

(2014) 07 GUJ CK 0157

In the Gujarat High Court

Case No : Special Civil Application No. 10141 of 2001

Indian Express Ltd.

APPELLANT

Vs

Workmen Employed Under IT

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Industrial Employment Standing Orders Act, 1946 — Section 1, 14 — Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 - Section 14

Citation : (2015) 145 FLR 896 : (2015) 1 GLR 591

Hon'ble Judges : Jayant M. Patel, J.

Bench : Single Bench

Advocate : Premal Nanavati and Pranav Trivedi for Trivedi and Gupta, for the Appellant; Yogini V. Parikh, for the Respondent

Final Decision : Dismissed

Judgement

Jayant M. Patel, J. The present petition is directed against the judgment and award passed by the Industrial Tribunal in Reference (I.T.) No. 176 of 1995, whereby the Tribunal has allowed the Reference and has fixed the age of retirement of the working journalists of the petitioner to 60 years from the date of award. The short facts of the case appears to be that the petitioner-Company, inter alia, is engaged in printing and publishing newspapers and publications in English and other regional languages. It has printing press, offices and branches in different States and Cities. One of such branches is at Ahmedabad. As per the petitioner, the branch at Ahmedabad came to be established in the month of February, 1958 and it had engaged various persons as its employees, which included working journalists and non-working journalists. In 1986, the respondent-Union made a demand that the retirement age of the employee should be enhanced to 60 years. Such demand was referred to the Tribunal for adjudication in Reference (I.T.) No. 504 of 1986. As per the petitioner, there was settlement between the parties and the Tribunal held that the age of retirement/superannuation for working journalists and non-working journalists will be 58

years and the award was also passed based on the same. On 27-6-1994, again demand was made by the Union requesting to enhance the age of superannuation/retirement at 60 years for employees of Ahmedabad Branch. The petitioner could not satisfy to the demand made by the respondent-Union, and therefore, once again the dispute was raised and such dispute came to be referred to Industrial Tribunal for adjudication being Reference (I.T.) No. 176 of 1995. The Tribunal, at the conclusion of the Reference, passed the above-referred judgment and award, whereby it was held that the age of retirement/superannuation shall be 60 years. It is under these circumstances, the present petition before this Court.

2. I have heard Mr. Premal Nanavati, learned Counsel with Mr. Pranav Trivedi, learned Counsel for the petitioner and Ms. Yogini Parikh, learned Counsel for the respondent.

3. The perusal of the award passed by the Tribunal shows that the Tribunal has relied upon the earlier award passed by the Industrial Tribunal in Complaint (I.T.) No. 254 of 1988 in Reference (I.T.) No. 504 of 1986, whereby in view of Clause 27 of the Model Standing Order, the said complainant was directed to be continued in service till 60 years. The Tribunal has also referred to another decision of the Tribunal in Reference (I.T.) No. 864 of 1982, wherein in respect of the other employees of the other industries, the age of retirement was finalized to the extent of 60 years. The Tribunal has further considered the age of retirement prevailing for working journalists in respect of other companies having circulation of newspapers and magazines located at Ahmedabad and Gujarat State namely : Akhand Anand Press, Sandesh, Gujarat Samachar, Jankalyan, Jansatta, Hindustan Times and Loksatta and the Tribunal has further found that the trend in the Gujarat State is to fix the retirement age at 60 years. On the aspect of earlier award, the Tribunal found that as there was settlement between the parties in Reference (I.T.) No. 504 of 1986, the principles of res judicata would not apply. Under these circumstances, the Tribunal has found it appropriate to fix the age of retirement at 60 years.

4. Mr. Nanavati, learned Counsel for the petitioner, raised the contention that the petitioner is an all India level company having functioning throughout the country. He submitted that the working as well as non-working journalists are transferable throughout the country. As per him, for other States, barring Maharashtra, the age of retirement is 58 years, so is in Gujarat as per the earlier award, which was passed on consent of the parties. He submitted that if the employee working in Gujarat is transferred outside the State, he may be required to be continued in service up to the age of 60 years, whereas, if any person is transferred from outside Gujarat to Gujarat, he may be retiring at the age of 58 years. In his submission, such would create anomalous situation and even discriminatory treatment by the employer to the similarly situated persons. He further submitted that the comparative chart, which has been considered by the Tribunal are for the other newspaper companies and for the publication

companies operating within Gujarat State only, whereas the case of the petitioner stands on a different footing and on different consideration. He submitted that the Tribunal has lost sight of the aforesaid aspect, and therefore, this Court may consider in the present petition.

5. Whereas, Ms. Parikh, learned Counsel for the respondent, submitted that it is not that throughout the country the age of retirement is 58 years for employees of the petitioner-Company. The petitioner-Company is formed in Bombay and in Maharashtra only the age of retirement is 60 years because of the Model Standing Order. She further submitted that in the chart, one newspaper company named Hindustan Times is operating throughout the country, but in spite of the same, age of retirement is 60 years. She has submitted that the Tribunal has rightly exercised the power, which may not be interfered with by this Court in the present petition.

