
(2015) 07 P&H CK 0144
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11732 of 2013

Khem Chand and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Employment (Standing Orders) Act, 1946 — Section 10, 10(2), 10(3), 3, 5

Citation : (2015) 4 LLN 230

Hon'ble Judges : Deepak Sibal, J

Bench : Single Bench

Advocate : A.S. Salar, S.S. Salar, Lalit Sharma, Ramesh Goyal, Arihant Goyal, Vikas Mohan Gupta, Kaur Chand Singla, Advocates, Bhupender Singh, Advocate for Rajesh Gaur and S.K. Sud, for the Appellant

Final Decision : Disposed off

Judgement

Deepak Sibal, J—These petitions being C.W.P. No. 11732 of 2013, C.W.P. No. 21624 of 2013, C.W.P. No. 13575 of 2013, C.W.P. No. 13972 of 2013, C.W.P. No. 23506 of 2013, C.W.P. No. 25951 of 2013, C.W.P. No. 36 of 2014, C.W.P. No. 1927 of 2014, C.W.P. No. 3564 of 2014, C.W.P. No. 18734 of 2014, C.W.P. No. 9011 of 2015 and C.W.P. No. 13454 of 2015 involving similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment. For the sake of convenience, facts are being extracted from C.W.P. No. 11732 of 2013 - Khem Chand and others vs. Union of India and others.

2. The petitioners were appointed by the respondent H.M.T. Limited (hereinafter referred to as - the holding Company). On the demerger of the holding Company in the year 2001, they were appointed as employees of the H.M.T. Machine Tools Limited (hereinafter referred to as - the subsidiary Company).

3. It is the case of the petitioners that at the time of their initial appointment with the holding Company, their retirement age was 60 years. After the de-

merger, as referred to above, the retirement age in both - the holding Company as well as the subsidiary Company was reduced to 58 years, but through order dated 30.04.2013 (Annexure P-16), the retirement age of only the employees of the holding Company has been enhanced from 58 to 60 years. Thus, the petitioners allege discrimination. It is the case of the petitioners that enhancement in the retirement age of employees of only the holding Company is discriminatory viz-a-viz the employees of the subsidiary Company like the petitioners, as their age of retirement continues to be 58 years. It is further the case of the petitioners that on de-merger of the holding Company, their transfer and appointment order appointing them in the subsidiary Company clearly specified that there would be no change in their service conditions.

4. In view of the above submissions, the petitioners have approached this Court seeking a direction to treat their age of retirement as 60 and not 58 years.

5. At the very outset, learned senior counsel appearing on behalf of the respondents has raised a preliminary submission, questioning the maintainability to the present petition. It is submitted that the age of retirement of the petitioners is to be as provided in the Standing Orders of the subsidiary Company. The above Standing Orders are under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as - the Act). Clause 24 of the Standing Orders, as it stood at the time of de-merger in the year 2001, is reproduced below:-

"24. RETIREMENTS:

The age of superannuation, shall be 60 years and an employee shall retire from service on the last day of the month in which he attains the age of superannuation. In determining the age of the employee, his SSLC certificate only will be admitted as proof of age. Where the employee is less than SSLC certificate or where the SSLC certificate cannot be produced due to justified reasons supported by necessary proof thereof, decision of the Company's Chief Medical Officer/Medical Board will be final. Once the date of birth is determined at the time of entry into service, the same will not be altered for any reason whatsoever and shall be final and binding for all purposes during the employee's service in the Company and also for the purpose of retirement notwithstanding any subsequent request for alteration or direction, declaration, undertaking whatsoever, to the contrary."

6. The retirement age of 60 years was sought to be modified and reduced to 58 years, for which, a proposal was made by the subsidiary Company under the provisions of the Act, to the Certifying Officer under the Act-cum-Regional Labour Commissioner (Central), Chandigarh. After issuing notice to all concerned including the H.M.T. Karmik Sangh, Pinjore (registered and recognised) - the Labour Union, vide order dated 23.04.2004, Clause 24 of the Standing Orders, as reproduced above, was ordered to be amended to the effect that now, the age of superannuation of the employees of the subsidiary Company shall be 58 years

instead of 60 years.

7. The H.M.T. Karmik Sangh, Pinjore (Regd.) appealed against that order before the Appellate Authority under the Act-cum-Deputy Chief Labour Commissioner (Central), New Delhi, under the Act. After hearing all concerned, vide order dated 25.02.2005, the appeal was dismissed.

8. In view of the above, Clause 24 of the of the Standing Orders, as modified through the above orders, at present, reads as under:-

"24. RETIREMENTS:

The age of superannuation, shall be 58 years and an employee shall retire from service on the last day of the month in which he attains the age of superannuation. In determining the age of the employee, his SSLC certificate only will be admitted as proof of age. Where the employee is less than SSLC certificate or where the SSLC certificate cannot be produced due to justified reasons supported by necessary proof thereof decision of the Company's Chief Medical Officer/Medical Board will be final. Once the date of birth is determined at the time of entry into service, the same will not be altered for any reason whatsoever and shall be final and binding for all purposes during the employee's service in the Company and also for the purpose of retirement notwithstanding any subsequent request for alteration or direction, declaration, undertaking whatsoever, to the contrary."

