

(1987) 11 AHC CK 0041
In the Allahabad High Court

Newspapers Ltd.	Vs	APPELLANT
Industrial Tribunal (II) and Others		RESPONDENT

Date of Decision : 10-11-1987

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 3, 4

Citation : (1968) 1 LLJ 436

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Judgement

R.S. Pathak, J.—The petitioner is the owner of the Leader Press and at the relevant time published two daily newspapers, the Leader and the Bharat and also carried on the business of publishing books.

2. On 3 July 1959 the petitioner submitted a set of draft standing orders framed by it to the Labour Commissioner, Uttar Pradesh. The draft standing orders contained provisions defining the terms and conditions of service of the working Journalists employed by the petitioner. The certifying officer, after considering the objections to the draft standing orders filed by the working journalists, modified some of the provisions and the standing orders so modified were certified by him under the Industrial Employment (Standing Orders) Act, 1946, on 10 January 1962. The petitioner preferred an appeal to the appellate authority constituted under the aforesaid Act and contended that a number of modifications effected by the certifying officer were not Justified. The appellate authority granted relief to the petitioner by its order dated 5 October 1962 in respect of some of the modifications only and affirmed the remaining changes effected by the certifying officer. The petitioner prays for certicarl.

3. In the draft standing orders the petitioner had included a provision fixing the aga of superannuation at 55 years or on completion of 30 years" service whichever was earlier, and it was further provided that no notice or payment of wages in lieu thereof would be required in such a case. The certifying officer deleted this provision and substituted another stating that the age of

superannuation would be the date on which a working journalist completed 58 years of age. Another draft standing order framed by the petitioner provided for the means of redress for working Journalists against unfair treatment or wrongful exaction on the part of the employer. The certifying officer substituted a different provision altogether which provided that all such complaints would be submitted by the working Journalist or on his behalf by the registered trade union of which he was a member to the labour officer of the industrial establishment and such officer would personally investigate the complaint, and the complainant working journalist or the registered trade union would have the right to be present during such investigation, The appellate authority confirmed the modifications made by the certifying officer in respect of both matters.

4. The petitioner contends that the certifying officer acted without Jurisdiction in amending the provisions in respect of the age of superannuation. It is urged that the certifying officer acted arbitrarily in raising the age of superannuation from 55 years to 63 years.

5. There can be little dispute that the certifying officer had power to examine the fairness or reasonableness of the provisions of the draft standing order fixing the age of superannuation. Section 4 of the Industrial Employment (Standing Orders) Act, 1946, declares that standing orders shall be certifiable under the Act if provision is made therein for every matter set out in the schedule which is applicable to the industrial establishment and the standing orders are otherwise in conformity with the provisions of the Act. It declares farther that it shall be the function of the certifying officer or the appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders. Now, the matter is set one in the schedule including at item 11C;

Age of superannuation or retirement, rate of pension or any other facility which the employers may like to extend or may be agreed upon between the parties.

This provision was introduced in Rule 6 of the Uttar Pradesh Industrial Employment (Standing Orders) Rules, 1946, upon the amendment of those rules by notification No. 1251 (LL) XXXVI (B) 181 (LL)-57, dated 17 November 1959. It was for the certifying officer and thereafter the appellate authority to consider the fairness or the reasonableness of the provision made by the petitioner in the draft standing orders that the age of superannuation should be 55 years. The certifying officer, and the appellate authority, considered the matter. The certifying officer referred to the trend of judicial decisions which indicated that the age of superannuation of industrial workers should be kept at 58 or 60 years. He pointed out that the efficiency of a person does not deteriorate immediately or necessarily on crossing the age of 55 years, and that in individual cases of infirmity or ill-health it was open to the employer to retire or terminate the services of an employee at any time. He distinguished the case of a working journalist from that of a Government servant who, he pointed out, was entitled to retirement gratuity as well as pension. Before the appellate authority it was urged that in the standing order of Pioneer Press, Ltd., Lucknow, the age of

retirement had been fixed at 55 years. The appellate authority referred to the award in the case of Press Trust of India, Ltd., where the National Industrial Tribunal, Bombay, had taken the view that the age of superannuation should be fixed at 68 years. Apparently it did not think that the case of the Pioneer Press, Ltd., compared with that of the petitioners.

