
(2005) 08 KL CK 0041
In the High Court Of Kerala
Case No : Writ Petition No. 2104 of 2004

Cochin Shipyard Ltd.

APPELLANT

Vs

Iqbal

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 3(2)
Industrial Employment (Standing Orders) Act, 1946 — Section 13A, 13B
Industrial Employment (Standing Orders) Central Rules, 1946 — Rule 2A

Citation : (2006) 108 FLR 720 : (2005) 4 ILR (Ker) 321 : (2005) 4 KLT 1020 :
(2006) 2 LLJ 1095

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Hema, J

Bench : Division Bench

Advocate : M. Pathrose Mathai, for the Appellant; Easwaran and P.V.
Jayachandran, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—Employer of the respondent-workman is the appellant. Respondent workman contended that going by Ext. P-2 certified Standing Orders as applicable to the employees of the appellant, he was entitled to continue in service until he attained the age of 60 years. On the other hand, he was sent out on attaining the age of 58 years, relying on Ext. P-1 settlement. It was in the above circumstances, the respondent approached this Court with the writ petition seeking a declaration that, going by Clause 34 of Ext. P-2 certified Standing Order, which prevails over Ext. P-1 settlement, he is entitled to continue in service, until he attains the age of 60 years. The learned Single Judge, in the impugned judgment, found that while 1978 settlement was in force, Ext. P-2 Standing Order was certified on 19-1-1980 and it did provide for the age of retirement as 60 years. When the settlement was followed by Ext. P-2 Standing Orders, he was entitled for a declaration for continuance in service until he attains the age of 60 years. According to the learned Single Judge, the subsequent settlement, which came into effect on 31-8-1981, could not have modified Ext. P-2 to alter the age of retirement to 58 years. This judgment is

impugned in this Writ Appeal by the employer.

2. The prime contention urged by the appellant is that the provision regarding the age of retirement contained in Ext. P-2 certified Standing Orders cannot have any application in the wake of the subsequent settlement-Annexure B. While the matter was argued, it was also brought to our notice that when Ext. P-2 was certified, there was no provision in the Industrial Employees (Standing Orders) Act, 1946 (hereinafter referred to as the Act) or the Rules framed thereunder, requiring superannuation as an item to be included in the Standing Orders, nor was it an item finding place in the model Standing Order contained in Schedule to the Act at the relevant point of time. It is contended by the appellant that 1978 settlement Annexure A provided that the age of retirement of the workmen in the service of the appellant--Company, as on the date of the said settlement, shall be 60 years and in cases of employees or workmen recruited thereafter, it shall be 58 years. It was, thereafter, Ext. P-2 Standing Order was certified on 19-1-1980. Even though age of retirement was not an item to be included in the Standing Order in terms of the Act and the Rules, it was included therein, providing 60 years as the age of superannuation. Later, at the time of subsequent settlement-Annexure B (Ext. P-I) the provisions in Annexure A settlement of the year 1978 were carried over as per Clause 36 of Annexure B which, reads as follows:

"The parties agree that the respective rights, benefits, responsibilities and terms and conditions of service under the provisions of the settlement dated 11-4-1978 which are not specifically amended, negated or otherwise modified under this settlement shall continue to be in force."

Therefore, by reason of this clause in Annexure B (same as Ext P-I), the age of retirement provided in Annexure A settlement entered into in 1978 is resurrected, notwithstanding what is contained in Ext.P-2 certified Standing Order, it is submitted. When a settlement is arrived at, the counsel contends that, it will prevail over the Standing Order in respect of the matter covered by the later settlement. Much reliance was placed on the decision of the Supreme Court reported in Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another, , Our attention was also invited to the decision of the Apex Court in Avery India Limited Vs. The Second Industrial Tribunal, West Bengal and Others, .

