

(2018) 05 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.P. No.1855 OF 2018

Grasim Industries Limited	Vs	APPELLANT
Gopal Soni S/O Ramchandra Soni		RESPONDENT

Date of Decision : 03-05-2018

Acts Referred:

Constitution of India — Section 227
Industrial Disputes Act, 1947 — Section 2(a), 2(k), 2(s), 10
M.P. Industrial Employment (Standing Orders) Act, 1961 — Section 7, 8, 14A, 21
Industrial Employment (Standing Orders) Act, 1946 — Section 10, 10(2)

Citation : (2018) 05 MP CK 0022

Hon'ble Judges : P.K.JAISWAL, J;S.K.AWASTHI, J

Bench : Division Bench

Advocate : Piyush Mathur, Dharmendra Kumar Sharma, Amit Dube

Final Decision : Dismissed

Judgement

This order shall also govern the disposal of connected miscellaneous petition bearing M.P. Nos.1856/2018, 1857/2018, 1858/2018, 1859/2018,

1860/2018, 1861/2018, 1862/2018, 1863/2018, 1864/2018, 1874/2018, 1875/2018, 1876/2018, 1877/2018, 1878/2018, 1880/2018, 1881/2018, 1884/2018,

1887/2018, 1888/2018, 1889/2018, 1891/2018, 1892/2018, 1893/2018, 1894/2018, 1896/2018, 1898/2018, 1899/2018, 1900/2018, 1920/2018,

1921/2018, 1922/2018, 1925/2018, 1929/2018, 1931/2018 and 1932/2018.Â Â

2. Regard being had to the similitude in the controversy involved in the present cases, the miscellaneous petitions were analogously heard and by a

common order, they are being disposed of by this Court. For the sake of convenience, the facts are being narrated from M.P. No.1855/2018.

3. By this miscellaneous petition, the petitioner is praying for the following

reliefs :-

7. RELIEFS :

1. To issue appropriate Writ/Direction or order to quash impugned order dated 26/02/2018 Annexure P/12.

2. To quash the proceedings of case No.20/IDR/2016 pending before M.P. Industrial Tribunal, Indore.

3. To call the record of the case No.20/IDR/2016 pending before M.P. Industrial Tribunal, Indore.

4. To award the cost of this petition.

5. Any other relief, which this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the petitioner and against the respondent.

4. Facts of the case reveals that the dispute has been referred under section 10 of the Industrial Disputes Act, 1947 to the Industrial Tribunal for adjudication.

5. As per statement of claim of respondent(Annexure-P/9) the following question was raised by him for adjudication before the Industrial Tribunal :

**1 D;k jkT; 'kklu }kjk ekud LFkk;h vkns'kksa esa vf/kokf""kZdh vk;q la'kksf/kr dj 60 o""kZ fd;s tkus ds i'pkr Hkh Isok fu;kstu }kjk Isokfu;qDr dks

fu/kkZfjr vf/kokf""kZdh vk;q 60 o""kZ ds iwoZ Isok fuo`Rr fd;k tkuk oS| ,oa mfpr gSA

2- ;fn ugh rks mi;qZDr Isok fu;qDr fdl lgk;rk ds ik= gS rFkk bl laca/k esa Isok fu;kstd dks D;k funsZ'k fn;s tkuk pkfg, \ ds ifjis{; esa izFke i{k dh vksj ls

fuEukuqlkj nkok dFku izLrqr gSA**

6. After the dispute has been referred, a preliminary objection has been raised by the petitioner/employer stating that the workmanÂ in question is not

a workman keeping in view the statutory provisions as contained under the provisions of the Industrial Disputes Act, 1947 and another ground has

been taken by the employer that after the superannuationÂ the workman is no longer a workman and the question of referring a dispute under

Section 10, does not arise, as Section 2(s) provides specific definition of workman.

7. The learned Tribunal rejected the prayer of framing preliminary issues on 9/11/2016Â This order was challenged in W.P. No.8007/2016 and other

connected writ petitions

(Annexure-P/1). The learned writ court keeping in view the joint prayer made by the parties, set aside the order dated 9/11/2016 and directed the

Tribunal to answer the reference made by the appropriate Government under section 10 of the Industrial Dispute Act, 1947. The learned writ

court framed two preliminary issues and disposed of the Writ petition No.8007/2016 and other connected writ petitions by directing that the Tribunal

shall decide the preliminary issues within a period of two months and shall decide the entire case within a period of 6 months from the date of

receipt of certified copy of this order. Relevant part of order dated 6/03/2017 reads as under :-

Keeping in view the joint prayer made by the parties, the impugned order is hereby set aside. The Tribunal is directed to answer the reference

made by the appropriate Government u/S 10 of the Industrial Dispute Act, 1947. However, the Tribunal shall frame two preliminary issues as under :

(a) Whether the employee is a workmen or not, keeping in view the provisions as contained under the Industrial Dispute Act, 1947 ?

