

(1979) 07 MAD CK 0048
In the Madras High Court

Pallavan Transport Corporation Ltd.

APPELLANT

Vs

Appellate Authority under the Industrial Employment
(Standing Orders) Act and Others

RESPONDENT

Date of Decision : 20-07-1979

Acts Referred:

Constitution of India, 1950 — Article 136, 309, 310, 311
Government of India Act, 1935 — Section 240
Industrial Disputes Act, 1947 — Section 12, 2
Industrial Employment (Standing Orders) Act, 1946 — Section 13, 5

Citation : (1979) 2 LLJ 262

Hon'ble Judges : T. Sathiadev, J; S. Mohan, J

Bench : Division Bench

Judgement

1. This writ petition is filed by Pallavan Transport Corporation Limited, against the common order of the Appellate Authority under the Industrial Employment (Standing Orders) Act, 1948 in Appeal Nos. 1 to 7 of 1977. The petitioner herein had preferred Appeal No. 1 of 1977 against the order made by the Certifying Officer, being the second respondent herein, whereas Appeal Nos. 2 to 7 of 1977 were filed by the same unions objecting to certain clauses in the Standing Orders, certified under order dated 10.6.1977.

2. The petitioner submitted draft Standing Orders on 24.5.1976 to be effective from 1.7.72 and in the draft Standing Orders, comprehensive provisions have been contemplated in respect of the service conditions of the employees.

3. In this writ petition, the petitioner, among other grounds, disputes about the provisions made in the Standing Orders in respect of superannuation Compulsory Retirement, Casual leave, confirmation of probation, Recruitment of Apprentices, Unauthorised absence, Scope of misconduct, Punishments to be imposed and determination of seniority. In the forefront, the fixation of age of retirement at 58 for all categories of personnel in the petitioners establishment is challenged in this petition. In the draft Standing Orders, it was proposed to fix the age of retirement at 55 years whereas the Certifying Officer fixed it at 58 for workmen

and 55 for clerical and administrative staff provided the management-Corporation at its discretion may extend the period of service in the case of workmen or re-employ them in specific cases. The Certifying Officer fixed the age at 55 for clerical and administrative staff taking into account the settlement arrived at u/s 12(3) of the Industrial Disputes Act under Ext. M 2 dated 7.3.1977, wherein they have agreed to have the age of retirement as 55, under Clause 10 of the settlement. It has to be followed for a period of three years from 17.3.1977. First respondent, the Appellate Authority revised this provision by fixing the age of retirement at 58 years for all categories of personnel on the ground that settlement u/s 12(3) under Ext. M 2, was brought about, at a time when emergency was clamped over the country and the workmen were not free to agitate their rights and there being no justification for differentiation between workmen and clerical and administrative staff. It would not be fair and reasonable to discriminate between them. It also took into account the view of the Supreme Court that in view of the improved standard of health and increase in the longevity which has come into existence in this country, the proper age for retirement could be 60 years and the nature of work could not be characterised as so hazardous or arduous to impair their service ability and utility beyond 55 years and further even in Pandian Roadways Corporation, the retirement age having been fixed at 58 years which is not different from what is prevailing in Simpson & Group Companies and Neyveli Lignite Corporation, the fixation of age of retirement at 58 will be fair and reasonable.

4. Mr. Ramasubramanian, counsel for the petitioner would contend that administrative and clerical staff are bound by Ext. M 2 agreement in which the age of retirement had been fixed at 55 and what has been agreed to cannot be violated by seeking for a fixation of a higher age of retirement when the Standing Orders are certified ; that Cheran Transport Corporation and Cholan Roadways Corporation, which are similar transport Corporations like that of the petitioner, had provided in their Standing Orders Exts. M 3 & M 4 for the age of retirement of their workmen at 55 years and by adopting region-cum-industry basis, a different age limit cannot be prescribed; that regarding workmen under Ext. M. 1, agreement dated 1.3.1977 u/s 12(3) of Industrial Disputes Act, they have withdrawn several demands and one of them related to the demand for fixation of age of retirement at 58 and therefore, they cannot ask for a refixation in these proceedings; that workmen have derived several other benefits and in particular benefits under the Gratuity Act and Provident Fund and taking into account these benefits, they have agreed for fixing the age of retirement at 55, and this factor had not been properly appreciated by the first respondent; that the nature of work is strenuous and arduous and it cannot be said that they can extend the efficiency if the age limit raised beyond 55 years, and more so in public interest, in transport operations, it is necessary to maintain efficiency which cannot be achieved by retaining personnel beyond 55 years; and that there is no jurisdiction for the Certifying Officer or the Appellate Authority to fix any age of retirement under Item 8 to the Schedule to the Act, wherein no

provision is made for fixing the age for superannuation.

