

(2015) 10 KL CK 0147

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 32073 of 2014 (H), 28749 and 34277 of 2014

Bhel Electrical Machines Ltd.

APPELLANT

Vs

BHEL EML Employees Association and Others

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 KLT 302

Hon'ble Judges : S.P. Chaly, J

Bench : Single Bench

Advocate : E.K. Nandakumar, Senior Advocate, M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas, K. John Mathai, Joson Manavalan and Kuryan Thomas, for the Appellant; V.B. Hari Narayanan and A.V. Vamanakumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.P. Chaly, J—W.P.(C) No. 32073 of 2014 is filed by the petitioner seeking to quash Exts. P6 and P11 orders passed by 4th and 5th Respondents respectively to the extent it enhanced the age of retirement of the workmen of the petitioner from 58 years to 60 years by the 4th Respondent and affirmed in appeal by the 5th Respondent and for other related reliefs. The other two writ petitions are filed by workmen of the petitioner establishment in W.P.(C) No. 32073 of 2014 to declare that they are entitled to continue in service till they attain the age of 60 years. I will consider W.P.(C) No. 32073 of 2014 in which the petitioner in W.P.(C) No. 34277 of 2014 is the additional 6th Respondent. The subject matter of these cases revolve round a question as to whether the workmen of the petitioner in W.P.(C) No. 32073 of 2014 are entitled to continue in service till they attain the age of 60 years. Therefore, the petitioners in the other writ petitions who are claiming the relief of continuance till 60 years of age will be guided by the decision in the said writ petition.

2. Brief facts leading for the disposal of W.P.(C) No. 32073 of 2014 are as follows:

3. Petitioner is a subsidiary company of Bharat Heavy Electricals Ltd. (for short, BHEL), a Government of India Enterprise. BHEL Electrical Machines Ltd. was formerly a Kerala Government Undertaking known as Kerala Electrical and Allied Engineering Ltd. Kasaragod Unit of the said establishment was taken over by BHEL as a joint venture Company with Government of Kerala, with share participation of 51% with BHEL, a Government of India Undertaking and 49% with Government of Kerala. The new Company was formed in the name of M/s. BHEL Electrical Machines Ltd. as on 19.11.2011 as a Government of India Enterprise.

4. Thereafter, petitioner submitted to the 4th Respondent draft Standing Orders applicable to workmen category for certification, by fixing the age of retirement of workmen at 58 years. The 4th Respondent incorrectly referred to and relied upon the outdated/superseded Ext. P3 guidelines issued by the Government of India on 19.05.1998 and enhanced the age of retirement of the workmen from 58 years to 60 years and passed Ext. P6 order. Even though an appeal was filed by the petitioner before the 5th Respondent against Ext. P6 order, the 5th Respondent dismissed the same by Ext. P11 order dated 17.10.2014 and it is thus challenging Exts. P6 and P11 orders passed by Respondents 4 and 5, this writ petition is filed.

5. Respondents 1 to 3 filed a joint counter affidavit denying the contentious issues and basically contending that Exts. P6 and P11 orders passed by Respondents 4 and 5 are in accordance with law in view of Ext. P3 guidelines issued by the Union of India, enhancing the retirement age from 58 to 60 years. So also, it is contended that even if the retirement age of the erstwhile State Government Company was fixed at 58 years as per the Standing Order, in view of subsequent take over of the same by the petitioner, Ext. P3 guideline of the Government of India has become binding on the petitioner and therefore, as of right, the employees of the petitioner Company is entitled to continue till they attain the age of 60 years. Furthermore, it is also contended that since the employees who opted to join the new company will be governed by the rules in vogue in the old Company until new Standing Orders are certified by the competent authority. Therefore, it was only a temporary arrangement agreed between the management and Unions until finalization of the Standing Orders which will govern the service conditions of the employees of the company. It is further contended that Ext. P1 offer of appointment issued in respect of the employee has only stated that he will be governed by the service conditions as applicable in the old company until the finalization of new Standing Orders. Therefore, it is stated that the above condition contained under the appointment order does not lay down any directive to the effect that the employees of the new company are bound by the old service conditions and the attempt of the petitioner to interpret the appointment order against the true intention of the same is totally irrational and unacceptable.

