

(1963) 11 AHC CK 0022
In the Allahabad High Court
Case No : Writ Petition No. 291 of 1962

Hazari Lal Srivastava

APPELLANT

Vs

Tulsipur Sugar Co. Ltd. and Others

RESPONDENT

Date of Decision : 21-11-1963

Acts Referred:

Constitution of India, 1950 — Article 311
Factories Act, 1948 — Section 49, 49(2)
General Clauses Act, 1897 — Section 21
Uttar Pradesh Factories Welfare Officers Rules, 1955 — Rule 21

Citation : AIR 1964 All 411 : (1967) 2 LLJ 355

Hon'ble Judges : V. Bhargava, J

Bench : Single Bench

Advocate : N. Banerji and R.L. Sinha, for the Appellant; Bishun Singh and S.N. Chaudhary for Opposite Party No. 1 and Standing Counsel for Opposite Parties 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

V. Bhargava, J.—This (petition under Article 226 of the Constitution of India has been presented by Sri Hazari Lal Srivastava, who was appointed as a Welfare Officer by opposite party No. 1, Messrs. Tulsipur Sugar Co., Ltd. on the 14th July, 1952 praying for issue of a writ of certiorari quashing the order dated 19th August, 1961 by which his services were terminated by opposite party No. 1, the order dated 26th September, 1961 by which the Labour Commissioner, opposite party No. 2, dismissed the appeal filed by him against the first order, and the order dated 17th May, 1962 passed by the State Government rejecting the representation, made by the petitioner against those two earlier orders.

2. Under the provisions of Section 49 of the Factories Act, 1948, the Government of U. P. promulgated rules relating to appointment of Welfare Officers by factories ordinarily employing 500 or more workers per day. These rules were known as U. P. Factories Welfare Officers Rules, 1949 [hereinafter referred to as Rules of 1949). It was during the time that these rules were

enforced that the petitioner was appointed as a Welfare Officer by apposite party no. 1. In these rules, there were only two provisions under which the services of a Welfare Officer could be terminated. One was Rule 13 laying down that no Welfare Officer shall be discharged except with the previous approval of the Labour Commissioner, obtained on submission of a report as to his work to him, and unless one month's notice or one month's pay in lieu of notice is given to such officer. The other rule, viz. Rule 14 provided for various punishments including the punishment of dismissal under circumstances justifying that punishment.

Subsequently, the State Government promulgated the U. P. Factories Welfare Officers Rules, 1955 (hereinafter referred to as the Rules of 1955) by a notification dated. 20th April, 1955. These rules were published and brought into effect in supersession of the Rules of 1949. In these rules no provision was contained of the nature which was contained in Rule 13 of Rules of 1949. There was a provision for punishment and dismissal or termination at services in any other manner as one of the punishments which could be awarded. Finally, there was Rule 21 laying down :

"The age of superannuation of Welfare Officer shall be 55 years. Extension of service in deserving cases may, however, be granted with the approval of the Labour Commissioner, for a period of one year at a time, but not for a period beyond the age of 60 years."

3. It is the admitted case of the parties that the petitioner attained the age of 55 years on 30-5-1960, so that, if the Rules of 1955 were applicable to him, he was to retire with effect from that date. The petitioner's case is that, near about that date, he was given a threat by opposite party No. 1 that his services would be terminated unless he applied for extension of service and under that threat he submitted an application for three years' extension. That application was recommended to the Labour Commissioner and the Labour Commissioner granted one year's extension. That extension expired on 30-5-1961. Subsequently, it appears that the petitioner made no application for further extension nor did opposite party No. 1 recommend further extension of service of the petitioner to the Labour Commissioner. On 19-8-1961 the opposite party No. 1 served the first impugned order on the petitioner informing him that, since any further extension to him had been declined by the Government, he was being retired with effect from that date. The petitioner filed an appeal on 31-8-1961 before the Labour Commissioner. That appeal was dismissed on 26-9-1961. On 24-10-1961 he filed an appeal to the State Government. The final order on that appeal was communicated to the petitioner by the letter dated 17-5-1962 which according to the petitioner was received by him on 22-5-1962. Thereupon the petitioner moved this petition.