5. Mr. Chidambaram, learned Counsel for the respondents contends that Ext. M 2 agreement was brought about during emergency when the labourers were forced to agree to certain conditions which are not voluntary in nature and, therefore, it cannot be held as against the clerical and administrative staff; that as far Ext. M 1, agreement, entered into with the workmen, merely because they have agreed to withdraw the demand for fixation of retirement age, it would not mean that Certifying Officer cannot deal with this aspect because at the time when Ext. M 1 was entered into between the parties, a draft Standing Order which had been already submitted by the petitioner on 24.5.1976 was pending consideration before the Certifying Officer, and that, therefore, withdrawal of some of the demands could not mean that they stand in the same position as that of those terms and conditions which have been agreed to and settled between the parties under Ext. M 1. He would state that this aspect was left open being fully aware of it being the subject-matter of consideration before the Certifying Officer and that the Authorities constituted under Central Act XX of 1946, have to go into the aspect of fairness and reasonableness of the conditions to be incorporated in the Standing Orders, whereas when a settlement is arrived at u/s 12(3) of the Industrial Disputes Act, it is not obligatory on the part of the authority to go into the fairness and reasonableness of the conditions incorporated in the settlement; that reference made to Gratuity Act or the provisions made for provident fund had no relevance because they are benefits earned by employees and in fact even under the Gratuity Act, u/s 2(c), the age of retirement is 58 and there is no reason as to why a different age should be prescribed under the Standing Orders, that Standing Orders framed for Pandyan Roadways Corporation which is not different from the petitioner-Corporation being solely owned by the Government of Tamil Nadu provided for age of retirement at 58 (Ext. M 4) and that merely because certain proceedings are pending in this Court, it will not be a proper ground to overlook the Standing Orders of an akin Corporation. According to the learned Counsel for the respondents, on Exts. M 3 and M 4, Standing Orders, relating to Cheran & Cholan Roadways Corporation, will no doubt be relevant, but they can not be conclusive, because the present trend is to fix a higher age of retirement in every category of service in this country. About the objection taken the provision made in Ext. M 7 (Standing Orders for Simpson and Group Companies) being relied upon he states that the workmen therein are engaged in transport operations and the nature of service rendered by them is not different from what is obtaining in respect of the employees of the petitioner-Corporation, and that the two settlements under Exts. M 1 and M 2 came into existence after draft Standing Orders were submitted by the petitioner-Corporation on 24.5.1976 and though arguments have been heard, the order was passed after considerable lapse of time on 10.6.1977 by the Certifying Officer and, therefore, the condition under Clause 10 in Ext. M 2 cannot prevail over what has been finally certified by the Appellate Authority under the impugned order. Lastly, he would plead that the Supreme Court in more than one

decision has held that fixation of the retirement age at 60 years for industrial labourers, cannot be said as unreasonable, and therefore, he contends that fixation of the same age limit for all categories of employees in petitioner-Corporation at 58, is fair and reasonable and this Court may not interfere with such a conclusion.

6. We will first take up for consideration whether in the face of what one has been agreed to under Ext. M 2 can the clerical and Administrative staff ask for a different age of retirement being fixed under the Standing Orders, in spite of Ext. M 2?

7. The petitioner-Corporation submitted draft Standing Orders on 24.5.1976 and it was certified on 10.6.1977 and the appellate order was passed on 27.6.1978. It is on 17.3.1977 that the settlement u/s 12(3) of Industrial Disputes Act, had been arrived at and Clause 10 of the agreement provided as follows:

The age of retirement on superannuation for all employees will be 55 years" (fifty-five years)

8. It is stated that the settlement will be binding on the parties for a period of three years from the date of the settlement. Even the first respondent, while dealing with the scope of a settlement arrived at u/s 12(3) of the Act, has stated as follows:

It is true that under the terms of the limited settlement u/s 12(3) of the Industrial Disputes Act, the Administrative staff had agreed to the fixation of the age of retirement of the superannuation at 55 years.... Strictly speaking, an agreement entered into u/s 12(3) of the Industrial Disputes Act would be binding on the parties to the agreement.

9. Therefore, the first respondent had clearly understood the legal implication and the binding nature of an agreement entered into u/s 12(3) of the Industrial Disputes Act.

