

(2019) 07 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No. 45822, 45825, 46462 Of 2012

Management Of Federal Mogul

APPELLANT

Vs

Additional Labour Commissioner

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 2, 3(2), 3, 4, 5, 6, 10, 10(1), 10(2), 10(A), 14A, 15, 15(1)
Karnataka Industrial Employment (Standing Orders) Rules, 1961 — Rule 3(1), 15A
Constitution of India, 1950 — Article 226

Citation : (2019) 07 KAR CK 0019

Hon'ble Judges : P.B. Bajanthri , J

Bench : Single Bench

Advocate : S. S. Naganand, B. C. Prabhakar, A. C. Balaraj, C. Vijaya Kumar, K.B. Narayana Swamy, P. N. Nanja Reddy, M.C.Narasimhan, K.Subba Rao, Sathish

Final Decision : Disposed Off

Judgement

1. In these petitions, petitioners have assailed the order of respondent Nos.1 and 2 dated 30.5.2012 and 7.11.2012 by which 2nd respondent's

decision to incorporate the age of retirement of an employee in the petitioner's "Management would be at the age of 60 years with a rider and

1st respondent in appeal affirmed the decision.

2. Petitioner is a Multi National Company which is engaged in manufacturing of Pistons, Rings and Piston Pins. While engaging nearly 1735

employees in various categories, their service conditions are governed by Certified Standing Orders of the Company, Appointment Orders, Settlement

issued from time to time. Goetze India Ltd. in existence till 03.08.2006 the date on which the name of the company called M/s. Federal Mogul Goetze

(India) Ltd., was incorporated vide Annexure-A. On 11.09.1979, Certified

Standing Orders were issued. It is an undisputed fact that age of retirement of employees is not covered under the standing orders dated 11.09.1979. Respondents-Employees formed Association called Federal Mogul Goetze India Employees Association. They have issued charter of demands on 15.7.2008. One of the demands was relating to revision of age from 58 to 60 years. When things stood thus, respondents-employeesâ?? election was held. Consequently, their Association has renamed from Federal Mogul Goetze India Employees Association to that of CITU. Consequently, on 7.7.2010, modified charter demands were submitted while retaining aspect of revision of age from 58 to 60 years. When the matter relating to consideration of modified charter demand was pending consideration, it was the Petitioner - Management and the respondents-employees entered into settlement on 19.11.2010. Pursuant to the settlement, Respondents-employees have given an undertaking in terms of settlement. Thereafter on 11.2.2012, respondent No.3 â?? Bharathiya Mazdoor Sangha (for short â??Sanghaâ??) submitted application for amendment of Standing Orders with two issues to the 2nd respondent. The two issues are relating to revision of age of retirement from 58 to 60 years and change of companyâ??s name as â??Federal Mogul Goetze India Ltd.,â?? When application was submitted by respondent No.3, was pending consideration before the 2nd respondent. Respondent Nos.4 to 6 got impleaded themselves in the application filed by respondent No.3 â?? Sangha. Petitioner on receipt of the notice from the 2nd respondent, had appeared before the Certifying Officer and filed a detailed objection dated 12.5.2012. Consequently, respondent filed rejoinder on 18.5.2012, petitioner submitted written arguments along with four decisions were cited before the certifying officer on 22.5.2012. On 30.5.2012 â?? 2nd respondent proceeded to amend the certifying orders in respect of both the issues namely assigning age of retirement of an employee at 60 years and change of companyâ??s name as Federal Mogul Goetze India Ltd., Feeling aggrieved and dissatisfied with the order of the 2nd respondent, insofar as revision of age of retirement at 60 years, the petitioner â?? Management preferred an appeal before the appellate authority on 26.6.2012.

3. Respondent No.3 â?? Sangha submitted their statement of objections before the Appellate Authority, so also, petitioners filed their written Synopsis

on 20.7.2012 and 22.7.2012 respectively. Appellate Authority rejected the petitioner's appeal on 7.11.2012. During the pendency of the present

petition, amended rules was brought into vogue called "Karnataka Industrial Employment (Standing Orders) (Amendment) Rules, 2017" (for

short Rules, 2017). Notification dated 27.03.2017 is reproduced herein:

"Whereas the draft of the Karnataka Industrial Employment (Standing Orders) (Amendment) Rules, 2009 was published as required by sub-

section (1) of Section 15 of the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946), in Notification No.LD 282 LET 2009,

Dated:07.12.2009 in Part IV-A of the Karnataka Gazette Extraordinary dated:07.12.2009, inviting objections and suggestions from all the persons

likely to be affected thereby within thirty days from the date of its publication in the Official Gazette.

