

(2003) 02 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No. 6898 of 2000

National Textile Corporation Ltd., (Pattern) Employees' Association, Mr. Hiralal Mulchand Khandelwal, Asstt. Officer Cotton, Indu Mill No. 1 and Mr. Anil Vasudev Jambhekar, Production Manager, New City Mills APPELLANT

Vs

Union of India (UOI) and National Textile Corporation Ltd. RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 300A
Sick Textile Undertakings (Nationalisation) Act, 1974 — Section 14
Textile Undertakings (Nationalisation) Act, 1995 — Section 14, 14(1), 14(2)

Citation : (2003) 2 ALLMR 144 : (2003) 4 BomCR 70 : (2003) 3 LLJ 340 : (2003) 2 MhLj 700

Hon'ble Judges : R.M. Lodha, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : N.D. Buch, for the Appellant; H.V. Mehta, a/w., R.C. Master, for Respondent No. 1, A.J. Rana and Meena H. Doshi for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The action of the National Textile Corporation of "rolling back" the age of retirement from 60 to 58 years is impugned in this petition. The Petition is filed by the National Textile Corporation Employees Association in order to redress the grievance of the managerial staff, that is, below board level employees - those whose services were taken over by the National Textile Corporation from the erstwhile Mills and direct recruits to the National Textile Corporation.

2. Prior to the Sick Textile Undertakings Nationalisation Act, 1974 coming into effect, the below board level employees of the mills, which were nationalised, retired at the age of 60 years. One hundred and three textile mills were nationalised by enacting the Textile Undertakings Nationalisation Act of 1974 (for

short "the Act of 1974"). All employees, including those who were workmen within the meaning of the Industrial Disputes Act, 1947, immediately before the appointed date, and who were employed in the sick industrial undertakings became employees of the National Textile Corporation on and from the appointed date with rights and privileges as to pension, gratuity and other matters as were admissible to them in the erstwhile mills unless their services were duly terminated or until the terms and conditions of employment were "duly altered" by the National Textile Corporation.

3. In 1983, the Textile Undertakings (Taking over of Management) Act came into effect, which took over the management of certain other textile mills. Thereafter these mills were nationalised under the Textile Undertakings Nationalisation Act of 1995. A similar provision was incorporated in the Act of 1995 as was available in the Act of 1974 regarding the service conditions of the employees. Thus, the retirement age of the employees whose services had been taken over by the National Textile Corporation from the mills continued to be 60 years. The National Textile Corporation also directly recruited some officers. However, at the time of their recruitment, they were informed that they would be superannuated at the age of 58 years. Therefore, for some time, two sets of retirement ages were prevailing in the National Textile Corporation.

4. In 1998, the 5th Pay Commission recommended that the retirement age of the below board level employees in government and public sector undertakings should be raised to 60 years. The Ministry of Industries, Department of Public Enterprises, Government of India issued an office memorandum on 19.5.1998 directing the Central Public Sector Enterprises to enhance the age of retirement for below board level employees to 60 years from 58 years. However, it was also directed that there would be a complete ban on extension of service beyond the period of superannuation, that is, 60 years. The Board of Directors of the National Textile Corporation passed a resolution on 26.5.1998, in accordance with this direction, raising the age of superannuation to 60 years with effect from 22.5.1998. On passing of the resolution, the Recruitment and Promotion Rules were also amended and all the employees below the board level and who were not governed by the provisions of the Industrial Disputes Act, Bombay Industrial Relations Act, Standing Orders framed thereunder were also to retire at the age of 60 years. This amendment to the Rules was brought into effect immediately. Accordingly, below board level employees benefited by the amendment as they were continued in service till the age of 60 years.

5. The Department of Public Enterprises thereafter by a Memorandum dated 21.8.1998 informed the public sector enterprises that in the event they did not want to increase the age of retirement, they should seek specific exemption from the operation of the government's decision of 19.5.1998 to increase the age of retirement to 60 years. A decision was taken by the Board of Directors of National Textile Corporation to move the government for exemption from the operation of the office memorandum of 19.5.1998 and accordingly an application

was made.

6. On 3.10.2000, the Government of India informed the National Textile Corporation that their request for rolling back of the age of retirement from 60 years to 58 years was approved by the Government and that the formalities required to implement this decision should be completed expeditiously. The necessary amendment was carried out in the National Textile Corporation Recruitment and Promotion Rules, 1982 and the age of superannuation was reduced to 58 years. Individual letters were issued to the officers on 17.10.2000 informing them of the change in the retirement age.

