

(2012) 03 AHC CK 0107
In the Allahabad High Court
Case No : Writ - A. No. - 41756 of 2011

Moti Lal Kushwaha

APPELLANT

Vs

State of U.P. And Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Constitution of India, 1950 — Article 309, 42, 43
Industrial Employment (Standing Orders) Act, 1946 — Section 10, 13(B), 3, 4, 5

Citation : (2012) 4 ADJ 336 : (2012) 133 FLR 831

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble V.K. Shukla, J.—In the present case, petitioner has rushed to this Court with request to quash the order dated 25.03.2011 issued by the Works Manager of the Irrigation Workshop Division, Naini, Allahabad, informing the petitioner that he would attain the age of superannuation on completing the age of 58 years. The facts of the case, as set out in the writ petition, are that the Irrigation Workshop Division, Naini, Allahabad is an industrial establishment in the Irrigation Department of the State Government, which is under the control and supervision of the Works Manager of the Irrigation Workshop Division, Naini, Allahabad. The petitioner was working continuously in the said workshop as Moulder since 01.01.1987 as daily wager. On 15.03.1991 the Chief Engineer, Procurement and Material Management, Irrigation Department, U.P. Lucknow sanctioned 93 posts in different trades, prescribing their pay scales, qualification and experience etc. Thereafter Selection Committee was constituted and the Superintending Engineer was made the competent authority. Applications were invited from daily wagers for their appointment in regular capacity. The Assistant Engineer by his order dated 30.10.1993 directed the daily wagers of the workshop to submit their applications as well as bio-data on the option form. On the basis of recommendations made by the Selection committee, services of 51 workers out of 54 were regularized, but the petitioner was left out. Aggrieved,

petitioner filed writ petition before this Court and this Court vide judgment dated 10.03.2006 directed the respondents to regularize the services of the petitioner and grant all benefit as were granted to similarly situated persons. In compliance of the order passed by this Court, the services of the petitioner were regularized. Petitioner claims that thereafter, he has been sought to be superannuated at the age of 58 years, whereas the petitioner is entitled to continue in service up to the age of 60 years in view of the amendments which have been made by the Governor in exercise of the authority vested under the proviso to Article 309 of the Constitution, wherein age of superannuation of government servants in place of 58 years has been changed to 60 years. Petitioner submits that in this background, as he is also a government servant and necessary amendments having been incorporated under, wherein amendment has been introduced in Fundamental Rules contained in Financial Hand Book Volume II to Volume IV, which prescribes the age of 60 years, and in view of this amendment, the directives issued to superannuate him at the age of 58 years is bad.

2. To the said writ petition, counter affidavit has been filed, and therein it has been sought to be contended that the petitioner has been functioning in the industrial establishment of the State Government and his service conditions are governed as per Model Standing Order published on 24.07.1992 framed in exercise of the authority vested under the Industrial Employment (Standing Orders) Act, 1946, and aforesaid Standing Order lays down statutorily imposed conditions of service, binding on both the employers and employee. In view of this, as the provisions of the Industrial Employment (Standing Orders) Act, 1946 are special law vis-à-vis general law, and in view of this, the petitioner has been rightly superannuated at the age of 58 years.

3. Rejoinder affidavit has been filed. Thereafter supplementary affidavit and supplementary counter affidavit have also been filed, and hereafter as per the directives issued by Special Appeal Bench in Special Appeal No. 1100 of 2011, State of U.P. and others vs. Moti Lal Kushwaha, present writ petition has been taken up for final hearing and disposal.