10. Mr. Ramasubramanian, would rightly contend that the concerned employees are bound by the agreement and they cannot, by resorting to the provisions of Act XX of 1946, seek to get over an agreed term and when the Certifying Officer had been apprised about the existence of the agreement, he had correctly held that during the period of agreement, Clerical and Administrative staff cannot ask for a different fixation of age of superannuation, whereas the Appellate Authority had even after correctly understanding the scope and enforceability of the settlement, tried to get over it by referring to the imposition of emergency during the relevant time and erroneously held that to discriminate between the clerical staff and administrative staff on the one hand and workmen on the other would be unfair and unjust and illegal. It is no doubt true that after the amendment was made in 1956, to Act XX of 1946, the Certifying Officer has to go into the aspect of fairness and reasonableness of the formulation of Standing Orders. It does not tantamount to conferment of power upon the Certifying Officer or the

Appellate Authority under the Act, to overlook existing and enforceable settlement between the parties which had come into existence under the provisions of the Industrial Disputes Act or other statutory enactment.

11. Mr. Chidambaram, learned counsel, contends that the Court should not be oblivious to the conditions that prevailed during the period of emergency and the extent to which the rights of industrial labourers have been curtailed. It is in this background the Appellate Authority came to the conclusion that what has been arrived at under Ext. M 2 was not a fair and reasonable settlement. When such powers can be exercised, the settlement cannot be upheld. Such an approach which requires to be made under the provisions of Act XX of 1946. In this context, he refers to the decision of the Supreme Court in 1978 II L.L.J. 399, wherein the question arose as to whether the provisions of Act XX of 1946 will prevail over certain regulations made under Electricity Supply Act, 1948. That was a case wherein the question of superannuation came up for consideration and it was claimed by the workmen that they cannot be retired on their attaining the age of 58 since Electricity Board was not competent to make a Regulation under Electricity Supply Act, when such a provision could be competently made under the Standing Orders Act.

It was held:

Industrial Employment (Standing Orders) Act, being a special law in respect of matters enumerated in the schedule, the regulations made by the Electricity Board, in respect of any of those matters can have no effect and unless they have been notified by the Government u/s 13(b) or certified by the Certifying Officer u/s 5 of the Industrial Employment (Standing Orders) Act.

No doubt Act XX of 1946 being a special enactment, it will prevail over other enactments. But in certifying the standing orders, the Certifying Officer and the Appellate Authority cannot by-pass or over-look settlements arrived at u/s 12(3) of the Industrial Disputes Act on the pretext of going into the aspect of fairness and reasonableness of the provisions to be made in the standing orders. When parties are bound by the terms of settlement, to provide a condition which will violate an agreed term, cannot be characterised either as fair or reasonable one. The reasoning of the Appellate Authority that factum of emergency should be taken note of, cannot also be accepted because whatever may be the surrounding circumstances that provided during a settlement, it is not open to the Statutory Authority constituted under Act XX of 1946 to go beyond what is found in Ext. M 2 and then held that the settlement is not binding between the parties or that it is unfair, unjust and illegal or to apply the concept of discrimination and held that it will not be fair and reasonable to differentiate between the workmen on one hand and administrative and clerical staff on the other hand. Therefore, it is obvious that so far as clerical and administrative staff are concerned, and who have been parties to the settlement under Ext. M 2 during the period of settlement, they cannot ask for different age of superannuation to be fixed under the Standing Orders and in the face of what is

provided under Clause 10 of the agreement and they can have recourse for modification of the Standing Orders only after the settlement expires. Therefore, we hold that the Appellate Authority erred in fixing the same age of superannuation for all categories of employees and in so far as the clerical and administrative staff are concerned, the age of superannuation can be only 55 years and the provision in this regard, will have to be as certified by the second respondent.

12. About the binding nature of Ext. M 1, settlement dated 13 1977 it is not in dispute that workmen asked for fixation of age of retirement at 58 years. That was one of the many demands made by them. However, when the settlement was arrived at, under Clause 15, it was agreed as follows:

In consideration of the settlement reached, the unions agreed to withdraw all other demands listed in Annexure 1 and also withdraw the strike notice and the demands contained therein.

Clause 11 of Annexure 1 is

to provide for retirement age at 58 instead of 55.

13. Mr. Chidambaram, learned counsel, contends that withdrawal of the demand relating to superannuation would not operate as a bar against Certifying Officer under Act XX of 1946, to consider whether it is fair and reasonable to fix a higher age for superannuation. Though Mr. Ramasubramanian, learned Counsel for the petitioner had contended that withdrawal would tantamount to an agreement not to raise this aspect during the period of settlement, we do not see any force in this contention because, whatever had been agreed to between the parties that alone can be enforced. When certain demands are made and in the course of settlement, they are given up, it does not result in an estoppel or result in the Corporation or the employees foregoing their rights and entitlements under enactments. We have already referred to the fact that this settlement has come into existence only when the proceedings were pending before the Certifying Officer. It is only the Corporation, which came with a draft standing order providing for age of superannuation and asked for certificate to that effect. Hence when the Certifying Officer was seized of the matter, unless as has happened in the case of Ext. M 2 where an enforceable agreement had come into existence which would bind the hands of both the parties, in respect of workmen covered by Ext. M 1, the aspect of superannuation had been taken out of the purview of the settlement and therefore, it would not be illegal for the Certifying Officer to go into the aspect of superannuation of workmen and fix it as 58 years, in spite of the withdrawal of the demand consequent to the agreement under Ext. M 1. Therefore, we do not agree with the contention of the counsel for the petitioner that Ext. M1 will stand in the way of fixation of the age of retirement for workmen.

