

**(1997) 08 MAD CK 0097**

**In the Madras High Court**

**Case No :** Writ Petition No's. 7600, 8698, 9204, 9205 and 9444 of 1997

Karuppaiah S. and others

APPELLANT

Vs

Chennai Dock Labour Board

RESPONDENT

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**Date of Decision :** 30-08-1997

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 19(2), 2, 9A

**Citation :** (1997) 08 MAD CK 0097

**Hon'ble Judges :** P. Sathasivam, J

**Bench :** Single Bench

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## **Judgement**

1. In all these writ petitions the issue involved is one and the same, hence the same may be disposed of by the following common order.

2. For convenience, I am referring the facts in W.P. No. 7600 of 1997 leading to the filing of the writ petition. 17 Mazdoors working in the respondent-Chennai Dock Board have filed the above writ petition to quash the order of the respondent dated December 30, 1996 and another order dated December 12, 1996 proposing to retire the petitioners on July 1, 1997 on completing 58 years of age whereas under the certified Standing Orders of the Board the age of retirement is 60 years. They also prayed for consequential direction directing the respondent Board to continue the petitioners until they attained the age of retirement on July 1, 1999. According to them, the Madras Dock Labour Board was constituted in the year 1954 under the Madras Dock Labour Board Act, 1948 (hereinafter referred to as the Act). The petitioners were all working under the various listed employers. They were either working as Cand F workers or as Stevedore workers otherwise called the General Pool Workers. In the year 1988, two Schemes were framed u/s 4 of the Act. The first Scheme related to the C and F workers called the Madras Unregistered Dock Clearing and Forwarding Workers Regulation of Employment Scheme, 1988. The other Scheme related to Stevedore workers or otherwise called General Pool workers. This was called the Madras Unregistered Dock General Pool Workers Regulation of Employment

Scheme. It is contended that by virtue of the Scheme referred above, their services were taken over by the respondent Board. At the time of take over their age of retirement under the listed employer was 60 years as per the certified Standing Orders framed under the Industrial Employment Standing Orders Act, 1948 (hereinafter referred to as the Standing Orders Act). Rule 18 of the Scheme applicable to C and F workers which provided that the age of retirement shall be 58 years contained a saving clause namely Rules 38 (3) which stated that accrued benefits are protected. By virtue of this, according to the petitioners, the C and F workers are entitled to 60 years of age which was there, when they were working under listed employers. Likewise regarding the Stevedores workers, though Regulation 21 provided the age of retirement was 58 years, there was a similar saving clause that accrued benefits will not be taken away. Therefore, by virtue of this clause, the Stevedore workers were entitled to the benefits of 60 years because that was the age of retirement for the listed workers. It is also contended that even as per clause 19 of the Certified Standing Orders framed for the Madras Dock Labour Board under the Standing Orders Act, 1948 with effect from April 1, 1959 the age for retirement was 60 years. It is also contended that on becoming the employees of the respondent-Board, the petitioners are entitled to the benefit of 60 years as the age of retirement because the certified Standing Orders will prevail over any other service conditions as per the judgment of the Supreme Court reported in U.P. State Electricity Board, v. H. S. Jain . Further, even the two schemes contain saving clause under Rule 38(3) and Rule 41 (3) to the effect that existing rights are protected. Apart from this even under the certified Standing Orders framed by the respondent Board which came into force with effect from April 1, 1959, the age of retirement was 60 years and this age of retirement will prevail over any age of retirement provided for under the two 1988 Schemes. Under the Scheme framed in the year 1956 for registered workers and in the 1967 Scheme framed for the listed workers namely those working in the shore, though the age of retirement was 58 years, there was a provision to the effect that in respect of persons who joined before May 31, 1974 the age of retirement will be 60 years as per the existing practice. All the petitioners have joined before May 31, 1974. When such is the position, the respondent Board by the impugned order decided to retire the petitioners on completing 58 years of age on July 1, 1997 which is illegal, arbitrary and in violation of Articles 14 and 16 of the Constitution of India. In those circumstances, all the petitioners have approached this Court for the relief stated above.

