

(1984) 01 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No's. 2629 to 2631 of 1983

Pallavan Transport Corporation, (Metro) Madras-2

APPELLANT

Vs

Presiding Officer, I Additional Labour Court, Madras, T.K.
Krishnamurthy and Others

RESPONDENT

Date of Decision : 11-01-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (1985) 51 FLR 297 : (1984) 2 LLJ 132

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

1. The petitioner in these three writ petitions is the Pallavan Transport Corporation (Metro) Madras. The second respondent in each of these three

writ petitions was a workman under the petitioner and they shall hereinafter be referred to as the workmen. The petitioner superannuated the

workmen on their attaining the age of 55 years as per the details given below.

1. 30.6.1977 Krishnan Second Respondent in WP 2630/83.

2. 31.1.1978 Antony Joseph Second Respondent in WP 2631/83.

3. 28.2.1978 Krishnamurthy Second Respondent in WP 2629/1983.

The workmen contended that at the relevant point of time, the prescribed model standing orders under the Industrial Employment (Standing

Orders) Act XX of 1946, hereinafter referred to as the Act, were in force and as per clause 21 thereof the age of superannuation could be only 58

and hence, the Orders of superannuation passed by the petitioner against them are illegal and then workmen should be deemed to be in service

until each one of them attained the age of 58. The petitioner would maintain a

stand that clause 11 of the Service Rules, under which the age of superannuation was fixed at 55, would govern and hence the orders of superannuation must be upheld and in any event, the workmen received the benefits of retirement and therefore, they cannot be permitted to project the present stand. Naturally, industrial disputes were raised and they were referred for adjudication to the first respondent. In I.D. No. 391 of 1980, workman Krishnan (Second Respondent in W.P. No. 2630/1983) was the claimant and in I.D. No. 447 of 1980, workmen Antony Joseph (Second Respondent in W.P. No. 2631 of 1983) and Krishnamurthy (Second Respondent in W.P. No. 2629 of 1983) were the claimants. The first respondent adjudicated, the matter and came to the conclusion that the model standing orders prescribed under the Act would govern and hence, the orders of superannuation passed against the workmen cannot be sustained and the workmen must be deemed to be in service until they attained the age of 58 and since by the time the awards came to be rendered the workmen had already attained the age of 58, they were held to be entitled to all the benefits on the said basis. W.P. No. 2629 and 2631 of 1983 are directed against the award of the first respondent in I.D. No. 447 of 1980 and W.P. No. 2630 of 1983 is directed against the award of the first respondent in I.D. No. 391 of 1980.

2. Before I deal with the submission made by Mr. M. R. Narayanaswami, learned Counsel for the petitioner, impugning the awards passed by the first respondent, there is a necessity to refer to a few aspects which may be germane to complete the factual picture. That the petitioner is an industrial establishment to which the Act applies, is not being disputed before me. The petitioner did submit draft Standing Orders as per S. 3 of the Act on 24th May, 1976 to the Certifying Officer and the order of the Certifying Officer was passed on 10th June, 1977 under S. 5 of the Act. There was an appeal under S. 6 of the Act and the order of the Appellate Authority was passed on 27th June, 1978. The petitioner agitated the matter with regard to various provisions in the Standing Orders certified by the Certifying Officer and confirmed by the Appellate Authority, in W.P. No. 2523/78, which was heard and disposed of by a Bench of this Court, consisting of Mohan and Sathiadev, J.J., by order dated 20th July, 1979. Vide Pallavan Transport Corporation Ltd. Vs. Appellate Authority

under the Industrial Employment (Standing Orders) Act and Others, . The learned Judges except with regard to clerical and administrative staff covered by a settlement under S. 12(3) of the Industrial Disputes Act, 1947, did not vary the Standing Orders.