14. Mr. Ramasubramanian, learned Counsel for the petitioner contend that the authorities were in error in fixing the age of superannuation higher than what

has been incorporated in the draft Standing Order. The petitioner-Corporation fixed the age of superannuation at 55 taking into account other benefits which are derived by the employees like gratuity, & provident fund and in fixing the age of superannuation the likely benefits to accrue to the Corporation and also to the employees had been taken into consideration, Merely by extending the age of retirement, it cannot be contended that it would be beneficial to the employees because when workmen are placed with substantial benefits like gratuity, provident fund, etc, it would be in their own interests to have an earlier retirement. He also contend that the region-cum-industry factory had not been properly applied even though Exts. M 5 and M 4 have been marked. On this aspect Mr. Chidambaram, learned Counsel would contend that benefits conferred on employees like gratuity, and provident fund or any other monetary benefits are earned by them during the course of their service. That cannot stand in the way of fixation of a fair and reasonable age of superannuation which has to be decided only by the Statutory Authority under Act XX of 1946, when such a determination has been made, the correctness of such conclusion cannot be canvassed in this writ petition, unless it be shown that the conclusion has been arrived at on any irrelevant factors or the order passed by the first respondent, is in any. way illegal.

15. Regarding the applicability of region-cum-industry basis, he relies upon the certified Standing Orders of Pandian Roadways Corporation and also on Ext. W1, the Standing Orders for Neyveli Lignite Corporation and also on Ext. W7 to show that in Simpson and Group companies, the age of retirement is 60 years for workmen in its transport undertaking and hence the Certifying Officer and the Appellate Authority had taken into account the prevailing practice in the industry.

16. Mr. Ramasubramanian, refers to the decision rendered in Burhanpur Tapti Mills Ltd. Vs. Burhanpur Tapti Mills Mazdoor Sangh, , to show that a gratuity scheme is formulated to benefit the employees as a retiral benefit and therefore, when an employee is to retire at 35 years, he cannot plead that it is an unfair limit, fixed for cessation of his employment. According to him, in the words of the Supreme Court, it is only human elimination from industries of all senile or disabled employees, who but for such retiral benefits would continue in employment, even though they function inefficiently. In this decision, it has been held that in fixing the gratuity, emphasis has to be laid upon financial capability of the employer and of his profit making ability and the scheme of gratuity is akin to a scheme of pension and both of them are efficient devices and they are intended to benefit the employees. Therefore this decision can be of no assistance to him to contend that only 55 years for superannuation will alone be justified and not any higher age limit. In this context, Mr. Chidambaram, would refer to the decision of the Supreme Court in Hindustan Antibiotics Ltd. Vs. The Workmen and Others, , to the effect that in fixing the age of retirement, the principle of region-cum-industry will be more conducive to industrial relation on the retirement age has to be fixed taking into consideration the nature of the employment and to what extent it would be fair and reasonable. In this decision

it has been held that "we would, therefore, following the trend of judicial opinion, hold that the retirement age of the employees of the company should be raised to 60 years".

17. The decision rendered by the Supreme Court earlier in *Talang v. Shaw Wallace & Co.* 1964 II L.L.J. 644, is also relied upon by him wherein it has been held that taking into account the prevailing practice in the region, the superannuation age has to be fixed, and in the said case, it has been held that the trend in the Bombay region was to fix the age of retirement at 60 years and not at 58 years, and hence the age limit can be fixed at 60 years. He also refers to the provision made in Gratuity Act of 1972 to the effect that if there is no other fixation of limit the retirement age should be considered as 58 years.

18. First respondent had taken the view that Standing Orders under Exts. M3 and M4 for Cheran and Cholan Roadways Corporation cannot conclusively determine the issue and that the age limit found fixed for Pandian Roadways Corporation under Ext. W4 and that is found in respect of Transport undertakings belonging to Simpson and Group Companies, under Ext. W7, clearly show that the age of superannuation can be reasonably fixed at 58 years. Thus, the approach made by the first respondent cannot be characterised as illegal and the fact that the workmen are getting either gratuity or provident fund or other retiral benefits, cannot result in a lower age limit being fixed for being superannuated from service depending upon the factors taken into account in those cases.

