

(1976) 02 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2332 of 1975

Mathuri Sahu and Others

APPELLANT

Vs

Secretary, Prajatantra Prachar Samity

RESPONDENT

Date of Decision : 09-02-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1976 Ori 186 : (1976) 42 CLT 597

Hon'ble Judges : S.N. Shankar, C.J;P.K. Mohanti, J

Bench : Division Bench

Advocate : P. Palit, S. Das and R. Mohapatra, for the Appellant; J. Das and G. Rath, for the Respondent

Final Decision : Dismissed

Judgement

Shankar, C.J.—Petitioners, nine in number, are employees of Prajatantra Prachar Samity (hereafter called the "Samity"). Opposite Party in the petition is the Secretary of the Samity. The prayer of the petitioners is that the orders dated November 15, 1975 and December 26, 1975 (Annexures 1 and 2 respectively) be quashed. The former is a letter issued to one of the petitioners Raghunath Patra by the Secretary of the Samity informing him that as he had already reached the age of 58 years he was being superannuated and retired. The latter is a letter to the President of Cuttack Press Workers' Union issued by the :Secretary in reply to a communication sent by the said Union stating in substance that the decision taken by the Samity that its employees would retire on attaining the age of fifty-eight years was justified.

2. The petition is contested on several grounds. It is urged that the Samity is a private institution and a registered trust created to undertake literary and cultural activities by publishing newspapers and periodicals and to encourage other activities of like nature and has no statutory duty or obligation violation of which can be remedied under the writ jurisdiction; that the averments in paragraph 9 of the petition that the employees of the Samity "usually and

ordinarily retire from their employment either on the event of their death or on the event of perpetual illness or on the event of their voluntary abandonment of the employment" is not correct and that in almost all industries in the country "the present trend and normal practice as to the age of retirement is 58 years." The petitioners, it is maintained, are not entitled to any relief from this Court.

3. The objection pressed on behalf of the opposite party In forefront is that no writ could be issued by the Court against the Samity as it was a private body. In reply it is contended that a writ under Article 226 could go to any person or authority if any statutory right of the petitioners was infringed and that in the instant case as there was a breach of Standing Orders certified under the Industrial Employment (Standing Orders") Act, 1946 relating to service conditions of the employees of the Samity the rights of the petitioners were infringed and the writ was competent. Strong reliance in support of this submission is placed on Tata Chemicals Ltd. and Others Vs. Kailash C. Adhvaryu, .

4. No copy of the certified Standing Orders was filed with the petition nor has any reference been made in the petition to the particular Standing Order the infringement of which is claimed. Learned counsel for the petitioner however "produced a copy of the Standing Orders at the time of hearing but was unable to point to any clause of the Order the breach of which can be invoked by the petitioners in support of the relief. The Standing Orders do not at all specify the age of superannuation. Question of a breach of any Standing Order by the Samity to entitle the petitioners to invoke Article 226 does not, therefore, arise.

5. In fact, in (paragraph 9 of the petition the claim has been laid by the petitioners on the ground that the employees of the Samity "usually and ordinarily retire from their employment either on the event of their death or on the event of perpetual illness or on the event of their voluntary abandonment of the employment". This is the only ground for the relief. In the counter affidavit this averment is controverted. As it is not denied that the Samity is a private institution and a registered trust, the question that arises for consideration is whether the petitioners are entitled to invoke writ jurisdiction on the ground urged in the petition.

6. In Banchhanidhi Rath Vs. The State of Orissa and Others, the appellant was appointed a Headmaster of Sadhu Charan Bidyapitha in the year 1949. In the year 1951 the Government of Orissa recognised this Bidyapitha as an institution in accordance with the terms of Education Code. By letter dated 19th May, 1969 the appellant was retired from service. He challenged the order of retirement in a writ under Article 226 of the Constitution. Amongst others the contention raised by him was that it had been the uniform usage and implied term of office of all teachers in private schools in Orissa that irrespective of age limit they would continue to be in service as long as they were physically fit and mentally alert. The writ petition was dismissed. In dealing with the appeal by the petitioner against the order of dismissal at page 845 of the report the Supreme Court said :--

"It is manifest that the appellant could not enforce a contract of employment in an application under Article 226 of the Constitution. The appellant did not rely on any rule of the management of the institution that the appellant would continue in service as long as the appellant was physically fit and mentally alert. The appellant alleged a custom to that effect in the petition. Custom of such a nature cannot be enforced in an application under Article 226."

T. In *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, the question of locus standi of a petitioner to invoke Article 226 came up before the Supreme Court. In this case writ was filed by the workmen challenging the validity of an agreement entered into between the Company and the Corporation Employees Union the effect of which was that in spite of an earlier settlement the company could carry out retrenchment of 92 workmen. The objection was that the writ petition was not maintainable. Dealing with the contention Mr. Justice Shelat shaking for the Court at page 1309 of the report said :--

"No doubt, Article 226 provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus, etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute."

8. There is, therefore, no escape from the conclusion that the petitioners have no locus standi to invoke Article 226 of the Constitution and the ground on which they base their claim is not sustainable in the writ Court.