6. The petitioner says that the certifying officer and the appellate authority had no Jurisdiction to modify the draft standing orders framed by the petitioner, and reliance has been placed upon the observations of Wanchco, J. (as he then was), in Electric Workers Union Vs. The U.P. Electric Supply Co., . It is true that in his Judgment in that case that learned Judge pointed out that the certifying officer had no jurisdiction to adjudicate upon the fairness or the reasonableness of the provisions of any standing orders. But that is a view proceeding upon the provisions of Section 4 of the Act as they stood at the relevant time. Section 4 was amended by B. 32 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, which expressly conferred upon the certifying officer and the appellate authority the duty to adjudicate upon the fairness or the reasonableness of the provisions of the standing orders. The observations in the case of Gulzari Lal and Others Vs. Sm. Sarju Bai and Another, , can be of no relevance in view of the express conferment of such Jurisdiction u/s 4 as it stands today.

7. It is urged that a standing order in respect of the matter set out at item 110 of the schedule can be made only with the agreement of the parties or should be such as the employer may like to extend.

8. Reference has been made to Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others, . In my opinion, the contention is misconceived. As pointed out by the Supreme Court in that case, item 110 consists of two parts, the first relates to the age of superannuation or retirement and the second refers to the rate of pension or any other facility, and is in regard to the latter part of item 11C that the Supreme Court has pointed out that the rate of pension or any other facility should be such as the employer may like to extend or as may be agreed upon between the parties. Nothing in the observations of the Supreme Court in that case suggests that the age of superannuation is a matter to be decided necessarily either upon agreement between the parties or it will be such as the employer may determine.

9. I am also not impressed by the submission that the certifying officer and the appellate authority have Acted arbitrarily in fixing the age of superannuation at 58 years, The petitioner says that in Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others, the Supreme Court has laid down that the age of superannuation should be 55 years. I have perused the judgment of the Supreme Court, and that is not what it has laid down. The question before the Supreme Court was whether a rule fixing the age of superannuation at 65 years should be applied to workmen who had entered into employment before the introduction of that rule or should be confined to those workmen engaged after

the rule had come into force. It held that the rule of retirement for the previous employees should be 60 years and that the rule of 55 years should apply to those employees who entered service after the relevant rules had come into force.

10. That is all so far as the first contention is concerned and upon the aforesaid considerations it must be rejected.

11. The next contention of the petitioner is that the certifying officer erred in substituting a standing order conferring a right upon the trade union to be present during the enquiry upon a complaint relating to unfair treatment of a workman. It is urged that in a domestic enquiry no such right can be recognized in a trade union, and I am referred to the case of *N. Kalindi and Ors. v. Tata Locomotive and Engineering Company, Ltd., Jamshedpur* 1960 II L.L.J. 928.

12. Item 10 of the schedule of the Act refers to means of redress for workmen against unfair treatment or to wrongful exactions by the employer or his agents or servants. With reference to this matter the petitioner included a provision in the draft standing orders. The certifying officer found that it was not in conformity with the model standing order 28 and that the provision made by the petitioner was not sufficiently comprehensive. Accordingly, he substituted a standing order which is almost identical with the model standing order 28.

13. Section 3 of the Act requires an employer to submit to the certifying officer copies of the draft standing orders proposed by him for adoption in his industrial establishment. It declares that each draft, shall be, so far as is practicable, in conformity with the model standing orders framed by rules made by the "appropriate Government." The State Government, which is the "appropriate Government" here, has drawn up model standing order, and model standing order 28 is one of them. It provides:

28. All complaints arising out of his employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent or servant, shall be submitted by a workman or on his behalf by a registered union of which he is a member or by a Government labour officer to the labour officer of the industrial establishment or if there is none, to any other officer appointed by the employer in this behalf. The officer to whom the complaint has been (submitted shall personally investigate the complaint at such times and place he may fix, and the complainant-workman or registered union or the Government labour officer, as the case may be, shall have the right to be present at such investigations;