19. Yet another decision relied upon by Mr. Chidambaram, is the one reported in *British Paints (India) Ltd. Vs. Its Workmen*, wherein it has been held:

Considering that there has been a y general improvement in the standard of health in this country and also considering that longevity has increased, fixation of age of retirement at 60 years appears to us to be quite reasonable in the present circumstances. Age of retirement at 55 years was fixed in the last century in Government service and had become the pattern for fixing the age of retirement everywhere. But time in our opinion has no come considering the improvement in the standard of health and increase in longevity in this country during the last fifty years that the age of retirement should be fixed at a higher level and we consider that generally speaking in the present circumstances fixing the age of retirement at 60 years would be fair and proper unless there are special circumstances justifying fixation of a lower age of retirement.

20. It is clear from the above decisions of the Supreme Court that it would not be unfair or unreasonable to fix the age of retirement at 58 years, as has been done by the first respondent, who had, taking into account the comparative nature of work discharged by the two classes of employees had come to the conclusion that the work is not so hazardous or adduous as to impair their serviceability or utility beyond 25 years.

21. The next point taken by Mr. Ramasubramanian, is that there is no jurisdiction

on the part of respondents 1 and 2 to fix an age of superannuation as part of the Standing Orders. This contention is quite surprising in view of the petitioner-corporation itself coming forward with a draft Standing Orders providing for an age of superannuation to be fixed at 55. That apart, it has to be seen whether the authorities have jurisdiction to fix the age of superannuation. Mr. Ramasubramanian, refers to Item 8 in the Schedule to Act XX of 1946 and contends that it has been held in more than one decision that the age of superannuation does not come within the category prescribed under Item 8 of the Schedule which is to the effect:

termination of employment and the notice thereof to be given by the employer and workmen.

22. This contention is straightway answered by referring to the Rules framed in Tamil Nadu in Schedule 1 dealing with the workmen, wherein provision has been made for retirement on attaining the age of 58 years. It is contended by Mr. Chidambaram, that before the Draft Standing Orders were submitted on 24.5.1976, workmen have been covered by the model Standing Orders with effect from 1.1.1972 and therefore, unless it be shown that what has been found in the model standing orders is unreasonable, Certifying Officer cannot refuse to adopt what is found in the Model Standing Orders. It is not in dispute that the workmen had been covered by the Model Standing Orders and a provision having been made for age of superannuation, it cannot be said that the respondents 1 and 2 had no jurisdiction to fix the age of superannuation.

23. In this context, reliance is placed on the decision rendered in Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others, , wherein the scope and jurisdiction of the Certifying Officer came up for consideration. It also dealt with the power of the concerned Certifying Officer to fix age of superannuation, when no provision had been made under the Central Act, but when U.P. Government had provided for the fixation of an age of superannuation to be fixed. It has been held in that case that after Section 4 of Act XX of 1946 was amended under Act 36 of 1956, it is for the Certifying Officer and the Appellate Authority under the Act to adjudicate upon the fairness and reasonableness of the provisions of any standing orders and the scope of the enquiry had become wider, and that Standing Orders must cover matters initially included in the Schedule, as well as matters which may be added I to the Schedule by the appropriate Government, in exercise of the authority conferred u/s 15 of the Act. It has been further therein that, having regard to the development of industrial law in this country, it cannot be said that gratuity, provident fund and the age of superannuation are not matters relating to conditions of employment. It has been made out that in exercise of the powers u/s 15, the U.P. Government had added several items to the list contained in the Schedule. Item 11 C related to 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. Therefore, it was held that fixation of an age of

retirement is within the jurisdiction of the authorities under Act XX of 1946.

24. In *The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen*, it has been held that the scheme and object of the Act was intended to provide for a uniform condition of service and for that purpose, after the amendment effected in 1956, it is for the Certifying Officer and the Appellate Authority to find out the fairness of the standing orders. In this case also, 11 C introduced by the U.P. Government was taken into account and it was held that after the introduction of Item 11 C to the Schedule, it will be well within the jurisdiction of the authorities under the Act XX of 1946 to provide for an age of retirement superannuation. It was again reiterated in this decision that after the amendment effected in 1956, it is well within the jurisdiction of the Certifying Officer and Appellate Authority to examine the fairness and reasonableness of the provisions to be made in the Standing Orders.

25. He also referred to the decision reported in *Akhil Ranjan Das Gupta v. Assam Tribune* 1965 II L.L.J. 614 wherein it has been held that if there is a deviation, the Certifying Officer can enquire into the reasonableness or otherwise of the standing orders, and if it cannot be characterized as unreasonable on the face of it, the High Court will not interfere with the exercise of power by the Certifying Officer or the Labour Court on appeal. Therefore, since a provision had been made in Tamil Nadu Standing Orders, viz., The Industrial Employment (Standing Orders) Rules, 1947 in Schedule I, regarding workmen about the age of superannuation, it cannot be said that respondents 1 and 2 have acted in excess of their jurisdiction in fixing age of superannuation.