3. The respondent Board has filed a separate counter affidavit in all the writ petitions. For convenience I shall refer the counter affidavit filed in the first writ petition, namely, W.P. No. 7600 of 1997. The case of the respondent as set out in the counter affidavit is briefly stated hereunder :-

All the petitioners are due to retire on account of their reaching the age of superannuation of 58 years on and from July 1, 1977. The age of retirement is fixed by virtue of statutory Schemes made by the Central Government by virtue

of powers vested in it u/s 4 of the Dock Workers (Regulation of Employment) Act, 1948. Clause 18(1)(b) of the Madras Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Act, 1988 and clause 21 of the Madras Unregistered Dock General Pool Workers (Regulation of Employment) Scheme, 1988 fix the age of superannuation of the respective dock workers of the respective statutory Schemes. Such Schemes having been placed before the Houses of Parliament and published through notification in the Gazette of India have statutory force binding on all. Unless the validity and legality of these provisions are challenged, the present writ petitions are not maintainable. Likewise the petitioners ought to have impleaded the Government of India and in the absence of Government of India as one of the respondents, the writ petitions are liable to be dismissed. It is contended that at present the respondent Dock Labour Board administers the following four statutory schemes framed by the Government of India u/s 4 of the Act :-

(i) Madras Dock Workers (Regulation of Employment) Scheme, 1956 - Registered Scheme;

(ii) Madras Unregistered Dock Workers (Regulation of Employment) Scheme. 1957 - Listed Scheme,

(iii) Madras Unregistered Dock General Pool Workers (Regulation of Employment) Scheme, 1988 - G.P. Scheme;

(iv) Madras Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1988-C and F Scheme.

The categories of dock workers under the four Schemes are different and distinct and nature of duties performed by them are different and distinct.

4. Originally the respondent was administering only the first two Schemes. The Madras Clearing and Forwarding Agents entered into a settlement with the representative unions of their Labour and brought into existence a private scheme called Madras Port Clearing and Forwarding Workers (Regulation of Employment) Scheme to be administered by their own administrative committee. By and Large the two private schemes in a way followed the pattern of the then two statutory schemes administered by the Madras Dock Labour Board. The two unions, namely, Madras Port and Dock Workers Congress (INTUC) and Madras Harbour Workers Union (AITUC) indulged in direct action with regard to the private scheme. Consequent upon this the Government of India when a settlement for wage revision was entered into on April 11, 1984 agreed in principle to discuss about the modalities for bringing the two private schemes under the statutory fold of Dock Workers (Regulation of Employment) Act. After discussions and deliberations, the Government of India instructed the respondent to frame draft schemes for each of the privately operated schemes. The draft schemes were prepared and placed before the Madras Dock Labour Board on August 4, 1986 in which the representatives of the Madras Port and Dock Workers Congress and Madras Harbour Workers Unions representing the

concerned categories of workers also participated. The two draft schemes are the Madras Unregistered Dock Clearing and Forwarding workers (Regulation of employment) Scheme, 1986 and the Madras Unregistered Dock General Pool Workers (Regulations of Employment) Scheme, 1986. In the C and F draft scheme the age of superannuation of dock workers was fixed at 58 years. At the said meeting no objection as to the fixation of age of retirement of dock workers at 58 years was raised specifically. Thus the draft schemes were sent to the Government for further action. Based on the approval to the draft schemes by the Madras Dock Labour Board at the meeting held on August 4, 1986, the Central Government by virtue of powers vested in it u/s 4 framed a draft scheme for C and F workers and G.P. notification dated October 12, 1987 and made the draft schemes available to the public on December 16, 1987 and December 4, 1987 respectively. Even though the Madras Harbour Workers Union gave strike notice questioning fixation of age of superannuation at 58 years, but ultimately at the meeting held on May 28, 1988 agreed to the fixation of age of superannuation at 58 years and thereby gave up the issues raised by it in its strike notice. It is also contended that in the light of the special statutory schemes having overriding effect over the certified Standing Orders, the petitioners cannot place reliance upon the Standing Orders framed by the Board as early as on April 1, 1959 nor on the Standing Orders obtained under the erstwhile employers, viz., the Clearing and Forwarding Agents and Madras Stevedores Association. The two statutory Schemes framed by the Central Government prevail over the Standing Orders being special statutory provisions dealing solely with service conditions of dock workers. Therefore, the special law for dock workers will prevail over the Standing Orders. As already stated, prior to August 1, 1988, the petitioners did not belong to any statutory scheme or pool. They were under private employers. Apart from this, the petitioners have been sleeping over their alleged right for 9 long years and even after the issue of notice dated December 31, 1996. Absolutely there is no basis for the claim of the petitioners. Consequently the respondent prayed for dismissal of all the writ petitions.

5. In the light of the above pleadings, I have heard Mr. N. G. R. Prasad, learned counsel for the petitioner in W.P. No. 7600 of 1997. Mr. R. Subramaniam, learned counsel for the petitioner in the other writ petitions and Mr. Venkatarman, learned counsel for the respondent Board.

