
(1989) 09 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 5844 of 1988

Maharashtra State Textile Corpn. Ltd.

APPELLANT

Vs

Vasudev Vinayak Joshi and another

RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 25N

Citation : (1990) 1 BomCR 781 : (1989) 59 FLR 708 : (1991) 2 LLJ 457

Hon'ble Judges : Sujata V. Manohar, J

Bench : Single Bench

Judgement

1. The respondent No. 1 is a permanent employee of the Western Indian Spinning and Manufacturing Mills Limited. The said undertaking now vests in the petitioners. The 1st respondent is in permanent employment of the petitioners as a "Jobber" in the Combing Department of the said Mills. He completed the age of 60 years on December 31, 1987. The petitioners proposed to retire the respondent No. 1 from service with effect from January 1, 1988. This order of retirement is under Standing Order 20A of the Standing Orders for Operatives in Bombay Cotton Textile Industry, as finally settled by the Industrial Court u/s 36(3) of the Bombay Industrial Relations Act. It governs the retirement of the respondent. This order is as follows :

"20A. An operative shall retire from service on attaining the age of 60 years, but a male operative shall be retained in service, if he continues to be efficient, upto the age to 63 years, provided that when retrenchment becomes necessary a person who has completed the age of 60 may be retired in preference to younger men."

The respondent filed a complaint being ULP No. 1236 of 1987 before the Industrial Court challenging his order of retirement. It is his contention that the notice of retirement served on him does not state that he is inefficient. He therefore, contends that he is entitled to be retained in service until he attains the age of 63 in view of the provisions of the Standing Order 20A.

2. In this complaint an ad interim order was granted ex parte under which the petitioners were restrained from retiring the complainant from January 1, 1988. This order is dated December 29, 1987. Nothing further appears to have been done.

3. The petitioners, however, thereafter reached a settlement with the representative union on May 20, 1988 under which it was agreed between the Mills and the representative union that the management had reorganised and rationalised the workload of the mills. As a result, an agreement was reached for a revision of the sanctioned strength of workmen and their wages. Under the terms and conditions of this settlement it was agreed that the present sanctioned strength of 457 workmen would be reduced to 423 workmen. The agreement sets out in detail the various posts which were to be reduced as well as the number of workmen in each of the posts which were being so reduced. One such post is the post of Jobber in the Combing Department. The settlement records that the present sanctioned strength of 2 workmen is being reduced to nil. The settlement also records that the petitioner will retire, presumably under Standing Order No. 20A.

4. After the settlement was arrived at, the petitioners made a Review Application before the Industrial Court date June 29, 1988 for review of the interim order passed by the Industrial Court on December 29, 1987. The petitioners contended that since retrenchment had become necessary, they should be permitted to retire the respondent who had completed the age of 60 years as per Standing Order 20A. This application has been rejected by the Industrial Court. Hence the petitioners have preferred the present writ petition.

5. The petitioners submit that under Standing Order 20A it is open to them either to continue or to discontinue the services of a male employee once he has completed the age of 60 years. They submit that if a male operative continues to be efficient after attaining the age of 60 years, they may or may not continue him in service.

6. In order to consider this submission it is necessary to look at the Standing Order in question. The 1st part of the Standing Order says that an operative shall retire from service on attaining the age of 60 years. The second part says that a male operative shall be retained in service, if he continues to be efficient, after the age of 60 years. According to the petitioners the first "shall" is mandatory, while the second "shall" should be read as "may" and not as mandatory. There is no warrant for such an interpretation of the Standing Order 20A. From the language used it is clear that both the provisions are mandatory. Hence if the operative continues to be efficient he is to be retained in service until he attains the age of 63. There is nothing in the scheme of this Standing Order which would indicate that any discretion is granted to the management to continue or not to continue a male operative after he attains the age of 60, even if he is efficient. In this connection it is necessary to examine the history of the Standing Order.