(b) Whether after attaining the age of superannuation can a reference be forwarded to the Industrial Tribunal in respect of an employee who is

no longer an employee after superannuation and whether the same be adjudicated by the Tribunal or not, keeping in view the Standard Standing

Orders as well as the statutory provisions as contained under the Industrial Disputes Act, 1947.

The parties shall be free to place all statutory provisions, all amendments made from time to time and the case law on the subject to assist the Tribunal

and the Tribunal shall be deciding the preliminary issues first and then shall be proceeding ahead in the matter of Reference It is needless to

mention that the Tribunal shall decide the preliminary issues within a period of two months and shall decide the entire case within a period of 6

months from the date of receipt of certified copy of this order.

The parties are directed to appear before the Tribunal on 28/03/2017.

With the aforesaid, the present and the connected Writ Petitions stand disposed of.

A copy of this order be placed in the record of connected Writ Petitions.

8. The learned Tribunal vide its order dated 12/07/2017, listed the case for

consideration of preliminary issues No.1 and 2 and directed the petitioner to lead the evidence first on 23/08/2017.Â On 23/08/2017, the learned Tribunal directed both the parties to lead evidence on all issues (referred in order of reference and framed by Tribunal as preliminary issues No.1 and 2).

9. The Division Bench of this Court by order dated 9/10/2017 allowed the writ petitions. Para â?" 10 is relevant which reads as under :-

10. Considering the aforesaid, we are of the view that the learned Tribunal has acceded inÂ its jurisdiction and committed material irregularity while passing the order dated 23/08/2017. Accordingly, we set aside the order dated 23/08/2017 passed by the Tribunal and direct the Tribunal to proceed in the matter inÂ terms of order dated 6.3.2017 and 12.7.2017 and decide the matter expeditiously, as early as possible, within a period of four months from 24.10.2017 or from the date of receipt of the certified copy of the order, which ever is earlier.

10. In pursuance to the order passed in the writ petitions, the learned Industrial Tribunal decided both the preliminary issues by holding that the respondent/employee was a workman and he does not come under exception (iv) of Section 2(s) of the Industrial Dispute Act.Â In respect of issue no.2, the learned Tribunal has held that the respondent/employee has a right to serve second party establishment till the age of superannuation i.e. 60 years and further held that the State Government has not committed any irregularity or illegality in making reference under Section 10 of the I.D. Act.

Paragraphs 7, 8 and 15 to 18 of the order dated 26/02/2018(Annexure-P/12), passed by M.P. Industrial Tribunal, Indore are relevant which reads as under :-

7. After careful evaluation of Ajay Jain, DW 1, I am of the view that mere working with 2-3 labourers or incidentally taking any help or work from them, is not amount to supervisory nature of work.Â It reveals from the aforesaid evidence that first party employee was mainly work as senior Technician.Â If he incidentally took the work from other labourers, it cannot be said that he was working in supervisory capacity.Â In these circumstances, I am of the view that first party employee was a workman, and he does not come under exception (iv) of Section 2(a) of the I.D. Act.

Issue No.1 is decided accordingly.

8. Issue No.2. Shri Ajay Jain, DW 1, witness of second party, has stated that first

party and second party had entered into a settlement (Ex. D-1)

dated 27-09-1968, thereafter the Certifying Officer had passed the Certified Standing Orders (Ex.D-2). Same was challenged before Industrial Court.

Industrial Court vide order dated 10-04-1974 (Ex.D-3), approved the Certified Standing Orders and thereafter the Certified Standing Orders (Ex.D-4)

are applicable in second party undertaking. He has admitted in his cross-examination that the aforesaid documents were not executed during his

period of employment. He has further admitted that the age of retirement of employees in the Model Standing Orders was 58 years and same was

adopted in the Certified Standing Orders. He has further admitted that now the State Government has amended the age of retirement of employees

in the Model Standing Orders as 60 years. He has further admitted that from 22.12.2015 employees of this undertaking are being retired at the age

of 60 years.