6. Learned counsel for the petitioners submitted that the respondent Board cannot retire the petitioners on completion of 58 years since under the certified Standing Orders, the age of retirement was 60 years. This will prevail over in age of retirement provided under two schemes according to the judgment of the Supreme Court reported in U.P. State Electricity Board, v. H. S. Jain . They also contended that even though Rules 18 and 21 of the respective schemes provided for 58 years of age, Rule 38(3) and Rule 41 (3) of the schemes protect the existing rights hence they are entitled to the benefits of 60 age of retirement. Finally, they also submitted that two earlier schemes framed by the respondent

Board one in the year 1956 for registered workers and another in the year 1967 for listed workers though the age for retirement was 58 years, there was a provision in both the schemes to the effect that where the existing age of retirement for any category of the workers is 60 years that practice should continue for the present incumbents as on May 31, 1974. Since the petitioners who have joined the listed employer well before May 31, 1974, they are also entitled to similar treatment and the action of the Board in denying the benefit of 60 years of age of retirement to the petitioners is illegal, discriminatory and in violation of Articles 14 and 16 of the Constitution of India.

7. On the other hand, the learned counsel for the respondent Board submitted that after notification of the scheme for C and F workers i.e. Madras Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1988 and for General Pool Workers i.e., Madras Unregistered General Pool Workers (Regulation of Employment) Scheme, 1983, all the petitioners are governed by the above said schemes only. Further, before framing the 1988 schemes, the representatives of the petitioners' Unions were consulted and after taking into consideration of all aspects including the age of retirement, the said two schemes have been notified within it is specifically mention that the age of retirement is 58. After the 1988 scheme the Standing Orders of erstwhile employers did not bind the respondent. He also submitted that the Dock Workers (Regulation of Employment) Act and the schemes framed thereunder have overriding effect over the Industrial Employment (Standing Orders) Act which has general application to all the industrial establishments. Therefore, according to him, the reference to the decision reported in U.P. State Electricity Board, v. H. S. Jain is misconceived and not applicable to the facts of the present batch cases. Further, as per the new schemes, the continuity of service counts only for the purpose of Provident Fund and Gratuity. Finally he submitted that the petitioners having slept over for 9 long years, it is not open to them to agitate the same before this Court.

8. I have carefully considered the rival sub-missions.

9. The respondent is a statutory body constituted under the Dock Workers (Regulation of Employment) Act (Act 9 of 1948) (hereinafter referred to as "the Act"). It is a tripartite statutory body consisting of a Chairman and such member or other members as may be appointed by the Government provided that the Board shall include an equal number of members representing (i) the Government (ii) the Dock Workers and (iii) the employers of dock workers and shipping companies. The Chairman of the Board is appointed to represent the Government and nominated in this behalf by the Central Government. u/s 4 of the Act, the Central Government alone framed statutory schemes which the Dock Labour Board concerned is to administer. The Dock Labour Board regulates the employment of dock workers by securing appropriate wages and also terms and conditions of service to the dock workers from the stevedoring employers who are registered/listed under the statutory schemes. The dock workers are kept in

pools and rotated in the matter of providing employment to diem depending upon the requisitions made by the stevedoring employers. Those employers are prohibited from engaging any dock labour outside the dock workers covered by the schemes. For administering the schemes and for employing the dock labour, the stevedores are under the statutory schemes liable to pay wages payable to dock workers, the levies and administrative charge to the Dock Labour Board.

10. It is seen from the counter affidavit that at present the Dock Labour Board administers the following four statutory schemes framed by the Government of India u/s 4 of the Act :-

"i) Madras Dock Workers (Regulation of Employment) Scheme, 1956 - this is popularly called as "Registered Scheme".

ii) Madras Unregistered Dock Workers (Regulation of Employment) Scheme, 1957 - this is popularly known as "Listed Scheme."

(iii) Madras Unregistered Dock General Pool Workers (Regulation of Employment) Scheme, 1988 - this is popularly known as "G.P. Scheme."

iv) Madras Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1988 - this is popularly known as "C and F Scheme."

The categories of dock workers under the 4 schemes are different and distinct and the nature of duties performed by them are different and distinct. By virtue of the scheme, the petitioners' services were taken over by the respondent Board. At the time of take over the age of retirement under the listed employer was 60 years as per the certified Standing Orders framed under the Industrial Employment Standing Orders 15 Act, 1948. Rule 18 of the Scheme applicable to C and F workers which provided that the age of retirement shall be 58 years contained a saving clause namely Rule 38(3) which stated that accrued benefits are protected. By virtue of this, it is the specific contention of the petitioners that C and F workers are entitled to 60 years of age which was there, when they were working under the listed employers. Likewise the Stevedore workers, though Regulation 21 provided the age of retirement was 58 years, there was a similar saving Clause that accrued benefits will not be taken away. Therefore, by virtue of this clause, the Stevedore workers were entitled to the benefits of 60 years because that was the age of retirement for the listed workers. In rule 18-A of the Madras Dock Workers (Regulation to Employment) Scheme, 1956 which was framed u/s 4(1) of the Act, the age of retirement is fixed as 58 years. However, the proviso says that the existing age of retirement for any category of workers is 60 years and the same shall be continued. Rule 18-A reads as follows :-

"18-A Age of retirement : The age of retirement of any worker under the scheme shall be 58 years. Provided that where the existing age of retirement for any category of workers is 60 years that practice shall continue for the present incumbents in that category (date of issue of Government order May 31, 1974)."

