
(1984) 07 KAR CK 0037
In the Karnataka High Court
Case No : W.A. No. 2733 of 1982

M.C. Raju

APPELLANT

Vs

Executive Director

RESPONDENT

Date of Decision : 27-07-1984

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 10, 10 (1), 10 (2), 12 A, 13 A

Citation : (1983) ILR (Kar) 189 : (1985) 1 KarLJ 231 : (1985) 1 LLJ 210

Hon'ble Judges : V.S. Malimath, C.J;R.S. Mahendra, J

Bench : Division Bench

Judgement

Malimath, C.J.—This appeal is by the workman M. C. Raju challenging the order made by the learned single Judge on 12th October, 1982 dismiss his Writ Petition No. 34992/82.

2. The brief facts relevant for the disposal of this case may be stated as follows : The appellant was in the service of the respondent from the year 1947. After he attained the age of 55 years the respondent gave him an extension of service for six months. On the expiry of the extended term he was sought to be retired from service with effect from 1st October, 1982. The appellant made a request to the respondent to continue him in service until he attains the age of 58 years, as per Annexure-C, on the ground that the Model Standing Orders prescribed under the Karnataka Industrial Employment (Standing Orders) Rules, 1961, (hereinafter referred to as the Rules), have been amended with effect from 11th March, 1982 by inserting Clauses-15A providing 58 years as the age for retirement or superannuation of a workman. As there was no response from the respondent to his request he filed Writ Petition No. 34992/82 seeking a writ in the nature of mandamus directing the respondent to continue him in service till he attained the age of 58 years. The learned single Judge dismissed the Writ Petition holding that the appellant is not entitled to remain in service till he attained the age of 58 years on the basis of the amended Model Standing Orders. The learned single Judge has taken the view that until the Certified Standing Orders of the

respondent-Company are suitably amended providing 58 years as the age of superannuation of its workmen no workman can claim as a matter of right that he is entitled to remain in service till he attained the age of 58 years. It is the correctness of the said view that is questioned by the appellant in this appeal.

3. Though the exact date is not available, it is not disputed that the certified Standing Orders of the respondent-Company framed under the Industrial Employment (Standing Orders) Act, 1946, (hereinafter referred to as the Act), had come into operation with effect from 2nd February, 1978. The schedule to the Act pertaining to the matters to be provided in the Standing Orders under the Act did not specify the age of retirement or superannuation as one of the matters in respect of which provision should be made in the Standing Orders. Even in the Model Standing Orders as they stood before 11th March, 1982 there was no provision in regard to the age of retirement or superannuation. In the certified Standing Orders of the respondent which were framed in conformity with the Model Standing Orders and which came into operation with effect from 2nd February,, 1978 there was no provision in regard to the age of retirement or superannuation. With effect from 11th March, 1982, the schedule to the Act was amended by the Karnataka Industrial Employment (Standing Orders) (Amendment) Rules, 1982, specifying the age of retirement or superannuation as one of the matters to be provided in the Standing Orders under the Act. By the same Amendment Rules the Model Standing Orders were also amended with effect from 11th March, 1982 by inserting Clause-15A providing that the age of 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 on award which may be binding on the employer and the workman under any law for the time being in force.

4. Before, 11th March, 1982 though there was no provision in the Model Standing Orders regarding age of superannuation or age of retirement, the same was governed by the settlement entered into between the workmen and the Management of the respondent, which provided 55 years as the age of retirement. The said settlement is dated 19th August, 1977 and Clause-5 thereof made a provision in this behalf. Clause-2 of the settlement makes it clear that the settlement was for a period of five years from 19th August, 1977 to 17th August, 1982. It is not disputed that no fresh settlement thereafter was entered into between the workmen and he Management.