4. Sr W.H. Khan, Senior Advocate, assisted by Sri Ramanuj Pandey and Sri P.R. Ganguly, Advocates, contended with vehemence that in the present case, it being accepted position that the petitioner is a government servant and the amendments having been made under U.P. Fundamental Rules, 2002, changing the age of superannuation from 58 to 60 years, in all eventuality, the petitioner is entitled to be superannuated on completing the age of 60 years, and in view of this, the directives issued to superannuate him at the age of 58 years is bad. It has also been contended that Irrigation Department has got various industrial establishments, and at Jhansi, Bareilly and Meerut superannuation age is 60 years, whereas in Kanpur, Allahabad and Gorakhpur, the age of superannuation is 58 years, which is clearly discriminatory in nature and not permissible in the eyes of law. In view of this also, the decision to superannuate the petitioner at the age of 58 years is bad. Sri Khan has relied on a judgment of this Court

passed in writ petition No. 7641 of 2003, decided on 11.10.2011, wherein similar claim has been accepted. It has also been submitted that the Standing Orders have no statutory force, and once there is conflict in between the Standing Orders and the Statutory Provisions, the statutory provisions will prevail over the non-statutory provisions, as such writ petition deserves to be allowed.

5. Countering the said submissions, learned standing counsel, on the other hand, contended that the claim of the petitioner could not be accepted for the simple reason that the Certified Standing Orders framed in exercise of the authority vested under the provisions of the Industrial Employment (Standing Orders) Act, 1946, contain statutorily imposed conditions of service, which are binding on both the employers and employees, and as per paragraph 31 of the aforesaid Standing Orders, the age of superannuation has been provided for as 58 years, and till date in terms of Section 13-B of the Industrial Employment (Standing Orders) Act, 1946 no declaration has been made by the appropriate government that nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, C.C.A. Rules and other similar Rules apply, and in view of this, the provisions of the Certified Standing Orders would apply with full force till it is modified, rescinded or varied or any other agreement is entered inter se parties. As far as the incumbents working in Jhansi, Bareilly and Meerut are concerned, there is an agreement, wherein age of superannuation has been accepted as 60 years, and in view of this no parity can be claimed, even if it is accepted that the incumbents can be transferred to such places until and unless the State Government proceeds to make declaration in this regard, and till date such amendment has not been incorporated in regard to Kanpur, Allahabad and Gorakhpur industrial establishments, wherein the age of superannuation has been accepted to be 58 years. In view of this, the writ petition deserves to be dismissed.

6. From the own showing of the petitioner, it is clearly established that his initial engagement had been made as daily wag worker on 01.01.1987. The petitioner has made categorical statement of fact in paragraph 2 of the writ petition that Irrigation Workshop Division, Naini, Allahabad is an industrial establishment of the State Government, which is under the control and supervision of the Worms Manager, Irrigation Wok Division, Naini, Allahabad. On 15.03.1991 the Chief Engineer, Procurement and Material Management, Irrigation Department, U.P. Lucknow sanctioned 93 posts in different trades, prescribing their pay scales, qualification and experience etc. Thereafter Selection Committee was constituted and the Superintending Engineer was made the competent authority. Applications were invited from daily wagers for their appointment in regular capacity. The Assistant Engineer by his order dated 30.10.1993 directed the daily wagers of the workshop to submit their applications as well as bio-data on the option form. On the basis of recommendations made by the Selection committee, services of 51 workers out of 54 were regularized, but the petitioner was left out. Aggrieved, petitioner filed writ petition No. 33410 of 1996 before this Court. In

the said writ petition stand was taken from the side of respondents that the petitioner had become over age and consequently could not be regularized. This Court on 17.07.2001 allowed the writ petition and directed the respondents to grant relaxation in age and to pass consequential order. Hereafter, the pay scale was granted to the petitioner, but he was placed in the work charge establishment vide order dated 17.10.2011. Again writ petition was filed before this Court and this Court on 18.01.2002 directed the respondents to regularize the services of the petitioner on the same type of job when vacancies would occur. Pursuant thereto the petitioner had been regularized, but from the date he resumed the charge. Petitioner again filed writ petition No. 48072 of 2004, and this Court vide judgment dated 10.03.2006 has given the entire benefits.

7. Industrial Employment (Standing Orders) Act, 1946 has been framed with the object to require the employers of the industrial establishment to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed under them. Said Act in question was to provide for framing of standing orders in all industrial establishments employing 100 or more workers. The provisions of Sections 3, 4, 5, 7, 8, 10 and 13B of the Industrial Employment (Standing Orders) Act, 1946 being relevant are extracted below:

3. Submission of draft standing orders.-

(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in this industrial establishment.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where Model standing orders have been prescribed shall be, so far as is practicable, in conformity with such model.