In view of the proviso to the said rule the existing age of retirement for any

category of workers is 60 years and the same shall continue for the present incumbent in that category irrespective of the date of retirement fixed as 58 in the first clause of the said rule. Likewise in Rule 9-C of the Madras Unregistered Dock Workers (Regulation of Employment) Scheme, 1957 which is also framed u/s 4(1) of the Act, the age of retirement of any workers under the scheme is fixed as 58. Here also the proviso safeguards the existing workers upto 60 years. Rule 9-C reads as follows :-

"9-C Age of retirement-The age of retirement of any worker under the Scheme shall be 58 years (for those appointed after May 31, 1974).

Provided that where the existing age of retirement, for any category of workers is 60 years, that practice shall continue for the present incumbents in that category."

11. The petitioners were initially working under the listed employers. At that time they were governed under the certified Standing Orders framed under the Standing Orders Act, 1948. Only in the certified Standing Orders it is mentioned that the age of retirement was 60 years. Thereafter all the petitioners were taken over by the respondent Board. In such a circumstance it is to be seen whether the petitioners are entitled to the benefits of 60 years as the age for retirement in view of the certified Standing Orders or 58 years as per the statutory schemes framed in the year 1988. The retirement age of 60 years was originally fixed as per the Standing Orders framed under the Standing Orders Act. Inasmuch as the petitioners were taken over by the Board, the age of retirement should be the same as found in the Standing Orders. In other words, according to Mr. Prasad, the Standing Orders will prevail over any other service conditions as per the judgment of the Supreme Court reported in U. P. State Electricity Board v. Hari Shankar Jain (supra). In the 3 Judge Bench decision a private electricity undertaking, run as partnership firm, was taken over by the U.P. Electricity Board. The private firm had certified Standing Orders, but it did not provide for age of superannuation. On taking over, the Electricity Board passed a regulation providing for superannuation only. Two of the erstwhile employees of the private firm challenged their retirement successfully before the High Court. Thereafter the U.P. State Electricity Board filed appeal before the Supreme Court. Their Lordships after considering the provisions in the Standing Orders based under the Industrial Establishment Act as well as Regulations made by the Electricity Board have observed thus at p. 408 :-

"The Industrial Establishment (Standing Orders) Act is a special law in regard to the matters enumerated in the Schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect unless such regulations are either notified by the Government under Sec. 13B or certified by the Certifying Officer under Sec. 5 of the Industrial Establishments to (Standing Orders) Act. In regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect of which no regulations have been made by the Board, the Industrial Establishment

(Standing Orders) Act shall continue to apply regard to age of superannuation having duly notified by the Government, the regulation shall have effect notwithstanding the fact that it is a matter which could be the subject matter of standing orders under the Industrial Establishments Standing Orders Act. The respondents were, therefore, properly retired when they attained the age of 58 years."

12. In Life Insurance Corporation of India Vs. D.J. Bahadur and Others, Life Insurance Corporation issued notices to its workmen u/s 19(2) and Section 9-A of the Industrial Disputes Act. At the same time the Central Government issued a notice u/s 49 of the L.I.C. Act introducing a new Regulation in the place of the old Regulation 58. Since these steps were taken by the L.I.C. to stop payment of bonus under the settlements, the workmen successfully challenged them, by means of a writ petition in the Lucknow Bench of the Allahabad High Court. The Allahabad High Court passed order in favour of the workmen, hence the L.I.C. has preferred the above appeal before the Supreme Court. In that case, the workmen contended that the proceedings under the L.I.C. Act could not prevail against the continued flow of bonus benefits under the Industrial Disputes Act. The High Court (Lucknow Bench) struck down the appellant's actions as of no consequence and void and sustained the claim for bonus based on the settlements of 1974. The L.I.C. has filed the appeal before the Supreme Court assailing the findings of the High Court. While considering the above aspect, Their Lordships have observed thus :-

"I am satisfied in this conclusion by citations but I content myself with a recent case where this Court tackling a closely allied question came to the identical conclusion, U. P. State Electricity Board v. H. S. Jain (supra). The problem that arose there was as to whether the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, prevailed as against Regulations, regarding the age of superannuation made by the Electricity Board under the specific power vested by Sec. 79(c) of the Electricity (Supply) Act, 1948 which was contended to be a special law as against the Industrial Employment (Standing Orders) Act. This Court (a Bench of three Judges) speaking through Chinnappa Reddy, J. Observed (supra) at 365-66 :

The maxim *Generalia Specialibus non derogant* is quite well known. The rule flowing from the maxim has been explained in *Mary Seward v. The Owner of the Veera Cruz*. 1884 10 A.C. 50 as follows :

"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so."