4. The main ground on which the petitioner has come up to this Court is that he was appointed on 14-7-1952 when the Rules of 1949 were in force and that then the Rules of 1955 came into force they could not be made applicable to him.

Under the Rules of 1949 there was no age of superannuation or retirement. There could only be a discharge under Rule 13 of the Rules of 1949. The petitioner was removed from service by the order dated 19-8-1961 in contravention of the provisions contained in the 1949 Rules, so that the termination, of his services amounts to punishment and that order is liable to be quashed. The other two orders passed by the Labour Commissioner and the State Government are also impugned on the ground that they were incorrect and did not grant to the petitioner the relief to which he was entitled. The petitioner also sought some consequential reliefs which need not be mentioned in detail.

5. The question that has to be considered in these circumstances is whether, when the Rules of 1955 were promulgated by the Government, the petitioner came to be governed by those new rules or whether he is right in claiming that he continued to be governed by the Rules of 1949.

6. Learned counsel appearing on behalf of the petitioner, urged that it has been held by the Supreme Court that, if any person is governed by standing orders made by a factory which made no provision for compulsory retirement, any subsequent rule made or standing order passed, fixing the age of compulsory retirement at 55 years can not apply to such an employee whose services had started before that standing order was made or rule enforced, for this proposition learned counsel relied on a decision of the Supreme Court in *Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others*, . Having heard learned counsel and having gone through the case, I am unable to hold that this case lays down the principle relied upon by the petitioner.

In that case, the standing orders by the appellant company were prepared under the Industrial Employment Standing Orders Act (Act 20 of 1946) which came into force on 23-4-1946 and those standing orders were duly certified by the certifying officer on 19-12-1953. One of the standing orders was that workmen shall retire from the service of the company on reaching the age of 55 years but the company may at its sole discretion offer an extension of service beyond this age to anybody. This standing order was sought to be applied by the company to its various employees whereupon an industrial dispute was raised which was referred for adjudication to a Tribunal. Against the decision of that Tribunal, there was an appeal to the Labour Appellate Tribunal. The Labour Appellate Tribunal held that there had been an admission that there was not fixed age of retirement obtaining in the concern before the standing orders were certified, and that in fact in some cases the appellant had employed persons who had passed the age of superannuation.

On the circumstances aforesaid, the Tribunal came to the conclusion that it would not be unreasonable to assume that all the workers who joined the appellant company's service prior to the framing of the standing orders had naturally and legitimately expected that they would be allowed to continue in service as long as they remain physically fit and so it held that the new scheme could not be justly enforced against the workmen who had been recruited by the appellant

before the introduction of the said orders. Consequently, the Tribunal directed that there should be no age of retirement in regard to the prior employees of the appellant company. The appellant company appealed to the Supreme Court. The Supreme Court, in these circumstances, had to consider two different aspects. One was whether, by a standing order or by any order of the Labour Appellate Tribunal, the age of retirement could be brought into effect in respect of employees who had been employed at a time when there was no such age of retirement prescribed by any standing order or rule, and the second aspect was whether in that particular case it would be reasonable or unreasonable to fix the age of superannuation at 55 years.

The Supreme Court agreed with the view of the Labour Appellate Tribunal that, in the circumstances of that case, it would be unfair and unreasonable to impose the rule of compulsory retirement at 55 years against the previous employees and then proceeded to formulate the question whether there should or should not be a rule of superannuation in regard to them. Their Lordships then proceeded to consider this aspect and held that the Tribunals could have made an appropriate order fixing age of superannuation different from the age which had been, fixed by the appellant company and further that the Supreme Court, dealing with the case in appeal against the judgment of the Labour Appellate Tribunal, could also itself fix the age of superannuation. On the facts of that case, the age of superannuation was fixed at 60 years.