7. Aggrieved by this reduction of the retirement age of 58 years, the association representing the below board level employees of the National Textile Corporation has filed the present petition. Primarily, the contentions raised in the writ petition are that:- i) it was not open to the National Textile Corporation to unilaterally reduce the age of retirement thereby adversely affecting the terms and conditions of service of the officers and employees concerned as the service conditions of the employees who were initially employed in the nationalised mills were protected by both the Acts of 1974 and 1995; ii) the age of superannuation could not be said to be "duly altered" by issuing memorandum or office orders or circulars; iii) the 5th Pay Commission had in fact recommended an increase in the age of retirement looking to the life expectancy, health facilities available, morbidity, labour market conditions, state of economic developments, etc. and; iv) in 1998, when some of the employees wanted to opt for the voluntary retirement scheme then applicable, they were prevented from doing so under the pretext that their services were indispensable; v) the decision to reduce the age of superannuation suffers from non-application of mind and is arbitrary and mala fide and violative of Articles 14, 16, 21 and 300A of the Constitution of India.

8. In the affidavit of the Manager - Legal and Administration of Respondent No. 2, that is, National Textile Corporation (SM) Ltd. which has been filed on behalf of Respondent Nos. 2, 3 and 4, it is stated that the decision to reduce the age of retirement for the National Textile Corporation group of companies was taken by the Board of Directors at its meeting held on 20.5.1999, in view of the fact that idle wages were being paid to the workers and because the financial condition of the National Textile Corporation was precarious. It is further averred that the age of retirement was increased to 60 years only because the National Textile Corporation had no option but to comply with the instructions issued by the Department of Public Enterprises on 19.5.1998. However, after the clarification was issued, the Board took an independent decision on merits and decided that the retirement age of those employees who were governed by the Standing Orders or agreements under the Industrial Disputes Act or the Bombay Industrial Relations Act would continue to be governed by them and that the retirement age in respect of other employees was required to be reduced. An affidavit of the Nand Kishore Katiyar was filed on behalf of Respondent Nos. 2 to 4 bring on record the fact that the National Textile Corporation (SM) Ltd. and National

Textile Corporation (MN) Ltd. have been declared sick industries within the meaning of Sick Industrial Companies Act, 1985. According to this affidavit, reduction in age of retirement from the age of 60 years to 58 years would mean that the National Textile Corporation would save a substantial amount per month by way of salaries and perquisites payable to below board level employees and thus, the financial burden on the National Textile Corporation would be reduced.

9. An affidavit in rejoinder has been filed by the Petitioners contending that the saving in revenue on account of the rolling back of the age of the retirement would be minimal as compared to the idle wages being paid to the workmen. The non disclosure of the basis on which the National Textile Corporation had taken the decision to seek an exemption from the government in respect of the office memorandum dated 19.5.1998 and the reason and basis on which the exemption was granted has also been questioned in this affidavit. According to the Petitioners, this amounted to a discriminatory and mala fide action on part of the Respondents. It has also been denied that the National Textile Corporation would save Rs. 19.63 lacs approximately per month by reducing the age of retirement.

10. Ms. Buch, the learned Counsel for the Petitioners submitted that in view of the judgments of the Apex Court in the case of S.P. Dubey Vs. M.P.S.R.T. Corpn. and Another, , M.G. Pandke and others Vs. Municipal Council, Hinganghat, Dist. Wardha and others, , K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, and B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others, , the action of the respondents was unconstitutional and in violation of the Article 14 of the Constitution of India. While emphasising the main contentions raised in the petition as detailed above, the learned Counsel submitted that the actions of the Respondents smacked of arbitrariness and capriciousness since the age of retirement had been enhanced from 58 years to 60 years due to the office memorandum of 19.5.1998 issued by the Department of Public Enterprises, and soon thereafter, it was reduced to 58 years without any reason whatsoever. Non-disclosure of the reasons for the roll back of the age of retirement in itself would indicate that the Respondents had acted capriciously and not in good faith, according to Counsel.

11. As against this, Mr. Rana, learned Counsel for Respondent Nos. 2 to 4, submitted that the Respondents were well within their rights to reduce the age of retirement. It was only because the office memorandum of 19.5.1998 of Department of Public Enterprises, which directed them to increase the age, left them with no option, that the Respondents were compelled to increase the age of retirement to 60 years. He submitted that in view of the judgment of the Division Bench of this Court in the case of B.J. Shetty and Ors. v. Air India Ltd., which had relied on judgment in the case of K. Nagaraj (supra), roll back in the age of retirement, was permissible in law.