In *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar*



Pradesh and Others, this Court observed .

"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by Lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.

We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely, with conditions of service enumerated in the Schedule of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hard won and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi judicial determination, by the general, incidental provision like Sec. 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand protanto repealed by Sec. 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Sec. 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies.

I respectfully agree and supply the reasoning and the conclusion to the near identical situation before me and hold that the I.D. Act relates specially and specifically to industrial disputes between workmen and employers and the L.I.C. Act, like the Electricity (Supply) Act, 1948, is a general statute which is silent on workmen's disputes, even though it may be a special legislation regulating the take over of private insurance business."

It is further held thus :-

"To avoid absurdity and injustice by judicial servitude to interpretative literality is a function of the Court and this leaves with me no option but to hold that the I.D. Act holds where disputes erupt and the L.I.C. Act guides where other matters are concerned. In the field of statutory interpretation there are no inflexible formulae or foolproof mechanisms. The sense and sensibility, the setting and the scheme, the perspective and the purpose these help the Judge navigate towards the harbour of true intendment and meaning. The legal dynamics of social justice also guide the Court in statutes of the types we are interpreting. These plural considerations lead me to the conclusion that the I.D. Act is a special statute when industrial disputes, awards and settlements are the topic of controversy, as here. There may be other matters where the L.I.C. Act vis-a-vis the other statutes will be a special law. I am not concerned with such hypothetical situations now."

"Whatever be the powers of regulations of conditions of service, including

payment or nonpayment of bonus enjoyed by the employees of the Corporation under the L.I.C. Act, subject to directives of the Central Government, they stem from a general Act and cannot supplant, subvert or substitute the special legislation which specifically deals with industrial disputes between workmen and their employers. In this view, other questions which have been argued at length and considered by my learned brother, do not demand my discussion. The High Court was right in its conclusion and I affirm its judgment. I, therefore, direct the Corporation to fulfil its obligations in terms of the 1974 settlements and start negotiations, like a model employer, for a fair settlement of the conditions of service between itself and its employees having realistic and equitable regard to the prevailing conditions of life, principles of industrial justice and the directives underlying Part IV of the Constitution."

13. In *Western India Match Company Ltd. Vs. Workmen*, two Judges Bench of the Supreme Court have held in the following manner at p 407 :-

"It plainly follows from Sections 4, 10 and 13(2) that the inconsistent part of the special agreement cannot prevail over the Standing Order. As long as the Standing Order is in force, it is binding on the company as well as the workmen. To uphold the special agreement would mean giving a go-by to the Act's principle of three party participation in the settlement of terms of employment. So we are of opinion that the inconsistent part of the special agreement is ineffective and unforeseeable."

14. In *S.P. Dubey Vs. M.P.S.R.T. Corpn. and Another*, the following conclusion of the Supreme Court has been pressed into service.

"The appellant was in service of the company from 1947 to August 30, 1955. Admittedly, the age of superannuation of the company-employees was 60 years. The Government of Madhya Pradesh took over the company with effect from August 31, 1955 by the notification of the same date. The notification specifically stated that the existing staff of the company would not be adversely affected with regard to their conditions of service. It is no doubt correct that on August 31, 1955 rules were operating in respect of the State Government employees according to which the age of superannuation was 58 years but the persons who were serving with the company were taken into Government service with a specific assurance that their conditions of service were not to be adversely affected. When the State Government takes over a private company and gives an assurance of the type it is but fair that the State Government should honour the same. Thus, the State service rules which fixed the age of superannuation at 58 years could not be made applicable to the appellant and other employees of the taken over company. We, therefore, do not agree with the reasoning of the High Court."

15. On analysis of all the above decisions, particularly the decisions that arose under the L.I.C. Act and the Electricity Supply Act the view of the Apex Court is that Standing Orders applicable to workmen prevail over the orders issued under

the above mentioned Act.

