be retired from service on 1.1.91.

7. In paragraph-9 it is stated as follows:

9. That the Petitioners who were victims of unfair labour practise approached to the Labour Commissioner on 11.1.91. But unfortunately, the Labour Commissioner who was fully aware of the aforesaid settlement, dated 22.1.91, declined to entertain the appeal preferred by the Petitioners and returned the same to the Petitioners vide his letter No. LP. 14/87/1597/dated 6.2.91. The Petitioners crave indulgence of this humble court to refer and relay on those documents if so required at the time of hearing.

8. In paragraph-12 it is stated as follows:

12. That the Petitioners beg to state that it is an established principles of law that the retirement age of an Industrial Establishment is 58 or 60 years of age. This principle has been founded on several decisions of the Hon''ble Supreme Court of India. Despite this position of law the retirement age had been reduced to 50 years. The Labour Commissioner who is the Certifying Officer under the Provisions of Industrial Employment (Standing Order) Act, has also certified the same. The Petitioners beg to state that the Certifying Officer has not made any proper Enquiry before Certifying the standing order and had also not gone into the question whether the reduction of age of superannuation from 58 years of age to 50 years was reasonable and fair.

9. In paragraph-15 it is stated as follows:

15. That the learned Certifying Officer committed an error by fixing the retirement age by the Standing Order though the Act does not authorize him to do so. His power has been circumscribed by Schedule I of the Act. By this Schedule he has not been authorized to fix the retirement age.

10. An affidavit-in-opposition has been filed wherein the relevant paragraphs are paragraphs-7 and 9 are quoted below:

7. That with regard to the statements made in paragraph 3 of the writ petition, I say that the age of superannuation of the Industrial Employees under the Mill

 

was fixed at 50 years as per Clause 23 of the Standing Orders for workers employed at the Mill which was in force in the Mill. The said Standing Order was duly certified by the Certifying Officer on 18th August, 1988. The Clause 23 of the Standing Order being very much relevant for the purpose of deciding the issues raised in the writ petition.

11. Shri Dasgupta in support of his contention submits that the Standing Order regarding superannuation is not fair and reasonable relying on the following decisions :

(i) 1984 S.C. 505 Glaxo Laboratories (I) Ltd., Appellant v. Presiding Officer, Labour Court Meerut and Ors. Respondents. wherein in paragraph-12 the Apex Court has laid down the law as follows:

12. The days of laissez-faire when industrial relation was governed by the harsh weighed law of hire and fire, the management was the supreme master, the relationship being referable to contract between unequal and the action of the management treated almost sacrosanct. The developing nations of social justice and the expanding horizon of socio-economic justice necessitated statutory protection to the unequal partner in the industry namely, those who invest blood and flesh against those who bring in capital. Moving from the days when whim of the employer were supreme lex, the Act tock a modest step to compel by (sic) the employer to prescribe minimum conditions of service subject to which employment is given. The act was enacted as its long title shows to require employees in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. The movement was from status to contract, the contract being not left to be negotiated by two unequal persons but statutorily imposed. If this socially beneficial act was enacted for ameliorating the conditions of the weaker partner, conditions of service prescribed thereunder must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief.

12. In paragraph 13 the Supreme Court pointed out that the power to prescribe conditions of service is not unilateral but the workman has right to object and to be heard and a statutory authority, namely Certifying Officer have to certify the same. In the instant case before the Standing Order was made and certified reducing the age of superannuation, the workers were not heard. So it directly runs counter to the decision of the Apex Court.

13. The next case is 1973 S.C. 1227 The workmen of Firestone Tyre and Rubber Co. of India P. Ltd., Appellant v. The management and Ors. Respondents wherein the Supreme Court pointed that "In construing the provision of a welfare legislation, courts should adopt beneficial rule of construction. As far as reasonably possible construction furthering the policy and object of the Act and more beneficial to the employees has to be preferred. Act intended to improve and safeguard the service conditions of an employee should be liberally

 

interpreted, according to its plain words and without doing violence to the language used by the legislature.