3. S. 7 of the Act speaks about the date of operation of the Standing Orders and since, in the present case, an appeal was preferred, it would

become normally operative on the expiry of the seven days from the date on which copies of the order of the Appellate Authority are sent under

Sub-s. (2) of S. 6 of the Act. But as per the dates traced above, the orders of superannuation against the workmen had come to be passed

anterior to the date when the certified Standing Orders became operative. But S. 12A of the Act lays down as follows :

Temporary application of model Standing Orders : (1) Notwithstanding anything contained in Ss. 3 to 12, for the period commencing on the date

on which this Act becomes applicable to an industrial establishment, and ending with the date on which the Standing Orders as finally certified

under this Act come into operation under S. 7 in that establishment, the prescribed model Standing Orders shall be deemed to be adopted in that

establishment and the provisions of S. 9, sub-s. (2) of S. 13A shall apply to such model Standing Orders as they apply to the Standing Orders so

certified.

(2) Nothing contained in sub-s. (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of

the State of Gujarat or the Government of the State of Maharashtra.

The result of S. 12A of the Act is that between the date on which the Act became applicable to the petitioner and ending with the date on which

the Standing Orders finally certified became operative, the prescribed model Standing Orders shall be deemed to govern the service conditions

and obligations in the establishment. This is what the workmen would contend. Only on this basis, they advanced their case that as per Clause 21

of the prescribed model Standing Orders, their age of retirement could be only 58 and not 55 and hence, the orders of superannuation passed on

their completing the age of 55 illegal and have got to be eschewed.

4. Mr. M. R. Narayanaswami learned Counsel for the petitioner, would first state that the orders of superannuation were passed long prior to the

Standing Orders getting certified and becoming operative and on the relevant dates, Clause 11 of the Service Rules, marked in the cases as Ex. M.

1 should govern. As against this Mr. G. Venkataraman, learned Counsel for the workmen, would submit that the Standing Orders certified, are

part of the statutory terms and conditions of service between the industrial employer and employees. They will govern the relationship between the

parties and between the two dates mentioned in S. 12A of the Act, namely the date on which the Act becomes applicable to the industrial

establishment and the date on which Standing Orders finally get certified under the Act and become operative the prescribed model Standing

Orders shall stand adopted; and they have the same legal efficacy as the certified Standing Orders and there is no escape from them. Learned

Counsel would further submit that the service Rules, Ex. M. 1 do not satisfy the ingredients of S. 13B of the Act, so as to exclude the applicability

of the Act and thereby, the prescribed model Standing Orders to the petitioner at the relevant point of time.

5. In *The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, the Supreme Court held that the

Standing Orders certified under the Act become part of the statutory terms and conditions of service between the industrial employer and his

employees and they will govern the relations between the parties and the Supreme Court referred to its earlier pronouncement in *Workmen of*

Dewan Tea Estate and Others Vs. The Management, . In *Borosil Glass Works Limited Vs. M.G. Chitale and Richard M. D'souza*, a Bench of

the Bombay High Court, after adverting to the pronouncement of the Supreme Court in *Workmen of B & C Mills v. B & C Mills (supra)*,

expressed the opinion that the legal efficacy attachable to certified Standing Orders under the Act holds good in respect of the prescribed model

Standing Orders under the Act. Padmanabhan J., in *Somarajan and Others Vs. Management of A.R.C. Engineering Works, Ambattur* and

Another, , has also taken the view that the prescribed model Standing Orders under the Act would govern the relationship between the parties as

the certified Standing Orders during the relevant period.

6. The language of S. 12A of the Act is categorical. Prior to the enactment of the Act, the relationship between an industrial employer and his

employees was a matter governed by contracts between the employer and his employees. In some cases, the terms and conditions of service had found expression in writing, but in many cases, they were left in field of oral agreement and understanding. Ambiguity prevailed and there were breaches of industrial peace on account of controversies arising with regard to conditions of service. Hence, an imminent need to define the conditions of employment in industrial establishments was felt and this led to the passing of the Act. After the Act, the Certified standing orders became part of the statutory terms and conditions of service between the industrial employer and his employees. But, during the interregnum, namely, between the date on which the Act becomes applicable to an industrial establishment and the date on which the standing orders get finally certified under the Act, the Legislature brought in S. 12A of the Act, to state that the prescribed model standing orders shall govern. Hence, the prescribed model standing orders have the same legal efficacy to govern the terms and conditions of service in an industrial establishment to which the Act applies during the relevant period as the certified standing orders. If this legal position is understood, as contended by Mr. G.