16. On behalf of the respondent Board a decision of Palaniswamy, J. reported in General Secretary Madras Harbour Workers" Union v. The Industrial Tribunal (Madras) 1972 I LLJ 8 is pressed into service. In that case the General Secretary of the Madras Harbour Workers" Union has filed a Writ petition before this Court to quash the award of the Industrial Tribunal in I.D. 51 of 1968. In that case, the dispute is mainly concerned with the stevedore workers employed by the Madras Dock Labour Board. The service conditions of the stevedore workers are governed by the Madras Dock Workers (Regulation of Employment) Scheme, 1956 which has been made by the Central Government in exercise of the powers conferred on them by Section 4(1) of the Dock Workers (Regulation of Employment) Act, 1948 (Central Act 9 of 1948). The learned Judge after considering the Standing Orders which were framed under the Industrial Employment (Standing Orders) Act, 1946 came to the conclusion that Standing Order is not a statutory provision though it is in compliance with the Standing Orders Act. The following conclusion of the learned Judge at P3 is extracted :

"The Standing Orders which are required to be framed under the Industrial Employment (Standing Orders) Act, 1946 are no more than terms of contract between the employer and the employees though it has the approval of the certifying officer under that Act. That Act has been enacted to require all employers in industrial establishments formally to define conditions of employment under the Act. The Standing Orders which are required to be framed under that Act have no statutory force. Any employee may raise an industrial dispute regarding a Standing Order and it is not open to the employer to say that such a dispute cannot be raised because the Standing Order has been framed by virtue of the power given to him under the statute. The Supreme Court in Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another, had to consider the question whether a Tribunal has got jurisdiction to deal with a dispute arising out of a Standing Order. Answering the question in the affirmative, it is pointed out that there is no warrant for holding that merely because the Standing Orders Act is a self contained statute with regard to the matters contained therein, the jurisdiction of the Industrial Tribunal under the Industrial Disputes Act to adjudicate upon the matter covered by the Standing Order has been in any way abridged or taken away. It is further pointed out that it is always open to the workmen to raise an industrial dispute as defined in Sec. 2(k) of the Industrial Disputes Act with regard to a Standing Order. The principle underlying this decision is that Standing Order is not a statutory provision, though it is framed in compliance with the provisions of the Standing Orders. Act."

17. Even though the petitioners have very much relied on the decisions mentioned above, the difficulties expressed by the petitioners as well as other connected workmen, the respondent in consultation with the Union leaders and with the approval of the Union of India framed two Schemes in the year 1988,

namely Madras Unregistered Dock General Pool Workers (Regulation of Employment) Scheme, 1988 and Madras Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1988 as per Section 4(1) of the Dock Workers (Regulation of Employment) Act, 1948. The factual position in these cases certainly differ from those cases in the reported decisions. The respondent Dock Labour Board regulates the employment of dock workers by securing appropriate wages and also terms and conditions of service to the dock workers from the stevedoring employers who are registered/listed under the statutory schemes. The dock workers are kept in pools and rotated in the matter of providing employment to them depending upon requisitions made by the stevedoring employers. The Stevedoring employers are prohibited from engaging any dock labour outside the dock workers covered by the schemes. For administering the schemes and for employing the dock labour, the stevedores are under the statutory schemes liable to pay wages payable to dock workers, the levies and administrative charge to the Dock Labour Board. In earlier days the respondent was administering only two schemes, namely, "registered scheme" and "listed scheme". The respondents explained in their counter affidavit the functioning of the private scheme and the dissatisfaction expressed by workmen. The Trade Union representing the Labour under the two private schemes agitated for the private schemes being brought under the statutory fold of Dock Workers (Regulation of Employment) Act for being administered by the respondent Board. As requested by the Unions, the Government of India when a settlement for wage revision was entered into on April 11, 1984 agreed in principle to discuss about the modalities for bringing the two private schemes under the statutory fold of Dock Workers (Regulation of Employment) Act. They also explained the discussions and deliberations between the Unions and the respondent Board. Thereafter, the Government of India instructed the respondent to frame draft scheme for each of the privately operated schemes. When the draft schemes were placed before the respondent Board on August 4, 1986 the representatives of the Madras Port and Dock Workers Congress and the Madras Harbour Workers Unions representing the concerned categories of workers also participated. The said two draft schemes are (1) The Madras Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1986 and (2) The Madras Unregistered Dock General Pool Workers Regulation of Employment) Scheme, 1986. In both the said draft schemes, the age of retirement is mentioned as 58 years. The respondent Board also approved the above draft schemes and also resolved to forward the draft schemes to the Department of Surface Transport, Ministry of Transport, Government of India, New Delhi for notifying them in the Union of India Gazette. It is specifically stated in the counter affidavit that at the said meeting, no objection was raised as to the fixation of age of retirement of dock workers at 58 years was raised specifically. As per the provisions of the Act, objections were called for with regard to the two draft schemes. Only at that stage some of the unions including the Madras Harbour Workers Union objected to the age of superannuation at 58 years, Finally, after considering all the aspects, the Government of India, Ministry of