And whereas the said Gazette was made available to the public on 07.12.2009.

And whereas the objections and suggestions received in this regard have been considered by the State Government.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 15 of the Industrial Employment (Standing Orders) Act, 1946

(Central Act XX of 1946), the Government of Karnataka hereby makes the following rules, namely:-

RULES

1. Title and Commencement:- (i) These rules may be called the Karnataka Industrial Employment (Standing Orders) (Amendment) Rules, 2017.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment of Schedule-I:- In the Karnataka Industrial Employment (Standing Orders) Rules, 1961, in Schedule-I:

(i) Under the heading "Model Standing Orders prescribed under Rule 3(1): A- For workmen excluding clerks and other ministerial staff, in the

entries at Sl.No.15-A, for the words and figures "58 years" the words and figures "60 years" shall be substituted.

(ii) Under the heading "Model Standing Orders prescribed under Rule 3 (1): B- for Clerks and other Ministerial Staff", in the entries at Sl.No.22-

A, for the words and figures "58 years" the words and figures "60 years" shall be substituted."

4. In this background, petitioner feeling aggrieved and dissatisfied with the orders of the Certifying Officer and Appellate Authority's orders dated

30.5.2012 and 7.11.2012 respectively, presented this petition.

5. Learned counsel for the petitioner submitted that petitioner's application before the respondent No.3 is not maintainable in view of the fact that

they have entered into settlement pursuant to modified charter demands dated 7.7.2010 and 19.11.2010. Such settlement would be in vogue for a

period of four years. Therefore, application filed by respondent No.3 on 31.10.2014 cannot be entertained by the Certifying Officer. It was further

contended that there is total non-application of mind by the Certifying Officer as well as the Appellate Authority. They have not considered the

contentions and citations submitted before them. On this score, orders of respondent Nos.2 and 1 are liable to be set aside.

6. Learned counsel for the petitioner relied on provisions of the Karnataka Industrial Employment (Standing Orders) Rules, 1961 and provisions -

Schedule "I Rule 15-A:

"15-A The age for retirement or superannuation of the workman may be 58 years or such other age as may be agreed upon between the employer

and the workman by any agreement, settlement or award which may be bind on the employer and the workman under any law for the time being in

force".

7. In support of the contentions to set aside the orders of respondent Nos.1 and 2, learned counsel for the petitioner has cited the following decisions:

1. 2011 " IV-LLJ-163 (Kant) " Kennametal India Ltd., And Kennametal India Employees Association and Others

2. C.M. W.P. No.23051/1995 " 1996 I LLJ 1148 - disposed of on 18.12.1995 decided by the Hon'ble High Court of Allahabad between Mohd.

Shamim V. State of U.P. and Ors.

3. 2002 CLR 396 (Bombay HC) Tulsiram K. Gothad Vs. Superintendent, Mahatma Gandhi Memorial Hospital Mumbai and another.

4. 2007 III CLR 718 (Bombay HC- DB Tusiram K. Gothad Vs. Superintendent, Mahatma Gandhi Memorial Hospital Mumbai and another.

5. AIR 1990 (SC) 1801 " Baruni Refinery Pragatisheel Shram Parishat Vs Indian Oil Corporation Ltd., and Others.

6. 1996 LLR 200 (Del. HC) Bharat Electronics Ltd., Vs. Chief Labour

Commissioner.

7. 1959 (XVI) FJR 415 â?" Guest Keen Williams Private Limited Vs. P.J. Sterling

8. (2007) I SCC (L & S) 16 â?" Punjab National Bank & Others Vs. Manjeed Singh & Others.

9. 1998 I LLJ 389 â?" Virudhachalam P and Others Vs Management of Lotus Mills & Anr.

10. 1977 Lab IC 162- Herbertsons Ltd., Vs. The Workmen of Herbertsons Ltd.,

8. Learned Senior counsel for respondents submitted that the settlement entered into between the petitioner and the respondents dated 19.11.2010

Item No.50(j) would not come in the way of entertaining application for assigning age of retirement of an employee at 60 years by the 2nd respondent

pursuant to the Standing Orders Section 10(A) read with Section 3(2) of the Industrial Employment (Standing Orders) Act, 1946 (for short referred to

as â??Act, 1946â??). It was further contended that item No.50(j) of the settlement would not be a hurdle in respect of assigning age of retirement of

an employee at 60 years in view of introduction of Rule 15-A dated 11.03.1982. Item No.50(j) of the settlement reads as under:

â??The Settlement, in the manner stated herein is in full and final settlement of all demands as contained in the modified charter of demands dated 7th

July 2010 of the Association and all other demands raised by the Association/ employees not specifically dealt with herein are deemed to have been

settled. Further the employees and the Association agree not to reopen any of the matters covered under this settlement and make any demands

which involve additional financial burden for the company during the period of the settlementâ??.