12. In order to appreciate the controversy before us, it would be necessary to consider the provisions of the Acts of 1974 and 1995. Section 14 of the Nationalisation Act of 1974 reads as under:

14. Employment of certain employees to continue.--(1) Every person who is a workman thin the meaning of the Industrial Disputes Act, 1947 and has been immediately before the appointed day, employed in a sick textile undertaking shall become, on and from the appointed day, an employee of the National Textile Corporation, and shall hold office or service in the National Textile Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such sick textile undertaking had not been transferred to, and vested in the National Textile Corporation, and shall continue to do so unless and until his employment in the employment are duly terminated or until his remuneration, terms and conditions of employment are duly altered by the National Textile Corporation.

(2) Every person who is not a workman within the meaning of the Industrial Disputes Act, 1947, and who has been immediately before the appointed day employed in a sick textile undertaking shall, in so far as such person is employed in connection with the sick textile undertaking which has vested in the National Textile Corporation, become, as from the appointed day, an employee of the National Textile Corporation and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same under the sick textile undertaking if it had not vested in the National Textile Corporation and shall continue to do so unless until his employment in the National Textile Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the National Textile Corporation.

Provided that in respect of any sick textile undertaking the management of which could not be taken over by the Central Government under the Sick Textile Undertakings (Taking Over of Management) Act, 1972 by reason of any decree, order or injunction of any Court, any agent, director (including a managing or whole-time director, by whatever name called) or manager shall not become an employee of the National Textile Corporation.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force the transfer of the services of any officer or other person employed in a sick textile undertaking to the National Textile Corporation shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any Court, Tribunal or other authority.

(4) Where, under the terms of any contract of service or otherwise, any person whose services become terminated or whose services become transferred to the National Textile Corporation by reason of the provisions of this Act is entitled to any arrears of salary or wages or any payment for any leave not availed of or other payment, not being payment byway of gratuity or pension, such person may, except to the extent such liability has been taken over the Central Government u/s 5 enforce his claim against the owner of the sick textile

undertaking but not against the Central Government or the National Textile Corporation.

13. Section 14 of the Nationalisation Act of 1995 is *pari materia* with Section 14 of the Act of 1974. Now u/s 14(2) as seen above, the terms of the conditions of employment of an employee who is not covered by the Industrial Disputes Act, 1947 and who was employed in the textile undertaking which was nationalised, remain the same unless the terms and conditions of employment are "duly altered" by the National Textile Corporation. "Duly altered" would mean that the service conditions are altered in accordance with law and within the parameters of law. The Petitioners here have not been able to demonstrate that the service conditions of the employees who were employed in the mills, which were nationalised, have not been altered in accordance with law. Merely because there was a reduction in the age of retirement would not by itself indicate that the service conditions have not been duly altered. The term "duly altered" used in Sub-section (1) of Section 14 would entail an alteration in the service conditions by amending the standing orders governing the workmen, in accordance with law. This alteration would have to be by consensus between the National Textile Corporation and the workmen. Sub-section (2) seen in juxtaposition with Sub-section (1) reveals that alteration in the service conditions of the other employees, including below board level employees need not be consensual and can be unilaterally effected. The only prerequisite is that the change must be in accordance with law. Therefore, the submission of Ms. Buch regarding the protection available u/s 14 of the Nationalisation Acts cannot be accepted and the action of Respondents cannot be questioned on the basis of Section 14 of the Nationalisation Acts of 1974 or 1995.

14. In *K. Nagaraj (supra)*, the Apex Court was considering the effect of the roll back of the age of retirement introduced by the Andhra Pradesh government. The Andhra Pradesh government decided to reduce the age of superannuation of all government employees other than the last grade service employees, from 58 years to 55 years. Notifications were issued to the effect that every government servant whether ministerial or non-ministerial but not belonging to the last grade service who had already attained the age of 55 years was to retire from service w.e.f. February 28, 1983. This reduction in age of retirement was justified by the Government on the ground that it had become necessary to provide greater employment opportunities to the youth. As a result of the order, over 18000 government employees and 10000 public sector employees were superannuated. These notifications were challenged on the grounds that they violated Articles 14, 16, 21 and 300A of the Constitution of India. The case of the Petitioners in *K. Nagaraj (supra)* was similar to the case of the Petitioners herein as seen from the following. Paragraph 2 of the judgment in *K. Nagaraj (supra)* reads thus:

2. These writ petitions were filed by the Andhra Pradesh government employees to challenge the aforesaid order and the notifications on the ground that they violate Articles 14, 16, 21 and 300A of the Constitution. The case of the