Venkataraman, learned counsel for the workmen, there is no escape for the petitioner to get over the prescribed model standing orders.

7. Mr. M. R. Narayanaswami learned counsel for the petitioner wanted to press forth the Service Rules, Ex. M. 1 as governing the relationship

between the parties on the relevant dates when the workmen were superannuated. The Service Rules could be of avail to the petitioner only if they could be brought in within S. 13B of the Act which runs as follows :-

Act not to apply to certain industrial establishments. Nothing in this Act shall apply to an industrial establishment in so far as the workmen

employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil

Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and

Appeal) Rules or the Indian Railways Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate

Government in the Official Gazette, apply,

As to what type of rules apart from the enumerated rules in S. 13B would fall

within the category of "any other rules or regulations" under the section, has been the subject-matter of scrutiny and decision by judicial pronouncements.

8. In *Raman Nambisan (P.) and Others Vs. Madras State Electricity Board and Others*, Kailasam, J, as he then was, declined to countenance a

case put forth on behalf of the Madras State Electricity Board that the rules and regulations of the Government of Madras, adopted by it as

transitory rules and regulations can be equated to the rules under S. 13B of the Act. The very same learned Judge, in *Thiruvengkataswami v.*

Coimbatore Municipality 1968 I L.L.J. 36 declined to accept the stand taken by the Coimbatore Municipality that the municipal rules should be

regarded as rules notified in this behalf by the appropriate Government in the Official Gazette as required under S. 13B of the Act. The learned

Judge found that the said rules were not notified for the purpose of the Act. The following observations of the learned Judge are relevant :

... The clause, "any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette can only

mean the rules and regulations that may be notified by the appropriate Government for the purpose of the Industrial Employment (Standing Orders)

Act. It is admitted that no rules were notified under this Act. Rules framed under the District Municipalities Act, long before the Act came into

force cannot be said to be rules notified in this behalf by the appropriate Government.

9. In *U.P. State Electricity Board, v. H. S. Jain* , the Supreme Court approved the above views of Kailasam J. as he then was. It is true, the

Supreme Court did not agree with the view of the learned Judge that

Section 13B cannot be availed of for purposes of framing rules to govern the relationships in an industrial establishment under private management

or in a statutory corporation. This rule can apply only to industrial establishments in respect of which the Government is authorised to frame rules

and regulations relating to the conditions of employment in industrial establishments.

Adverting to the relevant words occurring in S. 13B of the Act, the Supreme Court observed as follows in Para 15 thereof at page 407.

... They (the words) are used to describe subordinate legislation made by

authorities to whom the statute delegates that function. The words can have no other meaning in S. 13B. Therefore, the expression "'workmen ... to whom .. any other rules or regulations that may be notified in this behalf means, in the context of S. 13B, workmen enjoying a statutory status, in respect of whose conditions of service the relevant statute authorises the making of rules of regulations. The expression cannot be construed so narrowly as to mean Government servants only; nor can it be construed so broadly as to mean workmen employed by whomsoever including private employers, so long as their conditions of service are notified by the Government under S. 13B.

10. It is not the case of the petitioner that the service rules were framed within the meaning of S. 13B of the Act, and no attempt was made before me to demonstrate that the service Rules do satisfy the norms laid down by the Judicial pronouncements referred to above. There is nothing to state that they should govern the relationship between the parties and the prescribed model standing orders could not be invoked.

