(1995) 12 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Writ Petition No. 148 of 1995

Karam Singh APPELLANT

Vs

National Hydro-electric Power Corporation Ltd. and Others RESPONDENT

Date of Decision : 27-12-1995

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 3(3), 5, 5(3), 6, 7

Citation : (1996) 2 ShimLC 31

Hon'ble Judges : S.N. Phukan, C.J;R.L. Khurana, J

Bench : Division Bench

Advocate : R.P. Singh, for the Appellant; K.D. Shreedhar, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—By this judgment, we propose to dispose of the abovenoted six writ petitions, since common question of law and fact is involved therein.

2. The admitted facts of the case may be thus stated. The Salal Hydro-electric Project at Jyotipuram (J and K) was an undertaking of the Government of India. It was handed over to the National Hydro-electric Power Corporation (for short referred to as ''the Corporation'' hereinafter), on agency basis for execution The Corporation is also an enterprise of the Government of India. The Corporation is also undertaking another project in District Chamba of Himachal Pradesh, known as Chamera Hydro-electric Project.

3. The Petitioners, alongwith other various employees, were transferred from Salal Hydro-electric Project, Jyotipuram (J and K) to Chamera Hydro-electric Project in Chamba District. Such transfer orders were effected vide different office orders in respect of each the Petitioners with effect from different dates. These office orders contained similar conditions, inter alia, in the following terms:

They will also be eligible to the benefit of continuity of service, EPF, service for the purposes of gratuity on transfer to the new place of posting. The date of annual increment in their existing scales of pay will also remain unchanged.

Other terms and conditions of their offer of appointment will remain unchanged. They will continue to be governed by rules and regulations of the Corporation as are applicable to employees of their categories and as amended from time to time at the place of their posting.

4. The Corporation had its Standing Orders for its Salal Hydro-electric Project, Jyotipuram. These Standing Orders were duly certified u/s 5 of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as ''the Act of 1946''). The Petitioners, while working with Salal Hydro-electric Project were governed by these Standing Orders. No Standing Orders existed in respect of Chamera Hydro electric Project. Only Model Standing Orders existed. The Standing Orders for Chamera Hydro-electric Project came to be certified u/s 5 of the Act of 1946, vide order dated 28th February, 1992 of the Regional Labour Commissioner (Central), Chandigarh, being the certifying authority under the provisions of the Act of 1946. These Standing Orders, u/s 7 of the Act of 1946, were to come in operation on the expiry of 30 days from the date on which authenticated copies thereof are sent to the employer, the trade union or other prescribed representative of the workmen as envisaged u/s 5(3) of the Act of 1946, provided no appeal was preferred u/s 6 of the said Act. These Standing Orders contain a clause providing for the age of retirement of workmen of Chamera Hydro-electric Project as 58 years. Be it stated that the Standing Orders in respect of Salal Hydro-electric Project provided for the age of retirement at 60 years.

5. The Corporation on 11th January, 1988, submitted revised draft Standing Orders of Salal Hydro-electric Project for certification with a view to maintain uniformity of the Standing Orders in all its units. One of the modification introduced, which is relevant for the purpose of present petitions, was with regard to the age of superannuation, which was sought to be brought down to 58 years from 60 years. The revised Standing Orders were certified by the Regional Labour Commissioner (Central), Chandigarh, u/s 5 of the Act of 1946, after hearing the parties, vide his order dated 12th March, 1993 The appeal carried u/ s 6 of the Act of 1946 before the Chief Labour Commissioner (Central), New Delhi by the various Unions of the workmen of the Corporation was also dismissed on 31st May, 1995. Therefore, presently, as per the Standing Orders of Salal Hydro-electric Project and that of Chamera Hydro-electric Project, the age of superannuation of the workers in both the Projects is the same, that is, 58 years. The Petitioners stand retired from service on and with effect from different dates consequent upon their having attained the age of 58 years.

6. The case of the Petitioners is that the employees of Salal Hydro-electric Project were to retire at the age of 60 years, but on their transfer to Chamera Hydro-electric Project, the Corporation by taking that the Petitioners were governed by the rules and regulations of Chamera Project, has erroneously ordered their retirement on attaining the age of 58 years. On transfer to Chamera Hydro-electric Project the Petitioners neither became the employees of

the said Project nor they could be governed by the rules and regulations framed for the employees of the said Project.

7. By virtue of the present writ petitions, the Petitioners have approached this Court seeking the issuance of an appropriate writ, order or directions for quashing the orders, vide which they were retired from service on attaining the age of 58 years and that they may be allowed to continue in service upto the age of 60 years.