(3) The draft standing orders submitting under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

4. Conditions for certification of standing orders.- Standing orders shall be certifiable under this Act if-

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this

Act;

and it shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

5. Certification of standing orders.-

(1) On receipt of the draft under Section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, if any, of the workmen or where there is no trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications there in which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

7. Date of operation of standing orders.--Standing orders shall, unless an appeal is preferred u/s 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of Section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of Section 6.

8. Register of standing orders. --A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefor on payment of the prescribed fee.

10. Duration and modification of standing orders.-

(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or other representative body of 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.

(2) Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workmen] may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of [***] the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen], a certified copy of that agreement shall be filed along with the application.

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

13-B. Act not to apply to certain industrial establishments.--Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

8. Under the provisions of the Industrial Employment (Standing Orders) Act, 1946, the State Government in its wisdom issued notification dated 24.07.1992 known as Model Standing Orders. The said Model Standing Orders have been published after objections have been received and suggestion forwarded have been considered. Said Model Standing Orders are known as U.P. Industrial Employment Model Standing Order, 1992. Paragraph 31 of the aforesaid Model Standing Orders, 1992 clearly proceeds to contain superannuation age of workmen to be 58 years unless there is agreement to the contrary. Thus, paragraph 31 of the Certified Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 contains specific age of superannuation.

9. This fact is reflected that petitioner's engagement was as workman in the Irrigation Workshop Division, Naini, Allahabad, which is an industrial establishment of the State Government under the control and supervision of the Works Manager, Irrigation Workshop Division, Naini, Allahabad. Once such is the factual situation, then to conceive of this situation that under the provisions of the Industrial Employment (Standing Orders) Act, 1946 and U.P. Industrial Employment Model Standing Order, 1992 are not applicable to him, cannot be accepted and mere mention at some places, in separate proceedings, will not act as estoppel, as law on the subject is clear that there is no estoppel against

statute, and moreover the outcome of the said proceedings have not at all been disclosed before this Court. In the case of R.S.R.T.C. and Others Vs. Deen Dayal Sharma, , Apex Court clarified the legal position that the Standing orders have no statutory force and are not in the nature of delegated or subordinate legislation. However, it has been clarified that Certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946, are statutorily imposed conditions of service and binding both on the employers and employees. They do not amount to statutory provisions. Any violation of these Standing Orders entitles an employee to appropriate relief either before the forum created under the Industrial Disputes Act or before the civil court. Recourse to civil court is open according to the principles indicated therein. Thus, the aforesaid judgment of the Apex Court clearly provides that Certified Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946, are statutorily imposed conditions of service, which are binding on both the employers and employees. They may not amount to statutory provisions, but as far as employers and employees are concerned, inter se them, it is statutorily imposed conditions of service and is binding. In view of this once as far as Irrigation Workshop Division, Naini is concerned, it is an industrial establishment of the State Government, and therein the provisions of the Industrial Employment (Standing Orders) Act, 1946, and the U.P. Industrial Employment Model Standing Order, 1992 are applicable with full force, and as per the same age of superannuation of a workman is 58 years, and till the aforesaid provisions are not modified, rescinded or varied, same has a binding effect.

10. It may be true that in Jhansi, Bareilly and Meerut establishments, the age of superannuation is 60 years, but as per the provisions contained under the Industrial Employment (Standing Orders) Act, 1946, and the U.P. Industrial Employment Model Standing Order, 1992, an agreement has been entered inter se workmen and the employers of Jhansi, Bareilly and Meerut establishments in respect of age of superannuation and the same has been accepted to be 60 years. In view of this, as there is an agreement, the workmen of these divisions stand on different footing. This circumstance is also fully indicative of the fact that the provisions of Industrial Employment (Standing Orders) Act, 1946, and the U.P. Industrial Employment Model Standing Order, 1992 are fully applicable to workman of Industrial Department. This is true, as mentioned in the writ petition that services are transferable, it will lead to an anomalous situation, but the fact of the matter is that in the present case, as far as the workmen of Kanpur, Allahabad and Gorakhpur are concerned, the age of superannuation is 58 years and till date in consonance with the provisions of the Industrial Employment (Standing Orders) Act, 1946, and the U.P. Industrial Employment Model Standing Order, 1992 no agreement has been entered into inter se the employers and employees, then in the absence of the same, the incumbents working in these divisions will have to be superannuated on attaining the age of 58 years. Moreover, petitioner has never been transferred, and even the terms and

conditions of transfer has not been brought to the knowledge and notice of this Court. Petitioner, as such, cannot make much capital of the aforementioned terms and conditions of transfer.