This being the decision of their Lordships of the Supreme Court, I do not see how it can support the proposition put forward by the petitioner that once he was employed at a time when there was no age of superannuation, no such age could be fixed for him subsequently. If the petitioner's case were to be governed by the ordinary rules and laws applicable to industrial concerns and were to be fixed by standing orders as was the case in the matter which went up before the Supreme Court, the principle laid down by the Supreme Court would lead to the conclusion that, by a fresh standing order, it would be permissible to fix the superannuation age for the petitioner, though, if an industrial dispute is raised with regard to that age, the appropriate Tribunals or their appellate authorities can go into the question of reasonableness and fairness of the age of superannuation fixed by the standing orders and could then fix the age at appropriate number of years. That case does not, therefore, indicate that there can be no fixation of the age of superannuation at all in the case of an employee who was governed by rules which did not lay down any age of superannuation.

7. In the case of the petitioner, however, it has to be kept in view that the rules governing his conditions of service are not laid down by standing orders. On the other hand, even though the petitioner was to be employed in the service of opposite party No. 1, his conditions of service were to be laid down by the State Government by rules framed u/s 49 of the Factories Act. Section 49 of the Factories Act made it compulsory for every factory wherein five hundred or more workers are ordinarily employed to employ in each factory such number of

welfare officers as the State Government might prescribe. The same section further lays down in Sub-section (2) that the State Government may prescribe the! duties, qualifications and conditions of service of officers employed under Sub-section (1). It was in exercise of these powers that the State Government first promulgated the Rules of 1949 and subsequently promulgated the Rules of 1955 in supersession of the Rules of 1949. The power of laying down the conditions of service was thus exercised by the State Government as a power of making rules conferred by a statute and the rules had the force of statutory rules. u/s 21 of the General Clauses Act, 1897, any power to make rules carries with it the power to add to, amend, vary or rescind any of those rules. The framing of the new Rules of 1955 in supersession of the Rules of 1949 by the State Government was therefore a valid exercise of its power u/s 49(2) of the Factories Act, read with Section 21 of the General Clauses Act.

8. In view of this position, the submission made by the petitioner was that this power of making rules could only be exercised by the State Government prospectively and for future employees, and not retrospectively. It was urged that a Legislature can legislate so as to take away past vested rights but a delegated authority does not possess that power to enforce rules retrospectively so as to affect rights which may have already been vested in persons affected by them. It appears to me that, in the present case, it is difficult to hold that there was in fact any particular right vested in the petitioner due to his appointment while the Rules of 1949 were in force which had been taken away by the enforcement of the revised Rules of 1955. It is true that the Rules of 1949 were silent on the question of retirement on attainment of a particular age, but it has to be kept in view that, when the petitioner accepted service as a Welfare Officer, he knew that he was going to be governed by rules laying down the conditions of service made by the Government u/s 49(2) of the Factories Act.

Further, Section 21 of the General Clauses Act was also in force at that time and any one accepting a service which, he knows, under the statute will be governed by conditions of service which laid down by the State Government, must also be held to know that his conditions of service would be liable to alterations from time to time by the same rule making authority in exercise of the powers conferred on that authority by Section 21 of the General Clauses Act. Thus, when the petitioner took service as a Welfare Officer in 1952, he, no doubt, knew that the rules then applicable to him were the Rules of 1949, but, in joining the service, he also accepted the legal position that, subsequently, those rules may be amended by the State Government in exercise of its powers u/s 21 of the General Clauses Act, and, if so, he would be governed by those new rules. The principle thus deduced by me from these statutes is, in fact, in line with the principle which the Supreme Court upheld in the case of *Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others*, cited by me above.

