

(2012) 04 KAR CK 0149

In the Karnataka High Court

Case No : Writ Petition No. 41583 of 2011 (L-RES)

M/s Kennametal India Ltd.

APPELLANT

Vs

Kennametal India Employees Association

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Standing Orders — Clause 22

Citation : (2013) 1 AKR 10 : (2012) 134 FLR 476 : (2012) 3 LLJ 833 : (2012) LLR 600

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : S.N. Murthy, for the Appellant; K.S. Subramanya, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash the order dated 26.8.2011, Annexure-M passed by the Certifying Officer and the order dated 29.10.2011, Annexure-Q, passed by the Appellate Authority. Petitioner is a company engaged in the manufacture of cutting tools and other allied products. Respondent is the trade union representing the workmen in the petitioner's company. The relationship between the petitioner's company and the respondent-workmen is governed by certified standing orders as required under Industrial Employment (Standing Orders) Act, 1946, Clause - 22 of the certified standing orders deals with the retirement age of workmen and the same reads as under:

22. Retirement.--Employees shall retire from the services of the Company on completing the age of 58 years but the Company may in its discretion extend the services of a particular employee beyond the aforesaid limit subject to his being found medically fit by the Medical Officer and upon such terms and conditions as the Company may in this behalf prescribe.

2. The respondent trade union filed an application before the Deputy Labour

Commissioner-cum-Certifying Officer for amendment of Clause 22 of the Standing Order enhancing the age of retirement from 58 years to 60 years. On contest the certifying officer by his order dated 30.9.2009 allowed the claim of the respondent union amending Clause-22 by fixing the age of retirement at 60 years. Aggrieved by this order the petitioner filed an appeal before the Appellate Authority and the same came to be dismissed vide order dated 28.5.2010. Aggrieved by the order of certifying officer and the Appellate Authority, the petitioner approached this court in W.P. No. 16922/2010. Learned single Judge of this court vide order dated 19.11.2010 allowed the writ petition and set-aside the order passed by the certifying officer and the appellate authority on the ground that an application for amendment of a clause in the settlement before the expiry of settlement period as not maintainable. The respondent union being aggrieved by the order of learned single Judge filed an appeal in W.A. No. 400/2011. A Division Bench of this court by order dated 27.7.2011 disposed the writ appeal with an observation as under:

In view of the above, the instant writ appeal is disposed of. The claim of the appellant/association shall now be reconsidered, whereupon the competent authority shall dispose of the claim raised by the appellant/association, by passing a well reasoned speaking order, within one month from today.

3. After the disposal of W.A. No. 400/2011 the certifying officer passed the impugned order at Annexure-M allowing the amendment of Clause-22 of certified standing orders enhancing the retirement age to 60 years by his order dated 26.8.2011. Aggrieved by this order of certifying officer petitioner filed an appeal and the same came to be dismissed as per Annexure-Q, dated 29.10.2011. Hence, this writ petition.

4. Heard arguments on both the side and perused the entire writ papers.

5. Sri S.N. Mutiny, learned senior counsel for the petitioner contend that though the settlement between die parties expired on 30.6.2011, the same continued to operate and bind the parties until a new settlement is signed. Therefore, during the subsistence of the settlement, the impugned orders are bad in law. I decline to accept this contention of learned senior counsel. The Supreme Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, held that "on the expiry of the period prescribed in the sub-section the conceptual quality of the transaction as a "settlement" comes to an end. The ban lifts. The parties are no longer bound to maintain the industrial status quo in respect of matters covered by the settlement. They are at liberty to seek an alteration of the contract. But until altered, the contract continues to govern the relations between the parties in respect of terms and conditions of the service."

Therefore, on the expiry of the term of settlement on 30.6.2011, the respondents are entitled to seek alteration of terms of settlement. The impugned order passed by the certifying officer on 26.8.2011 was after the expiry of the term of earlier settlement. Therefore, the impugned order passed by the

certifying officer is in accordance with law.

6. It is seen from the record that learned single Judge of this court on earlier occasion set-aside the order of certifying officer mainly on the ground that during the subsistence of settlement, respondent union has no right to seek amendment of settlement. Further a Division Bench of this court disposed the appeal in W.A. No. 400/2011 on 27.7.2011 with an observation as stated above. A reading of the observation made by a Division Bench of this court manifestly makes it clear that the matter was remanded to the certifying officer for reconsideration in accordance with law. The Division Bench made the above observation by taking into consideration that the period of settlement was expired. This order in W.A. No. 400/2011 is not questioned by the petitioner. On the other hand, the petitioner by accepting the order in W.A. No. 400/2011 participated and contested the proceedings before the certifying officer. Therefore, it is not open for the petitioner to contend that the earlier settlement dated 5.12.2007 though expired on 30.6.2011 continues to bind the parties and respondent has no right to seek alternation of the settlement.

7. Secondly, it is contended that the certifying officer committed an illegality in not considering the relevant factors for enhancement of age of retirement. There is no substance in this contentions. A perusal of the impugned order passed by the certifying officer specifies that by following the law declared by the Apex Court, this court, the age of retirement in similarly situated industry, the general trade, the model standing orders and other circumstances the certifying officer held that the age is to be enhanced from 58 to 60 years. The certifying officer also noticed that as per the certified standing orders, discretion is vested with the petitioner company to enhance the retirement age from 58 years to 60 years. By considering the entire objections filed by the petitioner and also the entire material on record, the certifying officer rightly concluded that the age of retirement is to be enhanced: In the circumstances, I find no justifiable ground to interfere with the impugned order. Accordingly, the writ petition is liable to be dismissed. It is brought to my notice that subsequent to the order of certifying officer on 26.8.2011 some of the employees have retired from service. The order of certifying officer will come into effect on expiry of 30 days from the date of order. Therefore, the petitioners to extend the monetary benefit to such of the employees who have retired from service on the expiry of 30 days from the date of order of certifying officer.

Accordingly, the writ petition is hereby dismissed.