9. It was submitted that even though petitioners got issued certified Standing Order of 11.07.1979 the date on which the provision of Rule 15-A was

not available for determination of age of retirement, at the same time petitioners have not acted upon under Rule 15-A which was incorporated on

11.03.1982 so as to change the service conditions of the employees in particularly age of retirement at 60 years or in terms of language employed in

Rule 15-A.

10. Learned Senior Counsel has pointed out Section 10(1 and 2) of the Act, 1946. He has stressed his argument on sub-section (2) of Section 3.

Further, learned Senior Counsel submitted that there is no error committed by

respondent Nos.1 and 2 in entertaining application of the respondents and amending certified order and its confirmation by the Appellate Authority.

11. Learned counsel for the respondent further pointed out that in respect of issuance of amendment of Rules, 2017. Amendment of Schedule â?" I in

the Karnataka Industrial Employment (Standing Orders) Rules, 1961 : in the Schedule â?" I

â?"(i) under the heading â?"Model Standing Orders prescribed under Rule 3(i) : A-for workman excluding clerks and other ministerial staffâ?", in the

entries at Sl.No.15-A, for the words and figures â?"58 yearsâ?" the words and figures, â?"60 yearsâ?" shall be substituted.

(ii) under the heading â?"Model Standing Orders prescribed under Rule 3(i); b-for clerks and other ministerial staff, in the entries at Sl.No.22-A for

the words and figures â?"58 yearsâ?" the words and figures â?"60 yearsâ?" shall be substituted.

12. Management â?" petitioner questioned the validity of Rules, 2017 issued on 27.03.2017 before this Court and petitioners suffered in Writ Petition

and Writ Appeal is filed and it is pending consideration. Learned counsel for respondents in support of the aforesaid contentions relied on the following

decisions:

1. Guest Keen Williams Ltd Vs. PJ Sterling reported in AIR 1959 (SC) 1279(Para Nos.9 & 23)

2. Imperial Chemical Industries Vs. Workmen reported in AIR 1961 (SC) 1175 (Para Nos.9, 10 & 11)

3. GM Talang Vs. Shaw Wallace & Co. reported in AIR 1964 (SC) 1886 (Para Nos.4 & 7)

4. British Paints Vs. Workmen reported in AIR 1966 (SC) 732 (Para Nos.3, 5, 6 & 7)

5. Hindustan Antibiotics Vs. Workmen reported in AIR 1967 (SC) 948 (Para No.39)

6. The Railway Board Vs. Pitchumani reported in AIR 1972 (SC) 508 (Para Nos.11, 12, 14, 27)

7. Jeevan Lal Ltd. Vs. Workmen reported in 1972 (1) LLJ 472 (Para Nos.17, 19)

8. The workmen of BPC Vs. BPC Corporation reported in Lab IC 8 (Para No.12)

9. Pandavapura Sahakara Sakkare Kharkhane Vs. Additional Industrial Tribunal reported in ILR 1996 KAR 2069 (Para Nos.4, 15, 16)

10. Gokak Mills Vs. Workmen reported in ILR 1993 Kar 591 (para 4, 12, 13)

11. Chairman UP Jala Nigama Vs. Jaswant Singh reported in AIR 2007 (SC) 924 (para Nos. 13, 15)

12. Mothi Ram Deka Vs. GM, Northern Railway reported in AIR 1964 (SC) 600 (Para Nos.25 & 26)

13. Karnataka Employer's Association Vs. The State of Karnataka and Others
" Order dated 29.06.2018 passed by this Hon'ble Court in

Writ Petition Nos.14576-14577/2017 and connected cases.

14. Karnataka State Notification dated 27.03.2017 passed by the Labour Department.

13. Learned counsel for the respondent distinguished Baruni Refinery Pragatisheel Shram Parishat case supra while contending that in the case of

Baruni Refinery Pragatisheel Shram Parishat in the Standing Order, there was a clause relating to age of retirement was existing, whereas in the

present case, in the certified Standing Order dated 11.09.1979, such a clause relating to age of retirement of employees was not incorporated.

Therefore, Baruni Refinery Pragatisheel Shram Parishat case has no application to the case of petitioners herein. He has also cited on Kennametal

India Ltd. And Kennametal India Employees Association and Others, a Division bench decision of this Court in KUNIGAL STUD FARM

EMPLOYEES UNION vs UNITED RACING AND BLOOD STOCK BREEDERS LTD reported in LAWS (KAR) 2011 9 53. It was also argued

that scope of Article 226 in respect of Judicial Review is limited in respect of issuing certiorari. In this regard, he has cited decision of the Apex Court

in SYED YAKOOB vs K S RADHAKRISHNAN AND ORS. reported in AIR 1964 SC 477 (para 7).

