
(2001) 01 KL CK 0026

In the High Court Of Kerala

Case No : O.P. No's. 11028, 14269 and 16612 of 2000

Devarajan and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 01 KL CK 0026

Hon'ble Judges : K.K. Usha, C.J.;Kurian Joseph, J

Bench : Division Bench

Advocate : C.V. Radhakrishnan and R. Ramadas, P.K. Kurian, Antony Dominic and C.N. Ramachandran Nair, for the Appellant; K. Ramakumar, Sr. C.C.S.C., A.N. Kuttan, A.C.C.S.C. and Thomas Mathew Nellimootil, A.C.C.S.C., V. Rajendern and P. Gopinthan, for the Respondent

Judgement

K.K. Usha, C.J.—These original petitions are at the instance of the members of the managerial staff of Fertilisers and Chemicals Travancore Limited, a Central Public Sector Enterprise. The challenge is against the decisions of the Board of Directors of FACT to lower the retirement age of managerial employees from 60 to 58.

2. Pursuant to an order, dated 15th June 1971 the retirement age of employees belonging to the managerial or supervisory category, whose salary per month exceeded Rs. 750 was fixed at 58 years and in the case of persons whose salary did not exceed Rs. 750 per month the superannuation age was 60. In 1978 under an agreement there was further change in the age of retirement. It was decided that those employees on the rolls of the company as on January/ February 1978 would automatically retire from the service of the company on their attaining the age of 60 and employees who joined the company after 23rd January 1978 will retire on their attaining the age of 58. Thereafter pursuant to Ext. P-1 office memorandum issued by the Government of India, Ministry of Industry, Department of Public Enterprise, the age of retirement was enhanced

to 60. Exhibits are referred as they are marked in O. P. No. 11028/2000 and counter affidavits filed therein. The amendment regarding age of retirement of the managerial personnel was effected by making necessary modification in the superannuation rules as is evident from Ext. P-3 with effect from 30th May 1998. In the case of employees who are workmen, the change was brought in by way of a settlement as evidenced by Ext. P-4 with effect from 16th June, 1998.

3. Petitioners' complaint is against the decision taken by the Board of Directors of FACT on 28th February 2000 to reduce the retirement age of the managerial employees from 60 to 58. They would contend that such decision is against the policy of the Central Government which was reflected in Exit. P-1 namely a direction to enhance the age of retirement from 58 to 60. Therefore, they seek to quash Ext. P-8 decision taken by the Board of Directors to the extent it reduced the retirement age of all the managerial staff.

4. From the counter affidavit filed by additional Respondents 5 to 8, who represent the workers, it is seen that the workers are in favour of reducing the age of retirement as they found that it was an essential step for the very existence of the company. Therefore, they are not in favour of the challenge against Ext. P-8.

5. The Petitioners would contend that the decision taken by the Board of Directors to reduce the age of retirement is vitiated by non-consideration of relevant factors. They would contend that the note placed before the Board, copy of which is produced as Ext. P-7, would make it clear that no substantial gain will be made by the company by reducing the age of retirement. These aspects have been totally ignored by the Board while taking the impugned decision. It is further contended that the impugned decision is against the directive given by the Union of India under Ext. P-1. The unilateral decision taken by the 4th Respondent without consulting the Central Government and without concurrence of the Central Government is totally arbitrary, unreasonable and mala fide. According to the Petitioners, the decision is against Exts. P-5 and P-6. Ext. P-5 is a communication addressed by the company to the Union of India in the matter of financial relief proposal, in which it is stated that the scope for significant reduction in the manpower may not be feasible. It was also mentioned therein that if the retirement age is reduced to 58 years, 29 experienced senior officers will retire by the year 2000 and it will create a vacuum at the senior levels. In Ext. P-6 communication, dated 6th January 2000 the company has informed the Government of India that it is not feasible to review the retirement age of employees at present.

