

(1985) 11 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 5816 of 1982

Nanjappa

APPELLANT

Vs

Management of Sri Krishnarajendra Mills

RESPONDENT

Date of Decision : 20-11-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Employment (Standing Orders) Act, 1946 — Section 4, 4 (a), 5

Citation : (1986) 52 FLR 699 : (1987) ILR (Kar) 536

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : K. Subba Rao, for the Appellant; R.J. Babu, for the Respondent

Final Decision : Allowed

Judgement

Bopanna, J.—This petitioners have challenged the correctness of the award made by the Labour Court, Bangalore, upholding the action taken by the 1st respondent-management by retiring them on their completion of 40 years" service on the ground that such retirement was permitted by the Standing Orders in force which governed the service conditions of the workmen and certification of such Standing Orders was within the jurisdiction of the Certifying Officer who certified the said orders under the relevant provisions of the Industrial Employment (Standing Orders) Act, 1946 (for short "the Act").

2. The Certified Standing Order which governed the retirement age of the petitioners reads as under:

"An operative will be retired from the employment in the company when he completes 60 years of age or 40 years of continuous service whichever occurs earlier."

It is not in dispute that the petitioners had not completed 60 years of age on the date they were retired but they had completed 40 years of continuous service. The reference made to the Labour Court was on the following lines:

"Are the management of Sri Krishnarajendra Mills Limited, Mysore justified in retiring the services of Sriyuths Nanjaiah, Roving-44 and Nagaiah, Spinning-172, with effect from 1-6-1972 and 30-6-1972 respectively before attaining the age of 60 years?"

3. The Labour Court on the pleadings of the parties framed the following additional issues :--

"1. Are the certified standing orders ultra vires ?

2 Is there any custom or service conditions other than certified standing orders that a workman should retire only on attaining the age of 60 years ?

3. Whether the pleas raised in additional claim statement are beyond the terms of reference ?

4. Whether the workmen Nanjaiah and Nagaiah were victimised ?

5. What Order?"

The parties let in oral evidence in support of their respective contentions. The management also relied on the Certified Standing Order 24(a) and contended that that Standing Order was part and parcel of the terms and conditions of service which had been duly certified by the appropriate authority under the Act, and the workmen having given their consent to such certification it is not open to them to contend that the Standing Order is ultra vires of the provisions of the Act. The oral evidence on this point will not be very material since if the management were to succeed in their contention that the standing order as framed in the year 1968 was not ultra vires of the powers of the certifying authority, the order of termination passed against the workmen should be sustained.

3. The power of certification conferred on the Certifying Officer is controlled by the provisions of Section 4 and 5 of the Act. u/s 4, a standing order shall be certifiable under the Act, if provision is made thereunder for every matter set out in the Schedule to the Act and is otherwise in conformity with the provisions of the Act. u/s 5, the Certifying Officer after hearing the parties can certify the Standing Orders if he is satisfied that that those Standing Orders are fair and reasonable from the point of view of the employer and also from the point of view of its workmen. In this case, we are not concerned with the power of the Certifying Officer u/s 5 but only with Section 4(a) and (b) of the Act. On the plain language of Section 4, there could be no dispute that the Certifying Officer can only certify Standing Orders placed before him for certification if those Standing Orders are in conformity with the provisions of the Act and if those Standing Orders relate to matters set out in the schedule which are applicable to the Industrial Establishment. The schedule to the Act, as it stood then, did not provide for the retirement of the workmen at all. However, in cases which had come up before the High Courts on this point, a contention was raised by the managements that the items mentioned in the schedule are not exhaustive of

the conditions of service for which Standing Orders will have to be framed with a view to achieve the object of the Act and therefore, it is permissible for the management to frame Standing Orders, which are strictly not covered by the items in the schedule and it is also open to the Certifying Officer, even in the absence of draft Standing Order, suo moto to frame such Standing Order and certify the same as fair and reasonable. This contention was rejected by the Supreme Court in Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others, of the Judgment, the Constitution Bench of the Supreme Court ruled as follows :-

"Then in regard to the matters which may be covered by the Standing Orders, it is not possible to accept the argument that the draft Standing Orders can relate to matters outside the Schedule. Take, for instance, the case of some of the draft Standing Orders which the appellant wanted to introduce ; these had reference to the liability of the employees for transfer from one branch to another and from one job to another at the discretion of the management. These two Standing Orders were included in the draft of the appellant as Nos. 10 and 11. These two provisions do not appear to fall under any of the items in the Schedule ; and so, the certifying authorities were quite justified in not including them in the certified Standing Orders."