14. Learned counsel for 5th respondent submitted that Management have accepted the change of name whereas they are aggrieved by fixation of

retirement age in the very same certified orders dated 30.05.2012. It was contended that it is only an insertion of age criteria which was not covered

in the certifying order issued in the year 1979 and petitioners have not made out a case. It was also contended that he would adopt the Senior

Counsel's arguments in respect of other contentions.

15. Learned counsel for respondent Nos.3 and 5 reiterated that certified Standing Orders dated 11.09.1979 do not cover the age criteria of the

employees. In such circumstances, application filed by respondent No.3 to incorporate the age criteria in respect of employees, there is no infirmity so also affirmation of the certifying orders of the 1st respondent â?" Appellate Authority. It was also submitted that no doubt in the appointment letter, age of retirement has been indicated. At the same time, in view of later development relating to incorporation of Rule 15-A in the year 1982, suo-motto petitioner should have carried out necessary steps to get amendment in the Certified Standing Orders. On the other hand, respondent No.3 and others have made application for getting it incorporated in the certified Standing Orders. He relied on the following 14 decisions:

- (1) C.S.JAYALAKSHMI vs THE STATE OF KARNATAKA decided in W.P.No.13072/2012 decided on 08.08.2012
- (2) JAGDISH SHASTRI vs THE CHIEF SECRETARY, STATE OF KARNATAKA decided in W.P.No.10515/08 decided on 12.11.2009
- (3) THE MANAGEMENT GEM PROPERTIES PVT. LTD. vs TUMKUR ZILLA ENGINEERING AND GENERAL WORKERS UNION reported in W.P.No.21257/2014 decided on 01.03.2017.
- (4) NANJAPPA vs KRISHNARAJENDRA MILLS reported in ILR 1987 536
- (5) R N TIWARI vs VIDESH SANCHAR NIGAM LTD. reported in 136/2007 DLT 232
- (6) KOMAL PRASAD SINHA vs BIHAR STATE FOOD AND CIVIL SUPPLY CORPORATION LTD AND OTHRS decided by High Court of Jharkhand at Ranchi in W.P.(C) 4517/2005
- (7) PREMALATA PANDA vs STATE OF ORISSA decided by High Court of Orissa at Cuttack in W.P.No.9279/2015
- (8) KARMACHARI UNION vs STATE OF RAJASTHAN decided by High Court of Rajasthan at Jodhpur in W.P.No.8626/2009
- (9) M/S BRITISH PAINTS (INDIA) LTD. vs ITS WORKMEN reported in 1966 SCR(2) 523
- (10) IMPERIAL CHEMICAL INDUSTRIES LTD. vs THE WORKMAN IMPERIAL CHEMICAL INDUSTRIES LTD. reported in 1964 SC 1886(5)
- (11) RAJIV KAPOOR & OTHERS vs KIRAN PAL SINGH reported in C.A.No.605/2013
- (12) STATE OF UTTAR PRADESH vs DAYANAND CHARKARWARTY & OTHERS decided by Apex Court in C.A.No.5527/2012

(13) Apex Court decision in S.P.DUPEY vs MADHYA PRADESH STATE ROAD TRANSPORT CORPORATION decided in

C.A.No.1731/1986

(14) Apex Court decision in G M TALANG AND OTHERS vs SHAW WALLANCE AND COMPANY reported in 1964 AIR 1886

16. In reply, learned counsel for the petitioners submitted that application for amendment of certified Standing Orders are not maintainable in view of

the fact that settlement was in vogue and further, letter of appointment orders issued to each of the employee reveals that age of retirement is at 58

years as long as condition imposed in the letter of appointment at Sl.No.15 is not modified or cancelled, employee is not entitled to get it changed from

58 years to 60 years. Such letter of appointment order amounts to agreement. Therefore, that agreement is in vogue, question of entertaining

application for amendment of such Standing Orders by 3rd respondent is arbitrary and contrary to the factual aspect in particularly, letter of

appointment. Reliance on the aforesaid decisions have no assistance to the respondents.