3. Amplifying this situation, it is further submitted that going by Schedule to the Act, the age of superannuation or the age of retirement was not a matter to be provided in the Standing Orders at the relevant time. Item No. 11 therein provided for "any other matter" which may be prescribed by the Rules. But the Rules, as on the date of certification viz., 19-1-1980, also did not contain any prescription as to further items that have to be provided for in the Standing Orders. Our attention is drawn to Rule 2A whereby item 10-B is specifically introduced to the Schedule. One among the items in item 10-B is regarding the age of retirement. This was introduced as an item in the Schedule only by

notification dated 17-1-1983. Citing the decision of the Apex Court reported in *Workmen of Lakheri Cement Works Ltd. v. The Associated Cement Companies Ltd.* 1969 (2) SCWR 237, it is submitted that there was no authority to include any matter in the Standing Orders other than the items mentioned in the Schedule to the Act in the absence of any further prescription by the Rules made under the Act.

4. It is further submitted that the contention of the writ petitioner is centered around the interpretation of the Standing Orders. The remedy provided for is to raise an industrial dispute or to file an application as provided u/s 13A of the Act. Therefore, when such efficacious alternate remedies were open to the workman, the learned Single Judge ought not to have entertained the Writ Petition, counsel for the appellant submits.

5. It is submitted by the learned Counsel for the workman-respondent that raising an industrial dispute, for adjudication in terms of the Industrial Disputes Act, 1947, is not an alternative remedy. Adjudication depends upon the reference made by the Government in the case of failure of conciliation proceedings/The Government has the discretion to refer a dispute to the Labour Court or Industrial Tribunal, as the case may be, or not to refer it. Therefore, it cannot be taken as an efficacious remedy available to the workman. In this regard the learned Counsel relied on the decision of this Court reported in *Assistant Personal Officer v. Antony* ILR 1978 Ker 216. This contention has some force.

6. Referring to Section 13B of the Act, it is submitted that such a remedy to approach the Labour Court or the Industrial Tribunal, as the case may be, is available only in respect of a "workman" as defined in Section 2(i) of the Act. Section 2(i) of the Act wordily implants the provision contained in Section 2(s) of the Industrial Disputes Act, 1947. A close reading of Section 2(s) will reveal that a workman who retired from service will not be considered as workman. A person discharged, dismissed or retrenched or terminated from service alone will come under the definition of "workman". So he cannot resort to the remedy available u/s 13B of the Act, it is submitted. The counsel is justified to submit so.

7. It is further submitted, relying on the decision reported in *Western India Match Company Ltd. Vs. Workmen*, , that a certified Standing Order for providing the conditions of service of a workman will override the existing contract of service. Therefore, Ext.P-2 overrides Ext.P-1 settlement. So when Ext.P-1 was arrived at, there was no provision regarding the age of retirement in Annexure A for being replaced by Annexure B settlement, because the provision regarding the retirement age contained in Annexure A has been replaced by Ext.P-2 certified Standing Order.

8. It is now submitted that no contention has been raised in the appeal before the Appellate Authority designated under the Standing Orders Act, nor before the learned Single Judge as to the enforceability or otherwise of Clause 34 of Ext.P-2 standing orders viz-a-vis to the items provided in the Schedule to the Act. So,

such a contention cannot be heard at the appellate stage.

9. The contention of the appellant/employer is that Clause 34 of Ext.P-2 Standing Orders does not have any legal efficacy. Of course, the ground urged is the subsequent settlement. When efficacy or enforceability of Clause 34 is the matter under consideration, necessarily, all other attendant legal contentions to support the non-efficacy of Clause 34 can certainly be urged as a ground to get relief, especially when it is centered around a question of law. Therefore, we will consider that contention first, which will necessarily give a quietus to the issue raised in the writ petition.