Surf Transport considered those objections and the schemes were finally notified on April 12, 1988 statutorily as required u/s 4 of the Act. It is also seen that after the afore-said two schemes were finally notified the number of workmen to be absorbed in the respective pool of C and F workers and General Pool Workers under the respective schemes was subject matter of discussion and deliberations of the Madras Dock Labour Board at its meeting held on May 28, 1988 in which the Workers representatives from Marads Port and Dock Workers Congress and Madras Harbour workers Union participated. While absorbing C and F workers from the private pool and also the G.P. Workers from the private pool into the pools under the statutory schemes of C and F workers and G.P workers, the workers who had crossed the age of 58 years were not absorbed. In counter affidavit, they have furnished that there were 27 such mazdoors and four masters of C and F private pool who could not be absorbed on account of their crossing the age of 58 years that they were not absorbed. Similarly there were three private general pool workers who were not absorbed on account of their crossing the age of 58 years. It is pertinent to note that the specific statement in the counter affidavit that before the meeting of the Board on May 28, 1988, on April 29, 1988 the Madras Harbour Workers Union gave strike notice raising several issues in regard to the implementation of the statutory schemes dated April 12, 1988 questioning fixation of age of superannuation at 58 years but ultimately at the meeting held on May 28, 1988 agreed to the fixation of age of superannuation at 58 years as stated above and thereby gave the issues raised by it in its strike notice. The statutory schemes as notified on April 12, 1988 were brought into force from August 1, 1988 by the Central Government. It is also seen that in the Board igniting held on May 28, 1988, apart from Chairman, and Deputy Chairman, Mr. M. Kalyanasundaram, Mr. G. Muralidharan, Representatives of Madras Harbour Workers Union Mr. E. Narayanasamy, Mr. Iniyon Samapat, representatives of Madras Port and Dock Workers Congress, Mr. A. Kamalasekaran, Mr. M. S. Arun, representatives of Madras Stevedores Association and Mr. V. R. Rajamani, representative of Madras Steamer Agents" Association, participated. In the said special Board meeting the following resolution was passed :-

"Resolved to approve of the proposal to enforce the implementation of the said two Schemes with effect from June 1, 1988 and to inform the Ministry of Surface Transport, Government of India for issue of notification in the extraordinary Gazete of India."

Thereafter orders of appointment were issued setting out the terms of appointment under Madras Dock Labour Board. The petitioners have agreed to accept the terms and conditions of the service as required under the letter of appointment.

One of the terms is age of retirement will be 58 years and another clause is the service rendered as permanent worker under the Clearing and Forwarding pool will count only for his retirement benefits and for no other purpose. Similar

clause is provided in the erstwhile Private G.P. Workers also. I am herewith reproducing the terms of appointment :-

"Madras Dock Labour Board

Ref. No. 17/86-A3

Rajaji Salai Madras-600 001

Date : May 31, 1988

ORDER

Sub : Listing of workers under the Madras Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1988-Issue of Order-Reg.

In pursuance of Government notification No. LB. 13013/15/87-L-IV (i) dated April 12, 1988 notifying the Madras Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1988, Shri S. Karupiah is informed that his name is provisionally listed as Mazdoor under the above scheme subject to :

1. (a) his being found medically fit by the Medical Officer of the Madras Dock Labour Board.

(b) verification of his age (with available records viz. School certificate/birth certificate as produced by him earlier; in case where no age proof is available, on the basis of age assessed by the Medical Officer of Madras Dock Labour Board which will be final and binding on him). His age of retirement will be 58 years :

(c) verification of his character and antecedents by the Government authorities concerned.

2. x x x x

3. x x x x

4. x x x x

5. x x x x

6. x x x x

7. His provisional listing will commence from August 1, 1988. The number assigned to him will be 6044 and his weekly off will be Saturday. He should report for III shift on August 1, 1988

8. He will be governed by the Standing Orders and other Rules and Regulations that are in force in M.D.L.B. and that may come into force from time to time as framed by the Dock Labour Board and applicable to the Registered Listed workers of the Madras Dock Labour Board to the extent they are applicable to him under the above stated Scheme.

9. His service rendered as a permanent worker under the Clearing and Forwarding Pool will count only for his retirement benefits and for no other purpose. He will be entitled to retirement benefits such as Contributory Provident Fund and Gratuity.

He should state in writing whether he is agreeable to the above conditions for listing him as a worker under the above Scheme on or before August 7, 1988.

sd/- x x x 31-5-1988 Deputy Chairman, Madras Dock Labour Board.