6. According to the Petitioners, a sudden change in the view of the company in Ext. P-8 reducing the retirement age from 60 to 58 is taken without any basis. No opportunity was given to the officers like the Petitioners to put forward their contention in the matter and therefore Ext. P-8 is vitiated by mala fides and violation of principles of natural justice. Under these circumstances, the Petitioners would contend that Ext. P-8 is only to be quashed by this Court.

7. A detailed counter-affidavit has been filed by the company who is impleaded as 4th Respondent in the Original Petition. It is contended therein that there is no merit in the complaint of the Petitioners that Ext. P-8 decision was taken without looking into relevant factors and also against the directives of the Central Government. Pursuant to Ext. P-1 memorandum, dated 19th May 1998 received from the Government of India, Ministry of Industry, Department of Public Enterprises, the Board of Directors of the Company at its meeting held on 27th May 1998 resolved to enhance the age of retirement for all the managerial and those non-managerial employees whose age of retirement was 58 years to 60 years. Accordingly, the superannuation rules were amended. Thereafter, the Government of India issued Anr. office memorandum, dated 21st August 1998, copy of which, is produced as Ext. R-4 (a), stating that any public sector undertaking which does not want to increase the age of retirement of its employees may seek specific exemption from operation of Ext. P-1 office memorandum, dated 19th May 1998. The company has been suffering heavy loss for the last couple of years due to various reasons. Therefore, it became necessary for the company to find out ways and means to achieve cost reduction including reduction in manpower. Realising the gravity of the situation 11 Trade Unions functioning in the company submitted Ext. R-4 (6) letter, dated 12th October 1998 requesting the management to review its decision to enhance the retirement age, so that substantial amount could be saved. In the meanwhile, the company had sought financial assistance from the Central Government. In this connection the company received Ext. R-4 (c) communication, dated 23rd September 1999 from the Government of India. In the above letter it was suggested that the Board of the Company may review its decision on raising the age of retirement as a measure for cost cutting and make suitable recommendations to the department for consideration and approval of the Government. It was after due deliberations on the issue and taking into consideration all the facts and circumstances Ext. P-8 decision was taken by the Board of Directors on 28th February 2000 to reduce the age of the employees except in the case of those who were covered in 1978 settlement in respect of whom the Board felt a fresh legal opinion is necessary. There is no merit in the contention that the above decision is taken contrary to the policy of Government of India.

8. Ext. R-3 (d) in O. P. 16612/2000 is a communication, dated 30th March 2000 received from the Government of India, Ministry of Chemicals and Fertilisers, Department of Fertilisers to the effect that the department proposes to seek exemption of the Cabinet so as to enable the company to implement the decision. Later, Government of India, issued Ext. R-4 (d) office memorandum, dated 9th May 2000 regarding the procedure to be followed in the matter of proposals for rolling back the age of retirement to 58 years in the case of some sick/unviable public sector undertakings.

9. Detailed counter affidavit has been filed by Respondents 1 to 3 in O.P. 11028/2000. Counter affidavits have been filed by the Union of India in the other

two Original Petitions also. It is stated therein that FACT had. been consistently showing profits for the last several years, but due to its commissioning of the Amonia Replacement Project as well as the high interest burden on the Government loans and depressed market conditions for indigenous caprolactam due to cheaper imports etc. it ended up in substantial loss during 1998-99 and 1999-2000. The company, therefore, approached the Government of India seeking several reliefs. We are referring to the documents produced by Union of India as they are marked in their counter affidavit in O.P. 11028/2000. Ext. R-I (a) is a communication, dated 15th December 1998 addressed by the Chief Minister of Kerala to the Prime Minister referring in detail to the difficult circumstances in which the company is faced and requested for a meeting of the representatives of the company as well as State of Kerala. Subsequently, the matter of providing financial relief to the FACT was considered by the Government of India. Among other measures, it was found that reduction of the work force to some extent was also necessary. It was on this basis Ext. R-I (b) communication, dated 2nd September 1999 was addressed to the company suggesting to take steps for rationalization of the work force to a manageable level, to introduce voluntary retirement scheme and also lowering the age of retirement. This was followed by Ext. R-I (c), letter, dated 23rd September 1999.