8. The Respondents have averred that Salal Hydro-electric Project, which was initially under the control of the Government of India, was handed over to the Corporation on agency basis on 15th May, 1978. An option was invited from all the employees of the Salal Project for being appointed to the Corporation on transfer with effect from, 1st April, 1983. Almost all the employees, including the Petitioners, opted for being transferred to the Corporation. In the order of appointment/transfer, it was made clear that the employees being transferred to Chamera Project would continue to be governed by the rules and regulations of the Corporation, as were applicable to the employees of their categories, as amended from time to time. The Petitioners by accepting such a condition joined their duties in Chamera Project. The terms and conditions applicable to the employees of Chamera Project, inter alia, included the age of retirement as 58 years. The further case of the Respondents is that the Standing Orders qua Salal Hydro-electric Project stood modified and the age of retirement in respect of the employees of Salal Project has also been changed to 58 years, at par with the age of retirement of employees of Chamera Project The certified revised Standing Orders of Salal Project have also been confirmed in appeal by the Chief Labour Commissioner (Central), New Delhi on 31st May, 1995 The Respondents have stated that once the Standing Orders are certified, the same are binding on the present as well as future employees.

9. We have heard the learned Counsel for the parties and have gone through the record of the case.

Para 24 of the Standing Orders for Salal Project, prior to its revision on 12th March, 1993, provided for the age of retirement of workman as 60 years. These Standing Orders also contained a provision for transfer in para 7, in the following terms:

Transfer.-A workman may be transferred according to exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer:

Provided that the wages, grade, continuity of service and other conditions of service of the workman are not adversely affected by such transfers:

Provided further that a workman is transferred from one job to another, which he is capable of doing, and provided also that where the transfer involves moving from one State to another, such transfer shall take place, either with the consent of the workman or where there is a specific provision to that effect in the letter of appointment and provided also that (i) reasonable notice is given to such workman and (ii) reasonable joining time is allowed in case of transfers from one station to another. The workman concerned shall be paid travelling allowance including the transport charges, and fifty per cent thereof to meet incidental charges.

10. This provision with regard to transfer (quoted above) came up for consideration before a Division Bench of this Court in Civil Writ Petition No. 163 of 1990, Shamsher Singh v. The Union of India and Ors. decided on 3rd August, 1993. It was held:

The aforementioned provision in the Standing Orders in an unambiguous terms makes it clear that a workman could be transferred, according to the exigencies of work not only from one of the Departments in the same establishment to another department in the same establishment, but also from one establishment under the same employer to another establishment of the same employer. This transfer, however, if made has to be subject to a condition that wages, grade, continuity of service and other conditions of service of the workman are not adversely affected by such transfer. The workman has been defined under the standing orders to mean any person employed in the project as defined in the Act. Project has been defined to mean Salal Hydro Electric Project, Jyotipuram, including its units/establishments under its control. Employer in the instant case is not disputed that it is the Corporation. In view of the clear provision contained in para 7, as regards the right of the employer to transfer its workman from one of its establishment to another establishment, it is not capable of dispute that such transfer, if ordered could have an adverse effect on the conditions of service of the workman. This is also not capable of being disputed that the age of retirement is a condition of service of workman. This is also not capable of being disputed that the age of retirement is a condition of service of workman Respondent-Corporation ordered the Petitioners transfer, considering them to be their work-charged staff at Salal Hydro Electric Project. On the date of transfer, the Petitioners were governed by the standing orders of Salal Hydro Project and para 7 of the standing orders was fully applicable to them. Respondent-Corporation accordingly, as per the standing orders had absolute right to order Petitioners'' transfer from one of its establishment, namely, Salal Project to another Project under its control, namely, Chamera Project, but on such transfer, proviso to para 7 clearly stated that such transfer would not adversely affect the other conditions of service.

It was further held in the following terms:

Since by virtue of para 7 of the standing orders of the Salal Project, terms and conditions of service of the Petitioners were not be adversely affected on transfer and on such transfer they would be continued to be governed in the transferred project as per the service condition applicable to Salal, the age of retirement being a condition of service could also be not adversely affected. It would in other words mean that the Petitioners would have been retired on attaining the age of 60 years and not at the age of 58 years.

11. Relying upon the said decision, the learned Counsel for the Petitioners has contended that in the present case as well, the Petitioners are similarly situated, as the Petitioners in Civil Writ Petition No. 163 of 1990, therefore, they would have to be retired on attaining the age of 60 years.

12. The decision given in Civil Writ Petition No. 163 of 1990 (supra), for the purpose of the present writ petitions, is relevant only to show that the Petitioners, being the erstwhile employees of Salal Project, inspite of their transfer to and appointment in Chamera Project would continue to be governed by the Standing Orders for Salal Project. As stated above, the Standing Orders, for Salal Project came to be revised, whereby the age of retirement was brought down to 58 years from 60 years. Such revised Standing Orders were certified u/s 5 of the Act of 1946 on 12th March, 1993 and upheld in appeal on 31st May, 1995 These revised Standing Orders for Salal Project were not in issue in Civil Writ Petition No. 163 of 1990.