10. Standing Orders Act is intended to require the employers in an industrial establishment to define the condition of service with sufficient precision as is enjoined in the long title and the preamble of the Act. The matters to be provided in the Standing Orders statutorily to be framed and certified are also dealt with in the schedule to the Act. There are 11 items in the schedule as forming part of the plenary statute. Items 1 to 10 are in relation to different aspects of the service conditions. None of them does deal with the age of retirement. Item No. 11 is of larger spectrum titled "any other matters which may be prescribed". Going by Section 2(f), it is agreed by either side that in respect of a public sector undertaking owned by the Central Government, the appropriate Government is the Central Government. Necessarily, for the appellant-industrial establishment owned by the Central Government, Central Rules will be applicable, to ascertain whether retirement is a matter specifically prescribed in terms of Item No. 11 of the Schedule. We see from the Rules that sub-item No. 3 on age of retirement to item No. 10B was provided only as per Rule 2A. But this item and the rule was introduced on the statute book by G.S.R.30 (E), dated 17-1-1983, long after the certification of Ext.P-2 Standing Orders or even Annexure B subsequent settlement. In other words, the age of retirement became a matter to be provided in the Standing Orders to be certified under the Act only with effect from 17-1-1983. The Standing Orders in this case had been certified on 19-1-1980. It includes Clause 34 which provided age of retirement. As per the law then in force, the Standing Orders cannot provide the age of retirement. The Apex Court in the decision reported in *Workmen of Lakheri Cement Works Ltd. v. The Associated Cement Companies Ltd.* (1969) II SCWR 237, has made it clear,

"Sub-section(2) of Section 3 provides that provision shall be made in such draft for every matter set out in the schedule which may be applicable to the industrial establishment, and where model Standing Orders have been prescribed, shall be so far as practicable, in conformity with such model."

On its basis, the Apex Court further held:

"It is manifest that this enlargement to the schedule does not take in the two topics on which paras 22 and 23 of the Standing Orders were framed. It follows therefore that there is no authority to extend the Standing Orders to topics not

mentioned in the first schedule to the Act as amplified by the rules to which we have referred."

The Supreme Court also considered the observation made in Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others, to the effect that "Certifying authorities were quite justified in not including them in the certified Standing Orders". Following the said decision the Supreme Court in Associated Cements" case held as follows:

"In view of the pronouncement of this Court, it is quite clear that the extension of the Standing Orders to the two topics was entirely without jurisdiction and the Standing Orders could not therefore be framed. It may however be mentioned that this point does not seem to have been taken either before the Certifying Officer or before the Appellate Authority. But even so. any action without jurisdiction would be a complete nullity....."

(Emphasis supplied)

11. Thus, placing reliance on the said decision of the Apex Court on an identical question, we have to hold that Clause 34 of ExtP-2, at the relevant point of time was a nullity as the schedule to the Act at the relevant point of time did not cover the age of retirement as a matter to be included in the certified Standing Orders. When Clause 34 thus does not have any legal efficacy, being "a complete nullity" as held by the Apex Court, necessarily the age of retirement provided in Annexure A settlement of the year 1978, which is carried over by Annexure B (Ext.P-1) settlement of the year 1981 will determine the date of retirement of the respondent-workman.

12. Going by the admitted facts, though the respondent/writ petitioner-workman entered service initially on 19-4-1977 he unauthorisedly absented from duty and faced dismissal on 6-8-1979. Thereafter, showing compassion, he was readmitted to duty as a fresher from 12-8-1980. These facts are not disputed. Therefore, for all practical purposes, it shall have to be taken that he commenced service on 12-8-1980. Consequently, going by Clause 14 in Annexure A-1 settlement of 1978, the age of retirement of those commenced service subsequent to the date of the said settlement shall be 58 years. Going by Clause 36 of Annexure B (Ext.P-1) subsequent settlement of the year 1981 all the terms in Annexure A which are not modified by Annexure B "shall continue to be in force". So the terms in Annexure A providing the age of retirement is still continued. The first respondent/ writ petitioner has been retired only on attaining the age of 58 years. He is, therefore, not entitled to any declaration for continuance in service until the age of 60 years.

In the light of this finding, we need not consider the other contentions raised, being only academic. In such circumstances the impugned Judgment which directs continuance of the first respondent in service until the age of 60 years shall have to be being only academic. In such circumstances the impugned Judgment which directs continuance of the first respondent in service until the

age of 60 years shall have to be set aside. We do so. The appeal is allowed and the writ petition stands dismissed. In this regard, it has to be borne in mind that among the hundreds of employees in the industrial establishment of the appellant, none other than the writ petitioner has raised this issue obviously because of the binding nature of Annexure B (Ext. P-I) subsequent settlement accepted by the trade unions representing the workmen, resolving a subsisting industrial dispute to bring about industrial peace.