11. Coupled with this, the provisions of the Industrial Employment (Standing Orders) Act, 1946 is applicable, then qua application of Fundamental Rules and Supplementary Rules, declaration u/s 13-B is a condition precedent or ipso facto, it can be said that the provisions of Fundamental Rules and supplementary Rules would be applicable. Till date the State government has not made any declaration in terms of Section 13-B of the Industrial Employment (Standing Orders) Act, 1946 that the provisions of the Industrial Employment (Standing Orders) Act, 1946 would not apply to industrial establishment. It would also be relevant to note that the Apex Court has already considered this aspect of the matter in the case of the 1978 (37) FLR 280 (SC) , clearly taking the view that as far as Industrial Establishment and their employees are concerned, they are governed by the provisions of the Industrial Employment (Standing Orders) Act, 1946, which is an special Act, and in case there is any conflict between special law and general law, then the general provisions will have to give way to the special provisions.

12. In the present case factual situation, which has so emerged, that petitioner claims that he is government servant in the industrial establishment, as such ipso facto, the provisions of Fundamental Rule 56 are applicable to him, and accordingly when amendment has been made in Rule 56 extending age of superannuation to 60 years, then said benefit be extended, petitioner has tried to make capital of the two communications dated 13.11.2007 and 27.02.2009. The Government Order dated 13.11.2007 clearly proceeds to mention that all those incumbents who were working in the Irrigation Workshop and which is industrial establishment of the Irrigation Department, they would also be awarded 50% D.A. as the Government Servants are being paid. In the said Government Order, it has been mentioned that the incumbents who are working in the industrial establishment are Government Servant. Similarly, in Government Order dated 27.02.2009, time scale has been accorded to the incumbents, who are working in the industrial establishment unlike the Government servants. Under the said two communications monetary benefit has been extended, but there is no mention in relation to extension of age of superannuation of any kind, whatsoever. There is no doubt of the fact that the petitioner is a Government servant, but as the petitioner has been working in the industrial establishment, his status is that of workman, and his services are governed by the provisions of the Industrial Employment (Standing Orders) Act, 1946, and the U.P. Industrial Employment Model Standing Order, 1992, and once no amendment has been made therein, they are statutorily imposed conditions of service binding on both the employers and employees. The judgment of Apex Court in the case of the 1978 (37) FLR 280 (SC) , would throw much light over the issue, where the provisions of the Industrial Employment (Standing Orders) Act, 1946 have been held to have the overriding effect in respect of the matter of

service conditions. Relevant extract of the said judgment as contained in paragraphs 13 to 18 are being quoted below:

13. Next, we turn to the submission based on the notification made under Sec. 13-B of the Standing orders Act. Section 13-B reads as follows:

13B. Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence, Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette, apply.

14. The notification made by the Government has already been extracted by us. Some doubts were expressed whether the U.P. state electricity Board had in fact made the regulation and whether the Government merely notified the relation without applying its mind. The learned counsel appearing for the Board and the Government placed before us the relevant records and note-files and we are satisfied that the Board did make the regulation and the Government did apply its mind.