6. It is also contended that petitioner finalised the draft Standing Order by fixing

the retirement age of workers at 58 years against the guidelines issued by the Government of India and contrary to the service conditions of employees of all Central Public Sector Undertakings through out the country. It was thereupon that Respondents Unions have objected to the approval of the above Standing Order before the 4th Respondent. Apart from the issue of age of retirement, the condition regarding shift working hours of the employees was also objected to by the Unions and the rest of the provisions contained under the Standing Orders were accepted by the Unions. The petitioner as well as the employees of the petitioner establishment have agreed that both parties will abide by the certification order passed by the 4th Respondent on the draft Standing Orders produced by the petitioner for certification and having done so, the petitioner is not at liberty to turn around and challenge Ext. P6 certification order passed by the 4th Respondent. Therefore, it is contended that Ext. P6 order passed by the 4th Respondent and Ext. P11 order passed in appeal are in accordance with law and therefore no interference is called for.

7. Additional 6th Respondent has also filed a counter affidavit stating similar contentions raised in the counter affidavit filed by Respondents 1 to 3. Apart from the same, 6th Respondent has contended that since the writ petitioner is relying on Ext. P4 as a supersession to Ext. P3 order of the Union of India, the remedy of the petitioner lies before the Government of India. Further, it is contended that if an Enterprise wants to keep the age of employees at 58 years, it has to move the Minister-in-charge of the Administrative Ministry/Department concerned, and that too, if such Enterprise is a sick industry. Since no such action to roll back from 60 to 58 years was initiated by the petitioner, petitioner is not entitled to maintain a writ petition. Relying on Ext. R6 (a), additional 6th Respondent contends that the stand of the Government of India is clear when it stipulated in Ext. R6(a) that Ext. P3 Government Order dated 19.05.1998 is binding on all Undertakings and further that in case any administrative Ministry or Public Sector Undertaking does not wants to increase the age of retirement of its employees, specific exemption from operation of the aforesaid decision would be necessary. It was also contended that the legal principles laid down by the Hon'ble Apex Court in various decisions especially the judgment in G.M. Talang and Others Vs. Shaw Wallace and CO. and Another, AIR 1964 SC 1886 : (1964) 9 FLR 417 : (1964) 2 LLJ 664 : (1964) 7 SCR 424 , the employees of the Central Government Undertakings are entitled to continue till they attain the age of 60 years. In such circumstances, additional 6th Respondent also canvassed for dismissal of the writ petition.

8. Heard learned counsel for the petitioner, Sri. Benny P. Thomas, learned counsel for Respondents 1 to 3, Sri. V.B. Hari Narayan and Sri. N. Unnikrishnan appearing for the Additional 6th Respondent.

9. Learned counsel for the petitioner relied heavily on Ext. P4 order of the Union of India dated 20.04.2007, which reads as follows:

"CHAPTER II PERSONNEL POLICIES

(b) Composition of Board of Directors

40. DPE/Guidelines/II(b)/40 Enhancement of age of retirement of Board and below Board level employees of profit earning Central Public Sector Enterprises (CPSEs).

The Government had taken a decision to increase the age of retirement from 58 to 60 years of Board level and below Board level employees of Central Public Sector Enterprises (CPSEs) in May 1998. In May 2000, sick/unviable CPSEs were permitted to roll back the age of retirement from 60 to 58 years with the approval of the Cabinet. Subsequently in August 2001, the Cabinet delegated the authority to Minister-in-charge to approve proposals for roll back of age of retirement from 60 to 58 years for all CPSEs and all categories of employees, which are duly approved by their Board of Directors. This decision was reviewed in April 2005 and it was decided that the power for roll back of age of retirement of all categories of employees of CPSEs would thereafter vest with the Cabinet.

2. In the meantime, several sick CPSEs have started making profit and these CPSEs have requested for enhancement of age of retirement of its employees from 58 to 60 years. The matter has further been reviewed by the Government and it has now been decided that the Minister-in-charge of the administrative Ministry/Department concerned is empowered to approve the proposals of CPSEs to enhance the age of retirement from 58 to 60 years, provided that--

(a) The CPSE concerned should as per its audited annual accounts have made net profits for the last 3 years continuously and should have a positive net worth during the last three years.

(b) The CPSE has not availed any budgetary support during the last 3 years and no budgetary support will be availed by the CPSE in future.

(c) The proposals are approved by the Board of Directors of the CPSE concerned and have the concurrence of Financial Advisor of the concerned administrative Ministry/Department.

3. All the administrative Ministries/Departments are requested to take note of the above decision and to advise the CPSEs under their administrative control suitably in the matter.

(DPE OM No. 18(1)/2007-GM-GL-80 dated 20th April, 2007)".

