
(1976) 09 OHC CK 0001
In the Orissa High Court

Kashinath Sahoo

APPELLANT

Vs

Orissa State Electricity Board

RESPONDENT

Date of Decision : 20-09-1976

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2, 4

Citation : (1977) 1 LLJ 457

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Judgement

R.N. Misra, J.—Petitioner is an employee of the Orissa State Electricity Board now working under the City Distribution Division, Cuttack. The Executive Engineer of the said City Distribution Division has required the petitioner to reure from service after one month, of the date of receipt of the notice dated 19-8-1976 (Annexure 5) on the ground that the petitioner has already attained the age of superannuation as provided in Sub-clauses (ii) of Clause 2) of Section 2 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the "Gratuity Act") Petitioner challenges his superannuation in this writ application.

2. According to the petitioner, he was employed under the Cuttack Electric Supply Company Limited as a workman and was entitled to continue in service as long as he was medially fit The State of Orissa revoked the licence of the Cuttack Electric Supply Company Limited with effect from 1-2-1962 in exercise of powers vested under S 5 of the Electricity (Supply Act of 1948 and in terms of a settlement reached between the "aid company and the State Government in course of the hearing of a writ application brought by the company challenging the revocation (O J C. No. 31 of 1962). it was agreed that the existing staff employed by the company would he taken over by the Board and would be allowed to continue to work on the same terns and conditions as before About 35 workmen in the employment of the company were thus taken over by she Board. In the employment under the Board, the ex-employees of the Cuttack Electric Supply Company the formed a distinct group by themselves. From time to time

whenever the Board wanted to change the conditions of employment of this group disputes arose. On 1.7-1963, the first set of disputes were settled on the intervention of the then Chief Minister. When the State Government was not prepared to refer a dispute for adjudication by the Industrial Tribunal O J.C. No 372 of 1963 was filed in this Court and by a writ of mandamus, Government input was called upon to refer the disputed. In Industrial Dispute Case No. 9 of 1964, the Tribunal held :

Thus, I come to the conclusion that the workers of the Cuttack Electric Supply Company, which was purchased by the State Electricity Board and is being managed by the City Distribution Division. Cuttack, under the State Electricity Board are entitled to continuity of service without any material change in their conditions of service they were enjoying under the company....

Subsequently, when a dispute arose regarding payment of bonus and gratuity, the matter was again referred for clarification under S 36 of the Industrial Disputes Act to the Tribunal and the clarificatory order of the Tribunal was subjected to appeals before the Supreme Court which were disposed of in November. 1968. In June. 1999, the Board decided to enforce a rule of superannuation in respect of work charged employees in the pay scale not exceeding Rs. 70 on completion of sixty years of age and for other on completion of 55 years of age At that time, so far as the employees of the company were concerned, it was stated;

...their age of superannuation shall be, according to the recent judgment of the Supreme Court, regulated having regard to the decision arrived at during discussions on the 1st July, 1963, namely, that all other conditions or service under the Board would be applicable to the ex-employees of the Cuttack Electric Supply Company in the same manner and to the same extent as they are to other employee of the Board. In other words, the age of superannuation of the regular and work charged employees of Ex Cuttack Electric Supply Company will be determined according to the principles mentioned above which are applicable to the employees of the Orissa State Electricity Board.

In a writ application filed before this Court, the General Secretary of the City Distribution Division Electrical Worker's Union Challenged the decision fixing the age of superannuation. By the judgment of the Court reported in *Saroj Kumar Ghosh Vs. Chairman, Orissa State Electricity Board*, this Court held -

....The position that emerges out of the aforesaid discussion and finding is that at the time when the workmen were taken over from the Cuttack Electric Supply Co. Ltd. by the Board they were not subjected to any condition of superannuation. The question that remains for examination is-Can it be said that superannuation is one of the lesser terms of service in respect of which the workmen of the company are DOW to be regulated by the terms and conditions of the employees under the Board? Mr. Rath for the opposite party Board did not seek to support the order of superannuation on the ground that it was covered by the lesser

terms of service In fact the stand taken in the counter-affidavit was other, wise as already discussed. In the circumstances, we are led to hold that superannuation is an important condition of service and was not liable to change in terms of the award which determined the terms of service of the workmen of the company....