15. I have gone through the newly added proviso to Section 8 of the S. O. Act, 1961. The language of which is as under:-

“...where the Government has made any amendment in the Standard Standing Orders, the same shall be deemed to be duly incorporated in any

award, agreement or settlement and in the certified amendments to the standing orders applicable to an undertaking.”

16. Since the aforesaid proviso is drafted in such a way that the State Government has made any amendment, the same shall be deemed to be

incorporated in any award agreement or settlement applicable to second party undertaking. Thus, amendment in the Standard Standing Orders is

deemed to be amended in the settlement or in the Certified Standing Orders applicable to second party. In these circumstances, first party employee

has a right to serve second party till the age of his superannuation i.e. 60 years. If second party has superannuated first party employee at the age of

58 years, it amounts to illegal retrenchment and he has a right to raise an industrial dispute and same will be covered in the definition of 'industrial

dispute' under Section 2(k) of the I.D. Act. In these circumstances, it cannot be said that first party employee is no-longer an employee after the date

of his superannuation at the age of 58 years. Therefore, the State Government has a right to refer his industrial dispute under Section 10 of the I.D.

Act to this Tribunal for adjudication. Thus, the State Government has not

committed any irregularity or illegality in making reference under Section 10 of the I.D. Act. Thus issue No.2 is decided accordingly.

17. Consequently, it is held that first party is a workman under the provision of Section 2(s) of the I.D. Act. Further first party employee has a right to serve second party establishment till the age of 60 years. Therefore, the State Government has rightly made an industrial dispute to this Tribunal under Section 10 of the I.D. Act.

18. Since Hon'ble the High Court of Madhya Pradesh has directed this Tribunal to dispose of this reference case expeditiously after deciding preliminary issues (mentioned above), therefore, it is expected from both parties to lead their evidence on next date of hearing. Now the case be listed on 14.03.2018 for evidence of both the parties.

11. In respect of preliminary issue No.1, the petitioner's witness â?" Ajay Jain (DW1) has deposed that the respondent â?" employee was working as junior technician and other persons were working under his custody. His work was of supervisory in nature. When he took round of the plant, he found that 2 â?" 3 labourers were working. He has admitted in his cross â?" examination that he has not filed any record regarding 2 â?" 3 labourers, who have worked with the petitioner. He has further admitted that he is unable to state the specific dates, when he inspected the work of the petitioner. He is unable to state the names of those labourers, who was working with the first party employee. The learned Tribunal after considering the admissions made by Ajay Jain (DW1), came to the conclusion that mere working with 2 â?" 3 labourers or incidentally taking any help or work from them is not amount to supervisory nature of work. If he incidentally took work from other labourers, it cannot be said that he was working in supervisory capacity and held that the respondent â?" employee was a workman and he does not come under exception IV of Section 2(a) of the I.D. Act.

12. In respect of preliminary issue No.2, Ajay Jain (DW1) has deposed that the petitioner and respondent had entered into a settlement dated 27.9.1968. Thereafter, certifying officer had passed the certified standing orders. Same was challenged before Industrial Court, the Industrial Court vide order dated 10.4.1974, approved the Certified Standing Orders and, thereafter, the Certified Standing Orders are applicable in petitioner's

undertaking. This witness has further admitted the age of retirement of employees in the Model Standing Orders was 58 years and same was

adopted in the Certified Standing Orders. He has also admitted that now the State Government has amended the age of retirement of the employees in

the Model Standing Orders as 60 years and from 22.12.2015, the employees of the petitioner's undertaking are being retired at the age of 60 years.

The learned Tribunal after appreciating the provisions of M.P. Industrial Employment (Standing Orders) Act, 1961 (for short 'the Act of 1961') and

M.P. Industrial Employment (Standing Orders) Rules, 1963 (in short 'the Rules of 1963') came to the conclusion that the amendment made in

Section 14A of the Rules of 1963 vide notification dated 28.6.2014, for enhancement of the age of retirement of employees from 58 years to 60 years

will Ipso facto be applicable to the petitioner's undertaking where Certified Standing Orders are applicable. The respondent has a right to serve the

second party till the age of his superannuation, i.e., 60 years. If the petitioner has superannuated respondent employee at the age of 58 years, it

amounts to illegal retrenchment and he has a right to raise an industrial dispute and the same will be covered in the definition of 'Industrial Dispute'

under Section 2(k) of I.D. Act.

13. Learned Senior Counsel for the petitioner has drawn our attention to Full Bench judgment of the Allahabad High Court in the case of M/s.