6. As such, if the ground is considered as it is for the comparison made by the Industrial Tribunal to find out the trend in the newspaper companies, which are engaging working and non-working journalists, it is true that in majority of the companies, which are referred to by the Tribunal at Paragraph 12 are having operation in Gujarat State, but name of the company mentioned at Item No. 14 in the said schedule is "Hindustan Times", which is operating throughout the country and there also the age of retirement is 60 years. Therefore, it cannot be said, per se, that the Tribunal had misdirected itself in not considering the distinction for the petitioner-Company having operation throughout the country. The aforesaid aspect is coupled with the fact that for the very petitioner-Company in Maharashtra State, age of retirement is 60 years for working and non-working journalists.

7. Apart from the above, had it been a case where there is agreement between the representative Union and the petitioner-Company, whereby Model Standing Orders are certified, such would bind to all its employees, but such are not the fact situation in the present case. Therefore, in absence of any certified Standing Orders, the Model Standing Orders framed by the State Government or the Central Government, as the case may be, can be considered as the guiding factor. The Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the "Act of 1946") provides for the scope of disputes. Section 2A of the Act of 1946 reads as under:

"2A. Where this Act applies to an industrial establishment, the Model Standing Orders for every matter set out in the Schedule applicable to such establishment shall apply to such establishment from such date as the State Government may by notification in the Official Gazette appoint in this behalf:

Provided that nothing in this Section shall be deemed to affect any Standing Orders which are finally certified under this Act and have come into operation under this Act in respect of any industrial establishment before the date of the coming into force of the Industrial Employment (Standing Orders) (Bombay

Amendment) Act, 1957."

8. The aforesaid shows that wherever the Act of 1946 is applicable to the industrial establishment, Model Standing Orders would apply. The Schedule pertaining to the Model Standing Orders vide Item No. 10A provides as under:

"THE SCHEDULE

(See Sec. 2A)

Matters to be provided in Standing Orders. 10th (Model Standing Orders and amendments) under this Act -

1. xxx xxx xxx

1A xxx xxx xxx

2. xxx xxx xxx

3. xxx xxx xxx

4. xxx xxx xxx

5. xxx xxx xxx

6. xxx xxx xxx

7. xxx xxx xxx

8. xxx xxx xxx

9. xxx xxx xxx

10. xxx xxx xxx

10A. Age for retirement or superannuation."

9. The Model Standing Orders are framed by the State Government in exercise of the power under Sec. 2A of the Act of 1946 and vide Clause 27, it has been provided as under:

"Schedule-1, Clause 27 : The age for retirement or superannuation of the workman may be sixty years or such other age as may be agreed upon between the employer and the workmen by any agreement, settlement or award, which may be binding on the employer and the workmen under any law for the time-being in force."

10. The aforesaid shows that if any industrial establishment is operating in the State to which the Act of 1946 applies, the Model Standing Order would apply, unless there is any agreement between the employer and the workman otherwise. As per Sec. 14 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as "the Act of 1955" for short), the provisions of the Act of 1946 are made applicable. Sec. 14 of the aforesaid Act of 1955 for ready

reference reads as under:

"Section 14. Act 20 of 1946 to apply to newspaper establishments:--The provisions of the Industrial Employment (Standing Orders) Act, 1946 as in force for the time-being, shall apply to every newspaper establishment wherein twenty or more newspaper employees are employed or were employed on any day of the preceding twelve months as if such newspaper establishment were an industrial establishment to which the aforesaid Act has been applied by a notification under sub-sec. (3) of Sec. 1 thereof, and as if a newspaper employee were a workman within the meaning of that Act."

11. Therefore, by virtue of the aforesaid provisions of Sec. 14, of the Act of 1946 is made applicable and as per Sec. 2A of the Act of 1946, the Model Standing Orders would apply. Such Model Standing Order, by Clause No. 27, provides for the age of retirement unless otherwise agreed between the employer and the workman. Under these circumstances, it can be said that the Model Standing Orders for the establishment operating in Gujarat State for the working and non-working journalists provides for 60 years as the age of retirement unless otherwise agreed by the workman with the employer. It is not the case of the petitioner that there was any agreement or award or certified Model Standing Order binding to the respondent-Union or its members. In absence of any certified Standing Order, the Model Standing Order would apply, and if applied, it would require the age of superannuation or retirement as 60 years.

12. Mr. Nanavati, learned Counsel appearing for the petitioner is not in a position to show any provision or notification of the Government providing that such Model Standing Order in any industrial establishment operating in Gujarat State would not apply to the petitioner-Company.

13. Under these circumstances, if the Tribunal has taken view as provided in the Model Standing Order, and if there is no other agreement or award to the contrary or as there is no certified Standing Order to the contrary, it cannot be said that the Tribunal has committed any jurisdictional error or has committed error apparent on the face of record, which may call for interference by this Court. In view of the above, the petition lacks merit. Hence, dismissed. Considering the facts and circumstances, no order as to costs.