17. At this stage, learned counsel for the petitioner relied on three decisions:

(1) MOHD. SHAMIM vs STATE OF U.P. AND OTHERS reported in 1996(I) LLJ 1148.Extract (Para.6)

(2) TULSIRAMKGOTHADvs SUPERINTENDENT, MAHATMA GANDHI MEMORIAL HOSPITAL MUMABI AND ANOTHER reported in

2002 CLR 396 (Bombay HC).

(3) Further Division Bench upholding TULSIRAM K GOTHAD in TULSIRAM K GOTHAD vs SUPERINTENDENT, MAHATMA GANDHI

MEMORIAL HOSPITAL MUMBAI AND ANOTHER reported in 2007 II CLR 718.

These decisions are required to be examined with reference to Rules, 1961.

18. Learned Senior Counsel K.Subbarao made a statement that the conditions imposed in the letter of appointment that age of retirement of an

employee is 58 years has no significance as and when 1982 Rules were incorporated on 11.03.1982. He pointed out with reference to object of Act,

1946 relating to conditions of service to be made known to the employees. Therefore, decisions of Mohammed Shamim (supra) and Tulsiram supra

has no application to the present case.

19. Heard learned counsel for the parties.

20. The issue of retirement age of a workman working in a manufacturing unit is covered under the employment clause Act, 1946. Industrial

employment (Standing Orders) Act, 1946 read with Industrial Employment (Standing Orders) Central Rules, 1946, Schedule 1-B vide GSR.30(E)

dated 17.01.1983 states the retirement age is restricted to 58 years vide GSR 1040, dated 12.09.1984.

21. In case of establishments which are not governed by Act, 1946, the age of retirement is decided by service conditions such as

settlement/appointment letters, employment agreements. However, if the retirement age is not determined, in such an establishment the worker can

claim that since the age of retirement is not decided by law as well as by service conditions, he can work till the time he is physically fit and able to do

work. However, by and large, Courts have held that age of retirement should be 60 yrs. In G.M.TALANGE cited supra decided on 24.03.1964, Apex

Court in making its decision in the above matter, relied upon the report of the Norms Committee in which the following opinion was expressed:

“After taking into consideration the views of the earlier Committees and Commissions including those of the Second Pay Commission, the report of

which has been released recently,, we feel that the retirement age for workmen in all industries should be fixed at 60. Accordingly, the norms for

retirement age is fixed at 60.”

22. The Apex Court held that, “it is important to notice that the correctness of the Tribunal’s findings that in all the concerns in the Bombay

Region, trend set had been to fix the retirement age at 60 years, was not challenged before this Court”. Therefore, coming to the decision that the

age of retirement of workman should be assigned at not less than 60, the Supreme Court relied on reports of the Norms Committee which formed its

decision taking into consideration earlier Committees and Commissions. The above Judgment was upheld in TEJ BAHADUR RAM vs STATE OF

UTTAR PRADESH AND ANR. arising in SLP (C) No.18692/2005.

23. Life Expectancy issue as on this day is also relevant factor for determination of age of retirement both in Government and Private organization. In

countries like Brazil- 65, China-60, France-67, Germany-67, Amecia-67 and UK-67. Statistics released by Union Ministry of Health and Family

Welfare indicates that life expectancy in India has gone up by five years from 62.3 years for Males and 69.9 years for female in 2001-2005 to 67.3

years and 69.6 years respectively in 2011-2015. Life expectancy in Karnataka 68.00 in 2011-15 and projected is 72.3 years. In Maharashtra and in

Punjab it is 68.9 and 72.5 years and 72.8 and 70.1 years respectively. Recently State of Chattisgarh age of retirement of industrial Employees

enhanced from 58 to 60 years and further gave authority to industrial establishments to further extend to 62 years if they think that there is a need of any employee or worker.

24. The International Labour Conference (for short 'ILC') has passed a recommendation which recognizes violence and harassment in the

world of work as 'Human rights violence or abuse'. A new Convention and accompanying recommendations were adopted by ILC on the final

day of Centenary of International Labour Conference in Geneva. The conference is organized by the International Labour Organisation to set its

broad bye-laws including conventions and recommendations. Under the convention, violence and harassment in the world of work can be recognized

as constituting, 'Human rights violence or abuse'. Harassment and violence are also, 'a threat to equal opportunities, is unacceptable and

incompatible with decent work', it says violence and harassment have been defined as behaviour, practice or threats 'that aim at, resulting or are

likely or likely to result in physical, psychological, sexual or economic harm'. Member States have been reminded that they have a responsibility to

promote, 'general environment of 'zero' tolerance'.

25. The convention was passed with 439 votes in favour, 7 against and 30 abstentions. The recommendations was passed with 397 votes in favour, 12

votes against and 44 abstentions. The 3 Indian Representatives at the Conference, all voted in favour of both conventions and recommendations. The

new International Labour Standards aims to protect workers and employees irrespective of their contractual status. It also includes those employees

or workers in training, interns and apprentices, workers whose employment has been terminated, volunteers, job seekers and job applicants. According

to ILC, it recognizes that, 'individuals exercising authority, duties or responsibility of an employer can also be subjected to violence and

harassment'.

