

(2000) 08 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6204 of 1994

Chief General Manager, Singareni Collieries Co., Ltd.,
Bellampalli

APPELLANT

Vs

Presiding Officer, Industrial Tribunal-I, Hdy. and another

RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 5 ALD 695 : (2000) 5 ALT 784

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. S.R. James, for Mr. K. Srinivasa Murthy, for the Appellant; Mr. G. Vidya Sagar, for the Respondent

Judgement

1. Questioning the order of the Industrial Tribunal No.1 in ID No.85 of 1989 dated 19th day of November, 1993, wherein an award was passed declaring the action of the petitioner-Company in terminating the services of the second respondent as Trammer with effect from 1-1-1989 as unjustified, the petitioner-Company filed the present writ petition.

2. The facts of the case are that the second respondent was appointed as Trammer on 16-12-1957 and at that time his age was shown as 21 years. Subsequently, a bonus card was issued to him on 15-12-1958 which was marked as Ex.W1 wherein his age was shown as 22 years as on that date. At the time of the recruitment of the second respondent there were no rules relating to the age of retirement for the workmen in the petitioner-company. Subsequently, in the year 1960 the Company framed the Rules governing the fixation of age and superannuation of the Employees. Rules. Rule 3(iv and vi) of the Age Retirement Rules which are relevant for the purpose of this case are extracted hereunder:

"(iv) In case of employees already in service is unable to give his date of birth after issue of this circular, their ages should be determined in accordance with the provisions of this rule. The work should be completed within a period of 12

months from the date of issue of this circular.

(v).....

(vi) In the case of literate employee the date of birth shall be entered in the record of service in the employees own handwriting. In the case of illiterate employee the declared date of birth shall be recorded by a senior employee and witnessed by another employee."

3. As can be seen from the above, sub-clause (iv) of Rule 3 says that the age of the employees who are unable to give their date of birth has to be determined within 12 months from the date of issuance of the Circular. Sub-clause (iv) of Rule 3 says that in case of literate employees the date of birth should be entered in the record of service in the employee's own handwriting and in case of illiterate employees the date of birth has to be recorded by a senior employee and witnessed by another employee. But the procedure to be followed for fixation of the age under these rules seemed to have been not mentioned in these rules. After these rules came into force, when the petitioner-company started retiring its employees by fixing their age without any basis, the Union raised a dispute and ultimately Memorandum of settlement was executed between the Union and the Management on 22-6-1965. As per this agreement, the Management has to send the worker for assessment of his age to the Medical Officer before termination of his services (superannuation). When the petitioner-Company was observing the agreement in breach, again the Union raised a dispute and once again a settlement was entered into between the parties on 17-9-1969. On the basis of the said settlement, the petitioner company issued a circular dated 26-10-1983 wherein it is clearly stated that when any employee raises a dispute with regard to the age that was entered in his record, the Management has to send him to a Medical Officer for assessment of his age.

4. In this case, the petitioner-company served a notice on the second respondent on 13-2-1987 stating that he would be retiring from service on 1-1-1989 on attaining the age of superannuation. Immediately on 17-2-1987 the second respondent filed a representation stating that at the time of his entry into service in the year 1957, his age was recorded as 21 years and as such his age as on 1-1-1989 would be only 53 years but not 60 years as contended by the Management. When the Management did not heed to his request, conciliation proceedings were initiated which ended in failure. At the instance of the Union, the Central Government referred the dispute to the Industrial Tribunal under Sections 10(1)(d) and 2A of the Industrial Disputes Act 1947, for adjudication of the Following issue :

"Whether the action of the Management of M/s. S.C. Co. Ltd., Bellampalli, District Adilabad (AP) in terminating the services of Sri G. Narsaiah, Trammer, Shanti Khani with effect from 1-1-1989 is justified? If not, to what relief the workman concerned is entitled?