9. After drawing attention to the above facts, it was submitted on behalf of the respondents that the retirement age was reduced from 60 to 58 years after due notice to the petitioners through their Union and that they had accepted and acquiesced to the reduction in the age of their retirement. No change to the above orders was made thereafter. It was further submitted that the prayer made in the present petition, in fact, amounts to seeking a direction to amend/modify the existing Clause 24 of the Standing Orders, for which the petitioners, under Section 10 of the Act, should approach the concerned statutory Authorities. It was thus submitted that the petitioners be relegated to the statutory Forum available to them, which was both efficacious and effective.

10. On merits, learned senior counsel inter alia submitted that both - the holding Company and the subsidiary Company were separate entities in law and were independent of each other. The petitioners, who had themselves accepted employment under the subsidiary Company, were obliged to abide by the orders passed by it.

11. Clause 24 of the Standing Orders, as it exists today, specifies the date of superannuation for employees like the petitioners to be 58 years. The petitioners seek a change in the Standing Orders to the effect that the date of retirement should be 60 years instead of 58 years. For seeking such a modification in the Standing Orders, the petitioners have an effective alternative statutory remedy under Section 10 of the Act, which reads as under:-

"10. Duration and modification of standing orders--

(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen, [or a trade union or other representative body of the workmen], be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

(2) Subject to the provisions of sub-section (1), an employer or workman [or a trade union or other representative body of the workmen] may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of [* * *] the modifications proposed to be made, and where such modifications are proposed to be made by agreement between employer and the workmen [or a trade union or other representative body of the workmen], a certified copy of that agreement shall be filed along with the application.

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra."

12. As per Section 10(3) of the Act, as reproduced above, the foregoing provisions of the Act shall apply in respect of an application made under Section 10(2) of the Act as they would apply to the certification of the first Standing Orders. Sections 5 and 6 of the Act, which pertain to the certification of the first Standing Orders, are reproduced below for ready reference:-

"5. Certification of standing orders-

(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may

require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen."

13. From the above quoted provisions of the Sections of the Act, it is clear that the petitioners have an effective alternative statutory remedy, to which they should be relegated especially when even earlier the retirement age was reduced from 60 to 58 years through proceedings under the Act and that in the present petition, there is no challenge to Clause 24 of the Standing Orders, which provides that the age of retirement of the petitioners be 58 years. The Statute further provides for a remedy of appeal against the order to be passed by the Certifying Officer before whom application is to be filed seeking modification of the Standing Orders.

14. In this regard, it would be useful to refer the following observations by a Constitution Bench of the Apex Court in *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, AIR 1964 SC 1419 : (1964) 6 SCR 654 : (1964) 15 STC 468 , wherein it was observed as under:-

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Courts does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a Court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 obtaining relief Where it is open to the aggrieved petitioner to move another tribunal or even itself in provided by a statute the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be by passed and will leave the party applying to it to seek resort to the machinery so set up.

[emphasis supplied]"

15. The same opinion has been recorded by the Apex Court in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, AIR 1985 SC 330 : (1985) 4 ECC 103 : (1985) ECR 4 : (1985) 19 ELT 22 : (1985) 154 ITR 172 : (1984) 2 SCALE 819 : (1985) 1 SCC 260 : (1985) 2 SCR

190 : (1985) 17 UJ 368 in the following words:-

"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute."

16. The observations of the Apex Court in *Chairman, Coal India Ltd. and another vs. Madan Prasad Sinha and others* reported as (2000) 10 Supreme Court Cases 597 are also significant to note, which are as under:-

"The appropriate course for the High Court to adopt was to decline exercise of any power under Article 226 of the Constitution and to require the respondents to resort to the remedy of adjudication of the alleged industrial dispute in the manner provided therefor under the industrial laws."

17. Similarly, in *Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others*, (2007) 113 FLR 1 : (2007) 2 LLJ 95 : (2006) 13 SCALE 558 : (2007) 2 SCC 112 : (2007) 1 SCC(L&S) 750 : (2007) 2 SCL 423 : (2006) SCR 852 Supp : (2007) 2 SLJ 423 : (2006) AIRSCW 434 : (2006) 1 Supreme 384 , the Apex Court has held as under:-

"In the instant case, the workmen have not made out any exceptional circumstances to knock the door of the High Court straightaway without availing the effective alternative remedy available under the Industrial Disputes Act. But the dispute relates to enforcement of a right or obligation under the statute and a specific remedy is, therefore, provided under the statute. The High Court should not deviate from the general view and interfere under Article 226 of the Constitution except when a very strong case is made out for making a departure. There are several decisions to the same effect. The respondents have not made out any strong case for making a departure. Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition."

18. In view of the above, the petitioners are relegated to their remedy under Section 10 of the Act.

19. In the peculiar facts of the case, it is directed that if any such claim is filed on behalf of any of the petitioners, before the Certifying Officer, under Section 10 of the Act, for seeking modification of Clause 24 of the Standing Orders, such claim be decided by the competent Authority expeditiously, but not later than four months of the date of receipt of a certified copy of this order.

20. Accordingly, all these petitions being C.W.P. No. 11732 of 2013, C.W.P. No. 21624 of 2013, C.W.P. No. 13575 of 2013, C.W.P. No. 13972 of 2013, C.W.P. No. 23506 of 2013, C.W.P. No. 25951 of 2013, C.W.P. No. 36 of 2014, C.W.P. No.

1927 of 2014, C.W.P. No. 3564 of 2014, C.W.P. No. 18734 of 2014, C.W.P. No. 9011 of 2015 and C.W.P. No. 13454 of 2015 are disposed of in the above terms.

21. No costs.