

(2016) 06 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 4691 of 2016

Foundation Brake Kamgar Sanghatna

APPELLANT

Vs

M/s Foundation Brake Manufacturing Pvt. Ltd.

RESPONDENT

Date of Decision : 22-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Employment (Standing Orders) Act, 1946 — Section 6(1)

Citation : (2017) 2 ALLMR 423 : (2017) 1 BCR 37 : (2016) 6 BCR 756 : (2016) 150 FLR 619 : (2016) LabLR 1158 : (2016) 3 LLJ 696 : (2016) 5 MhLJ 638

Hon'ble Judges : P.R. Bora, J.

Bench : Single Bench

Advocate : T.K. Prabhakaran, Advocate, for the Appellant; Mr. Sandesh R. Patil, Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.R. Bora, J.—Heard. The petitioner union has filed the present petition against order dated 26th February, 2016 passed by Member, Industrial Court, Jalgaon in Appeal (IESO) No. 1 of 2015.

2. The aforesaid appeal was filed by the present respondent, seeking quashment of order dated 21.8.2015 in Application No. 1 of 2015 passed by Deputy Commissioner of Labour, i.e. Certifying Officer, under The Industrial Employment (Standing Orders) Act, 1946 (for short, the Act), whereby he had allowed the application of the petitioner union and has consequently allowed to extend age of retirement from 58 years to 60 years in the Standing Orders. Vide the impugned order, the Industrial Court, which is an appellate authority, as provided under the provisions of the Act, has set aside the order dated 21.8.2015 passed by the Deputy Commissioner of Labour, Nasik Division, Nasik in Application No. 1 of 2015 and consequently, he has rejected the application filed by the petitioner union, whereby the union had prayed for extension of age of retirement from 58 years to 60 years.

3. When the present matter was taken up for hearing, Shri T.K.Prabhakaran, learned Counsel appearing for the petitioner union, submitted that the matter will have to be remitted back to the Appellate Authority for its reconsideration in view of the fact that under Section 6(1) of the Act, the Appellate authority does not possess any power to set aside the order passed by the Certifying Officer. In view of the submission so made by Shri Prabhakaran, I heard the learned counsel appearing for the parties on the limited issue of jurisdiction of the Industrial Court (Appellate Authority) in passing the orders under Section 6(1) of the Act.

4. After hearing the arguments of the learned Counsel for the parties, it was clarified by this Court that the issue of jurisdiction will be decided first by the Court and if this court reaches to the conclusion that the Appellate Authority has no power to set aside the order passed by the Certifying Officer, necessary orders will be passed or else the matter will be heard on merits on the next date.

5. Accordingly, Shri Prabhakaran, learned counsel for the petitioner and Shri Sandesh Patil, learned counsel appearing for the respondent, made their respective submissions on the limited issue of jurisdiction, as aforesaid.

6. Shri Prabhakaran, learned Counsel, submitted that the plain reading of Section 6 of the Act makes it clear that the Appellate Authority has the power either to confirm the order of Certifying Officer or alter in the form certified by the Certifying Officer amending the said Standing Order by making necessary modification thereto as he thinks necessary. However, the Appellate Authority has no power to cancel the Standing Orders or set aside the Orders passed by the Certifying Officer. In order to substantiate his arguments, the learned counsel relied upon two judgments; one delivered by the Kerala High Court in the case of Kerala Agro Machinery v. Industrial Tribunal and Ors., 1988 (II) LLJ 18 (KL HC) and the other by Himachal Pradesh high Court in the case of Gabriel Employees Union v. Gabriel India Ltd. And Ors., 2008 (I) LLJ 618 (HP HC).

7. Shri Sandesh Patil, learned counsel appearing for the respondent, opposed the submissions advanced on behalf of the petitioner union. Placing reliance on the judgment of the Allahabad High Court in the case of Electric workers Union v. The U.P. Electric Supply Co., the learned Counsel submitted that the Appellate court has power to set aside such amendment. Taking support of the observations made by the Hon"ble Apex court in the case of James Joseph v. State of Kerla (2010) 9 SCC 642, the learned Counsel submitted that statutory provisions for appeals against the original orders or decrees will not have any limitations and as such the argument advanced on behalf of the petitioner union that the appellate authority under the provisions of the said Act does not possess any power to set aside the order passed by the Certifying Officer, cannot be accepted.