5. The Tribunal having gone into the evidence adduced by both the parties and

the documents marked on both sides held that the termination of the second respondent with effect from 1-1-1989 is illegal and he is entitled to be reinstated into service with full backwages from the date of his termination.

6. Questioning the said award passed by the Tribunal, the petitioner-company filed the present writ petition.

7. The main contention urged by the learned Counsel for the petitioner is that as per the Register of Employees maintained under Rules 48(3), 51 and 71 -B, his age was shown as 20 years and in the Service Record which was marked as Ex.M1, his age was shown as 29 years and he has given a declaration on 9-4-1969 that the contents of the Service Book belonging to him regarding his age, date of appointment and other service particulars are explained to him and having agreed with the same, he affixed his thumb impression and as per the Service Book, his age at the time of entry into service is 20 years. I have perused the service record. Firstly, in page 2 of this record, his age was shown as 29 years as on 13-12-1957, perhaps the date on which he entered the service. While all other entries in this page are shown in horizontal manner, the age was given at the top of the paper and I also find difference in ink and in the handwriting. As per this page, the service record was prepared on 28-1-1958. the declaration was obtained on 9-4-1969 after the rules came into force and just before the parties entered into the second agreement dated 17-9-1969, where under the management has agreed to refer the matter of the employee to the Medical Officer for the assessment of his age. At the same time, it is not in dispute that in Ex.W1, the Bonus Card issued to the 2nd respondent on 15-12-1958, his age was shown as 22 years. The management has failed to explain this discrepancy as noticed in the Bonus Card and the service card and under what circumstances- his age was entered as 29 years on the date of his entry into service. As pointed out earlier, on the date of entry of the 2nd respondent into service, there no retirement rules and the rules came into force in 1960. As per these rules, the management is bound to determine the age of the employees 12 months from the date, the rules came into force and in case of an illiterate employee, the date has to be recorded by a senior employee and witnessed by another employee. It is also now on record that the procedure prescribed for fixation of the age as per settlement entered into between the Union and the management on 26-2-1965 was not followed at the time of obtaining thumb impression of the workman on the service card said to have been prepared before retirement rules come into force. It is not the case of the petitioner company that the 2nd respondent gave his date of birth to the management. Even assuming that the respondent has given his age as 29 years, he was not able to give the exact date of birth, (i.e.,) the date and the month in which he has born and even if any credence is given to the entry in the service record, the same was entered in 1958 on the basis of his physical appearance. When the Management entered into an agreement in 1965 to refer the employees for fixation of his age to the Medical Officer, when the workman disputed his age as entered in the service card, the Management is bound to

send the employee to the Medical Officer for determination of his age. Without following the procedure they obtained the thumb impression of the 2nd respondent in 1969 after 1965 agreement showing that the age entered in the service record is correct and the basis on which the respondent has declared his age or the procedure followed by the management in fixing the age was not forthcoming either before the Tribunal or before this Court. Further, he being an illiterate employee, the date of birth has to be recorded by a senior employee and witnessed by another employee under Rule 3(iv) of the retirement Rules. I do not find that any employee has witnessed the declaration given by the 2nd respondent. The Management neither followed the Rule 3(iv) and 3(vi) of the retirement rules in fixing the age of the 2nd respondent nor sent him to the Medical Officer for fixation of his age as per the memorandum of settlement entered into between the Union and the Management on 26-2-1965, much earlier to the declaration said to have been given by the 2nd respondent on 9-4-1969.

8. I am also of the view that whatever the rules may say with regard to the fixation of the age, the rules are silent on the procedure to be followed for fixation of the age, more so, with regard to the illiterate persons. Hence, they are bound to give effect to the settlement entered into between the union and the Management on 26-2-1965 as well as the 2nd settlement dated 17-9-1969, which was given statutory effect by issuance of circular on 26-10-1933.

