
(2014) 04 DEL CK 0254
In the Delhi High Court
Case No : W.P. (C) No. 17460/2006

Devi Prasad

APPELLANT

Vs

Taj Sats Air Catering Ltd.

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2A

Citation : (2014) 142 FLR 834 : (2014) LLR 604

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : R.K. Gupta, Advocate for the Appellant

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the award dated October 11, 2006, whereby the Industrial Tribunal No. 11, Karkardooma Courts, Delhi (Tribunal, in short) decided I.D. No. 137/2004, holding that the retirement of the petitioner at the age of 55 years is justified. Before I come to the facts, suffice to state that the impugned award decides the reference made by the appropriate Government in the following terms:

Whether the proposed retirement of Sh. Devi Prasad S/o Late Sh. Narain Dutt on attaining the age of 55 years is illegal and/or unjustified and if so, what sum of money as monetary relief along with consequential benefits in terms of the existing laws/Government Notifications and to what other relief's is he entitled to and what directions are necessary in this respect?

2. It was the case of the petitioner before the Tribunal that he joined the services of the respondent company as a Driver in the Transport Department at Indira Gandhi International Airport, International Airport Complex, New Delhi on August 16, 1994. He was appointed as permanent Driver w.e.f. May 16, 1995 in Grade-III vide letter dated May 16, 1995.

3. It was the case of the petitioner that since similarly situated employees and

drivers of Taj Sats Care Catering Ltd. at Mumbai are being retired at the age of 60 years, he should not be retired at the age of 55 years, that too, without any Pensionary benefits etc.

4. According to the petitioner, a demand notice was sent to the respondent-company on April 19, 2004 to retire the workers at the age of 60 years.

5. The claim was contested by the respondent-management on the ground that the petitioner was appointed as a Driver and as per the service conditions applicable to the workmen, the retirement age of all the workmen is 55 years and all the workmen have accordingly been retired from service on attaining the age of 55 years. It was also the case of the respondent that as per his service conditions, custom, usage and practice, the workmen are retired from the service on attaining the age of 55 years, and therefore, the management committed no wrong by issuing letters to the workmen, retiring them on attainment of age of 55 years. According to the respondent, the service conditions of the workmen, with respect to their retirement age, cannot be challenged under the proceedings initiated by the petitioner. It was also the respondent's stand that the petitioner attained the age of retirement on September 7, 2004. The service conditions applicable to Taj Sats Air Catering Ltd. at Mumbai has nothing to do with the workmen working in Delhi Unit of the company.

6. The following issues were framed by the Tribunal:

(i) Whether the prayer of workman is untenable and unacceptable as the workman has already been retired from service? OPM.

(ii) Whether the workman has already made the full and final settlement? OPM.

(III) Whether the action of the management proposing the retirement at the age of 55 years is illegal and unjustified? OPW.

(iv) In terms of reference.

7. On issue No. 1, the Tribunal was of the view that the claim filed by the petitioner u/s 2A of the Industrial Disputes Act, 1947 (Act, in short) was purely a question relating to the superannuation and cannot be deemed to be an Industrial Dispute coming within the scope and ambit of section 2A of the Act. In other words, the retirement by superannuation is automatic when the workman reaches a particular age and not by an act performed by the management as in the case of dismissal, discharge, retrenchment or termination. The Tribunal also was of the view that since there is no reference challenging the existing conditions of services inasmuch as whether the retirement age should be raised from 55 years to 60 years of all the workmen working in the Delhi Unit, and rather, relates to one individual workman, and since there is no reference made to the Tribunal to alter the condition of service of all the workmen, an individual case of one workman cannot be taken up by the Tribunal for altering the age of retirement of all workmen if the claim is not espoused by an appreciable number of workmen working with the respondent, and thus answered the issue against

the petitioner.

8. Insofar as the issue No. 2 is concerned, the Tribunal was of the view that, since the petitioner has accepted all the dues in full and final settlement for all his claims, which has been admitted by the petitioner, meaningfully read, the Tribunal held that such a claim is not maintainable.

9. Insofar as the issue No. 3 is concerned, the Tribunal was of the view that even though, the respondent has failed to show that there were framed rules, regulating the service conditions of its employees mainly on the aspect of age of the retire-merit on superannuation, there is infernal evidence to show that the practice consistently followed in this regard has been accepted by the workmen and the petitioner was not able to point out a single case wherein any workman of the respondent-company has been allowed to continue the service beyond the age of 55 years, which is the age of superannuation applied to all the employees. The Tribunal held that all the workmen working in Delhi Unit are retired by the respondent-company at the age of 55 years, which has become custom, usage and practice, and therefore, the condition of service of the respondent of the workers wording in Delhi Unit.

10. Insofar as the issue No. 4 i.e. Relief is concerned, the Tribunal held that the retirement age of 55 years is valid.

11. Mr. R.K. Gupta, learned counsel appearing for the petitioner would challenge the award of the Tribunal on the ground that the respondent cannot have two different age of retirement, one for work-men working in Delhi Unit and another for Mumbai Unit. According to him, the petitioner was holding a transferable post. He would state that if an employee working in Delhi Unit is liable to be transferred to Mumbai Unit, the age of retirement would be 60 years. He states the differential treatment is discriminatory. Further, he states that there is no justification for the respondent to have two different age of retirement. In fact, both the establishment in Delhi as well as in Mumbai are part and parcel of Indian Hotels Company Ltd. as is clear from the terms of appointment dated August 16, 1994. He has also show time the memorandum of settlement entered between the Management of the Narang International Hotels Pvt. Ltd. and the Hotel Mazdoor Union dated 12.08.2005 to contend that in their case, the age of retirement has been enhanced from 55 to 58 years. Similar enhancement should be granted to the petitioner.

12. No submission has been made by Mr. R.K. Gupta insofar as the maintainability of reference in the absence of an espousal by a Union. The issue which need to be decided at the threshold is, in the absence of any espousal by a Union, whether reference was maintainable: Admittedly, it is a case where reference has been made by the appropriate Government were order dated November 9, 2004. Even assuming that it is the case of the petitioner that he has been prematurely retired at the age of 55 years, even though he could have continued to 60 years, the dispute would be construed as an Industrial Dispute in

terms of section 2A of the Act. Still, the petitioner has to cross the hurdle of the dispute having been referred u/s 10 is not espoused by appreciable number of workmen working with the management. I agree that the conclusion of the Tribunal on issue No. 1, wherein, it was held as under:

An individual case of one workman cannot be taken up by this Tribunal for altering the age of retirement of all the workmen if the claim is not espoused by an appreciable number of workmen working with the management I therefore, hold that the claim, of the workman is unacceptable and untenable.

13. In view of the fact that the petitioner cannot cross the hurdle of the Industrial Dispute being not espoused by an appreciable number of workmen, I do not think, this Court need to go into other issues in this writ petition as the same would not help the petitioner in getting the relief as claimed by him in his claim petition.

14. The writ petition is accordingly dismissed. No costs.