26. Therefore, to conclude, Clause 31 of the Standing Orders will read as made by the Certifying Officer and the contention of Mr. Ramasubramanian, learned Counsel for the petitioner is upheld only in respect of clerical and administrative staff, who are covered by Ext. M2 settlement.

27. The next point taken, relates to compulsory retirement as a measure of punishment which has been proposed under Sub-division Vii of Clause 26(1) in the draft Standing Orders. The petitioner--Corporation has asked for inclusion of "compulsory retirement", as one of punishments for misconduct, and both authorities have refused to certify this provision, In the affidavit it is contended that compulsory retirement is proposed not as a matter of punishment, but as a necessary incident so that the Corporation can remove such of those employees who may not extend efficient service to the Corporation.

28. Relying upon the decision of the Supreme Court, Mr. Ramasubramanian, learned Counsel for petitioner contends that compulsory retirement, after all involves removal of dead wood, and having prescribed a higher age of superannuation at 58 years, the Corporation should be enabled to weed out such dead wood, in the interest of its efficient operation. The reasoning of first respondent that it is likely to result in abuse of power by authorities in the Corporation or that it may result in victimization for trade union activities, are

mere surmises and it cannot be said that, if any such abuse occurs, the unions cannot take care of the interest of the employees.

29. Mr. Chidambaram learned Counsel contends that the concept of compulsory retirement is alien to industrial relation and this is a concept known only in respect of Government servants who held their jobs not under contract, but as one of status, and the doctrine of pleasure is unknown to industrial law. Further such a power even in respect of Government servants is entrusted with highest authority. If such power is to be given to Managements in private undertakings and in Corporations, it will unsettle security of service and, therefore, the Corporation cannot be entrusted with the power of compulsory retirement as found under Government rules. He goes to the extent of asserting that in no Standing Orders such a provision has found a place and in this case, the Corporation having come forward with a proposal that compulsory retirement is one of facts of punishments, cannot now contend that what has been proposed, is not a measure of punishment. He refers to the decisions of the Supreme Court to strengthen his contention that compulsory retirement is the outcome of doctrine of pleasure and it cannot be conceived of as a punishment. In *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, wherein Rule 56(j) of the Fundamental Rules came up for consideration, it was held that compulsory retirement involves no civil consequences, and while a minimum service is guaranteed to the Government servant, the Government is given power to energies its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest. It has been further held therein that Fundamental Rules 56(j) empowers the Government to compulsorily retire a person which emanates out of the doctrine of pleasure, but is subject to the rules or law, made under Article 309 of the Constitution of India, as well as to the conditions prescribed under Article 311 of the Constitution of India. He then refers to the decision in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, wherein it has been held that compulsory retirement under the Civil Services (Classification, Control and Appeal) Rules, does not amount to dismissal or removal within the meaning of Article 311 of the Constitution and that, it does not fall within the provisions of the said Article nor does it involve any stigma or implication of misbehaviour or incapacity of the person who had been compulsorily retired. In comparison with dismissals and removals which involved loss of benefit already earned, in case of compulsory retirement, the incumbent will be entitled to pension which he has actually earned and there will be no diminution of the accrued benefits.

30. Yet another decision relied upon by him is *The State of Bihar Vs. Abdul Majid*, wherein it has been held that Civil Servant holds an office at the pleasure of Crown, and in India, in view of Section 240 of the Government of India Act, 1935, there are restrictions and limitations on the exercise of pleasure of the Crown and the matter is justifiable if there is an illegal termination from service.

31. Based on these decisions Mr. Chidambaram, learned Counsel for the respondents, contends that the concept of compulsory retirement is a peculiar procedure conceived of for the purpose of eradicating personnel in service, to bring in greater efficiency, and it can be done in public interest, and having its origin from the doctrine of pleasure, such a concept cannot be inducted into the service conditions relating to industrial employees. He refers to the following passage in the decision reported in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, .