9. Without following this procedure, they suddenly served a notice on the 2nd respondent on 13-2-1987 stating that he will be retiring on 1-1-1989. As stated supra, I have my own doubts on the entry made on the top of page 2 of service card with regard to the age of the 2nd respondent. Further, the declaration was also obtained from the respondent without following the procedure determining the age of workman in accordance with Rule 3(iv) of the Retirement Rules coupled with the settlement entered into between the Union and the Management on 22-6-1965. Hence I do not find any illegality or irregularity in the order passed by the Tribunal in declaring the action of the 1st respondent in retiring the 2nd respondent from service with effect from 1-1-1989 (sic as illegal). But at the same time I have no manner of doubt in holding that the Tribunal went wrong in giving a direction to reinstate the 2nd respondent with full back wages without ascertaining his age as per the memorandum of settlement entered into between the Union and the Management and as per the Circular dated 26-10-1983.

10. As the Award of the Tribunal has been stayed by this Court in WPMP No,7615/94, dated 18-10-1995 and the petitioner retired from service as per his own version, during the pendency of the writ petition, I am inclined to direct the 1st respondent to refer the case of the 2nd respondent to the Superintendent, Osmania Hospital for fixation of his age, as he is no more an employee of the petitioner Company and he is apprehending that justice may not be done if he appears before the Medical Officer of the Company, in the light of the bad blood

that has flown between the management and the 2nd respondent since 1989. After fixation of the age of the 2nd respondent by the Osmania Hospital, if the 2nd respondent is entitled to continue in service after 1-1-1989 till he attained the age of superannuation, the petitioner company shall pay all the arrears of salary and extend all other consequential benefits treating the period for which he is out of service as on duty within 8 weeks from the date of receipt of the report. If the 2nd respondent is not entitled to continue in service after 1-1-1989, the date on which he was made to retire, no relief can be given to the 2nd respondent and the award to that extent is modified.

11. At this stage, the learned Counsel for the petitioner Company referred to a decision of the Supreme Court in *Visakhapatnam Dock Labour Board Vs. E. Atchanna and Others*, . I have gone through the judgment of the Supreme Court. The facts in that case are altogether different from the facts of the case on hand. Further, in that case, their Lordships of the Supreme Court before considering the question whether the Division Bench of this Court can give an interim direction to send the Mazdur to a Medical Board constituted by the Director, Health Services, pending disposal of the writ appeals, after a single Judge of this Court refused to grant relief to the workmen on the ground of laches and observed as follows:

"Therefore, for alteration of their dates of birth the respondents were required to take steps within 5 years from the date of coming into force of the said notification. Even after the circular was issued by the appellant, the respondents did not approach the appellant within reasonable time. The respondents had sought alteration on the basis of the certificates which did not provide irrefutable proof as regards their correct dates of birth, more particularly for the reasons pointed out by the learned single Judge. Without deciding all these issues it was not proper to give the impugned directions. The request for referring the respondents to the Medical Board was refused by the appellant. That prayer was also rejected by the learned single Judge, whether that should have been done or not is itself in issue in the appeals, The impugned directions given at an interlocutory stage are very likely to cause serious prejudice to the appellant's case."

12. From this it is seen that the workmen sought for alternation of date of birth on the basis of the certificates which did not provide an irrefutable proof as regards the correctness of date of birth, more so after expiry of the time fixed for filing application for alternation of date of birth. Hence their Lordships held that the Division Bench was not justified in referring the workmen to a Medical Board for fixation of his age as an interim measure without finally adjudicating the dispute.

13. In this case, the Industrial Tribunal having considered the oral and documentary evidence let in by the parties categorically held that the Management failed to produce any proof that the age of the workmen was fixed in the light of the retirement rules and the settlements entered into between the

Union and the Management. Hence the above case would not come to the rescue of the petitioner company.

14. For the above reasons I am inclined to allow the writ petition in part and modify the Award to the extent directing reinstatement with backwages from 1-1-1989 and direct the petitioner company to send the 2nd respondent to the Osmania Hospital for fixation of his age and take action indicated supra. No order as to costs.