7. Originally the Standing Orders did not contain any provision regarding the retirement of an employee. Schedule 1 of the Bombay Industrial Relations Act, however, was amended in 1956 and clause 13 was added to schedule 1, as a result of which the age of retirement on superannuation was inserted as a part of Schedule 1. After this amendment, the Mill Owners' Association applied to the commissioner of Labour u/s 38(2) of the Bombay Industrial Relations Act for insertion of a Standing Order dealing with the age of retirement or superannuation. The Mill Owners' Association had proposed the following Standing Order for Operatives : "Every male operative shall retire from service on completion of 55 years of age and every female operative on completion of 50 years of age. The management may, if the operative is medically fit, at their discretion, grant an extension of not more than one year at a time ...". The representative union of the Mill employees had opposed this Standing Order on the ground that at the relevant date there were very meagre retirement benefits. The proposed age of retirement was very low. They had contended that the mill employees should be allowed to work so long as they were fit and were in a position to render efficient service. After taking into consideration the view points of both the sides, the Commissioner of Labour fixed the age of retirement at 60 years. From this decision cross appeals were preferred by the Representative Union as well as the Mill Owners' Association before the Industrial Court. The Representative Union was against the fixation of any age of superannuation, while the Mill Owners' Association was against the higher age limit of 60 years and wanted an age limit of 55. The Industrial Court negatived the contention of the Representative Union and held that the Commissioner of Labour was right in framing a Standing Order on a subject which was specified in Schedule 1. In fact he was bound to frame a Standing Order. It, however, was impressed by the fact that the existing retirement benefits were not adequate enough, inter alia, for an operative to afford to be without employment on attaining the age of 55 or 60. In the circumstances, the Industrial Court felt that it was necessary to fix the superannuation age for some time on the high side. It observed :

"We are conscious of the desirability of bringing in new and younger blood in the industry as well as the necessity of keeping it at a level of efficiency, but we have to bear in mind that we have in this country no old age pension scheme such as exists in some of the Western countries, and that the existing retirement benefits are inadequate."

It then examined the rules and regulations of various companies relating to the age of retirement. It quoted the case of the Greaves Cotton and Crompton Parkinson and other allied companies v. Their Employees 1948 ICR (Bom) 223 in which the Adjudicator has observed : "I think there is some force in allowing this exception but in my opinion if any exception is to be made after 60 years, the company should give its reasons in writing for doing so." Some other cases were also cited where, after the age of 60 years, the company had a discretion to continue the employee in service but was required to give reasons for such continuation. The question, therefore, of granting or not granting discretion to

the management to continue an employee in service after the age of retirement was present before the Industrial Court. Despite the express suggestion of the Mill Owners' Association, the Industrial Court did not use language granting any discretion to the management to continue an employee above the age of 60.

8. It was urged before the Industrial Court that a higher age limit should be fixed atleast for the male operatives. The Industrial Court after some discussion confirmed the age of retirement fixed by the Commissioner of Labour with the modification that in the case of male operatives the Standing Order should be modified to the effect that a male operative shall be retained in service if he continues to be efficient upto the age of 63 years, provided that when retrenchment becomes necessary a person who has completed the age of 60 may be retired in preference to younger men.

9. In construing Standing Order 20A one cannot be oblivious to this historical setting, in order to see whether the terms of the Standing Order are such as would fairly carry out the object for which the Standing order was framed. From this background also it is apparent that the Standing Order was not intended to give a discretion to the management of the kind as is argued before me. In fact the Mill Owners' Association had asked for a Standing Order which expressly gives to the management discretion to grant or not to grant any extension and had used the words "the management may at their discretion grant an extension to an employee" This language was not adopted in the Standing Order as framed and modified by the Industrial Court. The standing Order uses language which is mandatory. I do not see any reason why the language should be read down so as to read "may" instead of "shall" in the second half of the Standing Order.

10. It is urged by Mr. Naik, learned Advocate for the petitioners that the Standing Order, if interpreted in this manner would compel the management to continue a male operative if he is efficient but if he is otherwise not a suitable person to be continued in service. But the plain language of Standing Order 20A does not permit any discretion being granted to the management to retire an efficient employee at 60 if he is otherwise unsuitable. In such a situation it is open to the management to take such steps as may be available in law to discontinue him from service.