10. Relying on the said order, learned counsel contended that the petitioner establishment came into force only in the year 2011 and ever since, for the next three years, the company was running at a loss. Therefore, as per Ext. P4 order, the retirement age of its employees was never enhanced to 60 years and it always remained at 58 years itself. Learned counsel also contended that Ext. P3 order of the Central Government which fixes the age limit at 60 years is superseded to the extent it concerns sick companies. Learned counsel further contended that the age limit of the workers of the petitioner company has not

been fixed at 60 years, it is not liable to make any application for rolling back. He further contended that Ext. P4 applies to a company which has already enhanced the age of its employees from 58 to 60 years and if the said company has become sick or unviable, was entitled to roll back after complying with the stipulations contained under Ext. P4.

11. That apart, it is contended that only the sick or unviable companies which were rolled back from 60 to 58 years in order to further enhance its age back to 60 years on making profit are liable to seek permission from the authorities prescribed under Ext. P4. Since the petitioner has not enhanced the retirement age limit of its workers, it is not duty bound to secure any permission as stipulated under Ext. P4. It is in this background, learned counsel contended that the petitioner company has produced the audited Profit and Loss Account and the Balance Sheet before the 4th Respondent, wherein for the succeeding years from the formation of the company in 2011 it was running at a loss and therefore the 4th Respondent ought to have accepted the Standing Orders in toto, without incorporating the retirement age of the workmen as 60 years.

12. Learned counsel has also contended that neither the 4th Respondent nor the 5th Respondent in appeal have considered the arguments put forth by the petitioner and further that the 4th Respondent was carried away by Ext. P3 order unmindful of the fact that the same was superseded by Ext. P4. Therefore, learned counsel contended that the writ petition is to be allowed and Ext. P6 certification so far as concerning the incorporation of retirement age of workmen at 60 years and Ext. P11 order in appeal are to be quashed.

13. Learned counsel for the petitioner has also contended that none of the Public Sector Undertakings in Kerala have enhanced the retirement age from 58 to 60 years and therefore if the petitioner alone is to comply with the said stipulation, it will cause innumerable difficulties to them, especially due to the reason that the petitioner is running at a loss ever since its inception. Learned counsel further contended that even though as per Ext. P3, the retirement age was fixed by the Government of India at 60 years, petitioner Company in its Standing Order has never enhanced the age from 58 years and it was always remaining intact without any disturbance. Therefore, it is contended that, the workmen or the Unions are not at liberty to insist/compel the petitioner for enhancing the retirement age to 60 years.

14. On the other hand, learned counsel for Respondents 1 to 3 reiterated the stand taken in the counter affidavit filed and contended that Ext. P3 guideline issued by the Government of India is binding on all Central Public Sector Undertakings. Learned counsel also contended that Ext. P4 is a guideline issued in order to meet certain specified circumstances so far as concerning sick and unviable Central Public Sector Undertakings. Learned counsel also contended that the petitioner and Respondents having agreed to submit to the jurisdiction of 4th Respondent in the matter of enhancing the retirement age to 60 years, was not at liberty to turn around and challenge the same by filing a statutory appeal.

Learned counsel further contended that all other Central Public Sector Undertakings except the approved sick and unviable Enterprises are bound under law to fix the age limit at 60 years ever since issuance of Ext. P3 guidelines. It was also contended that, Ext. P4 guideline was issued by the Government of India only to take care of the situations of the sick and unviable Enterprises, and in order to avail benefit of the same, stipulations contained under Ext. P4 will have to be complied with by the petitioner. It is also argued that petitioner having not secured the sanction stipulated under Ext. P4 is not entitled to canvass for the proposition that, it having not enhanced the age from 58 to 60 years, is entitled to fix the age limit at 58 years in its draft Standing Orders. Therefore, learned counsel canvassed that the writ petition is unmerited and is therefore liable to be dismissed.

15. Learned counsel for the additional 6th Respondent also reiterated his stand taken in the counter affidavit filed by the 6th Respondent and additionally contended that there being no illegality in Ext. P11 order passed by the 5th Respondent, there is no scope for any judicial review invoking Article 226 of the Constitution of India, especially in view of Ext. P3 Government Order which stipulated that the retirement age of all Central Public Sector Enterprises shall be 60 years. Learned counsel also contended that the decision of the Government of India has come into force with effect from the date on which the Standing Order is certified by the 4th Respondent incorporating the amendment of retirement age to 60 years.