In the face of this Ruling of the Supreme Court it is not possible to contend that the very same Bench had also expressed a view which was favourable to the management in paragraph-16 of its Judgment. In para-16 of the Judgment the Supreme Court observed as follows :

"If, however, it appears to the appropriate authorities that having regard to the relevant facts and circumstances, it would [sic (not ?)] be unfair and unreasonable to make a provision for a particular item, it would be competent for them to do so ; but the employer cannot insist upon adding a condition to the Standing Order which relates to a matter which is not included in the schedule."

4. On this observation of the Supreme Court, Mr. Babu, learned Counsel for the management, contends that by implication the Supreme Court had recognized the power of the Certifying Officer to introduce a provision which is not covered by the Schedule if he is of the view that such provision is necessary for defining the conditions of service of the workman with sufficient precision. The very same decision of the Supreme Court was considered by it in Workman of Lakheri Cement Works Ltd. v. The Associated Cement Companies Ltd. The Supreme Court relied on the Ruling of the Constitution Bench in ROTHAK'S case and ruled:--

"That the extension of the standing orders to the two topics was entirely without jurisdiction and the standing orders could not therefore be framed."

Both these decisions are decisions of the Supreme Court dealing directly with the power of the Certifying Officer under the Act. Granting there is something which supports the case of the Management, we are not dealing with the powers of the

Certifying Officer but with the dispute raised by the workman on the propriety and legality of the Standing Order. Such a dispute can be raised in view of Item No. 1 of the 2nd Schedule, to the I.D. Act which reads as under :--

"The propriety or legal it? of the order passed by the employer under the standing order."

This Standing Order can only mean the Standing Order as certified by the Certifying Officer, as the employer cannot introduce Standing Orders in its establishment without the certification of the Certifying Officer. Therefore any observation made by the Supreme Court on the power of the Certifying Officer to make a Standing Order cannot be relevant while deciding the legality or propriety of the Standing Order in an industrial dispute raised by the workmen. This view is no more reintegrate in view of the decision of the Supreme Court reported in *Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation and Anr.* In that case the Supreme Court after referring to its earlier decision in *LAKHERI CEMENT WORKS* observed :--

"This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. Relying upon the earlier decision of this Court in *Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Utter Pradesh and Others*, the Court held that everything which is required to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr. Shanti Bhushan that some other act of misconduct which would per se be an act of misconduct though not enumerated in S.O.22 can be punished under S.O.23 must be rejected.

It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish cut some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct."

Though these observations were made while dealing with the case of misconduct which was not covered by the Standing Orders, they apply with equal force to the validity of the Standing Order which is challenged in an Industrial Dispute.

5. It was further contended by the learned Counsel for the Management that it had all along adopted this Standing Order in the case of its workmen till it was suitably amended on 7-2 1980 by a new Standing Order, whose validity cannot be questioned after the amendment of the Schedule to the Act. It transpires that the Standing Order in question was sought to be amended sometime in the year

1973 by providing for the age of retirement at 60 years, subject to certain conditions more particularly mentioned therein. The validity of this Standing Order was challenged in appeal before the Industrial Tribunal and during the pendency of the appeal, the services of the petitioners were terminated under the old Standing Order in question. Therefore, it was submitted that even under the new Standing Order the workmen would have retired from service after attaining the age of 60 years and therefore, it is not a fit matter for interference by invoking the jurisdiction under Article 226 of the Constitution.

6. The view of the Labour Court being clearly opposed to the ruling of the Supreme Court, this Court has to interfere; otherwise this Court would be perpetuating the illegality of an order which is contrary to the law laid down by the Country's Highest Court. The new Standing Order had taken note of the unfairness of the old Standing Order and had uniformly fixed the age of retirement as 60 years. That apart by interfering with the award, this Court would not cause any inconvenience to the management or create industrial unrest since a large number of workmen governed by the old Standing Orders have already retired in terms of the new Standing Order and there cannot be many cases of such nature.

7. Accordingly, this petition is allowed, the impugned award is quashed and in substitution of the same there shall be an award directing the Management to pay the petitioners the emoluments they would have earned had they continued in service till they attained the age of 60 years.