10. Reference is also made in this counter affidavit to the guidelines which are to be followed by the public sector undertakings in the matter of rolling back the age of retirement of its employees. Exhibit R-I (d), same as Exhibit R-4 (e) produced by the company along with its counter affidavit, was also an office memorandum relating to rolling back the age of retirement to ? 58 years in the case of sick/unviable public sector undertakings. As a reply to title company's request for financial relief Ext. R-I (f) reply dated 8th September 1999 was given seeking clarifications regarding a concrete proposal for reduction of manpower and saving in salary and other costs among other things. This was followed by Ext. R-1 (g), dated 17th December 1999" reminding the company to review its decision on raising the age of retirement and to make suitable recommendations to the department for consideration. It is contended by Respondents 1 to 3 that O.M., dated 21st August 1998 was issued giving permission to seek exemption from operation of any of the decisions taken pursuant to O.M., dated 19th May 1998. This was followed by O.M., dated 9th May 2000, which has been already referred as Ext. R-3 (e) as produced in the counter affidavit of the company. It is further contended that the decision of the Board taken on 28th February 2000 was not unilateral. It is in accordance with the decision and policy of the Government of India and the decision of the Board will be implemented only after it is approved by the Government. Respondents 1 to 3 would further contend that no Writ Petition would lie against a decision of the Board of Directors. On that ground alone the petitions are to be dismissed.

11. A counter affidavit has been filed by Respondents 5 to 8. It is contended therein that it is a matter of policy of the company to reduce the age from 60 to 58. It is not therefore justiciable under Article 226 of the Constitution.

Government of India earlier permitted 240 public sector undertakings to increase the retirement age from 58 to 60. Out of the above 240, only 30 companies decided to increase the retirement age to 60. The Air India and Indian Airlines who had thus increased the age from 58 to 60 reverted to the retirement age of 58 years. This was subject-matter of the decision of the Bombay High Court and the Supreme Court. There were number of discussions with recognized trade unions and management on the subject of reducing the staff strength. In order to make the unit viable reduction of staff strength is required. In view of the above, Respondents 5 to 8 and all other recognized unions agreed for lowering the staff strength and to implement the reduction of retirement age of the employees to 58.

12. In the light of the above pleadings it has come out that under Ext. P-1 office memorandum, dated 19th May 1998 Government of India, Ministry of Industry, Department of Public Enterprises has given a directive to enhance the age of retirement for below board level employees of Central Public Sector Enterprises upto 60 years. It is also ordered therein that the decision to enhance the age of retirement in each unit shall come into force with effect from the date the relevant rules and regulations of the enterprises concerned are amended by the concerned unit. It was thereafter the Board of the company took a decision on 27th May 1998 to enhance the age of retirement upto 60 years. This was followed by amendments to the regulations in the case of managerial staff and to the standing orders under an agreement with the workmen.

13. Thereafter Ext. R-4 (a) office memorandum dated 21st August 1998 was issued by the very same ministry to the effect that the memorandum dated 19th May 1998 is binding on all Central Public Enterprises, but in case any administrative ministry or public sector undertaking does not want to increase the age of retirement of its employees, specific exemption could be obtained. "In the meantime, the company fell into financial problems and it had to seek assistance from Government of India. In reply to such communication the Department of Fertilizers suggested under Ext. R-1(b), dated 2nd September 1999 to work out a detailed strategy for cost cutting measures in the operation of the company as a whole. In this connection it was noted that the company has a large work force of 7,300 employees with an annual salary bill of Rs. 124 crore and it is necessary to rationalize the work force to a manageable level. The company was, therefore, directed to consider introducing Voluntary Retirement Scheme and lowering the age of retirement. The company was directed under Ext. R-1 (f) communication, dated 8th September 1999 to send certain clarifications/details to the department in connection with their request for financial assistance. The fourth item in the above communication was a concrete proposal for reduction of manpower and saving in salary and other costs to be formulated and sent to the department, Ext. R-1(c) communication from the department to the company was more specific. The Board of the company was requested to review its-decision on raising age of retirement and make suitable recommendations to the department for consideration and taking the approval of

the Government.