11. The second line of submission by Mr. M. R. Narayanaswami, learned counsel for the petitioner, is that the workmen accepted and received the retirement benefits and hence, they are precluded from raising the industrial dispute. Before the first respondent, this stand has been sought to be maintained on the principle of estoppel. This theory of estoppel was not pursued before me for obvious reasons. Some of the pronouncements have recognised that such technical pleas are not generally entertained in industrial adjudication. Besides, the ingredients factually and legally to be satisfied before the principle of estoppel, could be pressed forth, do not at all stand satisfied in the instant cases. Obviously, realising this position

Mr. M. R. Narayanaswami, learned counsel for the petitioner, would state that the workmen must be deemed to have acquiesced in the orders of superannuation or waived their rights when they received the retirement benefits. There is no dispute before me that the workmen did receive the retirement benefits. But the petitioner did not put forth the specific plea of either acquiescence or waiver before first respondent during the adjudication of the disputes. The petitioner did pass orders of superannuation against the workmen and disbursed the retirement benefits. These were are not in accord with the prescribed model standing orders which, as

stated above, are statutory terms and conditions of service and which governed the relationship of the parties. The question is whether the workmen, consciously and with the requisite intention, acquiesced in the orders passed or waived their legitimate rights by accepting the retirement benefits. On an assessment of the facts placed in the cases, I am clearly of the view that either on the basis of acquiescence or waiver, or both, the workmen cannot be denied their legitimate right to be in service until they attained the age of superannuation namely 58 year under prescribed model standing orders.

12. Acquiescence denotes conducts which is evidence of an intention by a party to abandon a right legitimately due to him. It may also denote a conduct from which the opposite party could be justified in inferring such an intention. Acquiescence is only a form of estoppel, and it is of the essence of acquiescence that the party acquiescing should be aware of and by words or conduct should represent that he assents to what is a violation of his rights and that the reason to whom such representation is made should be ignorant of the other party's rights, and should have been deluded by the representation into thinking that his wrongful action was assented to by the other party. The question of estoppel or acquiescence is essentially a question of fact, which has to be decided on proper materials before the Court. Of course, once facts are established, acquiescence is a matter of legal inference.

13. Waiver is an intentional relinquishment of a known right. There can be no waiver unless the person against whom waiver is claimed had full knowledge of his rights and all facts enabling him to take effectual action for the enforcement of such rights. This is what has been recognised by the Supreme Court in *Associated Hotels of India Ltd., Delhi Vs. S.B. Sardar Ranjit Singh*, . The Supreme Court quoted with approval the dictum of a Bench of the Calcutta High Court in *Bhanukdhari Singh v. Nathima Sahu* 11 CWN 848, where it was held as follows :

A Waiver is an intentional relinquishment of a known right or such conduct as warrants an inference of the relinquishment of such right, and there can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of the facts which would enable him to take effectual action for the enforcement of such rights.

The theory and plea of "Waiver" are not matters to be naively advanced without advert to the essential ingredients to be satisfied. It must be established that there was an intentional relinquishment of a known right or the voluntary relinquishment or abandonment of a known existing legal right, or conduct such as warrants an inference of the relinquishment of a known right or privilege waiver is a notion different from estoppel. Waiver is contractual and would constitute an agreement to release or not to assert a right. Estoppel, on the other hand, is a rule of evidence and it may have the effect of creating substantive rights as against the person estopped. The plea of estoppel could not be and was not in fact urged before me on the factual and legal basis. That waiver as contractual, will be germane for the other contention advanced by the learned counsel for the workmen, which I shall presently advert to. A plea of acquiescence or waiver should be taken by the opposite party specifically and there should be an issue on that point. They could not be a matter of bare presumptions and assumptions. They are questions of fact which have got to be pleaded and have got to be proved. The burden of proof of the ingredients of acquiescence or waiver is on the person who relies on the same. As adverted to earlier, in the instant cases, there was no plea of either acquiescence or waiver. If pleaded and specific evidence establishing acquiescence or waiver was placed, the workmen would have counter-pleaded and placed counter-evidence that they had no intention to acquiesce or waive. Even otherwise, there is no evidence worth the name that was placed in the case to substantiate the theory of acquiescence or waiver. The records produced by the petitioner evidenced nothing more than disbursement of the retirement benefits. From none of the materials placed by the petitioner it could be spelt out that the workmen agreed" to waive their rights or acquiesced in the orders or superannuation consciously or intentionally. Mere receipt of retirement benefits with nothing more to indicate abandonment of their legitimate rights would not amount to acquiescence or waiver. The petitioner examined one witness as M.W. 1 in I.D. No. 391/1980 and his evidence is of no avail at all to the petitioner on the question of acquiescence or waiver. In the absence of plea and proof of these aspects, I am not able to sustain the submission of the learned counsel for the petitioner in this behalf.

