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**(1995) 12 AHC CK 0017**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 23051 of 1995**

Mohd. Shamim

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 18-12-1995

**Acts Referred:**

Industrial Employment (Standing Orders) Act, 1946 — Section 4

**Citation :** (1996) 73 FLR 1672 : (1996) 1 LLJ 1148

**Hon'ble Judges :** S.R. Singh, J

**Bench :** Single Bench

**Advocate :** Vineet Saran, for the Appellant; S. Chandra and V.R. Agrawal, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.R. Singh, J.—Impugned herein is the retirement notice dated February 15, 1995 whereby the petitioner was notified that he would be attaining the age of 55 years on April 1, 1995 and consequently, retiring from the service of the company with effect from April 2, 1995 in accordance with the Standing Orders of the Company. According to the petitioner, who had been serving articles to the department of electrical maintenance in the Factory of the 3rd respondent, the certified Standing Orders of the Company do not provide for superannuation which according to the petitioner, is governed by the Model Standing Orders framed by the State Government of Uttar Pradesh vide Notification No. 2651/XXXVI-3-5(SC)-85 dated July 24, 1992 (Annexure 3) thereby prescribing 58 years as the age of superannuation. Accordingly, the petitioner has sought the relief for issuance of a writ in the nature of certiorari quashing the retirement notice dated February 15, 1995 and further a writ of mandamus directing the respondents 3 and 4 to treat the petitioner on duly entitled to all monetary benefits.

2. The respondent-company was initially known as Great Eastern Electro Plating and in 1969, it was rechristened as M/s Geep Flash Light Industries Ltd. and on

September 8, 1979, the company again underwent a change of name and came to be known as Geep Industrial Syndicate Ltd. Allahabad arrayed as party respondent No. 3.

3. The learned Counsel appearing for the petitioner canvassed that the certified Standing orders of the Company do not prescribe any age of superannuation which has been prescribed for the first time by the Model Standing Orders formulated by the Govt. of Uttar Pradesh vide notification aforesaid. The learned counsel appearing for the respondent on the other hand, submitted that the superannuation being a termination of service on attaining a certain age, the provisions of Certified Standing Orders 25 would be attracted.

4. Therefore, the question herein that looms for consideration is whether the petitioner could be superannuated on attaining the age of 55 years by virtue of the Certified Standing Orders 25. For critical and analytical appreciation of the question, it would be useful to excerpt as under the Standing Orders 25 in so far as it is germane to the controversy involved in the instant case.

"Notice regarding dismissal or resignation of the workmen.

(a) Service of permanent workmen can be terminated without assigning any cause on giving 30 days notice or payment of wages in lieu thereof or for such longer period as may form part of a contract if any.

Provided that in the case of workmen attaining the age of 55 years, their services shall be terminated on attaining of such age.

Provided further that at the discretion of the management extension of service may be granted to such workmen to a maximum of five extensions of one year each"

5. Sri Vineet Saran, learned counsel appearing for the petitioner urged that Standing Order 25 is intended for application to a case of termination and not to a case of superannuation which is provided for in the Model Standing Orders 31 framed by the State Govt. of Uttar Pradesh as published in U.P. Gazette (Extra-ordinary) dated July 24, 1992 which is extracted as under:

"31. Subject to the agreement between the employer and workmen, the age at which a workman will reach superannuation shall be 58 years."

