
(1972) 09 AHC CK 0052
In the Allahabad High Court

Garhwal Motor Owners Union Ltd.

APPELLANT

Vs

The Labour Court and Others

RESPONDENT

Date of Decision : 01-09-1972

Acts Referred:

Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 — Section 10, 13, 15, 3

Industrial Employment (Standing Orders) Act, 1946 — Section 10, 3, 4

Citation : (1973) 1 LLJ 548

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—On or about December 6, 1969, the State Government referred for adjudication to the Labour Court, Lucknow, the dispute whether the employers who are the- appellants before us have validly and justifiably retired Sita Ram Semwal (respondent No. 3) and C.L. Mahajan (respondent No. 4). The Labour Court by its award dated 3rd June, 1970, answered the dispute in favour of the two workmen. Aggrieved, the appellants institute.. a writ petition in this Court. Before the learned single Judge the award was challenged on three grounds:

(1) that the reference made by the State Government is bad as there was no industrial dispute in existence;

(2) that the service rule introduced by the resolution of the company dated December 2, 1966 was applicable to respondents Nos. 3 and 4, and

(3) that the age of superannuation could be, fixed by agreement, and, since respondents Nos. 3 and 4 accepted retirement, they must be deemed to have agreed to the fixation of the age of retirement.

2. The learned single Judge found no merit in any of these grounds and dismissed the writ petition. The learned Advocate General appearing for the

appellants reiterated before us the first two points taken before the learned single Judge. The third point was not raised before us but in its place an entirely new point was pressed that in any event, the Labour Court ought to have fixed a reasonable age of superannuation and then considered the question of granting relief.

3. In support of the first point that there was no industrial dispute in existence and so the reference was incompetent, the learned single Judge observed that the employers had taken up this plea in the written statement only in respect of respondent No. 3. Their plea was that respondent No. 3 having made no demand before the management in respect of his retirement, no industrial dispute came into existence which could be referred for adjudication. No such plea was raised in respect of respondent No. 4, C.L. Mahajan. The learned Judge held that though it may be true that such a demand was not made before the management prior to the matter being taken up before the State Government for reference, yet the reference was not illegal. The learned Judge relied upon the decision of the Supreme Court in *State of Madras Vs. C.P. Sarathy and Another*, . He distinguished the Supreme Court decision in *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, .

4. The grievance of the appellants that the Tribunal should have given a finding on this, plea is no doubt true, but we are not inclined to remand the case because we find that there is hardly anything to decide.

5. In its written statement filed on behalf of the workmen, U. P. Trade Union Congress stated in paragraphs 4A to E about the retirement of Sita Ram, respondent No. 3, and that the same was illegal. In paragraph 4 it was stated:

That against the above illegal and unfair orders of the company the president of the C.M.O.U. Karamchari Sangh (the registered trade union of the employees of the company) vide letter No. 20, dated February 7, 1968, protested against depriving the workmen of their employment on the plea of superannuation and also invited attention of the company that the said retirement was in contravention of the provision of the certified standing order of the company.

In paragraph 4 G it was stated:

That the Chairman of the Board of Directors of the company in reply to the above said letter of the President of the Karamchari Sangh, vide his letter No. 4711/VI-33 dated March 1, 1969, informed that the age of superannuation had been fixed at 60 years by the decision of the Board of Directors and the same was in vogue for the last three years.

In paragraph 8 of the rejoinder filed by the employers it was, inter alia, stated that the receipt of the alleged letter dated 20-7-1969 is admitted. In paragraph 9 of the rejoinder, the contents of paragraph 4G were admitted.

6. On these findings it is clear that the registered trade union of the workmen had specifically raised a demand against the illegal retirement of respondent No.

3, with the company; but the company had turned it down on the ground that the age of superannuation was in vogue for several years. In face of this, the appellant-company is not entitled to say that no demand against the retirement having been made before the management, the reference was illegal. The union validly acted on behalf of respondent No. 3. In view of this factual position, whether reference can validly be made in case the workmen or their union do not make a demand to the management is merely of academic interest and need not be considered.

7. The second point relates to the validity of the rule of superannuation fixed by the company. It appears that the standing orders of the company were certified on December 29, 1960. At that time the company wanted to insert a provision for superannuation at the age of 60 years. To this the workmen's representative agreed provided a gratuity scheme was also drawn up. The certifying officer in his order held:

I am of the opinion that the age of retirement should be inserted in the standing orders only when a proper gratuity scheme is formulated by the employers.

8. The employers, however, did not submit a gratuity scheme with the result that no provision regarding retirement or the age of superannuation was introduced in the certified standing orders.

9. Several years later, on December 2, 1966, the Board of Directors of the company passed a resolution fixing the age of superannuation for all its workmen at 60 years. The question is whether the unilateral action of the management was operative as a valid service condition of the workmen.

10. Section 3 of the Industrial Employment (Standing Orders) Act, 1946, required every employer to submit to the certifying officer draft standing orders for every matter set out in the schedule which may be applicable to the industrial establishment. The certifying officer was u/s 4 to adjudicate upon the fairness or reasonableness of the standing orders and then to certify them. Section 10 of the Act dealt with duration and modification of standing orders. This section was repealed and re-enacted by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. After its amendment this section provided by Sub-section (1) that standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation. By Sub-section (2) the employer or the management could apply to the certifying officer to have the standing orders modified. Section 13 provided for penalties. Sub-section (1) stated that an employer who fails to submit draft standing orders as required by Section 3 or who modifies his standing orders otherwise than in accordance with Section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the

offence continues. Section 15 gave to the appropriate Government power to make rules. Under Clause (a) of Sub-section (2), the rules could prescribe additional matters to be included in the schedule. Originally, the schedule did not include superannuation or retirement. In exercise of its rule-making power the State Government issued a notification on 17th November, 1959, introducing item No. 11-C to the schedule. This related to "superannuation and retirement."