15. The High Court expressed the views that the expression any other rules or regulations" should be read ejusdem generis with the expressions "Fundamental and Supplementary Rules", "Civil Services,Control, Classification and Appeal Rules" etc. So read, it was said, the provisions of Section 13-B could only be applied to industrial establishments in which the workmen employed could properly be described as Government servants. We are unable to agree that the application of the ejusdem generis rule leads to any such result. The true scope of the rule of "ejusdem generis" is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the rule is one which has to be "applied with caution and not pushed too far". It is a rule which must be confined to narrow bounds so as not to unduly or unnecessarily limit general and comprehensive words. If a broad-based genus could consistently be discovered, there is no warrant to cut down general words to dwarf size. If giant it cannot be, dwarf it need not be. It is true that in Sec. 13-B specifically mentioned happen to be Government servants. But they also possess this common characteristic that they are all public servants enjoying a statutory status, and governed by statutory rules and regulations. If the legislature intended to confine the applicability of Sec. 13-B to industrial undertakings employing Government servants only nothing was easier than to say so instead of referring to various rules specifically and following it up with a general expression like the one before us. The words "rules and regulations" have come to acquire a special meaning when used in statutes. They are used to describe subordinate legislation made by authorities to whom the statute delegates that function. Te words can have no

other meaning in Sec. 13-B. Therefore, the expression "workmen to whom.. any other rules or regulations that may be notified in this behalf means, in the context of Sec. 13-B, workmen enjoying a statutory status, in respect of whose conditions of service the relevant statute authorises the making of rules or regulations. The expression cannot be construed so narrowly as to mean Government servants only; nor can it be construed so broadly as to mean workmen employed by whomsoever including private employers, so long as their conditions of service are notified by the Government under Sec. 13-B.

16. Shri Garg relied on certain observations of the Madras High Court in *Raman Nambisan (P.) and Others Vs. Madras State Electricity Board and Others*, and *Thiruvengataswami v. Coimbatore Municipality* (). In *Thiruvengataswami (K.) Vs. Coimbatore Municipality*, case it was held that the mere fact that the Electricity Board had adopted the rules and regulations of the Government of Madras as its transitory rules and regulations did not bring the workmen employed in industrial establishments under the Board within the mischief of Sec. 13-B of the Industrial Establishment's (Standing order) Act. In *Thiru Venkataswami's* case it was held that rules notified u/s 13-B of the Standing Orders Act merely because the rules were made by the Government and published in the Government Gazette. We agree with the conclusion in both cases. In *Thiru Venkataswami* case *Kailasam J.*, also observed that the industrial employment (Standing order) Act was a special act relating exclusively to the service conditions of persons employed in industrial establishments, and, therefore, its provisions prevailed over the provisions of the District Municipalities Act. We entirely agree. But, the learned judge went on to say:

Sec. 13-B cannot be availed of for purposes of framing rules to govern the relationships in an industrial establishment under private management or in a statutory Corporation. This rule can apply only to industrial establishments in respect of which the Government is authorised to frame rules and regulations relating to the conditions of employment in industrial establishments.

There we disagree. Our disagreement is only in regard to industrial establishment in statutory Corporations and not those under private management. Our reasons are mentioned in the previous paragraph.

17. Shri Garg suggested that the rules, and regulations specific mention of which has been made in Sec. 13-B were all comprehensive sets of rules, and, therefore, "any other rules or regulations" that might be notified by the Government should also satisfy the test of comprehensiveness. He argued that a single rule or regulation could not be notified under Sec. 13-B as it would be too much to say, he said, that the notifying of a single rule or regulation would exclude the applicability of all the provisions of the Standing orders Act. We do not think that the notifying of one or many regulations has the effect that Shri Garg apprehends it has. The words "Nothing in this Act shall apply" are not to be interpreted too literally as to lead to absurd results and to what the legislature never intended. In our view the only reasonable construction that we can put

upon the language of Sec. 13-B is that a rule or regulation, if notified by the Government, will exclude the applicability of the Act to the extent that the rule or regulation covers the field. To that extent and to that extent only "nothing in the Act shall apply". To understand Sec. 13-B in any other manner will lead to unjust and un contemplated results. For instance, most of the Service Rules and Regulations expressly mentioned in Sec. 13-B do not deal with a large number of the matters enumerated in the schedule such as "Manner of intimating to workman periods and hour 11 of work, holidays, pay-days and wage rates", "shift working", "Attendance and late coming", "conditions of, procedure in applying for, and the authority which may grant leave and holidays". "Closing and reopening of Sections of the industrial establishments and temporary stoppages of work and the rights and liabilities of the employer and workman arising therefrom" etc. To exclude the applicability of Standing orders relating to all these matters because the Fundamental Rules, the Civil Service Rules or the Civil Services Control, Classification and Appeal Rules provide for a few. Matters like "Classification of workmen" or "suspension or dismissal for misconduct" would be to reverse the processes of history, apart from leading to unjust and untoward results. It will place workmen once again at the mercy of the employer be he ever so benign and it will certainly promote industrial strife. We have indicated what according to us is the proper construction of Sec. 13-B. That is the only construction which gives meaning and sense to Sec. 13-B and that is a construction which can legitimately be said to conform to the Directive Principles of state Policy proclaimed in Articles 42 and 43 of the Constitution.