The Standing Orders of the company in the instant case were initially certified on February 7, 1960 vide the Certificate of Standing Orders No. 664(i) of 1960 issued under the signature of the Certifying Officer, U.P. On February 8, 1960, It appears that the said certificate of Standing Orders certified as above was amended from time to time but the Standing orders 25 extracted hereinabove have been modulated by any amendment. Section 4 of the Industrial Employment (Standing Orders) Act, 1960 stipulates the condition on the fulfillment of which the Standing Orders are to be certified. It postulates that the standing orders shall be certified under the Act if the provision is made therein

for every matter delineated in the schedule which is applicable to the Industrial Establishment and, Standing Orders are otherwise in conformity with the provision of the Act. Item No. 8 of the Schedule to the Act pertains to termination of employment, and the notice thereon to be given by the employer and workmen. Item No. 11 - C included in the schedule for the first time by U.P. Industrial Employment (Standing Orders) (First Amendment Rules) , 1958 with effect from November 17, 1959 pertains to "age of superannuation or retirement, rate of pension or any other facility which the employer may like to extend or may be agreed upon by the parties". In U.P. Electric Supply Company Ltd. v. T.N. Chatterji and Ors. 1972 (25) FLR 269 the question was whether the expression termination of employment in Item No. 8 to the schedule could not be equated with the word "superannuation". The Supreme Court held as under:

"..... Item 8 by virtue of the language employed does not appear to cover the case of superannuation which does not depend on any notice and which covers an event which is automatic and which must be given effect to without any volition on the part of the employer or the workman as pointed out in the Orissa Judgment. If termination is to be read in a wide sense as meaning employment coming to an end, there was no necessity to have Item 9 because dismissal would then be covered by termination. In the context in which the word "termination" is used in Item 8, it cannot mean each and every form of termination or cessation of employment... Item No. 8 is confined to termination of employment by notice in writing and does not contain any mention of superannuation or retirement. It was perhaps this difficulty which prompted the State of U.P. to introduce Item 11-C in exercise of the rule making powers conferred by Section 15 of the Act..... it would follow that unless an employer can include a clause relating to the age of retirement and superannuation and Certifying Officer can certify it even though no such item appears in the Schedule to the Act, Clause 32 as certified in 1951 in the present case, would not be violative."

The point herein raised is covered by the aforesaid decision of the Supreme Court. In my opinion, therefore, the Certified Standing Orders 25 cannot be called in aid in order to inject any life into the impugned retirement notice. It may be observed that albeit the Standing orders in the present case were certified on February 8, 1960 i.e. after insertion of 11-C in the Schedule by an U.P. Amendment yet no specific provision was made therein as to superannuation. The question, therefore that emerges is whether the petitioner could be superannuated at the age of 55 years even without there being a provision to that effect in the certified Standing Orders.

6. Certified Standing Orders do favour of statutory flavour because of their certification by certifying officer under the provisions of the Industrial Employment (Standing Orders) Act, 1946, but in the absence of any specific provision as to superannuation in the Certified Standing Orders, retirement would be seconded by agreement if any between the employer and the workmen.

Standing Orders 31 of the Model Standing Orders framed by the State Govt., no doubt, provides that the age on which the workman will reach superannuation shall be 58 years but it is "subject to the agreement between the employer and the workmen". Since the petitioner, in the instant case, was sought to be superannuated after the enforcement of the Model Standing Orders framed by the State Govt. vide notification dated July 24, 1992 and Standing Orders framed by the State Govt. vide notification dated July 24, 1992 and there being no specific provisions in the certified Standing Orders providing for superannuation, the question that falls for determination is whether there was any agreement between the petitioner and the respondent company on the question of superannuation. This polemic, in my opinion, can, appropriately be gone into and adjudicated upon at the forum competent to go into the disputed questions of fact. The U.P. Industrial Disputes Act, 1947, provides for efficacious and effective forum for resolution of such a dispute. Even otherwise, the impugned retirement notice having been issued by a private company, I am afraid, a writ of certiorari cannot be issued to quash the said notice under Article 226 of the Constitution of India nor in the conspectus of facts and circumstances of the case, a writ of mandamus can be issued commanding respondent-company to treat the petitioner in service upto the age of 58 years merely because model Standing Orders framed by the State Govt. prescribed 58 years as the age of superannuation inasmuch as such prescription is subject to agreement between the Employer and workmen.

As a sequel to the above discussion, the petition is liable to be dismissed on ground of alternative remedy and it is dismissed accordingly.