14. A reminder was sent by the Joint Secretary to the department to the Chairman and Managing Director of FACT under Ext. R-1 (g), dated 17th December 1999 regarding review of its decision on raising the age of retirement. Pursuant to the above directives the Board of the company took Ext. P-8 decision at its meeting held on 28th February 2000 to reduce the age of retirement from 60 to 58.

15. Ext. R-1 (d) is an office memorandum of general application to all public sector enterprises. It provides for the procedure to be followed in case the age of retirement of employees of sick/unviable public sector undertakings for which rehabilitation/revival packages are under consideration, is to be rolled back to 58 years. It also provides that in such case the Board of the concerned company should review its decision on the raising of the age of retirement and make suitable recommendations to the administrative ministry/department concerned for taking the approval of the Cabinet. It is relevant to note that the ministry had even proposed to seek exemption of the Cabinet to enable the company to implement the decision forthwith as is evident from the communication, dated 30th March 2000 produced as Ext. R-3 (d) in OP. No. 16612/2000. It is now submitted before us that Ext. P-8 decision taken by the Board is pending consideration before the Government of India for approval.

16. The main contention raised before us by the learned Counsel for the Petitioners is that while Ext. P-1 was issued by the Director on behalf of the ministry, Exts. R-1 (b) and R-1 (f) were signed only by a Desk Officer. Therefore, Exts. R-1 (b) and (f) cannot be taken as a permission to deviate from the directions contained in Ext. P-1. We do not find any merit in this contention. A mere reference to Ext. R-1 (c) would clearly show the fallacy of the above argument. Ext. R-1 (c) is a clear direction requesting the Board of FACT to review its decision on raising the age of retirement and make suitable recommendations to the department for consideration and taking the approval of the Government. The above communication was issued by the Director himself. Ext. R-1 (g), dated 17th December 1999 is a communication addressed by the Joint Secretary to the department directing the Chairman and Managing Director of the company to have the review by the Board on the age of retirement at the earliest. The counter affidavit filed by the Union of India is also to the effect that it was in accordance with the policy and decision of the Government of India the Board of the company was directed to roll back the age of retirement from 60 to 58. The above will clearly show that there is no merit in the contention that the decision to reduce the age of retirement was taken on the basis of certain communications issued by a subordinate officer and not on the basis of the directives of the department.

17. Elaborate arguments were also addressed before us by learned Counsel for the Petitioners on the merits of Ext. P-8 decision. It was submitted that Ext. P-7 notes placed before the Board would clearly show that if the retirement age is

reduced to 58 the savings on account of proposed manpower is not significant, on the other hand, if managerial retirement age is brought down to 58, there will be a vacuum at senior levels. 2 Executive Directors, 6 General Managers and 18 Deputy General Managers will have to retire within one year apart from many key operating staff at middle level. As a result of which, the Petitioners would contend the entire functioning of the company would adversely be affected. We do not think it is for this Court to examine these aspects in a writ petition filed under Article 226 of the Constitution of India.

18. It is seen from the documents produced in this case that the Government of India after conducting detailed discussion on the requirement of the company for financial assistance gave the proposal for reducing the work force as also the age of retirement. It is on that basis Ext. P-8 decision was taken by the Board of the company. As observed earlier, it is not within the jurisdiction of this Court under Article 226 of the Constitution to examine whether the policy decision thus taken by the Government of India and implemented in Ext. P-8 was justified or not in the circumstances in which the Company is placed. Apart from the above, Ext. P-8 will come into effect only when it is further considered and approved by the Government of India. We may also point out that the stand taken by the workers who are represented by different trade unions in support of reducing the age of retirement is also an aspect which would certainly weigh with this Court in taking a view not to interfere with Ext. P-8.

19. In the result, the original petitions fail and they stand dismissed.