Provided that the complaints relating to:

(i) * * * (ii) * * *

Where the complainant alleges unfair treatment or wrongful exaction on the part of his employer or his agent or servant, a copy of the order finally made shall be supplied to the complainant if he asks for one, and also to the employer. in

other cases the decisions of the investigating officer, and the action, if any, taken by him, shall be intimated to the complainant, and a copy of the same supplied to the employee:

14. Provided that the complainant-workman shall have the right of appeal to the Labour Commissioner or to a conciliation officer of the State Government or to the machinery provided by collective agent, if any, against the decision of the investigating officer or the employer, without prejudice to any right of the workman aggrieved by the decision of the investigating officer or the employer to resort to legal proceedings in a Court of law:

15. Provided also that a workman or a registered union of which he is a member may submit a complaint in respect of dismissal for decision to the Labour Commissioner or to a State conciliation officer direct, without first referring it to the labour officer of the industrial establishment or if there is none, any other officer appointed by the employer in his behalf or the employer:

16. Provided further it that no complaint, whether in the first instance or is any appeal shall be referred to a conciliation officer or a labour officer of the State Government, if he acts as a representative of the workman in putting up the complaint."

17. Now there is nothing to show that it is not practicable for the petitioner to have a standing order which conforms to model standing order 28. in the circumstances, it is apparent that in substituting the impugned provision the certifying officer has done no more than what is contemplated by the statute.

18. The certifying officer and the appellate authority have been appointed by the statute to be the judge of the fairness or the reasonableness of the provisions contained in the draft standing orders. Unless it can be said that their judgment has been arbitrary or perverse or has overlooked a material provision of the law affecting their decision, or their decision will bring about a contravention of the law, it is not open to the Court upon a petition for certiorari to interfere with their judgment. The petitioner does not say that the certifying officer, in substituting the impugned provisions, acted arbitrarily or perversely. Nor has reference been made to any provision of the law which has been overlooked by the certifying officer or which will be contravened if effect is given to the impugned provision. As regards the decision of the Supreme Court in *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, the Supreme Court was concerned with a case in which an enquiry was being made by the employer against the workman in respect of misconduct charged against him. The Supreme Court observed (at pp. 229-230):

it is helpful to consider in this connection the fact that ordinarily in enquiries before domestic tribunals the person accused of any misconduct conducts his own case. Rules have been framed by Government as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented

by anybody else. When the general practice adopted by domestic tribunals is that the person accused conducts his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge sheet of misconduct against a workman he should be represented by a member of his union. Besides it is necessary to remember that if any enquiry is not otherwise fair, the workman Concerned can challenge its validity in an industrial dispute.

Our conclusion therefore is that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though of course an employer in his discretion can and may allow his employee to avail himself of such assistance.

19. It is not the case of the petitioner that ordinarily in enquiries arising upon a complaint by a workman of unfair treatment or wrongful exaction the complainant conducts his case. indeed no material in that regard has been placed before me. Further the Supreme Court specifically pointed out in the aforesaid case that no provision has been made in the rules framed by Government as regards the procedure to be followed in enquiries made into a charge of misconduct against a workman. The case before me is very different. Here the State Government has made detailed provision in model standing order 28 and it contemplates a complaint not only by the workman but also on his behalf by a registered trade union of which he is a member.

20. Now I must also make it clear that the only grievance of the petitioner against the impugned provision is that it confers a right upon the trade union to be present during the enquiry. No grievance has been made against the right recognized in the trade union to submit a complaint on behalf of the workmen. if, as it appears to be here, the petitioner does not dispute the right of the trade union to submit a complaint on behalf of the workmen, clearly there can be no case for disputing the right of the trade union to be present during the investigation following upon such complaint.

21. Accordingly, the second contention of the petitioner is also rejected.

22. In the result, the petition falls and is dismissed with costs.