26. The Convention takes a broad view of avenues where violence and harassment can occur. It recognizes that such conventions can occur not just at the work place, but in place where a worker takes rest, uses sanitation, washing or changing facilities; during work related trips, travel; and in employer provided accommodation, among others. The Convention says violence and harassment may also involve third parties. The Convention will enter into force 12 months after 2 Member States have ratified it. The ILO has 187 Member States. The recommendation is not legally binding and only provides guidelines as to how the Convention can be applied. Thus, there is activism in the labour laws like judicial activism in order to protect each and every right of an employee from the employer or third parties. Therefore, one has to draw inference that the demand of employees relating to age of retirement if any would fall under service condition of employee.

27. The following provisions are required to be examined in the present petitions viz.,:

- (i) 11.09.1979 Certified Standing Orders
- (ii) Appointment order of an employee wherein the petitioner has assigned the age of retirement at 58 years
- (iii) Provisions of Act, 1946, Section 2 " Interpretation;
- (g) "Standing Orders", means Rules relating to matters set-out in the Schedule.
- (iv) Section -3 - Submission of draft Standing Orders
- (v) Section 4 " Conditions for Certification of Standing Orders
- (vi) Section 5 of Certification of Standing Orders
- (vii) Section 6 " Appeals
- (viii) Section 10 " Duration and modification of Standing Orders
- (ix) Section 15 " Power to make rules
- (x) Amendment to the Schedule of the Act, 1946 at Sl.No.10-A, notified on 11.03.1982:

"2. Inclusion of additional matter in the schedule to the Act:-

In the Schedule to the Industrial Employment (Standing Orders) Act, 1946 (Central Act 20 of 1946), after item 10, the following additional matter shall be inserted namely:- "10A. Age of Retirement or superannuation".

(xi) Rule 15-A of Karnataka Industrial Employment (Standing Orders) Rules, 1961 is extracted as under:

“The age for retirement or superannuation of the workman may be (60 years) or such other age as may be agreed upon between the employer and

the workman by any agreement, settlement or award which may be bind on the employer and the workman under any law for the time being in

force.”

10 A. Age of Retirement or Superannuation.

28. The core issues in the present petitions are:

(1) Settlement dated 19.11.2010 would be a hurdle for the respondents in making an application for amendment of certified Standing Orders and order

of respondents 2 and 3 or not?

(2) Amendment of certified Standing Orders dated 30.05.2012 is contrary to terms of agreement dated 19.11.2010, in particularly item No.50(j) of the

Settlement dated 19.11.2010 or not?

(3) Whether order of respondents 1 and 2 are in order or not?

29. On perusal of the cited decision, it is clear that there is no direct decision on the point in respect of factual aspect of the present case that age of

retirement is not covered under the Standing Orders issued in the petitioner's Company dated 11.09.1979. It is true that the order of appointment

issued to each of the employee reveals the age of retirement would be at 58 years. In terms of Schedule, matters to be provided in Standing Orders

under the Act, 1946, "10-A " Age of retirement or superannuation" (vide notification No.SWL. 106, LBW 81, dated 11.3.1982) which specifies

the age of retirement has not been carried out by the petitioner/company to the extent of incorporating the age of retirement in the Standing Orders. In

other words, making necessary application for amendment of the Standing Orders dated 11.09.1979. That apart, in the order dated 31.05.2012 of the

2nd respondent while ordering age of retirement at 60 years Company may in its discretion extend the services of a particular employee beyond the

aforesaid limit subject to his being found medically fit by the Medical Officer and upon such terms and conditions of the company may in this behalf

prescribe with a rider, therefore, there is no blanket prescription of age of retirement at 60 years. In other words, petitioner has a discretion to extend

the age of retirement of an employee at 60 years subject to medical examination of an employee. Such an amendment is reasonable and opinion

expressed by the Norms Committee cited it is also in terms of the decision in G.M.TALANGE of the Apex Court, where Court has taken note of

Norms Committee Report.

30. Petitioner is also running a unit at Patiala in the State of Punjab, where employees have been permitted to retire at the age of 60 years whereas

petitioners are insisting that employees in the Bengaluru Unit are entitled to attain age of superannuation at the age of 58 years. Under one employer,

two sets of employees with a different age of retirement would be arbitrary and illegal. There is no nexus in differentiating among two sets of

employees. Petitioner being a model employer, should have resorted to common service conditions for its employees irrespective of an employee who

is working in Patiala or Bengaluru. It is also undisputed that an employee from Bengaluru to Patiala vice-versa can be transferred and it is not disputed

even though petitioner contended that till date none of them have been transferred from Bengaluru to Patiala vice-versa. At the same time, there is no

dispute that norms have been assigned that an employee is permitted to be transferred from, one unit to another unit. In other words, uniform

standards are required to be adhered by a model employer. Hence fixation of age of retirement can't vary from one unit to another under common

employer.