8. I Have carefully considered the submissions made by the leaned Counsel appearing for the respective parties. Section 6(1) of the Act reads thus,

"6. Appeals

(1) Any employer, workman, trade union or other prescribed representatives of the workmen aggrieved by the order of the Certifying Officer under subsection (2) of Section 5 may, within thirty days from the date on which copies are sent under subsection (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision, shall be final, shall by order in writing confirm the amendments either in the form certified by the Certifying Officer or after further modifying the same as the appellate authority thinks necessary."

9. From the plain reading of the aforementioned Section, it is clear that the Appellate Authority has power either to confirm the order of the Certifying Officer or to alter in the form certified by the Certifying Officer amending the said Standing Order by making necessary modification thereto as he thinks necessary.

10. The similar issue had arisen for consideration before the Kerala High Court in the matter of Kerala Agro Machinery (cited supra) "whether the Industrial Tribunal has got jurisdiction to set aside the order passed by the Certifying Officer under The Industrial Employment (Standing Orders) Act, 1946" and while deciding the said issue, the Kerala High court has held as under,

"The powers of the Appellate Authority are specified in subsection (1) of Section 6 of the Act. The Appellate Authority has the power to confirm the standing orders certified by the Certifying Officer, or to amend or modify and add to the standing orders as it thinks necessary to make the standing orders certifiable under the Act. This power of the Appellate Authority includes the power to adjudicate the fairness or reasonableness of the standing orders also. Under the first part of subsection (1) of Section 6, right is given to any person aggrieved by the order of the Certifying Officer to challenge the same by preferring an appeal. The power of the Appellate Authority is to confirm the standing orders either in the form certified by the officer or by amending the same or by making such modifications or additions as it thinks necessary to render the standing orders certifiable under the Act. The Appellate Authority can exercise only those powers conferred on it under Section 6(1). The Appellate Authority has no power to cancel the standing orders or set aside the order passed by the Certifying Officer. Therefore, the Appellate Authority has no power to set aside the orders of the Certifying Officer and remand the matter for fresh disposal. The power to remand is not a procedural one."

11. Similar view was taken by the Himachal Pradesh High court while delivering the judgment in the case of Gabriel Employees Union (cited supra).

12. The judgment in the case of Electric Workers Union (cited supra) delivered by Allahabad High court, relied upon by Shri Patil, learned counsel appearing for the respondent, may not apply to the facts of the present case since Section 6 of the Act has suffered the amendment in the year 1958, and the relevant portion in Section 6(1), i.e. "confirm the amendments either in the form certified by the Certifying Officer or after further modifying the same as the appellate authority thinks necessary" was substituted vide the said amendment.

13. In so far as the powers of the Appellate Authority are concerned, in the judgment of the Hon''ble Apex court itself, which has been relied upon by Shri Patil, it has been clarified that the width, extent and limitation of/on appellate jurisdiction depends on the language employed by the statute conferring the appellate jurisdiction. In the instant case, the statute itself does not confer the power to the appellate authority to set aside the order passed by the Certifying Officer. Section 6 of the Act specifies the powers to be exercised by the appellate authority. The appellate authority can exercise only those powers conferred on it under Section 6(1) of the Act. As mentioned earlier, under Section 6(1) of the Act, the appellate authority has no power to set aside the order passed by the Certifying Officer.

14. In the instant case, the appellate authority has set aside the order dated 21.8.2015 passed by the Certifying Officer. The power that has been exercised by the appellate authority is one beyond the scope of Section 6(1) of the Act. The order passed by the appellate authority is thus without jurisdiction. Such order cannot be sustained and has to be set aside and the matter has to be sent back to the appellate authority to reconsider it afresh in accordance with the provisions of law.

15. In the result, the following order, Order-

- (i) Order dated 26.2.2016 passed by Member, Industrial Court, Jalgaon (the appellate authority) in Appeal (IESO) No.1 of 2015, is quashed and set aside;
- (ii) The matter is remitted to the appellate authority to reconsider it afresh in accordance with law by giving opportunities to both the parties.
- (iii) The writ petition is allowed in the aforesaid terms;
- (iv) No order as to costs.