That rule merely embodies one of the facets of the "pleasure" doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in Government organizations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual Government servant and the interests of public. While a minimum service is guaranteed to the Government servant, the Government is given power to energize its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

32. It cannot be denied that Corporation came forward to include compulsory retirement as one of the punishments for misconduct. If it considers that persons who are unfit and persons who cannot bring about efficiency in its organization require to be weeded out under the existing standing orders, provisions having been made for removal of unfit persons either by removal from service or discharge or even dismissal, as the case may be, it is not necessary for the Corporation to have the power of compulsory retirement. There is considerable force in the objection taken by the respondents that even for legitimate trade union activities, the Corporation may resort to compulsory retirement furnishing no reasons whatsoever for termination of service. After all, in respect of industrial undertakings, the paramount consideration is industrial peace and if power is to be given to the organizations, it is to result in arbitrary orders. The Certifying Officer has the necessary jurisdiction to go into the fairness and reasonableness of the proposal and in this case, it cannot be said that respondents 1 and 2 have not taken into account relevant factors in refusing to incorporate a provision for compulsory retirement. In approaching this aspect of compulsory retirement, it is necessary to bear in mind its origin and purpose for which it is retained in respect of the Government servants. The passage above extracted clearly shows that, this power is exercised not as a punishment, but for the purpose of infusing efficiency in services. So far as Corporation is concerned,

if it finds, that any of its employee is unfit for discharging the duties, it has the necessary power of removal from service or discharge. Therefore, there is no need for incorporating an additional arrangement by way of compulsory retirement. It has been clearly held that compulsory retirement does not amount to a punishment. In this view, we see no ground to interfere with the decision of respondents 1 and 2 in deleting the provision for compulsory retirement.

33. The next point taken is about provision made for casual leave under clause 11. It is claimed by the petitioner-Corporation that no such provision was contemplated in the draft Standing Orders and the Certifying Officer turned down the claim for granting casual leave and that for the first time before the Appellate Authority in the appeal grounds, a claim had been made for casual leave for ten days for a year, over and above the existing leave benefits and, therefore, the first respondent had exceeded the jurisdiction in providing for casual leave of ten days in the aggregate in a calendar year. It is also claimed that under Act XX of 1946, no provision for casual leave can be made.

34. Yet another objection taken, is to the effect that leave facilities are governed by settlement dated 24.5.1976 and 27.9.1975 and 24.10.1975 and therefore, when the employees get considerable number of days as leave facilities, by resorting to Standing Orders, they cannot claim for additional provision under the head of casual leave.

35. Mr. Chidambaram, would contend that when casual leave had been provided for under Ext. W. 3 relating to Pandian Roadways Corporation, by adopting the region-cum-industry basis, petitioner-Corporation which is similarly placed as that of Pandian Roadways Corporation cannot object to a provision being made for casual leave. He refers to the decision of the Supreme Court in Gaziabad Engineering Co. (P) Ltd. Vs. The Certifying Officer, Kanpur and Another, wherein it has been held that Certifying Officer can grant casual leave as fair and reasonable, having regard to the prevalent practice in the neighboring industries in the industrial belt and also on financial position of the undertaking. It was also held that, when Appellate Authority had agreed with the conclusions of Certifying Officer, and found that provision of casual leave is fair and reasonable, they are pure questions of fact, and does not call for interference, under Article 136 of the Constitution of India, by the Supreme Court. It has been held therein.

Moreover, the model Standing Orders as well as the Schedule to the Industrial Employment (Standing Orders) Act, 1946, deal with casual leave. In this view there is nothing illegal in the order impugned nor are we satisfied that there is anything shockingly violative of fairness or justice. It is a notorious fact that casual leave is not an automatic advantage to the total number of days leave that a worker is entitled. It is only in the event of sudden emergencies that casual leave is allowed and so the grievance of the appellant is exaggerated, if not imaginary. Apart from this, it is elementary that unforeseen circumstances may un-expectedly crop up necessitating sudden absence of an employee, he be in Government service or any other office or in an industrial undertaking. The

whole concept of casual leave is calculated to provide for such contingencies.

36. In the light of what has been held in this decision, it is obvious that first respondent had taken into account only the likely contingency that may be faced by the employees, and it cannot be said that providing casual leave will be beyond the jurisdiction of Certifying Officer or Appellate Authority under the Act. As far as settlements which are referred to, it has not been shown before this Court as to what extent these settlements could prevent provision being made for casual leave, whatever be or irrespective of the provisions made for leave under different heads. It is not claimed by Corporation that they have already provided for certain number of days of casual leave under the said settlements. But, what is contended now is that provision having been made for certain leave facilities, workmen cannot ask for casual leave, which will add up to the number of days of leave which they could avail of under the settlements. Unless it be shown that casual leave as such is covered by these settlements arrived at u/s 12(3) of the Industrial Disputes Act, respondents 1 and 2 will have the necessary jurisdiction to consider the fairness and reasonableness of the provisions to be made and in so doing, they have adopted what has been done in respect of a sister corporation under Ext. W.3 (Pandian Roadways Corporation) Therefore, we see no reason to interfere with the conclusion arrived at in respect of the provision made for casual leave.