11. With effect from November 17, 1959, superannuation and retirement became one of the matters upon which the employer was obliged to submit and get standing orders certified. Section 10 of the Act entitled the employer as well as the workmen to apply for the modification of existing standing orders.

12. In 1960, the employers did submit draft standing orders on the subject of superannuation and retirement but on the objection of the workmen the certifying officer did not certify them on the ground that the employers should formulate a proper gratuity scheme. The employer, however, did not do so but by its resolution of 2nd December, 1966, unilaterally fixed the age of superannuation. This method introducing the service condition in respect of a matter provided in the schedule to the Standing Orders Act was contrary to Section 10 thereof.

13. A similar question came up before the Full Bench of this Court in *S. P. Srivastava. v. Banares Electric Light and Power Co. Ltd.* (1960) A.L.J. 257.

14. The Full Bench held that though the standing orders could be modified, they could be modified by agreement between the parties in accordance with the provisions of the Act itself. This meant that the manner of modification having itself been specified by the Act, no other mode of modification by agreement was permissible. The prescribed procedure is for the agreement to be certified as a standing order before it can govern the relations between the employer and his workmen. It is well-known canon of construction that when a particular mode of doing something is specified by statute, other modes of doing that thing are prohibited by necessary implication.

15. Thus even an agreement (unless certified) in relation to a matter mentioned in the schedule is ineffective. Obviously, the unilateral act of fixation of the age of superannuation was clearly illegal. The only way the employers could make a valid provision in regard to the age of superannuation and retirement was by applying for and obtaining a certified standing order on this matter. The resolution of the appellant's Board of Directors dated 2nd December, 1966, was ineffective. The Tribunal was justified in holding that the respondents Nos. 3 and 4 could not validly be retired on the basis of that resolution. The Tribunal further found that these two workmen were physically and mentally fit for their duties and so were entitled to reinstatement. We find no error in this finding.

16. In view of the decision of the Full Bench in *S.P. Srivastava's* case (*supra*) the learned Counsel for the appellants, in our opinion, rightly did not press the third point raised before the learned single Judge.

17. In its place Mr. Kacker submitted that even if the fixation of the age of superannuation by the company was invalid, it was incumbent upon the Labour Court to have itself determined the proper age of superannuation for the respondent-employees. learned Counsel invited our attention to several decisions of the Supreme Court where the Industrial Tribunal as well as the Supreme Court had fixed the age of superannuation for the workmen.

18. Mr. K. P. Agarwal, appearing for the respondent-workmen countered the submission by, inter alia, emphasising that the matter in dispute which was referred for adjudication did not involve the question of adjudication as to what should be the proper age of superannuation for the employees of the appellant-company. If the Tribunal had entered into this question, it would have illegally enlarged the scope" of reference. Relying upon *The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen*, , learned Counsel urged that this was not permissible

19. In rejoinder it was for the appellant urged that even though the Standing Orders Act is a self-contained Code, yet it does not abridge or limit the powers of the Labour Court under the U.P. Industrial Disputes Act, and if question arises in relation to a matter mentioned in the schedule to the Standing Orders Act, the Labour Court is competent to decide it on the merits. For the learned Counsel relied upon *Management of the Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another*, .

20. These submissions of learned Counsel are contentious and controversial. Before discussing them, we would like to be sure whether the question raised before us really arises. We notice that in the memorandum of appeal there is no ground relating to this point that the Labour Court should have fixed the age of superannuation. Same is the position in the writ petition. Further, the question referred for adjudication was whether the employers have retired Sita Ram Semwal and C. L. Mahajan validly and justifiably, and if not, to what rights are these workmen entitled and with what details. On a plain reading of the reference, it appears that the question of the validity of the retirement of the two employees alone was referred. At first glance, there seems nothing to suggest that the question as to what should be the proper age of superannuation for the employees in general was also intended to be referred. But assuming that by some long-drawn process of reasoning it may be held that the question as to what should be the proper age of superannuation is to be deemed included in the dispute actually referred, the question would still remain whether the Tribunal erred in not giving a finding on it.

21. Before the Tribunal the parties file written statements and rejoinders upon which the Tribunal frames issues. The parties then lead evidence on these issues. After hearing arguments, the Tribunal decides the issues.

22. In the present case we have carefully seen the written statement and the rejoinder filed by the appellant-company. There is nothing in them on the

question as to what should be the proper age of superannuation. There is no pleading by the appellant indicating that 60 years should be fixed by the Labour C "Has the proper age of superannuation. There, pleading it is clear that the appellant-company did not invoke the Labour Court to give a decision on this aspect. There is nothing on the record to suggest that the company pressed for any issue upon this aspect. In the writ petition we find several paragraphs taken to emphasis that the appellant-company pressed for the issue on its preliminary objection that no industrial dispute existed. But there is not even a suggestion in the writ petition that any issue was pressed on this aspect. Further, there is nothing on the record before us and the learned Counsel did not tell us that the appellant-company led any evidence or material to enable the Labour Court to give a finding as to what should be proper age of superannuation for the appellant's workmen. In this state of affairs the appellant-company is, in our opinion, not entitled to raise, for the first time before us, the abstract question of law that it was incumbent upon the labour Court to have fixed a proper age of superannuation. On the pleadings and lack of evidence before it, the Tribunal could not give a finding on this aspect this point also fails.

23. In the result the appeal has no merit and is accordingly dismissed with costs.