Petitioners as laid in the writ petitions is that there was no basis at all for reducing the age of retirement from 58 to 55; that the age of retirement was increased from 55 to 58 by the Government of Andhra Pradesh by a notification dated October 29, 1979 and nothing had happened since then no justify reduction of the age of retirement again to 55; that providing employment opportunities to the youths has not relevance on the question of fixing the age of retirement; that the Government had exercised its power arbitrarily without having regard to factors which are relevant on the fixation of the age of retirement; that the Government had acted unreasonably in not giving any previous notice to the employees which would have enabled them to arrange their affairs on the eve of retirement; that the Government was estopped from reducing the age of retirement to 55, since the employees had acted on the representation made to them in 1979 by increasing the age of retirement from 55 to 58; that as a result of the increase in the age of retirement from 55 to 58 years in 1979, a vested right had accrued to the employees, which could be taken away, if at all, only from future entrants to the Government service will result in grave detriment to public services of the State; and that, the decision of the Government is bad for a total non-application of mind to the relevant facts and circumstances bearing on the question of the age of retirement, like increased longevity. The Petitioners aver that the Government had not even considered the enormous delay, which would be caused in the payment of pensionary benefits to employees who were retired from service without any pre-thought.

In the present case also, the Petitioners have raised much the same contentions. The Apex Court while dealing with these contentions has held thus:

"7. Public interest demands that there ought to be an age of retirement in public services. The point of the peak level of efficiency is bound to differ from individual to individual but the age of retirement cannot obviously differ from individual to individual for that reason. A common scheme of general application governing superannuation has therefore to be evolved in the light of the experience regarding performance levels of employees, the need to provide employment opportunities to be younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counterbalance conflicting claims while determining the age of superannuation. On the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these conflicting claims of the different segments of society involves minutes questions of policy, which must, as far as possible, be left to the judgment of the executive and the Legislature. These claims involve consideration of varying vigour and applicability. Often, the court has no satisfactory and effective means to decide which alternative out of the many competing ones, is the best in the circumstances of a given case. We do not suggest that every question of policy is outside the scope of the judicial

review or that, necessarily, there are no manageable standards for reviewing any and every question of policy. Were it so, this Court would have declined to entertain pricing disputes covering as wide a range as cars to mustard-oil. If the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the court's interference would be called for, though not for fixing the age of retirement but for mandating a closer consideration of the matter. "Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore, violative of Article 14." [SCC para 85, p. 38: SCC (L&S) p.200] But, while resolving the validity of policy issues like the age of retirement, it is not proper to put the conflicting claims in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. That is an exercise, which the administrator and the Legislature have to undertake. As stated in *The Supreme Court and the Judicial function: Judicial self-restraint is itself one of the factors to be added to the balancing process, carrying more or less weight as the circumstances seem to require*"

As seen from the above observation of the Supreme Court the decision of the Government or Public Sector Enterprise, to reduce the retirement age of below board level employees, is a policy decision and unless there is any unreasonableness or arbitrariness in arriving at this decision, the scope of judicial review is limited. The Petitioners have not been able to demonstrate that the policy decision taken by the National Textile Corporation and approved by Respondent No. 1 is in any way arbitrary or unreasonable. The decision cannot be questioned only because it has been unilaterally taken by the national Textile Corporation.

15. In *Prabhakar Rao (supra)*, the Apex Court dealt with the situation that had arisen on account of the delay in the decision in *Nagaraj's case (supra)*. The Apex Court gave certain directions regarding reinstatement of the employees, who had retired at the age of 55 years between February 28, 1983 and August 23, 1984. Certain directions were also given regarding the reinduction of employees, who had not attained the age of 58 years by a particular date either by reinducting them in service or by paying them compensation. This judgment does not carry the Petitioners' case any further. In fact there is a clear finding that the Government has the power to change the age of superannuation.

16. In *S.P. Dubey v. MPSRTC (supra)*, the Apex Court was dealing with another case of roll-back of the age of superannuation. The facts involved in this case were that the appellant was in service of the company from 1947 to August 13, 1955 when the age of the superannuation was 60 years. The Government of Madhya Pradesh took over a company w.e.f. 31.8.1955. The notification issued stated that the existing staff of the company would not be adversely affected with regard to the conditions of service. At this point of time, that is on August 31, 1955, the Rules with respect to the age of superannuation of government employees was 58 years but the persons who were serving with the erstwhile company were taken into government service with a specific assurance that their

conditions of service were not to be adversely affected. In the light of this assurance having been given, the Apex Court observed that when the State Government takes over a private company and gives such assurance it is but fair that the State Government should honour the same. The Apex Court, therefore, held that the State Service Rules which fixed the age of superannuation at 58 years would not be made applicable to the employees after the company was taken over. Ms. Buch relied on this judgment to buttress her argument that the employees of the erstwhile mills were assured that their service conditions would remain the same by virtue of Section 14 of the Acts of 1974 and 1995. However, this would mean that we would have to ignore the stipulation in Section 14(2) that the terms and conditions of service could be "duly altered" by National Textile Corporation after nationalisation. We do not find that such a term came up for consideration before the Apex Court in the case of S.P. Dubey (*supra*). Nor was any assurance of the kind given while raising the age of retirement to 60 years of all employees under the Officer Memorandum of 19.5.1998. Therefore, this judgment, in our view, will not have any application to the facts involved in the present case.