(iii) 1970 Ori 126 (Saroj Kumar Ghosh, Petitioner v. Chairman, Orissa State Electricity Board, Opposite-Party, wherein a Division Bench of this Court has pointed out in paragraph-11 relying on the judgment of the Supreme Court reported in 1966 S.C. 1471 and 1960 S.C. 665, it laid down the laws as follows:

If this is the basis, there is no room for upholding the provision for superannuation. We must, therefore, hold that the provisions contained in Clause 32 of the Standing Orders, as extracted above, was without the authority of law. The Certifying Officer did not perform his job properly and overlooked the mandate of the Statute and certified it though such a provision was not certifiable u/s 4 of the Act. The tact that the workmen did not challenge such a provision cannot add enforceability to such a provision without jurisdiction. We, therefore, conclude that there was no valid standing Order applicable to the workmen of the Cuttack Electric Supply Co. Ltd. which made any provision for superannuation.

The Division Bench of the Orissa High Court pointed out that superannuation is an event which comes more or so in an automatic process. An age is fixed in reaching of which the holder of an office is required to go out of an office. With the lapse of time the event automatically comes, both the parties for (sic) end of the matter long before and it is an event which can not be resisted by them if the Rule is to be followed. Superannuation as pointed out by the Apex Court in AIR 1960 S.C. 1471, R & H District Electric Supply Company v. State of U.P. does not come within the definition of termination. Superannuation is an important condition of service and is not liable to be changed lightly.

(iv) 1970 20 FI.R 243 (Workmen of Lakheri Cement Works Ltd. and Associated Cement Companies Ltd.) wherein the Supreme Court pointed out that where the topics to be included in the Standing Order of a Company do not fall under any of the Item in the Schedule to the Act the extension of the Standing Order to such topics would be entirely without jurisdiction and such standing orders could not therefore be framed. Even the Supreme Court further pointed out that even if this point was not taken before the Certifying Officer or before the Appellate Authority such action being without jurisdiction and would be a complete nullity. So this completely answers the question raised in the present case. On the other hand on behalf of the Respondent reliance is placed in Ram Pukar Singh and Others Vs. Heavy Engineering Corporation and Others, Respondents and it is argued that a settlement u/s 12(3) of the Industrial Disputes Act is binding on all workmen whether members of the Union or not. Even if this contention is accepted the Petitioners can not he retired at the age of 50 relying on the standing order. Accordingly I hold that direction given to the Petitioners for superannuation on the basis of the standing order is no; sustainable inasmuch as that is a nullity as pointed out by the Apex Court. Accordingly a writ of mandamus is issued commanding the opposite-party/Respondents to take back all the Petitioners in service and allow them to continue to the age of 55 years as agreed to by the settlement. All the orders of superannuation of the workmen even though given effect to at the age of 50 on the basis of Clause-23 of the Standing Order shall stand quashed and the Petitioners shall be taken back in service and treated them to be in service till they attained the age of 55 years. All the monetary benefits shall be given to the Petitioners. This shall be done within a period of 3 months from the date of receipt of this order.

13. 1978 Lab. IC 1560 Central Workshop Karmachari Sangh Kanpur Petitioner v. Industrial Tribunal 1, 7th Stratchy Road Allahabad and Ors. Opposite-parties. This is a case from Allahabad High Court, wherein the Allahabad High Court in paragraph-8 has pointed out as follows:

The present day tendency is to fix the age of superannuation of workmen by Industrial Laws generally at 60 years unless evidence is produced to show that the work of a particular class of employee is arduous or hazardous on account of which the workmen lose efficiency earlier in age. See Jeewanlal (1929) Ltd. Vs. The Workmen and Another, In the absence of any evidence or finding that the work which the work-charged employees performed was arduous or hazardous in nature it was unreasonable for the Appellate authority IO interfere with the certified Standing Orders prescribing the age of superannuation at 60 years.

In the instant case there is absolutely no material to show that there was any notification for reducing the age of superannuation as done by Clause-23. It is absolutely unreasonable and unfair. Accordingly the writ application is allowed. As the poor workmen were dragged to the Court I order payment of costs of Rs. 300/-.