5. After the Act, the Rules and the Model Standing Orders were amended with effect from 11th March, 1982 as aforesaid, the workmen made an application on 16th June, 1982, as per Annexure-E, to the Deputy Labour Commissioner and Certifying Officer, Bangalore, under S. 10(2) of the Act, proposing an amendment to the certified Standing Orders for providing 58 years as the age of retirement of the employees of the respondent. On 31st December, 1982 the amendment sought was allowed, which decision was challenged by the respondent in an appeal under S. 6 of the Act. The Appellate authority allowed the appeal on 19th

March, 1983. The Appellate order was challenged by the workmen in Writ Petition No. 6593/83, and that Writ Petition came to be allowed on 4th October, 1983 and the matter was remitted to the Appellate authority-the Addl. Industrial Tribunal for fresh disposal. After remand, the Appellate authority made an Order on 19th July, 1984 allowing the appeal and setting aside the Order of the Certifying Officer and cancelling the certificate fixing 58 years as the age of retirement. The Appellate authority made a further order that a Clause viz., "The age of retirement of superannuation of the employees shall be 55 years" shall be incorporated in the Standing Orders of the respondent. Sri Krishnaiah learned counsel for the appellant submits that the workmen are likely to challenge the order of the Appellate authority dated 19th July, 1984 by means of a separate Writ Petition.

6. The principal contention of Sri. Krishnaiah is that by virtue of S. 12-A of the Act of the Model Standing Orders as amended with effect from 11th March, 1982 became applicable to the employees of the respondent with effect from that date and that the same shall continue to remain in operation until it is superseded by amending the existing certified Standing Orders of the respondent. Section 12-A of the Act on which the argument of Sri Krishnaiah is based may for the sake of convenience be extracted as follows :-

"12-A TEMPORARY APPLICATION OF MODEL STANDING ORDERS.

(1.) Notwithstanding anything contained in Ss. 3 to 12, for the period commencing on the date on which this Act becomes applicable to an Industrial Establishment and ending with the date on which the Standing Orders as finally certified under this Act come into operation under S. 7 in that establishment, the prescribed Model Standing Orders shall be deemed to be adopted in that establishment and the provisions of S. 9 Sub-s. (2) of S. 13 and S. 13-A shall apply to such Model Standing Orders as they apply to the Standing Orders so certified"

Section 12-A was inserted by Act 39 of 1963 with effect from 23rd December, 1963. As the preamble of the Act indicates the object of the same is to require employer in Industrial Establishments to define firmly the conditions of employment under them to make the same known to the workmen employed by them. Section 3 of the Act requires that within six months from the date on which the Act becomes applicable to an Industrial Establishment the employer shall submit the Certifying Officer draft Standing Orders proposed by him for adoption in his Industrial Establishment. On receipt of the draft Standing Orders, the Certifying Officer after following the prescribed procedure shall certify the draft Standing Orders whereupon the certified Standing Orders will become binding on the Industrial Establishment as well as the workmen. Section 6 of the Act provides for an appeal against the order of the Certifying Officer. It is therefore clear that it is bound to take some time before the certified Standing Orders contemplated by the Act come into operation. With a view to make certain transitory provisions during the interregnum S. 12-A of the Act was

introduced by Act 39 of 1963. Section 12-A provides that pending certification of the Standing Orders under the Act, the prescribed Model Standing Orders shall be deemed to be adopted in the establishment. As the Act was amended with effect from 11th March, 1982 by inserting a provision to the Schedule of the Act providing for the age of retirement or superannuation, it was contended that S. 12-A of the Act gets attracted and that therefore the consequences specified therein must follow. It was submitted by Sri Krishnaiah that the Model Standing Orders as amended with effect from 11th March, 1982 provides 58 years as the age of superannuation and that therefore the same must be deemed to be applicable to the workmen of the respondent until the certified Standing Orders are duly amended by following the procedure prescribed by S. 10 of the Act making an appropriate provision in the Standing Orders of the respondent providing for the age of superannuation.