16. Having considered the rival submissions made at the Bar, I am of the considered opinion that the question centres round Exts. P3 and P4 guidelines issued by the Government of India. In order to explain or clarify the nature of the order passed by the Government of India as per Exts. P3 and P4, Government of India is not a party to the proceedings and therefore only by providing a meaningful construction to the said Government Orders, a resolution to the issue can be arrived at. In my view, by Ext. P3 guidelines, the Government of India enhanced the retirement age from 58 to 60 years in all Central Public Sector Enterprises. Petitioners are not disputing the said guideline issued by the Government of India dated 19.05.1998, but contends that the same is superseded by Ext. P4 Government Order. Moreover, petitioner has no case that Ext. P3 is not binding on them.

17. On an appreciation of Ext. P4 guideline dated 20.04.2007, which is extracted supra, the heading reads "enhancement of age of retirement of Board and below Board level employees of profit earning Central Public Sector Enterprises (CPSEs)". The first sentence of the said guideline reads that the Government had taken a decision to increase the age of retirement from 58 to 60 years of Board level and below Board level employees of the Central Public Sector Enterprises in May, 1998. Thereafter, the said order speaks about permission to sick and unviable Enterprises in May, 2000 to roll back the age of retirement from 60 to 58 years with the approval of the Cabinet. If the definite expressions and

phraseologies employed in those sentences are taken into account, and read harmoniously, undoubtedly it can be found that by virtue of Ext. P3 guidelines, retirement age of the workmen of Central Public Sector Undertakings have already come into force. In my view, without assuming so, no meaning can be conveyed to the system of rolling back envisaged thereunder. It further reads that in August 2001, the Cabinet delegated the authority to Minister-in-charge to approve proposals for roll back of age of retirement from 60 to 58 years for all CPSEs and all categories of employees, which are duly approved by their Board of Directors.

18. Further, same was reviewed in 2005 and it was decided that the power for roll back of age of retirement of all categories of employees of CPSEs would thereafter vest with the Cabinet. Therefore, on a cumulative reading of the first paragraph of Ext. P4 guidelines, it is categoric and clear that a designated authority was conferred with powers at different point of time to permit sick and unviable Central Public Sector Undertakings to roll back from 60 to 58 years, which thus again pre-supposes that retirement age of the employees of the Central Public Sector Undertakings were fixed at 60 years generally. In order to provide meaning to the said part of Ext. P4 order, one has to bear in mind that a conscious decision was taken by the Government of India to fix the age limit of retirement at 60 years. According to me, only legally presuming so, the said part of Ext. P4 guidelines can be meaningfully construed and understood also.

19. So far as the second paragraph of Ext. P4 order is concerned, it takes care of the sick/unviable Undertakings already rolled back from 60 to 58 years, requesting enhancement of age of retirement of its employees from 58 to 60 years on making profit. That apart, Government of India has further reviewed the subject matter and it was decided that the Minister-in-charge of the administrative Ministry or Department concerned was conferred with power to approve the proposals of CPSEs to enhance the age of retirement from 58 to 60 years, provided the three conditions recited thereunder are satisfied by the said sick units which have rolled back to the retirement age of 58 years.

20. Therefore, if at all the petitioner had to succeed by relying on Ext. P4, in my considered opinion, the remedy available to them was to demonstrate before the concerned designated authority under Ext. P4, that it was a sick or unviable Enterprise entitled to roll back from the retirement age of 60 years prescribed under Ext. P3, by resorting to Ext. P4 stipulations. Having not done so, I am of the opinion that petitioner also cannot maintain the stand that it has retained the age of 58 years retirement in the erstwhile Kerala State Company and thereby Ext. P3 notification is not binding on it. So also, in order to avail the benefit of Ext. P4, petitioner was not entitled to provide its Profit and Loss Account and the Balance Sheet before the 4th Respondent Certifying Officer and canvassed the proposition that since it was suffering loss ever since its inception, was entitled as of right to fix the retirement age at 58 years, for the specific reason that in order to avail the benefit of roll back, prescriptions contained under Ext. P4 was

a necessary/essential corollary.