To :- Shri S. Karupppiah, No. 6044 x x x L.T.I. of Karupppiah

Clause 1(b) specifically says that "age of retirement will be 58 years ". In all the terms of appointment, in token of acceptance the person concerned has either signed or affixed his thumb impression. Apart from this, each individual concerned has given a letter to the respondent Board in the following manner :-

The above terms of appointment and the letter given by the person concerned clearly show that even though as per the earlier scheme when they were working under the private employers, their age of retirement was 60 years, after the 1988 scheme all of them were put on notice with regard to the age of retirement, namely, 58 years and they have approved and signed the same in the terms of appointment as well as by way of a separate letter to the respondent. I have already explained that the two schemes were drafted only after consultation with the various Union leaders and their grievances were heard by the respondent Board before finalising the 1988 scheme.

18. Apart from the above categorical factual position, it is seen that when the appointment orders were made on May 31, 1988, the statutory schemes for C and F workers and for G.P. workers were not there. The schemes which were framed by the Central Government u/s 4(1) of the Act brought into force with effect from August 1, 1988. The said schemes were laid before the House of Parliament u/s 8-(A) of the Act before they were notified.

19. The Industrial Employment (Standing Orders) Act is of the year 1946 and The Dock Workers (Regulation of Employment) Act is of the year 1948.

The above referred two statutory schemes framed by the Central Government deal with terms and conditions of service and conditions of dock workers making special statutory provisions. I have already explained how these two statutory schemes came to be formulated, approved and accepted by the persons concerned, respondent Board, Parliament and finally duly notified in the Gazette. As rightly contended by the learned counsel for the respondent, the Standing Orders framed under the Industrial Employment Act have general application to all the industrial establishments. The, Dock Workers (Regulation of Employment) Act and the statutory schemes framed thereunder specially regulate the conditions of service of the dock workers. In such circumstances, I am of the view that the Dock Workers (Regulation of Employment) Act and the statutory schemes framed thereunder have overriding effect over the Standing Orders

framed under the Industrial Employment (Standing Orders) Act. Even in the U.P. State Electricity Board, v. H. S. Jain , Their Lordships have given preference to standing orders framed under the Industrial Establishments (Standing Orders) Act than the Regulation framed under the Electricity Board, since those matters (Regulations made by Electricity Board) are of no effect unless such regulations are notified by the Government u/s 13-B or certified by the certifying officer u/s 5 of the Industrial Establishments (Standing Orders) Act. In our case, I have already found that the respondent only after consultation with the various Unions drafted two statutory schemes for the benefit of the persons concerned and after hearing the objections, placed the matter before the Parliament and thereafter, duly notified in the Gazette. In such a circumstance, I am of the view that the statutory schemes of the year 1988 alone will prevail. For the very same reason, the decision, namely Life Insurance Corporation of India Vs. D.J. Bahadur and Others, is also distinguishable. In S.P. Dubey Vs. M.P.S.R.T. Corpn. and Another, in view of the specific factual position, namely, while the Government of Madhya Pradesh taking over a private company, the age of superannuation of the employees of the company was 60 years. The notification specifically stated that the existing staff of the company would not be adversely affected with regard to their conditions of service. As per the Rules which were operating in respect of State Government employees, the age of superannuation was 58 years, but the persons who were serving with the company were taken into Government service with a specific assurance that their conditions of service were not to be adversely affected. Only in such a circumstance, Their Lordships have observed as follows :-

".. When the State Government takes over a private company and gives an assurance of the type it is but fair that the State Government should honour the same."

Here I have already explained that while the petitioners were inducted under the 1988 statutory schemes, all the petitioners were informed that their "age of retirement is 58 years" and also informed that their services rendered as permanent workers under the Clearing and Forwarding pool will count only for their retirement benefits and for no other purpose. It is also mentioned that they will be entitled to retirement benefits such as Contributory Provident Fund and Gratuity. The records produced as well as the documents included in the typed set of papers by the respondent Board show that the petitioners have given their consents and in token of the same they have signed/put their thumb impressions apart from submitting separate letters agreeing to all conditions prescribed in the two schemes. Admittedly, none of the petitioners nor the Trade Union leaders have challenged neither the provisions of 1988 statutory schemes or the terms of appointment order at the time of notification of the scheme (both the schemes) were published in the Gazette of India extraordinary - Part II - Section 3 sub section (ii) dated July 29, 1988. It is also brought to my notice that after coming into force of the statutory schemes, 143 persons belonging to the two statutory schemes have been retired on their reaching the age of superannuation of 58 years from August 1, 1988 onwards.



20. Under these circumstances, I am unable to accept the contentions of the learned counsel for the petitioners, consequently all the writ petitions fail and are accordingly dismissed. However, there will be no order as to costs.