11. It is also submitted that the management can always terminate the services of an inefficient employee. Hence the Standing Order, in so far as it prescribed that the operative shall retire from service on attaining the age of 60 has no meaning. Because all efficient operatives will have to be continued till the age of 63. This submission is also without much force because the option to continue an operative beyond the age of 60 is only in respect of male and efficient operatives. All others retire at the age of 60.

12. Strong reliance was placed by Mr. Naik on the decision of the Supreme Court in the case of Kailash Chandra Vs. Union of India (UOI), . The Supreme Court

was required to consider a somewhat similar clause under the Railway Establishment Code, dealing with Railway ministerial servants. This clause was as follows : "The Ministerial servant may be required to retire at the age of 55 years but should ordinarily be retained in service if he continues to be efficient up to the age of 60 years" The Supreme Court held that the intention was that as soon as employee attained the age of 55 years the appropriate authority had the right to retire the servant. But between the age of 55 and 60 the appropriate authority was given the option to retain the servant but was not bound to do so. The Supreme Court observed that the word "ordinarily" reinforced this contention as it meant that, "this may be done in the large majority of cases but not invariably". The Court held that even if the word "ordinarily" is ignored, the intention of the second clause was to give an option to the authority to continue the services of servant between ages of 55 and 60. In deciding whether to exercise this option or not, the authority could consider factors other than efficiency also. This decision of the Supreme Court cannot apply to the present case because the wording of Standing Order 20A is different from the wording of the rule which was before the Supreme Court. The language of the present rule is clearly mandatory and there is nothing in Standing Order 20A which would indicate that the management has any option to consider factors other than efficiency in deciding whether to continue an operative in service between the age of 60 and 63.

13. It was next submitted that in the present case retrenchment has become necessary and hence under Standing Order 20A the respondent, who has already completed the age of 60 years and who is required to be retrenched under the settlement, can be retired under this Standing Order in preference to younger men. This contention was negated by the Industrial Court on the ground that the petitioner had not obtained prior permission of the appropriate Government u/s 25N of the Industrial Disputes Act, 1947 for retrenchment of the workmen. There is no dispute that Section 25N is applicable to the petitioners in the present case. Mr. Naik however contends that Section 25N comes into operation only when the management actually retrenches its workmen. Such retrenchment cannot be done without complying with the provisions of Section 25N. According to him, however, Standing Order 20A merely requires that there should be a need for retrenchment. If there is a need for retrenchment, then resort can be had to that Standing Order for retiring employees above the age of 60 years. This submission does not bear scrutiny.

14. The Standing Order enables the management to retire a person above the age of 60 years when retrenchment becomes necessary. In other words it enables the management to reduce the number of workmen by retiring those who have attained the age of 60 years but who may have been continued in service under the Standing Order. The Standing Order, therefore, can come into operation only when the reduction in the number of workmen or posts actually takes place. In fact it prescribes a method of reducing the number of workmen when retrenchment takes place. Therefore, the phrase, "when retrenchment

becomes necessary", does not refer merely to the subjective satisfaction of the management regarding the need for retrenchment, nor does it refer merely to a settlement or agreement for retrenchment which may be arrived at between the management and the Representative Union. It refers to a further stage when ultimately reduction does take place in the number of workmen or the posts, as the case may be. And hence it becomes necessary for the management to comply with Section 25N of the Industrial Disputes act before it can resort to the provisions of the last part of Standing Order 20A.

15. If both the management and the Representative Union have agreed that retrenchment is necessary for the organisational and rationalisation of work and efficiency of the Mill in question, there should not be any difficulty in getting the permission of the appropriate Government u/s 25N. But without such permission, it is not open to the petitioners to retire the respondent under its Standing Order simply because of the terms of the settlement between the management and the Representative Union.

16. The Review Application was therefore rightly rejected. Needless to say, once the requisite permission is granted u/s 25N it will be open to the petitioner to resort to Section 20A for retiring such of its employees who have been retained in service after attaining the age of 60 years under Standing Order 20A. The rule is, therefore, discharged with no order as to costs.