The decision of this Court was in terms approved by a subsequent decision of the Supreme Court in the case of Naraindas Vs. Vallabhdas and Others, .

While the petitioner was continuing in employment, the impugned notice was given on 19-8-1976 to the effect that as the petitioner had already attained the age of superannuation as provided in Sub-clause (ii) of (r) of Section 2 of the Gratuity Act, his services would come to an end on expiry of a month of the aforesaid notice. Petitioner contends that the provisions of the Gratuity Act are not intended to regulate superannuation and being a beneficial statute, the Act cannot work out to the prejudice of a workman. Again, petitioner's case would not be covered by Sub-clause (ii) of Clause (r) of Section 2 of the Gratuity Act. Therefore the notice to terminate service is without jurisdiction,

3. In the counter-affidavit the notice has been justified to be valid. A rejoinder has been filed thereafter by the petitioner in support of his stand.

4. Two questions mainly arise for consideration, namely:

(i) Whether the provisions of Section 2(r) of the Payment of Gratuity Act are applicable to the case of the petitioner ? and

(ii) Whether the petitioner is liable to superannuate on his attaining too age of 58?

5. The Payment of Gratuity Act which came into force with effect from 16th of September, 1972, is an Act with a view to providing a scheme for payment of gratuities to employees. As the Statement of Objects and Reasons of the said Act show, there was to Central Act, to regulate the payment of gratuity to industrial workers. An attempt had been made in Kerala and West Bengal to make law for the purpose, hereafter other State Government voiced their intention to enact similar measures in their respective States. It was found that a Central Law on the subject ensuring a uniform pattern of payment of gratuity to the employees throughout the country was beneficial. The enactment of a Central Law would avoid different treatment to employees of establishments having branches in more than one State, when under the condition of service such employee were liable to be transferred from one State to another. The Central legislation on gratuity was discussed at a conference of the Labour Minister and then at the Indian Labour Conference and ultimately the Act was passed.

That the Act is a beneficial piece of legislation is not disputed. Superannuation has been defined in Section 2(r) of the Gratuity Act in the following manner :

Superannuation¹, in relation to an employee, means,--

(i) the attainment by the employee of touch age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment and

(ii) in any other case, the attainment by the employee of the age of fifty, eight years.

Undoubtedly this Act is primarily concerned with ensuring payment of gratuity and as Sub-section (S) of Section 4 shows, it is not the intention of the Act to deprive the employee, of any better terms of gratuity than provided by the statute. Going by the definition of superannuation, if the case is not covered by the first part, superannuation would come at the age of 58 years when gratuity becomes payable. Undoubtedly, the Act intends to fix the age of superannuation with a view to ensuring payment of gratuity. There is no force in the contention of Mr. Ram for the petitioner that the Board is not entitled to take advantage of the definition and superannuate the petitioner in case his case is covered by the second part of the definition,

6. The real controversy is as to whether the petitioner's case is covered by the first part or the second part of the definition. If it be held that the petitioner was entitled to continue in employment under the company as long as he was physically fit, there would be scope to dispute the position that the employee would be entitled to the same term under the Board, the Board having been bound by the contract ratified by an award that the employees of the company would be entitled to serve under the Board under the same terms and conditions. We have already referred to the finding reached by this Court in the case reported in AIR 1970 Ori 120 that under the company, there was no age of superannuation. This obviously supports the stand that an employee was entitled to continue in services long he was fit enough to work. Petitioner advanced that claim in paragraph 3 of his application when he pleaded:

...The condition of service of the petitioner was to the effect that the latter would be entitled to continue his service till he is found medically fit...

In paragraph 9 of the counter-affidavit, it has been pleaded :

...The standing orders as certified did not contain the provision that the employees shall continue in service till they are medically fit. All the other allegations made in his paragraph (paragraph 5 of the writ application; are not admitted and the petitioner is put to strict proof of the same.

In the rejoinder given by the petitioner, the following facts have been pleaded:

That after the order of superannuation of the Board was held illegal as per the decision of this Hon'ble Court (A.I.R. 1970 Ori 16) the ex company employees were under employment under the Board till their death. Some of the employees also served till they were found unfit by the Chief District Medical Officer and all of them were serving till after the commencement of the Shops & Commercial Establishments Act and Payment of Gratuity Act.