13. Therefore, the main question which arises for determination and consideration in the present writ petitions is as to what is the effect of the revised Standing Orders for Salal Project, whereby the age of retirement has been changed to 58 years.

14. In Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others, by virtue of the Standing Orders, the age of retirement was fixed at 55 years with effect from May 1954, Prior to the coming into operation of the Standing Orders, there was no age fixed for retirement. It was held that the rule of retirement for the previous employees should be 60 instead of 55 and that the rule of 55 should apply to all employees, who enter service after the relevant Standing Orders came into force. The learned Counsel for the Petitioners has argued that on the ratio laid down by the Hon''ble apex Court, the revised Standing Orders providing for the age of retirement as 58 years would be applicable only to those employees who would join the service under the Corporation after the date such revised Standing Orders came into operation. In so far as the previous employees are concerned, they would be governed by previous age of retirement of 60 years.

15. The ratio laid down in Guest, Keen, Williams Pvt. Ltd. case (supra), was distinguished and not followed by the Hon''ble apex Court in Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others, In the said case, one of the question involved was-whether Standing Orders govern the employees appointed before they are certified under the Industrial Employment (Standing Orders) Act 20 of 1946? It was held that the object of the Act of 1946 is to have uniform Standing Orders providing for the matters enumerated in the Schedule to the Act, that it was not intended that there should be different conditions of services for those who are employed before and those employed after the Scan ling Orders came

into force, and finally, that once the Standing Orders came into force, they bind all those presently in the employment of the concerned establishment as well as those who are appointed thereafter. It was observed in para 6 of the judgment by the Hon''ble apex Court:

The obligation imposed on the employer to have standing orders certified, the duty of the certifying authority to adjudicate upon their fairness and reasonableness, the notice to be given to the union and in its absence to the representatives of the workmen, the right conferred on them to raise objections, the opportunity given to them of being heard before they are certified, the right of appeal and the right to apply for modifications given to workmen individually, the obligation on the employer to have them published in such a manner that they become easily known to the workmen, all these provisions abundantly show that once the standing orders are certified and come into operation, they become binding on the employer and all the workmen presently employed as also those employed thereafter in the establishment conducted by that employer It cannot possibly be that such standing orders would bind only those who are employed after they come into force and not those who were employed previously but are still in employment when they come into force. The right of being heard given to the union or, where there is no union to the representatives of the workmen individually clearly indicate that they were provided for because the standing orders, as they emerge after certification, are intended to be binding on all workmen in the employment of the establishment of the date when they come into force and those employed thereafter Surely, the union or, in its absence, the representatives of workmen, who are given the right to raise objections either to the draft standing orders proposed by the employer or to the fairness and reasonableness of their provisions, could not have been intended to speak for workmen to be employed thereafter and not those whom they presently represent. Besides, if the standing orders were to bind only those who are subsequently employed, the result would be that there would be different conditions of employment for different classes of workmen, one set of conditions for those who are previously employed and another for those employed subsequently, and where they are modified, even several sets of conditions of service depending upon whether a workman was employed before the standing orders are certified or after, whether he was employed before or after a modification is made to any one of them and would bind only a few who are recruited after and not the bulk of them, who though in employment were recruited previously. Such a result could never have been intended by the Legislature, for, that would render the conditions of service of workmen as indefinite and diversified, as before the enactment of the Act. Why does Section 3(3) of the Act require the employer to give particulars of the workmen employed by him at the date of his submission of the draft standing orders unless the object of making him furnish the particulars was to have uniformity of conditions of service and to make the standing orders binding on all those presently employed. This is why the Act also insists among other things that after they are certified they must be made known to all workmen by posting them at or near the entrance through which they pass and in the language known to the majority of them.

16. A similar view was taken in Dunlop India Limited Vs. Their Workmen, and The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen, . The High Court of Andhra Pradesh also in Hyderabad Allwyn Ltd. v. The Additional Industrial Tribunal Hyderabad 1990 Lab IC 72, has held that the certified Standing Orders are binding not only on the employees or workmen who are on the rolls of the establishment on the date when they came into force but also on those who were appointed earlier to the coming into force of the certified Standing Orders. Though the workman was appointed prior to coming into force of the certified Standing Orders, clause governing the matter of superannuation thereof applies to and is binding on him.

17. Thus, the settled law is that certified Standing Orders bind not only the employees/workmen, who are appointed after such Standing Orders have come into force but also the employees/workmen appointed prior to the coming into force of the certified Standing Orders. Therefore, in the present case as well the certified revised Standing Orders for Salal Project would govern and bind the Petitioners. According to these revised Standing Orders the age of superannuation has been fixed at 58 years. The Petitioners, as such, have been rightly retired from service on having attained the age of 58 years.

18. For the foregoing reasons, there are no merits in the present writ petitions. The same are accordingly dismissed, with no orders as to costs.