14. On the basis that waiver is contractual and may constitute a cause of action and would amount to an agreement to give up what is due and not

to assert the said right, Mr. G. Venkataraman, learned counsel for the workmen, wanted to say that such agreements are hit by S. 23 of the Indian

Contract Act. He would first submit that such agreements are forbidden by law. He draws my attention to S. 13(2) of the Act which provides for

penal action when an employer contravenes the standing orders finally certified under the Act and would submit that by virtue of S. 12A of the Act,

violation of the prescribed model standing orders will also attract S. 13(2) of the Act and hence, any agreement in contravention of the prescribed

model standing orders must be held to be forbidden by law within the meaning of S. 23 of the India Contract Act. He dwelt upon certain passages

in the commentaries by Pollock and Mulla on the Indian Contract Act, Ninth Edition, and he also relied on the pronouncement of a Bench of the

Bombay High Court in *Madras and Southern Mahratta Railway v. Rupchand Jitaji* ILR 1950 Bom. 185, where it was held that a consent decree

providing for attachment of the salary of a railway servant, which is exempt from attachment under the Code of Civil Procedure, will be hit by S.

23 of the Indian Contract Act, since the terms of the compromise were unlawful and void.

15. Learned Counsel for the workmen would also try to bring the matter as opposed to public policy, again within S. 23 of the Indian Contract

Act. Learned Counsel relied on paragraph 4A in the Judgment of the Supreme Court in *U.P.S.E. Board v. Hari Shankar* (supra) to expatiate the

policy behind the Act. He also relied on *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, to state what is meant by public policy. My

attention was also drawn to the pronouncement of the Supreme Court in *Krishna Khanna Vs. Additional District Magistrate, Kanpur and Others*,

to substantiate the contention that the agreements would be opposed to public policy.

16. Mr. M. R. Narayanaswami, learned counsel for the petitioner has got his own submissions to be made on these aspects and in fact, he drew

my attention to the concerned provisions in very many other statutes, where contracting out itself is prohibited, apart from prescribing penalties for

contravention and learned counsel would state that this contract supports the proposition that any agreement waiving rights under the prescribed

model standing orders cannot be stated to have been forbidden by law. According to the learned counsel, the standing orders finally certified or the

prescribed model standing orders in the interregnum, only adumbrate terms and conditions or services and they are personal and private in nature

so far as individual workmen are concerned and there could not be any element of public policy, and the individual workmen could waive such

rights and benefits. These moot questions, I would have gone into and expressed an opinion over them if on facts I have found that there was

actually a waiver. As discussed above, I do not find any specific plea or proof of either acquiescence or waiver taken or adduced by the petitioner

and hence, I do not feel called upon to dwell upon these aspects. Accordingly, I refrain from expressing any opinion on these aspects.

17. The discussions which have preceded leave me with no other alternative but to dismiss the writ petitions. It is stated that the awards of the first

respondent have not taken into account, or given directions for adjustments of the amounts already disbursed on the basis of orders of

superannuation passed. These are all matters of computation and adjustment at the time of the settlement of the accounts. Accordingly, these writ

petitions are dismissed with costs.