The distinction sought to be drawn on the ground that, in that case, the employees affected had a right to challenge the new rules by raising an industrial

dispute does not affect the applicability of this principle because, even in the present case, if the appellant had any objection to the enforcement of these new Rules of 1955, the law did provide for him also an opportunity of being heard before the new rules were enforced against him. This opportunity was provided by Section 23, Clause (4) of the General Clauses Act. The rules u/s 49(2) of the Factories Act had to be made in accordance with the procedure laid down in Section 115 of the Factories Act, so that this power of making rules had to be exercised subject to the condition of being made after previous publication. The revised rules of 1955, it can be presumed, were made after previous publication in compliance with the requirement of law and, when they were published in the first instance, the petitioner could have raised his objection under Clause (4) of Section 23 of the General Clauses Act, with the result that the State Government would have had to consider his objection or suggestion before finalising the rules.

9. It is also to be noted that the Rules of 1955 were made applicable to persons appointed earlier under the Rules of 1949 by a specific provision and are not being applied by me to the case of the petitioner merely by Implication Rule 14 of the Rules of 1955 clearly lays down that any one appointed under the Rules of 1949 shall, for purposes of applicability of the new rules, be deemed to have been appointed under the Rules of 1955. By this specific provision the new rules were made applicable to persons appointed originally under the Rules of 1949 and, in these circumstances, the Rules of 1955 must be held to be applicable validly to the petitioner also.

10. The alternative question that arose before the Supreme Court whether the particular rule about fixing the age of 55 years was fair and reasonable or not does not arise in this case before me. The question of fairness or unreasonableness of any particular standing order or rule governing an industrial worker can be gone into only by an industrial court or Tribunal and, in the case of *Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others*, it was gone into by the Supreme Court because the Supreme Court's jurisdiction that was invoked was that of an appellate court and not a court dealing with the jurisdiction of issuing prerogative writs. The High Court, when exercising powers under Article 226 of the Constitution cannot go into the question of unfairness or unreasonableness of such a rule. All that can be seen is whether a rule is valid and applicable and I have given my reasons above for holding that the Rules of 1955 were validly framed and did become applicable to the petitioner.

11. This view expressed by me finds support from a few other decisions. The Supreme Court in the case of *D.S. Garewal Vs. The State of Punjab and Another*, had to consider the validity of rules made u/s 3 of the All India Services Act, 1951. In that Act, Section 3 had conferred on the Central Government the power to make rules for regulation of recruitment and the conditions of services of persons appointed to The All India Services though that power was to be exercised after consultation with the Governors of the States concerned. Then there was a provision in Section 4 laying down :

"All rules in force immediately before the commencement of this Act and applicable to all India service shall continue to be in force and shall be deemed to be rules made under this Act."

Dealing with the provisions of these two sections in connection with the question whether these sections contained unjustified delegation, of legislative functions the Supreme Court held :

"Thus though Section 4 appears on the face of it as one short section of four lines, it is in effect a statutory provision adopting all the rules which were in force at the commencement of the Act, governing the recruitment and the conditions of service of the two all-India services. The section certainly lays down that the rules already in force shall be taken to be rules under the Act; but that was necessary in order to enable the Central Government under Section. 3 to add to, alter, vary and amend those rules.."

This fast sentence shows that the Supreme Court held that, though the old rules applicable to the all-India services in existence were continued by Section 4 of that Act, the Central Government was given the power to add to, alter and vary or amend those very rules. This position was further recognised when the Supreme Court later in the judgment said :

"Further, by Section 3 the Central Government was given the power to frame rules in future which may have the effect of adding to, altering, varying or amending the rules accepted u/s 4 as binding."

Thus, the Supreme Court recognised the existence of 3 power in the Central Government u/s 3 of the Act to amend the rules which were otherwise laid down as binding u/s 4 of the same Act, which meant that even the rules, which were in existence u/s 4 of that Act, could later be amended or varied and applied to the same persons to whom those rules were originally, applicable. It is true that, in that case, the Supreme Court did not proceed to consider the question further whether the scope of Section 3 made it invalid or not, but it is to be noticed that this position brought about by Sections 3 and 4 of that Act was specifically noticed by the Court In connection with the question whether these sections contained unjustified . delegation of powers and the Court held that there was no such unjustified delegation, of legislative functions as would render any of those sections void.