That late Tal Ch. Nagina was in service till his death at the age of 72 years on 25-7-69. One M.A. All was in service till his death at his both year of age in the year 191. Jamshed Khan was in service till his death at his 61st year of age in the year 1975. Gatikrushna Swain served till his death at his 59th year of age in 1976 Late Wazid Khan, Mohammad Yusuf, Satyabadi Lenke, Goatam Nayak served till their death.

That one iswar Khuntia was noticed to the effect that his services were to be terminated as he was found unfit as per the medical examination report of the Chief District Medical Officer.

That one Banchhanidhi Behera was directed to appear before the Chief Medical Officer, Cuttack, for medical examination No medical fitness certificate having been granted to him by the Chief Medical Officer, his services were terminated....

Annexure 7 is the order of the Executive Engineer of the City Distribution Division with reference to Sri iswar Khuntia. Therein, it has been stated:

In continuation to this office memo No 9772 dated 30-7-74, it is to inform him that the Chief District Medical Officer has found him unfit do perform his duties as per the medical examination report No. 6931 dated 10-9-74 ...therefore, notice is hereby served on him that his service will be terminated on completion of one month from the date of issue of this memo....

Annexure 8 with reference to Banchhanidhi Behera shows:

...Since on medical fitness certificate has been (ranted by the Chief District Medical Officer, it is presumed that he did not appear for his medical examination. It is now considered that he is physically unfit to carry out his duties and as such notice is hereby served on him that on completion of one month from the date of issue of this memo, his services will be terminated if he fails to produce the medical fituess certificate from the above Medical Officer.

The genuineness of Exts. 7 and 8 has not been challenged at the hearing These two orders assured by the Executive Engineer of the City Distribution Division clear y support the petitioner's stand that superannuation was connected with medical fitness I he fur her fact that several employees of this category had been permitted to serve unit death, long after the age of 35 or 58 also goes a long way to support the petitioner's stand that under the company, superannuation depended upon keeping fie and had no reference to the age factor. It is interesting to note that we have at present nine writ applications in all of this type and the petitioner in this case as also the petitioner in O J.C. 959 of 196 are aged 66. The petitioner in O J.C, 958 of 1976 is already 64 while the petitioner in O.J.C. 960 of 1976 it 63 and the petitioner in O J.C. 963 of 1976 is 65. The fact that these employees have been allowed to continue in service long after the age of 60 which is ordinarily the age of superannuation for a workman in industrial establishments, lends support to the assertion of the petitioner that the employees of (he company were n it subjected to an age of superannuation and

were going out of employment only when they became physically unnt or by death were no more available to serve On a review of the historical background, the reference to particular cases indicated in the further affidavit of the petitioner, the two documents marked as Annexure 7 and 8 and fact that several of the employees at present were continuing long after the age of 60 and have now been noticed on tae basis of the Gratuity Act-all these clearly go to show as a fact that the petitioner''s assertion on this score is true. We would accordingly hold as a fact that the employees of the company like the petitioner were entitled to continuing in service as long as they were found fit and such a term had been accepted by the Board in the com. promise petition which has been upheld by this Court in the company''s writ application and by the Industrial Tribunal, this Court and the Supreme Court in several of the litigations referred to above. The petitioner''s case is, therefore, covered by the first part of the definition and the petitioner was not liable to superannuate on attaining the ego of 58 years which should be the position only when the second part of the definition applied the consequential position, there-fort, is that the notice of superannuation is without jurisdiction and cannot be sustained.

7. We think it appropriate to notice one of the contentious advanced on behalf of the opposite party-Board, namely that uniformity in the matter of superannuation is congenial to discipline. While we entirely agree with the submission, we are of the opinion that rights of the workmen cannot be sacrificed for obtaining a uniformity unless the mandate of the law requires it.

8. The net result, therefore, is that the writ application must succeed. We allow it at-d direct that the notice of superannuation be quashed. The petitioner shall be entitled to be in service as bet ore subject to the condition of medical fitness. He shall also be entitled to costs of the proceeding. Hearing fee it assessed at rupees one hundred.