18. We, therefore, hold that the Industrial Employment (Standing orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect unless such regulations are either notified by the Government under Sec. 13-B or certified by The Certifying officer under Sec. 5 of the Industrial Employment (Standing orders) Act. In regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect of which no regulations have been made by the Board, the Industrial Employment (Standing orders) Act shall continue to apply. In the present case the regulation made by the Board with regard to age of superannuation having been duly notified by the Government, the regulation shall have effect notwithstanding the fact that it is a matter which could be the subject matters) Standing orders under the Industrial Employment (Standing orders) Act. The respondents were therefore, properly retired when they attained the age of 58 years. The appeal is, therefore, allowed. The Writ Petition filed in the High Court is dismissed. The appellants will pay the costs of the respondents as directed by this Court on 28-9-1977. The costs are quantified at Rs. 3,500/-

13. Once such is the factual situation that till date no amendment has been made under the Industrial Employment (Standing Orders) Act, 1946, and the U.P. Industrial Employment Model Standing Order, 1992, the age of superannuation continues to be 58 years. One can go out of the ambit of the

aforesaid Act, namely, Industrial Employment (Standing Orders) Act, 1946, when declaration is made u/s 13-B of the Act, declaring that the provisions of this Act shall not be applicable to said industrial establishment and it shall be governed by Fundamental Rules and Supplementary Rules. Thus, in the absence of declaration/notification u/s 13-B, this Court cannot come to rescue of the petitioner.

14. However, in the facts of the present case, another Single has taken the following view:

Heard learned counsel for the petitioner. Learned Standing Counsel appears for the respondents.

According to the petitioners' counsel, the petitioners have attained the age of superannuation while working in the workshop of Irrigation Department. According to him, all those persons working in the Irrigation Department are entitled to continue up to the age of 60 years but a notice was served on the petitioners with regard to superannuation at the age of 58 years. The submission is that merely because the petitioners have been discharging duty in the workshop does not mean that they shall not be entitled for service benefits at par with other employees. In spite of categorical pleading on record, nothing has been brought on record to rebut the argument advanced by the petitioners' counsel that the employees working in the workshop are part and parcel of the irrigation department; rather in paragraph 5 of the counter affidavit, it has been stated that the petitioners belong to irrigation department. Once the petitioners are the employees of the State Government and also they have been admitted as employees of the Irrigation Department, only because they are discharging duty in the workshop shall not disentitle them to avail the service benefit at par with other employees of the irrigation department. Attention of this Court has not been invited to any rules, regulations or statutory provisions to make out a case that the service condition of the workshop employees are governed by different set of rules or regulations. In view of above, there appears to be no justification on the part of the respondents to treat the petitioners differently than other employees of the irrigation department. The impugned notice suffers from vice of arbitrariness and is discriminatory in nature.

Accordingly, the writ petition is allowed. A writ of certiorari is issued quashing the impugned notice dated 1.11.2003(Annexure-1) with consequential benefits.

15. The said judgment will not at all come to rescue of petitioner, for the simple reason that it is "per incurium" given without taking care of the statutory provisions which hold the filed, and which have been noted in detail in the earlier part of the judgment. Said judgment itself proceeds to mention, that attention of this Court has not been invited to any rule, regulation, statutory provision, to make out a case that service conditions of employees of workshop are governed by different set of Rules

16. Consequently, petition, sans merit and is accordingly, dismissed. No order as

to costs.