In this connection I may also cite a Division Bench decision of this Court in Raj Kishore Vs. State of Uttar Pradesh and Another, , in which it was held :

"Therefore the authority which made Rule 465 had also the authority to amend it. It has not been argued before us that the authority which amended Rule 465 was not the authority which was authorised by law to amend it. It follows, therefore, that every Government servant is bound by any subsequent alterations, amendments or additions made in the rules in existence when he was recruited to the service."

These remarks were made when dealing with the applicability of Rule 465 of the Civil Services (Classification Control and Appeal) Rules.

12. Further there is a Full Bench decision of this Court in Ram Autar Pandey Vs. State of Uttar Pradesh and Another, where also it was held that u/s 21 of the General Clauses Act the Governor was competent to amend the rules regulating conditions of service from time to time. In these circumstances the main contention raised by the petitioner that the Rules of 1955 did not apply to him has to be rejected and he cannot claim that he is entitled to continue indefinitely in service under the Rules of 1949.

13. In this connection, I may also take notice of the fact that the petitioner himself applied for extension of his service for three years claiming that the extension may be granted to him on the basis that he was governed by the Rules of 1955, and he was in fact granted one year's extension under Rule 21 of those rules. The petitioner continued in service under that extension and only started making a grievance that he was not to be governed by those rules when he found that no further extension was going to be granted to him under those rules. On this point learned counsel for the petitioner drew my attention to the circumstances in which the order dated 19-8-1981 retiring the petitioner was made by opposite party No. 1. That order mentions that the Government had declined to allow the petitioner any further extension of service, whereas it seems from the affidavit filed on behalf of the State Government that, after the Labour Commissioner had granted to the petitioner one year's extension in 1960, there was no further occasion when the Government may have declined to grant further extension.

To me it appears that opposite party No. 1 mentioning in that letter of 1961 that the Government had declined to allow any further extension to the petitioner was immaterial. Once the Rules of 1955 were applicable extension could only be granted in accordance with the conditions laid down in Rule 21. It was under that Rule that opposite party No. 1 could grant three years' extension on the application of the petitioner and one year's extension was granted as the rules did not permit extension of more than one year at a time. That application of the petitioner was thus finally disposed of and subsequently in 1961 no fresh application for extension was made by the petitioner; There being no application, opposite party No. 1 made no recommendation for further extension. It seems that the mention in this letter that the Government had declined to allow any further extension to the petitioner was meant to refer to the very first order made a year earlier when the extension had been granted for one year and not for three years.

There is, however, the fact that the petitioner actually proceeded to apply for an extension under the Rules of 1955 and at that stage made no grievance that the rules were not applicable to him. It is true that he stated in the present petition that he gave that application under a threat that, if he would not give it, his services would-be terminated. But that fact is not admitted by the opposite party

No. 1. It is a question of fact whether the petitioner was put under any such threat- or not and that is a question which cannot be investigated in a writ petition. Such a writ petition has to be decided on admitted facts. If the petitioner wanted to take his stand on a disputed fact, he could have sought the ordinary remedy by filing a suit where he would have had full opportunity to prove facts as put forward by him.

14. The petitioner in the alternative claimed that, even if he came to be governed by 1955 Rules, there was a subsequent notification dated 27-4-1961 which also became applicable to the petitioner and under which he should have been allowed to continue upto the age of 58 years. This notification was published in the U. P. Gazette Extra-Ordinary dated 27-4-1961 and related to the decisions taken by the Government on the recommendations of the Central Wage Board for the sugar industry. In Appendix V to the order contained in that notification, a scheme was enforced known as the Sugar Industry Workmen's Gratuity Scheme. That appendix defined a "workman" as having the meaning assigned to the word by Clause (2) of Section 2 of the U. P. Industrial Disputes Act, 1947. One of the clauses in the scheme was that the age of superannuation shall be 58 years.