7. What is expressly provided in S. 12-A of the Act is that the prescribed Model Standing Orders shall be deemed to be adopted by the establishment commencing from the date on which the Act becomes applicable to the Industrial Establishment and ending with the date on which the Standing Orders as finally certified under the Act come into operation under S. 7. The transitory period during which the Model Standing Orders shall be deemed to be applicable to the establishment has been provided with precision. That period is the one between the date on which the Act becomes applicable to the establishment and the date on which the Standing Orders as finally certified under the Act come into operation under S. 7. The expression "commencing from the date on which the Act becomes applicable" is significant. It does not speak of the date on which any amendment to the Act or Rules comes into force. If the contention of Sri. Krishnaiah is accepted S. 12-A will get attracted on every occasion when the Act is amended. But what is provided by S. 12-A is fixed date for commencement of the transitory period during which the Model Standing Orders shall be deemed to be applicable, which is the date on which the principal Act came into force. The other termini of the transitory period is the date on which the Standing Orders as finally certified under the Act come into operation under S. 7. Here again, the reference is to the final Standing Orders and not to the amendment to the Standing Orders already in operation in the establishment. The contention urged by Sri Krishnaiah, in our opinion, leads to absurd results if the Model Standing Orders become applicable with effect from the date of commencement of the Act as it would be giving retrospective effect to the amended Model Standing Orders when the amendment to the Act itself making provision in that behalf did not provide for giving any retrospective operation. The language of S. 12-A makes it clear that the Model Standing Orders shall be deemed to be applicable until the standing Orders are made as contemplated by the Act. The reference to the Standing Orders, as finally certified under the Act in S. 12-A, is obviously to the first Standing Orders made for the establishment after the Act came into force. It therefore follows that if the Model Standing Orders are amended subsequent to the coming into operation of the first Standing Orders in respect of the particular

establishment, the same do not automatically become applicable to the establishment concerned. Steps have to be taken to amend the existing Standing Orders in accordance with S. 10 of the Act. Until Such steps are taken to amend the existing Standing Orders to bring them in conformity with the amended Model Standing Orders, the amended Model Standing Orders will not be applicable to the establishment.

8. Section 10 provides for the duration and modification of the Standing Orders. Sub-s. (1) of that Section provides that Standing Orders finally certified under this Act shall not, except on agreement between the employer and 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. If there are, in operation certified Standing Orders in respect of a particular establishment and the Model Standing Orders are thereafter amended requiring the amendment of the existing certified Standing Orders, appropriate steps have to be taken in accordance with S. 10 of the Act. Let us take an instance where the Model Standing Orders get amended within three months from the date on which the first Certified Standing Orders came into operation. In these circumstances, sub-s. (1) of S. 10 precludes the amendment of the existing Certified Standing Orders immediately, as no amendments can be effected except on agreement between the employer and the workmen for a period of six months from the date on which these Certified Standing Orders came into operation. Sub-s. (1) of S. 10 of the Act, thus precludes the Standing Orders being modified so as to bring them in conformity with the subsequently amended Model Standing Orders for a period of six months from the date on which the existing certified Standing Orders came into operation. Thus, it becomes clear that it was not the intention of the legislature that the Model Standing Orders should become effective and come into operation immediately as and when they are amended. If the intention of the legislature was that they should be deemed to come into operation, as soon as the amendment came into operation, there would not have been a bar as contemplated in sub-s. (1) of S. 10. This is an additional reason which suggests that the legislature did not contemplate that the amendment to the Model Standing Orders should become operative as soon as the amendment comes into operation. We have, therefore, no hesitation in taking the view that as and when the Model Standing Orders are amended, the only way to give effect to the amendment is by resorting to the procedure of amendment contemplated by S. 10 of the Act and that until the existing Certified Standing Orders are suitably amended, the amended Model Standing Orders cannot be deemed to be applicable to the concerned establishment.

9. We are, therefore, in agreement with the view taken by the learned single Judge that the appellant in this case cannot claim the benefit of the amendment to the Model Standing orders specifying fifty-eight years, as the age of superannuation

10. For the reasons states above, this appeal fails and is dismissed. No costs.