
(2014) 11 KL CK 0193

In the High Court Of Kerala

Case No : Writ Appeal No. 1586 of 2014 in WP(C). 15954/2013

K.K. Omanakuttan

APPELLANT

Vs

The Secretary

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Industrial Employment Standing Orders Act, 1946 — Section 10, 5

Citation : (2014) 11 KL CK 0193

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : S.M. Prasanth, C. Dinesh, Ammu Charles and G. Renjith, Advocate for the Appellant; N. Nagaresh, Assistant Solicitor General, Saji Varghese and Mariam Mathai, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—The appeal is filed by the petitioners in the writ petition challenging the judgment dated 21.08.2014 in W.P. (C) No. 15954 of 2013.

2. The petitioners are the employees of the 3rd respondent company, HMT Limited. Originally they were appointed in the HMT Limited by the 2nd respondent therein. At the time when they were in service, the age of superannuation was 60 years. By virtue of an order passed by the Company Law Board in a scheme of arrangement submitted by HMT Limited, certain of their employees including the petitioners, were shifted to HMT Machine Tools Limited. The age of superannuation in HMT Machine Tools Limited was reduced from 60 to 58 years. According to the petitioners, since they were appointed and transferred to HMT Machine Tools Limited, by virtue of the directions issued in terms of Ext.P10 letter dated 19.06.2001 wherein it is clearly indicated that there would not be any change in the service conditions, they are entitled to continue up to the age of 60 years. According to them, the 3rd respondent has no right to reduce their age of superannuation.

3. The learned Single Judge, having taken into consideration certain earlier proceedings by which reduction in age of superannuation was under challenge

before this Court, found that the said challenge was repelled in W.P.(C) No.11473 of 2005 which ultimately became final in WA No. 2260 of 2005. It was further observed that certain other writ petitions were also filed by similarly situated persons, W.P.(C) No. 27284 of 2009 and connected cases, which also ended in dismissal. It is therefore found that the petitioners were not entitled for any relief.

4. It is a settled position of law that the employer can change the service conditions unless the decision is arbitrary or illegal. As far as the present situation is concerned by virtue of Ext.R2(b) dated 28.11.2003, a decision was taken to reduce the age of retirement of workmen, from 60 years to 58 years. Ext.R2(b) reads as under:

"In accordance with Sub-Section (3) of Section 5 of the Industrial Employment (Standing Orders) Act, 1946, I am to forward herewith an authenticated copy of the Modified Standing Order by amending Clause No. 24 for rolling back of "RETIREMENT AGE OF WORKMEN FROM 60 YEARS TO 58 YEARS" of M/s. HMT Limited, HMT Colony, Ernakulam as per the provisions of Section 10 of the Industrial Employment (Standing Orders) Act under my hand and seal on the 28th day of November, 2003 together with my Order No. 51(1)/2003-B.1 dated 28.11.2003, under Sub-Section (2) of Section 5 of the Industrial Employment (Standing Orders) Act, 1946."

5. The matter was taken in appeal and was also confirmed as evident from Ext.P17 order dated 28.03.2005. When the reduction in the age of superannuation has been confirmed by the authorities, the petitioners by themselves cannot have a separate treatment even by referring to Ext.P10 letter dated 19.06.2001. Under these circumstances, we do not find any ground to interfere with the judgment of learned Single Judge and accordingly the appeal is dismissed.