The petitioner claimed that he was a "workman" within the meaning of that appendix and was, therefore, entitled to continue in service upto the age of 58 years, because on 27-4-1961, when that notification was published and the scheme came into force, he was still in service of opposite party No. 1 and was working as a Welfare Officer. On behalf of the opposite party No. 1, it has been contended that that scheme is not applicable to the petitioner because he is not a workman. On behalf of the petitioner reliance was placed on item No. 6 in Appendix I to that notification in which a Welfare Officer is described as performing the duties as required by the Factories Welfare Officers' Rules and doing any other work assigned to him and has been described as belonging to the broad classification of supervisory work. It is true that a Welfare Officer in that notification is shown as doing the work of the nature of supervisory work but that circumstance by itself will not make a Welfare Officer a "workman" unless it is further found that he is not a person who is employed mainly in a managerial or administrative capacity, or is not a person who, being employed in supervisory capacity, draws wages exceeding Rs. 500/- per mensem or exercises, either by the nature of the duties attached to the office or by reason of the power vested in him functions mainly of a managerial nature.

15. I have looked into Rule 16 of the Rules of 1949 as well as Rule 17 of the Rules of 1955, which lay down the duties of a Welfare Officer. It seems, on a reading of the provisions contained in these rules, that the duties of a Welfare Officer have to be described as being those of a managerial nature or administrative nature. He is not entrusted with any specific work of the factory. He does not do any clerical work e.g. maintenance of accounts. His duties are mainly of a Liaison Officer between the Management and the Labour and in that

capacity he has to put forward the grievances of labour to have them redressed by the management. On the other side, he has to explain, the management's point of view to the labour. The relations between the management and labour are matter of administration in the factory and not of the actual work of production.

A Welfare Officer is thus only concerned with the managerial or administrative work in a factory though he himself does not possess any powers which he can exercise as such in those matters. All he does is to assist the management and labour in exercise of their rights vis-a-vis each other, and thus he functions as one of the participants in the administrative and managerial machinery of a factory. Considering the duties assigned to a Welfare Officer and in view of the meaning assigned to the word "workman" in Clause (2) of Section 2 of the U. P. Industrial Disputes Act, 1947 (Act 28 of 1947), a Welfare Officer is not a workman, so that the petitioner was not entitled to the benefit of the scheme contained in Appendix V of the notification of 1961.

16. I may add that an objection was raised on behalf of the respondent on the further ground that the petitioner had been guilty of laches and delay in moving this Court. It was urged that it was as early as 17-5-1960 that the petitioner came to know that the Rules of 1955 were being applied to him as is clear from the fact that he made an application for extension of service on the basis that he was due to retire on 30-5-1960 under those rules. It is urged that he should have moved this Court immediately when these rules were sought to be applied to him, particularly if pressure was brought on him to move an application, for extension unfairly. No doubt, there has been delay in this regard. There was further delay inasmuch as even afterwards the petitioner failed to come up to this Court on the dismissal of his appeal by the Labour Commissioner on 26-9-1961 under the Rules of 1949. The order of the Labour Commissioner in appeal was final and no appeal lay to the State Government.

The petitioner unnecessarily moved the State Government by a further appeal while no such appeal lay. In this writ petition, he has described his appeal as a further representation but the original petition sent by him on 20-10-1961 clearly mentions that he is filing an appeal and not a mere representation. The petitioner, however, sought exemption from the charge of delay on the ground that the State Government passed the final order on his appeal on 17. 5. 1962 which reached the petitioner on or about 22-5-1962 and the petitioner filed this petition on 20.8.1962 within three months of the receipt of that order. Considering the fact that I have already come to the view that on merits this petition has no force, I do not think that it is necessary for me to give any pronouncement on the question whether, in this case, the petitioner would further be disentitled to any relief on the ground of laches and delay.

17. The petition fails and is dismissed. In the circumstances of this case, I make no order as to costs.

18. This judgment automatically disposes of C. M. An. No. 58 of 1963 filed in connection with this petition.