
(1989) 05 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 701 of 1986

Dokan Protisthan Karmachari Sangha	APPELLANT
Vs	
Managing Director, M/S Nanak Singh Sujan Singh Sadana	RESPONDENT

Date of Decision : 15-05-1989

Acts Referred:

Citation : (1989) 2 GLJ 27 : (1989) 2 GLR 309

Hon'ble Judges : B.L.Hansaria, J and J.M.Srivastava, J

Bench : Division Bench

Advocate : S.N.Sharma, P.C.Deka, B.P.Bora, A.Das Gupta, Advocates appearing for Parties

Judgement

Hansaria, J.—An industrial dispute was raised by the petitioners relating to certain terms and conditions of service made available to its employees by M/S Nanak Singh Sujan Singh Sadana & M/S Sadana Warehousing & Agency. A reference under section 10 of the Industrial Disputes Act, 19 7, hereinafter referred to as the Act, required the Industrial Tribunal to adjudicate upon the following issues :

- (1) Whether the demand of dearness allowance @ Rs. 60/per head was justified considering the recent price hike ?
- (2) Whether the Union was justified in demanding modification of Clauses 6 & 7 of the appointment letters issued to the employees in which it was stated that the services of the employees would be terminated on attaining the age of 55 years or 30 years of service whichever is earlier and the Management shall have the absolute right to decide as to which of the employees should be retrenched in case the Management suffers loss and decides to shrink or close its business ?
- (3) Whether the Management was justified in denying conveyance allowance to one Miss Sibani Dey ?

2. The learned Presiding Officer of the Tribunal decided Issues No. 1 and 2

against the Union and as to Issue No. 3, it was pointed out that Miss Sibani had been paid the allowance, may be on demand or on compassionate ground. The Union has approached this Court questioning the aforesaid award.

3. Shri Das Gupta has confined his arguments to the question relating to the superannuation of the employees and, as such, we would deal with only this Issue out of the above agitated before the Tribunal.

4. Before this is done, we have to clear the deck by examining the validity of the preliminary objection taken by the Management that the Union at hand, namely, Dokan Protisthan Karmachari Sangha, could not have raised the industrial dispute on behalf of the employees of the aforesaid concerns. Shri Deka has urged that the Union being not a representative Union of the employees of the above mentioned concerns, it had no jurisdiction to take up the cause of the employees. In this connection, we have been referred to *Bombay Union of Journalists vs. The "Hindu"*, AIR 1963 SC 318, wherein it was held that a dispute between an employer and a single employee cannot perse be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen. Thus taking up the dispute by a Union may become an industrial dispute even if it concerns a single employee. Shri Deka states that the Union at hand is not the representative Union and refers in this connection to *Shree Gopal Paper Mills vs. The State of Haryana*, 1968 LIC 1259, (P&H), wherein it was held that bare sponsoring of individual dispute by Union is not enough to make it an industrial dispute. It was held that the Union which takes up the cause must be representative of the employees concerned and not an outside Union. It was further pointed out that representative character of the Union has to be gathered from the strength of the actual numbers sponsoring it.

5. In the present case, it may first be pointed out that the dispute relating to the age of superannuation is not confined to a single employee and, as such, such a dispute can undoubtedly become an industrial dispute. But then, it has to be taken up by a proper person. As to the petitioners at hand taking up the case of the aforesaid employees is concerned, it may be pointed out that there is no clinching evidence as to how many employees of the Management are members of the petitioner Union. The observation of the learned Tribunal that the Union could not satisfy the Tribunal that "a good number of employees of the concerns are the members of their union*" would go to show that some employees are definitely members of the petitioner Union. This apart, from Annexure I it appears that in an earlier industrial dispute concerning the Management at hand relating to dismissal of Pulin Ch. Dey, the employee was represented by the petitioner Union in the conciliation proceeding held in 1981. It would thus seem that the petitioner Union can well be described as a representative Union. Moreover, in these days of public interest litigation too much emphasis on locus standi is fast withering away. We, therefore, hold that the petitioner Union could have well raised the industrial disputes in question on behalf of the employees of the Management.

6. Coming to the question of superannuation, it is settled law that the most important consideration in this regard is the trend in the particular area or region. This is what has been stated in the Workmen of the Bharat Petroleum Corporation Ltd. vs. M/s Bharat Petroleum Corporation Ltd., AIR 1984 SC 356. In this case, the retirement age of the clerical staff of the Corporation employees in the Refinery Division situated at Bombay was raised from 55 to 60 years so as to bring them at par with the clerks in the Marketing Division situated at Bombay. From G.M. Talang vs, Shaw Wallace & Co., AIR 1964 SC 1886, we find that the trend of fixing the age of retirement in Bombay region is to fix the age at 60. So far as the employees of Bombay region are concerned, fixation of retirement age as 60 years was held justified in Duolop India Ltd vs. The Workmen, AIR 1972 SC 2326. Though no evidence or material could be brought on record to show the trend in the comparable units "of Assam or for that matter at Gauhati, where the two concerns of the Management are situated, Shri Dasgupta brought to our notice the decision rendered in the Bengal Chemical & Pharmaceutical Works Ltd. vs. Its Workmen and another, AIR 1969 SC 360, in para 41 of which it was held that fixation of retirement age at 58 of the employees working in West Bengal was justified, though the demand of the Union was that the age of superannuation should have been 60 years which was not conceded by the Apex Court. In fixing the age of superannuation of the workmen, the age of retirement fixed by the State Government was also taken note of. The decision in M/s British Paints (India) Ltd. vs. Its Workmen, AIR 1966 SC 732, however, deserves notice wherein it was stated that if the work be of arduous nature, a case may be made out for fixing a lower age of retirement for those workmen as compared to clerical staff. We may point out that in the case at hand the demand of the Union is that the age of the retirement for all types of employees should be 58 years instead of 55 years.

7. In countering the submission made by Shri Dasgupta in favour of increase of the retirement age, Shri Deka has drawn our attention to the wellknown case of Air Hostesses (Air India vs. Nergesh Meerza, AIR 1981 SC 1829) wherein it was pointed out in para 111 that there cannot be any cut and dried formula for determining the age of retirement which is to be linked with various circumstances and a variety of factors. In this case the retirement age of Air Hostesses both of Air India and Indian Airlines Corporation was extended only upto 45 years.

8. We have duly applied our mind to the aforesaid controversy and, according to us, bearing in mind that the retirement age of Government servants in Assam is 58 years despite their enjoying pensionary and other benefits, we are of the view that the retirement age of the employees at hand should not be less than 58 years. We would, however, make an exception in case of those employees who are engaged in arduous nature of work and for whom we would maintain the retirement age fixed at 55 years. In this connection, we may point out that as per model Standing Orders of which mention has been made in Schedule IB of the Industrial Employment (Standing Orders) Central Rules, 1946, the age of

retirement of a workman, in the absence of any agreement between the employer and workman, shall be 58 years.

9. In the result, the petition is allowed to the extent that the retirement age of all types of employees like typists, cashiers, salesmen etc who engaged in clerical work would be fixed at 58 years; whereas those engaged in arduous nature of work shall have to retire on attaining the age of 55 years. This decision shall become effective from today.

J.M. Srivasrava, J.I agree