31. Certified Standing Orders of the petitioner dated 11.09.1979 do not cover the age of retirement of an employee. However, in the order of

appointment, age of retirement has been indicated that an employee would be retiring at the age of 58 years. Section 2 of the Act, 1946 relates to

interpretation wherein Sub-clause (g) defines a "Standing Order" means Rules relating to matters set-out in the Schedule. Petitioners are

concerned with rules referred to only on 11.09.1997 "Standing Orders. Schedule of the Act, 1946 do not contain the age of retirement of an

employee till 11.3.1982 whereas Section 10-A of the Schedule to Act, 1946 provides for an age of retirement or superannuation which was

incorporated on 11.03.1982. Section 4 relates to conditions for Certification of Standing Orders. Section 5 stipulates Certification of Standing Orders.

Section 6 deals with appeals against Certification of Standing Orders. Section 10

relates to duration and modification of Standing Orders. Section 15 or Act 1946 " Power to make Rules by the respective Government.

32. Petitioner's submission that in the order of appointment, age of retirement has been mentioned which amounts to Rules. Such a contention is not tenable for the reason that Sub-clause (g) of Section 2 relates to Standing Orders means Rules relating to matters set-out in the schedule.

Therefore, the contention of the petitioner that order of appointment amounts to agreement or rules is not tenable. Therefore, settlement would not be a hurdle for application for amendment of Certified Standing Orders.

Therefore, no infirmity in the decisions of the certifying officer and Appellate authority.

33. Section 3 has been interpreted in the case of BAJAJ AUTO LIMITED vs. BHOJANE GOPINATH.D AND ORS. reported in (2004) 9 SCC

488, wherein para.12 reads as under:

"In support of the submission that wherever there are certified standing orders of an industrial establishment, the rules thereof shall govern service

conditions of the workmen in that establishment and not the rules in the Model Standing Orders, learned counsel appearing on behalf of the appellant

placed reliance upon the decision of this Court in the case of Dunlop India Ltd. v. workmen [(1972) 3 SCC 616] wherein it has been laid down that

upon certification, it is rules in the certified standing orders which shall be binding on the employer as well as the workmen which would obviously

mean that the workmen will not be bound by rules in the Model Standing Orders. Reliance has been also placed upon another decision of this Court in

the case of The United Provinces Electric Supply Co. Ltd. v. Workmen (AIR 1972 SC 1201 w) herein it has been laid down that the certifying officer

and the appellate authority are duty bound to examine the question of fairness or reasonableness of the provisions of draft standing orders at the time

of considering the same for its certification. In our view, ratio decided in none of the two decisions, is applicable in the present case as the first case

related to industrial establishment which was within the State of West Bengal and the other one in Uttar Pradesh where no drastic amendments were

made by the State Legislature as were made by the State Legislature in Maharashtra. Learned counsel next relied upon the decision of this Court in

the case of Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar

Union & Ors. [(1999) 1 SCC 626 w]hich was a case brought to this Court from Maharashtra where before this Court on behalf of the workmen, argument was advanced that in the certified standing orders, no departure could be made either in principle or policy, from the model standing orders. There, according to Model Standing Orders, an employee of the corporation could be represented in the disciplinary proceeding by an employee of another establishment with the only restriction that he should be an office bearer of a trade union but in the certified standing orders, provision was made that an employee of the corporation could be represented in the disciplinary proceeding only by another employee of that very corporation. The prayer for certification was refused by the Certifying Officer but granted by the appellate authority. When the matter was taken to the Bombay High Court in writ, order passed by the appellate authority was set aside and the order of rejection of Certifying Officer restored. Thereafter, on appeal being preferred before this Court by the management, the order of appellate authority granting certification was restored holding that such an amendment in the model standing orders was permissible. In the said case, what was proposed was variation of the rule in the model standing orders by suitably amending the same and not the deletion or omission of any rule from the model standing orders. What is barred under Section 3 of the 1946 Act is deletion or omission of any rule from the model standing orders relating to any matter set out in the Schedule. In the case on hand, the amendment allowed was not for suitably modifying the rules of the Model Standing Orders but for deleting the same which is impermissible. Thus the ratio, laid down in the case of Bharat Petroleum Corporation Ltd. does not run counter to the submission of learned counsel appearing on behalf of the workmen.

