
(1996) 04 BOM CK 0023
In the Bombay High Court
Case No : Writ Petition No. 364 of 1996

India United Mills No. 2

APPELLANT

Vs

Ram Murat Haridwar Kurmi and Others

RESPONDENT

Date of Decision : 02-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (1996) 74 FLR 2469 : (1997) 2 LLJ 1131

Hon'ble Judges : J.K. Chandrashekhara Das, J;G.R. Majithia, J

Bench : Division Bench

Advocate : I.A. Saiyed, for the Appellant; S.Z. Choudhary, for the Respondent

Judgement

G.R. Majithia, J.—The petitioners have challenged the order dated December 12, 1995 passed by the Industrial Court, Bombay allowing the interim relief application and restraining the petitioners from retiring the Respondent No. 1 on his attaining the age of 60 years in this petition under Article 226 of the Constitution. Normally, this Court will not interfere with an interim order passed by a quasi judicial authority. In the instant case, we are not satisfied with the manner in which the Industrial Court has exercised the jurisdiction. Cases have come to our notice where the Industrial Court, on identical facts, refused to grant interim relief and that order was upheld by this Court.

2. The 1st respondent was in the employment of the petitioners. Memo dated June 15, 1995 was issued retiring him from service with effect from July 1, 1995. The order of retirement was issued under Standing Order 20-A. This memo of retirement was challenged by the 1st respondent in the complaint of unfair labour practice under Item No.9 of Schedule IV of the MRTU and PULP Act, 1971. Along with the complaint, an interim relief application was filed. In the interim relief application it was, stated that the 1 st respondent is entitled to continue in service till he attains the age of 63 years. The case of the petitioners is that the normal rule is to retire an employee on his attaining the age of 60 years.

However, extension can be granted by three years under Standing Order 20-A. The petitioners after examining the record did not grant extension in service upto the age of sixty three years. It decided to retire him from service on attaining the age of 60 years.

3. Before the Industrial Court it was contended that the complainant is efficient and he ought to have been granted the benefit under Standing Order 20-A and he ought to have been continued in service till he attains the age of 63 years.

4. The Industrial Court has opined that there is no evidence on record showing that date of birth of the 1st respondent. It also did not find that the discretion was not correctly exercised by the management. However, the Industrial Court after examining some judgments came to the tentative conclusion that the Respondent-company has not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 and, therefore, the complaint is maintainable.

5. We do not want to express on the opinion formed by the Industrial Court at this stage, suffice it to say that the Industrial Court was wholly unjustified in ordering retention of the 1st respondent in service till he attained the age of 63 years. The Industrial Court did not appreciate that if ultimately the 1st respondent succeeds, he could be adequately compensated with the grant of wages for three years. Allowing the interim relief application at this stage tantamounts to granting the 1st respondent relief to which ultimately he may not be found entitled to. The Industrial Court has wrongly exercised the discretion and to say the least in a most unjustified manner.

6. For the reasons stated above, the petition succeeds. Rule is made absolute in terms of prayer clause (a). No costs.

7. The Presiding Officer, Industrial Court, Bombay, is directed to withdraw the complaint from the Court of Mr. P. S. Ghose and entrust it to any other Industrial Court for disposal. The Industrial Court will dispose of complaint within six months from the date he takes cognizance of the same. If in case the 1st respondent succeeds in his complaint, the industrial Court will issue appropriate direction that the 1st respondent is entitled to all the benefits which would have accrued to him if he has retired at the age of 63 years.