Hindustan Lever Ltd., Orai Unit v. Presiding Officer, Industrial Tribunal, Kanpur & Ors., [2015(147) FLR 416] and submitted that the amendment

made in the Model Standing Orders do not automatically apply to the standing orders of the establishment, which have been finally certified under

Section 10 of the Industrial Employment (Standing Orders) Act, 1946. Any modification of the certified standing orders can be made in accordance

with the procedure which is prescribed in Section 10(2) of the Act.

14. In the case in hand, the stand of the petitioner is that the age of superannuation of employees of respondent was 58 years w.e.f. 27/09/1968 vide

settlement (Ex.D/1). The State Government has amended the age of superannuation from 58 years to 60 years by amending Rule 14-A of Rules of

1963, vide Notification dated 28/06/2014, which is not applicable to the petitioner's undertaking because no efforts on the part of representative of

employees under Sections 7 and 8 of the S.O. Act, 1961 for any amendment in

the Standing Orders was made. The Full Bench of Allahabad High

Court interpreted Section 10 of the S.O. Act, 1946, which is a Central Act, and this Central Act is applicable in the State of Karnataka as well as in the

State of Uttar Pradesh. There is specific provision under Section 10 of the S.O. Act, 1946, which reads as under :-

10. Duration and modification of Standing Orders-

(1) Standing Orders finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or

other representative body of 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.

From perusal of the aforesaid, it is very specific that the Certified Standing orders shall not be amended without following procedure laid down in

Section 10(2) of the S.O. Act, 1946. The provisions of the S.O. Act, 1946 are not applicable in the State Government of Madhya Pradesh because

there is a specific provision in Section 4 of the S.O. Act, 1961 which reads as under :-

4. Central Act XX of 1946 not to apply " Nothing in Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), shall apply to any

undertaking to which this Act applies.

15. In these circumstances, the learned Tribunal has rightly held that the law laid down by the Full Bench of Allahabad High Court on interpretation

of Section 10 of the S.O. Act, 1946 is not applicable to the facts of the present case because no such analogous provision like Section 10 of the S.O.

Act, 1946 has been enacted in the S.O. Act, 1961, which provides that amendment in the finally Certified Standing Orders cannot be made by the

State Government except on agreement between employer and workmen.

16. The learned Tribunal relied on the Division Bench decision of this Court in the case of Birla Gram Nagda Employers Association Samiti v. State of

M.P. reported in [2014 (4) M.P.H.T.] 234, passed in W.P. No.4979/2014 wherein the Division Bench vide order dated 15/07/2014 has

observed that "we are of the view that if, the State has power to fix the age of retirement to 58, they can certainly increase the age by amendment

as has been done in this case"

17. The State Government has amended the S.O. Act, 1961 by promulgating and notifying an ordinance dated 25/10/2014 and the same has become an

Act on 30/12/2014, whereby Section 8 of the S.O. Act, 1961 has been amended by adding a proviso thereto, which reads as under :-

“Provided that where the Government has made any amendment in the Standard Standing Orders, the same shall be deemed to be duly

incorporated in any award, agreement or settlement and in the certified amendments to the standing orders applicable to an undertaking.”

18. Learned Senior counsel for the petitioner has submitted that this amendment has only prospective effect and it is applicable from the date of

gazette notification dated 25.10.2014. The argument on behalf of the respondent is that there was no need to make amendment in second S.O Act,

1961 because amendment made in the Standard Standing Orders under Section 21 of the S.O. Act, 1961 is automatically applicable to an

undertaking / industries whereas the S.O. Act, 1961 is applicable and, secondly, there is deeming provision enacted by the State Government.

19. From perusal of the aforesaid newly added proviso, it is crystal clear that any amendment in the Standard Standing Orders is deemed to be

amended in the settlement or in the Certified Standing Orders applicable to the petitioner. After amendment in the Standard Standing Orders by fiction

of law the respondent has a right to serve the second party till the age of his superannuation, ie., 60 years.

20. For the above mentioned reasons, we are of the view that the learned Tribunal has not committed any legal error in passing the impugned order.

The learned Industrial Court having exercised its jurisdiction, interference into the impugned order by this court exercising the power under Section

227 of the Constitution is not warranted.

Accordingly, the Miscellaneous Petition No.1855/2018 and other connected miscellaneous petitions have no merit and are, accordingly, dismissed, but

without any orders as to costs. A copy of the original order be retained in the record of other connected miscellaneous petitions.