
(2002) 02 BOM CK 0006
In the Bombay High Court
Case No : Writ Petition No. 5830 of 1995

M.K. Mulki

APPELLANT

Vs

Kemen Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2002) 5 BomCR 315 : (2002) 95 FLR 567

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Shobha Gopal, for the Appellant; A.S. Rao and Formal Party, for the Respondent

Judgement

Nishita Mhatre, J.—The petitioner has challenged the Award of the Labour Court dated 16th August, 1994 rejecting the reference against continuity of service and full back wages.

2. The petitioner joined the services of Chemical Engineering Corporation as a Peon-cum-dispatch Clerk on 5th October, 1949. The said company was then taken over by the first respondent herein in 1967. Individual letters were issued by the first respondent regarding the taking over of the company to each workman. On 31st July, 1972, the first respondent confirmed the services of the petitioner with them and the petitioner was informed that his service conditions would continue unchanged. It appears that the employees of the erstwhile Chemical Engineering Corporation were permitted to continue in service till they were mentally fit or the employees themselves decided to retire from service. These service conditions were continued by the first respondent. The petitioner was, therefore, surprised to receive retirement notice of 17th December, 1987 retiring him with effect from 1st January, 1988. The petitioner continued to report for duty even after 1st January, 1988. However, no work was assigned to him and his name was struck off from the muster roll. On 24th February, 1988, the petitioner raised a demand for reinstatement as no work was being allotted

to him. The dispute was referred for adjudication before the Labour Court. Pleadings were filed by the parties. The petitioner had made a categorical statement in his statement of claim that there was no retirement age fixed with the first respondent company. However, the first respondent pleaded that the petitioner had been retired on attaining the age of the superannuation and that the petitioner at the time of retirement on 1st January, 1988 was 62 years 7 months and 20 days old. The evidence of the petitioner was recorded when he was 68 years old. At that stage, he has stated that due to his old age, his memory was weak. He also admitted that even at the age of 62 his memory was weak but that he was physically capable to carry out the duties assigned to him. The employer's evidence has been recorded by examining the Manager who has deposed that at the time of retirement, mental as well as physical efficiency of the petitioner was weak. The witness has also stated that as per the provisions of law, the employee's retirement age was 58. However, he was unable to produce any provisions of law showing that the retirement was fixed at the age of 58 years.

3. The Award of the Labour Court finds that the first respondent company was well within its right to retire the petitioner as his memory was weak and that in comparable concerns the retirement age was 58 or 60 years. On this ground alone, the Labour Court has held that the petitioner was not entitled to continue in service and that for an indefinite period of time.

4. The Award of the Labour Court has been assailed by the learned Advocate for the petitioner on the ground that where no retirement age is fixed, an employee is entitled to continue in service till such time as the employee finds he is not able to cope with the work or the employer finds that he is not mentally and physically fit. The learned Advocate submits that the petitioner was not subjected to any medical examination before retirement nor was he given any opportunity to show that he was physically and mentally fit to continue in service.

5. Mr. Rao, learned Advocate for the first respondent company, submits that the first respondent has been more than fair by permitting the petitioner to continue in service till the age of 62 years 7 months and 20 days when the age of retirement in comparable concerns was only upto 58 years. He further urges that the findings of the Labour Court that the petitioner was not physically fit to continue in service cannot be assailed as there is no evidence to the contrary. He, therefore, submits that the Award of the Labour Court need not be interfered with.

6. In my view, the Labour Court has totally misdirected itself while concluding that since in comparable concerns the retirement age was either 58 or 60 years, the petitioner had to be retired at that age. In fact, the Labour Court has found that there are different ages of retirement in various concerns ranging from 55 years to 60 years. Therefore, retiring the petitioner at the age of 62 years 7 months and 20 days is wholly unreasonable. Moreover, the Labour Court has not considered which are the comparable concerns and why they are comparable.

Merely citing Awards or judgments where the retirement age is fixed will not suffice.

7. Ms. Shoba Gopal, learned Advocate for the petitioner, has fairly conceded that reinstatement at this stage would serve no purpose as the petitioner has not been in good health after the age of 68 years when he gave evidence in Court and requests that the Court fix some compensation that should be payable to the workman. She also submits that the legal dues including gratuity, leave wages, etc. of the workman have not been paid so far.

8. I feel that the Labour Court has erred in rejecting the reference and the petitioner would have been entitled to reinstatement. However, given the age of the petitioner, he should have been deemed to have continued in service upto the age of 65 years as there is evidence to show that after this age his health was failing.

9. Hence, I pass the following order:---

(a) The first respondent company shall pay to the petitioner compensation of Rs. 25,000/- (Rupees Twenty Five thousand only) in lieu of reinstatement and back wages. The first respondent shall also pay to the petitioner gratuity and all other legal dues.

(b) All these amounts shall be paid to the petitioner within six weeks from today.

(c) The first respondent shall assist the petitioner in obtaining his Provident Fund dues from the office of the Regional Provident Fund Commissioner.

10. Rule made absolute accordingly with no order as to costs.

11. Issuance of certified copy expedited.

Rule made absolute.