9. In the Gujarat case relied upon by the learned counsel *Tata Chemicals Ltd. and Others Vs. Kailash C. Adhvaryu*, there was a Standing Order provisions of which were not complied with and therefore it was held that the suit for declaration that dismissal was illegal was not barred by Section 21(b) of the old Specific Relief Act. This case does not help the petitioners.

10. It was then argued that the petitioners had in any case been retrenched within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 in violation of the mandatory provision of Section 25F of the Act and this furnishes a good cause of action to the petitioners to invoke Article 226,

11. This case was not pleaded in the petition. The plea has for the first time been taken in the rejoinder.

12. The first question that falls for determination in the context of this plea is whether the impugned order is an order of retrenchment. On the face of it the order states that the petitioners having reached the age of superannuation i. e.

58 years are retired. As stated earlier there is no provision in the Standing Orders as to the age of superannuation. So what has happened in this case is that in spite of the absence of such a provision the Samity has taken a decision to retire its employees at the age of 58 years. If this decision is legal and sustainable the impugned order is purely an order of retirement and not retrenchment.

13. Retrenchment is defined in Section 2(oo) of the Industrial Disputes Act, 1947 in the following terms :--

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of the employment between the employer and the workmen concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health."

Clause (b) in terms excludes retirement on reaching the age of superannuation from the purview of retrenchment. True that retirement has the effect of "termination" of service but all termination of service is not retrenchment. The impugned order, therefore, prima facie is not an order of retrenchment unless it is shown that either the Samity was not competent to take the decision to retire its employees at the age of 58 years or that the decision is otherwise unreasonable and unwarranted. This is not the scope of the present writ petition. The petitioners have not raised any such plea and the consideration of this aspect apart from anything else is not warranted in this petition as framed.

14. The case of the Samity, in answer to the petitioners' contention that the employees of the Samity could retire only in the circumstances mentioned in para. 9 of the petition, is that the stand taken by the petitioners is "astounding, unusual and contrary to the normal practice in this country". It is further averred "the present trend and normal practice as to the age of retirement is 58 years in almost all industries", We have no material before us to decide the controversy raised by these pleas, nor would it be proper to embark on such a venture within the limited scope of this petition, If further appears that at one stage the case of the petitioners was taken up by the Union and the Union sent a communication to the Samity. But after the reply of the Samity to the Union vide An-nexure 2 the Union apparently took no interest in the matter. In The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen, the fixation of 58 years as the age of superannuation was approved by the Supreme Court. The decision of the Union cannot, therefore, on the face of it be called unreasonable. The Supreme Court in this case endorsed the age of superannuation after the various

aspects of the question had been considered at length by the appropriate Tribunals and the entire matter including the views of the Tribunal was before the Court. No decision in the absence of such relevant material would be justified. To take into account only the abstract principles would be to bypass the real question in controversy between the parties which will lead to complications and further unrest in the Industry resulting in multiplicity of proceedings. We are, therefore, not inclined to go into this aspect of this case in the present proceedings.

15. It was not disputed before us that the petitioners can raise an Industrial Dispute. All pleas available to the petitioners in law can be raised in this dispute. After baking into consideration all the relevant facts and circumstances of the case, we are of the view that the matter can more appropriately be decided in that dispute and the petitioners should not be allowed to side-track the real issue by invoking Article 226.

16. Learned counsel for the petitioners urged that the existence of alternative remedy is no bar to the invocation of writ jurisdiction. In support of the contention he relied on *Saroj Kumar Ghosh Vs. Chairman, Orissa State Electricity Board*, *Beni Bhuj Sahu Vs. Chief Engineer, Hirakud Dam Project* and *Another, and Duryodhan Naik v. Union of India 1969 Lab IC 1282 (Orissa)*. In *Saroj Kumar's* case the petitioner was, retired by the Orissa State Electricity Board on attaining the age of 55 years in pursuance of a clause relating to superannuation in the Standing Orders. The factum of superannuation was thus not in dispute and the contention raised was that the Standing Orders could not contain a clause fixing the age of superannuation and, therefore, the petitioner could not be superannuated. No enquiry on the factual aspect being called for, the Court entertained the writ and found that the superannuation clause was beyond the ambit of the Schedule to the Act and as such unenforceable and so the petitioner could not be retired. In *Beni Sahu's* case also there was no dispute as to "Retrenchment Notice". With this admitted fact the Court found that provisions of Section 25F having not been complied with, the order of retrenchment was vitiated. In *Duryodhan Naik's* case the Court found on the facts before it that one set of employees consisting of eleven petitioners had been retrenched and it was conceded that second and third categories of the petitioners were admittedly cases of retrenchment without recourse to the provisions of Section 25F of the Industrial Disputes Act, 1947. The relief was, therefore, granted in the writ petition. The facts of all these cases were wholly different from the present one and no question as to the competency and validity of the decision as to fixing the age of superannuation was involved. They are, therefore, of no assistance to the petitioners.

17. For reasons aforesaid, we are of the view that the petitioners in the facts of this case are not entitled to invoke the writ jurisdiction of this Court and therefore, dismiss this petition; but having regard to the circumstances of the case leave the parties to bear their own costs.

Mohanti, J.

I agree.