17. The contention of Ms. Buch learned Counsel for the Petitioners that the decision of the National Textile Corporation to roll back the age of retirement is unreasonable in view of the fact that the 5th Pay Commission had recommended that the retirement age should be increased also cannot be accepted. A similar contention had been raised in K. Nagaraj (*supra*) and the Apex Court has held that as long as reduction in age is not arbitrary or irrational, reduction in the age of retirement must be upheld. What the Court is required to ascertain while considering the reduction in the retirement age is whether the roll-back has been introduced objectively and without being actuated by mala fide. In the present case, we do not find that the roll-back was effected unnecessarily. A meeting was held on 11.8.1999 when representations received from subsidiaries such as the National Textile Corporation (WBAB and O) Ltd., National Textile Corporation (MP) Ltd. and National Textile Corporation (UP) Ltd., etc. seeking permission to enhance the age of retirement of the employees of the mills and showrooms and employees who were initially governed by the Standing Orders were considered. The extract of the minutes of the meeting shows that the request of these subsidiaries was turned down for the following reasons:

"(i) Most of the NTC Mills has either ceased operations or are running in huge losses.

(ii) VRS is in force for employees of most of the mills, showrooms and RMDs.

(iii) The service conditions, etc. of employees who are governed by Standing Orders, Agreements, etc. are not liable for alteration automatically through DPE guidelines, Government circulars, etc, and

(iv) The Board of NTC (HC) has already taken a decision and recommended to the Government to roll back the age of retirement from 60 years to 58 years

even in respect of such of NTC Group employees where it was recently raised under DPE instructions from 58 years to 60 years."

Obviously, therefore, the decision to roll-back could not be said to be actuated by arbitrariness or mala fides. In fact the affidavit of Nand Kishore Katiyar filed on 2.2.2001 shows that a substantial amount would be saved by way of payment of salaries to the below board level employees on account of the roll back. It has been averred in the affidavit that an amount of Rs. 19.63 lacs per month would be saved on account of rolling back the age of retirement from 60 to 58 years in respect of the 196 employees who were immediately due for retirement on 31.1.2001. Moreover, according to the affidavit, the financial burden which could be reduced on account of the rolling back would help in easing the financial crisis being faced by the National Textile Corporation especially in view of the fact that the National Textile Corporation SM Ltd. and National Textile Corporation MN Ltd., Respondent Nos. 2 and 3 herein, had been declared sick industries within the meaning of Sick Industrial Companies Act, 1985. We therefore do not find that the age of superannuation was reduced unreasonably or unjustifiably in the facts and circumstances of this case.

18. The submission of Ms. Buch that the National Textile Corporation could not retract from its stand of retiring employees at the age of 60 years as below board level employees had been refused voluntary retirement only on the ground that the services of these employees were indispensable also cannot be sustained. Merely because the employees were not permitted to avail of the voluntary retirement scheme would not, per se, indicate mala fides on the part of the Respondents and, therefore, it would not further lead us to the conclusion that in view of the voluntary retirement being refused to the employees, the roll-back of the age of retirement to 58 years was bad in law. Only because the retirement age had been changed during the interregnum from 19.5.1998 to 3.10.1999, it would not mean that the terms of employment pertaining the age of retirement were changed and substituted which had given a vested right to the employees to continue in service upto the age of 60 years. It was a concession granted unilaterally by the employer, which could be withdrawn unilaterally. In the case of B.J. Shetty (supra), the Division Bench of this Court was considering the very directive of the Department of Public Enterprises contained in the office memorandum of 19.5.1998 raising the age of superannuation from 58 years to 60 years as also the effect of the reduction in the age of retirement which the Air India had introduced on account of exemption granted. The Division Bench was of the view that no vested right had been created in favour of the Petitioners in that case to retire at the age of 60 years and, therefore, roll-back of the age of superannuation to the age of 58 years was in accordance with law.

19. We find no justification or setting aside the action of the National Textile Corporation of rolling back the retirement age from 60 years to 58 years of the below board level employees. We do not find that the action is either arbitrary or capricious or discriminatory.

20. Writ Petition is, therefore, dismissed with no order as to costs.