21. So also, I have earlier referred to Ext. R6(a) guidelines issued by the Government of India notifying that Ext. P3 guidelines is binding on all Central Public Sector Undertakings. It further stipulates that in case any administrative Ministry or Public Sector Undertakings does not want to increase the age of retirement of its employees, specific exemption from operation of Ext. P3 decision would be necessary. Having considered the entire circumstances, evidence on record and law involved, I am of the considered opinion that petitioner is bound by Ext. P3 decision of the Government directing the Central Public Sector Undertakings to enhance the age limit of its employees from 58 to 60 years. Merely because the coming into force of the said decision was dependent on the amendment of relevant Rules and Regulations of the Public Sector Enterprises, will not enable the petitioner to enhance the age limit at its sweet will and pleasure. The said aspect was properly considered by the 4th Respondent, Certifying Officer while modifying the age limit of retirement from 58 to 60 years fixed under the Standing Order by the petitioner. Even though learned counsel for the petitioner contended that Ext. P6 order is a non-speaking one, on a perusal of the same, I find that the arguments advanced by the petitioner Company was taken note of and it has arrived at a conclusion after assimilating the pros and cons concerning Exts. P3 and P4 guidelines.

22. Therefore, I am unable to agree with the argument advanced by the learned counsel for the petitioner that Ext. P6 is passed violative of principles of natural justice and suffers from the vice of arbitrariness. I have also gone through Ext. P11 impugned order passed by the 5th Respondent. It is true that so far as the ratio of the decision is concerned, it only stated that the certification of the Regional Labour Commissioner, Cochin is in order and the same need not be interfered with, but, on a reading of Ext. P11, it is clear that the 5th Respondent has borne in mind and took into account the contentions advanced by the petitioner, law involved in the subject matter, and the principles of law proposed by the Respondent Unions. Therefore, on a reading of Ext. P11, I am unable to arrive at a conclusion that it is a non-speaking order especially due to the fact that the contentions raised by the petitioner were recorded in Ext. P11 order itself. Moreover, in a case of this nature, when the resolution of dispute was dependent solely on the interpretation of Exts. P3 and P4 orders, a long run order by a statutory appellate authority is not expected of. So also, since the Appellate Authority was considering an order of the Certifying Officer interpreting Exts. P3 and P4, this Court will have to bear in mind that the Appellate Authority has also read the reasonings contained in Ext. P6 and has passed the impugned Ext. P11 order.

23. I also bear in mind the legal principles discussed by the Hon'ble Apex Court regarding the power of a Certifying Officer considering certification of a Standing Order, in paragraph 13 of the judgment in *The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen*, (1972) LabIC 644 : (1972) 2 LLJ 9 :

(1972) 2 SCC 54 : (1972) 3 SCR 754 . That apart, I also bear in mind the findings and observations of the Hon"ble Apex Court way back in 1964 in the judgment in "G.M. Talang & Others" (supra), about need for increasing the age of retirement from 55 years to 60 years after surveying the retirement age of various countries and ultimately finding that in 45 countries pensionable age was fixed at 60 years or more. Moreover, it is brought to my notice the order of Government of India dated 30.05.1998 which took into consideration the recommendation of Vth Pay Commission and increased the retirement age from 58 to 60 years. When order or orders passed by statutory authorities are scrutinized by this Court invoking the powers of judicial review conferred under Article 226 of the Constitution of India, this Court need only evaluate whether such statutory authorities have acted illegally or in violation of any settled legal principles. Therefore, on an evaluation of factual and legal circumstances involved in this case, I do not think that the authorities below have committed any such legal error while passing respective orders under challenge nor the petitioner has made out any such ground, warranting interference of this Court.

24. Having bestowed my attention to the cumulative circumstances, I am of the considered opinion that W.P.(C) No. 32073 of 2014 lacks merit and therefore it is liable to be dismissed and accordingly, I do so.

25. In view of the dismissal of W.P.(C) No. 32073 of 2014 and thereby confirming Ext. P6 order of the 4th Respondent Certifying Officer, petitioners in W.P.(C) Nos. 28749 & 34277 of 2014 are entitled to succeed and are entitled to continue in service till they attain the age of 60 years. Therefore, the said writ petitions are allowed permitting the petitioners to continue in service of the petitioner Company till they attain the age of 60 years. Petitioner in W.P.(C) No. 28749 of 2014 is continuing in service, also by virtue of an interim order passed by this Court. Petitioner in W.P.(C) No. 34277 of 2014 who is also the additional 6th Respondent in the writ petition filed by the Company crossed the age of 58 years, was not retained by the Company and therefore in accordance with the terms of this common judgment, suitable orders shall be passed by the 2nd Respondent in the said writ petition to reinstate the petitioner in service since it is stated that he will attain the age of 60 years only on 21.03.2016 and grant all consequential service benefits as if the said petitioner was continuing in the service of the Respondent Company in the said writ petition.

Accordingly, the said writ petitions are allowed.