37. Counsel for petitioner then referred to four other aspects, they being regarding Standing Orders being made about the period of probation, about percentage of apprentices to be retained, unauthorised absence and determination of seniority.

38. On the aspect of period of probation, being fixed under Clause 3(ii), it is contended by the petitioner that classification between skill and unskilled is a valid one and when the period of probation had been fixed upto 3 years under Model Standing Orders, there is no reason assigned by Appellate Authority for revising the period fixed by one year, out of the period of two years by the Certifying Officer. The so called fair concession has no basis whatsoever. In the draft Standing Orders, it was proposed that period of probation will be for two years out of a period of three years. In fixing period of probation at six months in the case of all the workmen subject to the extension, if any, the first respondent had taken into account the Standing Orders fixed under Ext. W. 1 for Neyveli Lignite Corporation and under Ext. W. 3 for Pandian Roadways Corporation. A reference had been made in the order about the provision made in the model Standing Orders. Hence it cannot be said that first respondent had not taken into account the prevalent practice in fixing the period of probation in respect of workmen involved in petitioner-Corporation and also about desirability of fixing the same period of probation whether they are unskilled workmen or skilled workmen.

39. Mr. Chidambaram refers to the decision of the Supreme Court in Western India Match Company Ltd. Vs. Workmen, , for the limited purpose of establishing

that it would be desirable to have only one set of Standing Orders for employees in an undertaking and that it would not be improper to fix the same period of probation whether they are skilled or unskilled. Therefore, the method adopted by first respondent to fix the same period of probation for all categories of workmen and applying the yardstick of six months cannot be interfered with, on the pleas that the first respondent had arbitrarily fixed the period of probation at six months without any supporting materials.

40. On the fixation of 5% quota for "Apprentices" of the existing strength of each category of workmen, it is contended by the petitioner-Corporation that is the sole prerogative of the Corporation to determine as to the number of persons who should be taken for training as apprentices and respondents 1 and 2 have no jurisdiction to fix a percentage as has been done. This point has been taken up before the first respondent in appeal No. 6 of 1977 claiming that, unless a percentage is fixed regarding the number of apprentices in the establishment, it would result in enlisting large number of persons by designating them as apprentices and extracting work from them without providing them permanent job opportunities and it would lead to unhealthy practices in the establishment in respect of appointment to permanent posts. It is this aspect that has impressed first respondent to fix a 5% quota for apprentices in each category of workmen and when it appears to be fair and reasonable, there is no scope for interference with such a fixation.

The next aspect taken up by counsel for the petitioner is the provision made about "unauthorised" "Absence" under Clause 11(c) which is to the effect as under:

If a worker is absent, without leave being sanctioned to him, more than 50 days in a calendar year, he shall be deemed to have left the employment, unless he gives explanation to the satisfaction of the Management for such absence in which case the period of absence shall be treated as leave without wage?.

41. The first respondent had deleted the latter portion of Clause 11(3) which reads thus:

Unless he gives an explanation to the satisfaction of the management for such absence in which case the period of absence shall be treated as leave without wages.

42. Mr. Ramasubramanian, counsel for the petitioner contends that first respondent ought to have also provided for taking disciplinary action and the mere fact that during the period of absence, he will lose wages, will not alone be sufficient and when a person had absented himself for a long period of more than 80 days, he does not deserve any further consideration and in such an event, it would be proper to provide for disciplinary action being taken. Clause 11(c) as modified by first respondent would not prevent the Corporation from initiating disciplinary proceedings if it chooses so do, provided it constitutes, misconducts. Therefore the clause as modified by the first respondent is a fair and reasonable

one and the objection taken by the petitioner had been taken note of and there is no need for incorporating a provision regarding taking up disciplinary action, which would be available to the Corporation depending on the nature of the misconduct that can be made out in individual cases.

43. On the fixation of single seniority list to the workmen in all the three units, it contended this is outside the scope of the Standing Orders and it would not be desirable to have such a seniority list. Such a claim made by the workmen had been withdrawn as seen from settlements under Exts. M. 1 and M.2, and therefore, it is contended that respondents 1 and 2 cannot ask for any such provision being invade in the Standing Orders, The first respondent had rightly held that the three units can have a single seniority list because transfer of workmen inter se is provided for, and in such an event, it cannot be said that it will be in the interests of workman to have a single seniority list. The mere fact that this aspect has been withdrawn from the demands made when Exts. M. 1 and M. 2 were entered into, it cannot be said that the Certifying Officer and the Appellate Authority cannot deal with this aspect.

44. In the result, having held that in respect of clerical staff and administrative staff covered by Ext. M.2 they cannot during the period of the settlement ask for revision about the age of superannuation, to the said limited extent, this writ petition is allowed and all other points taken by the Corporation are rejected. No costs.