
(2001) 04 MAD CK 0012
In the Madras High Court
Case No : W.A. No. 1459 of 1997

Karuppiyah S. and Others

APPELLANT

Vs

Chennai Dock Labour Board

RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Citation : (2001) 2 LLJ 715

Hon'ble Judges : R. Jayasimha Babu, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for Row and Reddy, for the Appellant; G. Venkataraman, for Aiyar and Dolia, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—The Madras Unregistered Dock General Pool Workers Scheme, 1988 as also the Madras Unregistered; Dock

Clearing and Forwarding Workers" Scheme, 1998 both of which are framed u/s 4(1) of the Dock Workers (Regulation of Employment) Act, fixes

the age of retirement of those governed by the scheme as 58 years. It is so provided by Clause 21 and Clause 18(1)(b) of the respective schemes.

The appellant workmen who are governed by those schemes accepted the offer made by the Dock Labour Board to list their names under the

schemes, which offer contained an express stipulation that the age of retirement will be 58 years.

2. They, however, approached this Court nine years after the notification of the scheme when their retirement on attaining the age of 58 years was

intimated to them, challenging the employer's right to retire them at that age. They contend that by reason of Clauses 41(3) and 38(3) respectively

of the two schemes which, inter alia, provide that nothing in those two clauses will apply in respect of any right accrued during the time they were

workers under the private employer - the age of retirement under their previous employers as set out in the Standing Orders by which they had

been governed while they were in private employment being 60 years, their age of retirement was 60 years. They also contend that under the

Standing Order framed by the Dock Labour Board in 1959, the age of retirement is mentioned as 60. It is their case that the Standing Orders

prevail over the statutory schemes and therefore they are entitled to serve till they attain the age of 60 years.

3. The two schemes had been placed before the Parliament before being notified as required under the provisions of Dock Workers (Regulation of

Employment) Act. That Act provides for notification of schemes which are of statutory character by the Central Government to regulate the

conditions of employment of Dock Workers. It also provides for constitution of Dock Labour Board on which representatives of Dock workers,

the Government, the Employers of Dock workers as also shipping companies serve as members. The Chairman is the nominee of the Central

Government. The scheme formulated is required to be placed before the Parliament which has been done. The two schemes are clearly statutory

schemes. The schemes were formulated in consultation with the workers and their unions in 1986. Prior to this notification Harbour Employees

Union had objected to the prescription of age of retirement as 58 years, but after discussion agreed to accept that age as the age of retirement. It

has been stated in the counter affidavit filed for the Dock Labour Board that the scheme had been approved at a meeting of the Board on May 28,

1988 at which the representatives of the Unions participated. At that meeting it was resolved to enforce the implementation of the two schemes

and to request the Government of India to notify the schemes. It is only thereafter the schemes were notified and came into effect from August 1,

1988.

4. The Dock Labour Board administers two other schemes. The Madras Dock Workers (Regulation of Employment) Scheme, 1956 and Madras

Unregistered Dock Workers (Regulation of Employment) Scheme, 1957. Under these two schemes the age of retirement is 58 years, the only

exception being for the employees who were in employment as on May 31, 1974 for whom the age of retirement is 60 years. The prescription of

the age of retirement in all these schemes have been made notwithstanding the fact that in a Standing Order notified in 1959 the age of retirement

had been mentioned as 60 years.

5. It is undisputed that the workmen governed by these schemes have been dealt with strictly in accordance with the schemes and the age of

retirement as specified in the scheme is the age of retirement by which the employees have been asked to retire.

6. It is the case of the appellant that the Standing Orders prevail over any other scheme, rule or regulations. Strong reliance is placed by the

appellant on the case of U.P. State Electricity Board v. Harishankar . The Court therein held that the Standing Orders Act was a special Act vis-a-

vis the Electricity Act and that Standing Orders Act would override Section 79(c) of the Electricity Supply Act as Section 79(c) was only an

incidental provision in the enactment relating to electricity, while the Standing Orders Act is concerned with the terms of the employment of

workmen in industry. Counsel also referred to a judgment of the Full Bench of this Court in the case of S. Bagianathan and Others Vs. Secretary

to Government of Tamilnadu, Rural Development and Local Administration Department and Others, wherein the Court held that the Industrial

Employment (Standing Orders) Act would prevail over the Tamil Nadu District Municipalities Act and Rules in their applicability to the Municipal

undertakings.

7. Counsel for the respondent Board invited our attention to the decision of the Apex Court in the case of Rajasthan State Road Transport

Corporation and Another Vs. Krishna Kant and Others, : wherein it was held that the Standing Orders certified under the Industrial Employment

(Standing Orders) Act do not have statutory force, and to the decision of a learned single Judge of this Court in the case of General Secretary,

Madras Harbour Workers' Union v. Industrial Tribunal 1972 1 LLJ 8 wherein it was held that the Tribunal has no power to amend or alter the

statutory schemes framed under the Madras Dock Workers (Regulation of Employment) Act, 1948, as those schemes have statutory force.

8. Reliance placed by the appellants on the age of retirement in the Standing

Order which applied to them while they were in private employment, has no relevance as those Standing Orders ceased to be applicable to them when they agreed to come under the schemes. The age mentioned in that Standing Order is not a matter which falls within the ambit of clause in the schemes saving accrued rights. All the workmen governed by all the four schemes governed by the Board uniformly have to retire at the age of 58. The workmen governed by the schemes which had been framed earlier and which are applicable to persons who fall in a different category also contained a provision for retiring those who were in employment with the Board as on May 31, 1974 at the age of 60 years. Those two schemes are not applicable to the appellants. Admittedly they were also not in the employment of the Dock Labour Board in 1974.

9. So far as the mention of age of 60 in the Standing Order of 1959 is concerned, the statutory scheme framed by the Central Government under the special enactment governing the Dock Workers, being a special statutory scheme concerning the terms of employment of workers employed in the Docks, the age of retirement mentioned in those two schemes prevail over the prescription of the age in the Standing Order. The decision of the Apex Court in the case of UP Electricity Board (supra) rested on the ground that the Industrial Employment (Standing Orders) Act is special enactment vis-a-vis Electricity Supply Act. That, however, is not the position here as the statutory scheme framed under the Dock Workers (Regulation of Employment) Act are to be regarded as special law vis-a-vis Industrial Employment (Standing Orders) Act. The later enactment is of general character applicable to all employees and "workmen" employed in all industries governed by the Act while the Dock Workers (Regulation of Employment) Act and the schemes framed thereunder, are special, so far as the Dock workers are concerned, the Act being one intended to regulate the conditions of employment of those employed in or in relation to the docks, being in the nature of special law concerning the dock workers. These special statutory schemes must be held to prevail over the Standing Orders framed under the Industrial Employment (Standing Orders) Act.

10. We, therefore, do not find any error in the judgment of the learned single Judge. The writ appeal is dismissed.