34. In view of the principle laid down in the aforesaid decision, what is required to be taken note of is that Section 3 provides for amendment of

Standing Orders and not for deletion. In the present case, matter relates to â??Amendment of Standing Ordersâ?? and not deletion of any

provision. Petitionerâ??s contention that respondents are not entitled for the relief so also Certified Order and Appellate Authorityâ??s order are

liable to be set-aside in view of BARONIâ??s case is not tenable since factual aspect of the BARONI and present case are entirely different. In

BARONI's case, Clause 19 read with Clause 20 of the Certified Standing Orders was the subject matter whereas in the present case, for the first time incorporating a Clause in the Certified Standing Orders by means of an amendment in terms of Sub-section (g) of Section 2 read with Section 3 and Section 10-A of the Standing Order which states 'Age for retirement or superannuation'. Therefore, all the cited decisions relied on by the petitioner has no application for the present case.

35. It is to be noted that respondent no.2 proceeded to incorporate age of retirement of an employee and it has been affirmed by the Appellate

Authority are in terms of Section 10-A which deals with Age of retirement or superannuation notified by the State Government dated 11.03.1982. In

the cited decisions on behalf of the petitioner are not, the subject matter Nair Service Society Vs. T. Beermastan and others reported in (2009) 5 SCC

545 at para.48 has held as under:

48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be

understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different

State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of

application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.

36. If the above principle laid down in Nair Service Society's case is taken into consideration, all the cited decisions on behalf of the petitioners

have no assistance since, respondents 1 and 2 have taken note of the provision of Section 10-A that 'Age for retirement or superannuation'.

Therefore, cited decisions are hereby distinguished. Even Rules, 2017 is taken into consideration, it relates to substitution, which relates back to from

the inception of provision.

37. On behalf of the respondents, the aforesaid citations have been quoted. No-doubt, some of the judgments are in their favour in respect of age of

retirement from 58 yrs to 60 yrs. At the same time, entire case is rest upon Section 10-A relating the age of retirement or superannuation issued by

the State Government on 11.03.1982 while invoking Section 14-A of the Act, 1946. That apart, in view of various judicial pronouncements that

employee is entitled to retire at the age of 60 years with a rider that employees health and mental conditions.

38. In the Certified Standing Order dated 30.05.2012, 2nd respondent has imposed the conditions that employee shall be subjected to medical

examination. Petitioner's contention that both respondents 1 and 2 have not appraised each and every contention of the petitioners is

management. Even though respondents 1 and 2 have not considered various contentions, at the same time the core issue in the present petition is

whether respondent no.2 entertaining the contesting respondents/employees claim for amendment of Certified Standing Order was in terms of Section

10-A of the Act, 1946 read with Rules or not. State Rules provide for age of retirement or superannuation to be incorporated in the Certified Standing

Orders. Therefore, sufficient caution has been taken by the 2nd respondent that age of retirement of an employee be at 60 years with a rider that

subject to medical fitness. Consequently, there is no infirmity in their orders.

39. Scope of judicial review in respect of decision of respondents 1 and 2 are limited in view of Para.7 of the Supreme Court decision reported in

SYED YAKOOB's case supra. Para-7 reads as under:-

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by

this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction

committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it,

or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal

acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where

the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a

writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means

that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ

proceedings. An error of law which is apparent on the face of the record can be

corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmed Ishaque* 1955-1 SCR 1104: ((S) AIR 1955 SC 233:)*Nagendra Nath v. Commissioner of Hills Division*, 1958 SCR 1240: (AIR 1958 SC 398) and *Kaushalya Devi v. Bachittar Singh* AIR 1960 SC 1168).

40. In a recent decision of the Apex Court reported in (2019) 4 SCC 500 *Sarvepalli Ramaiah Vs. District Collector, Chittoor* held as under:-

41. In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court's extraordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.

42. A decision may sometimes be set aside and quashed under Article 226 on the ground of illegality. This is when there is an apparent error of law on the face of the decision, which goes to the root of the decision and/or in other words an apparent error, but for which the decision would have been otherwise.

43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process. In this case there is no such patent illegality or apparent error. In exercise of power under Article 226, the Court does not sit in appeal over the decision impugned, nor does it adjudicate hotly disputed questions of fact.â??

ORDER

41. Comprehensive view and discussion supra, petitioners have not made out a case so as to interfere with the orders dated 30.05.2012 and 07.11.2012 vide Annexures L and P respectively. Writ petitions stand dismissed. Pending IAs, if any, do not survive and stands disposed of. There shall be no order as to costs.