
(2016) 08 OHC CK 0060
In the Orissa High Court
Case No : W.P.(C). No.9180 of 2010

Paradeep Phosphates Ltd.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 33A, 9A

Citation : (2016) 4 LLJ 64 : (2016) 4 LLN 510

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. Sambit Rath, B.K. Nayak-3 and Mr. Ganeswar Rath, Advocates, for the Petitioner; M/s. Sanjay Kumar Mishra, S. Mahanta, Caveators, for the Opposite Parties No. 3; M/s. P.K. Mohapatra and M. Mishra, M/s. Sanjaya Kumar Mishra, S.S. Sahoo and Mr. Budhadev

Final Decision : Dismissed

Judgement

S.N. Prasad, J.—In this writ petition the award passed in Industrial Dispute Case No.16 of 2003 dated 17th April, 2010 is under challenge whereby and where under the terms of reference regarding reducing the prevailing retirement age limit from 60 years to 58 years has been held to be illegal by the Industrial Tribunal directing the workman entitled to all the benefits for the differential period, i.e. the benefit which they would have earned had they been allowed to retire at the age of 60 years.

2. The issue raised by the petitioner while assailing the award is whether the age of superannuation can be said to be a service condition as per Schedule 4 of Section 9(A) of the Industrial Disputes Act, 1947 and if it is not a service condition, then there is no requirement to give any notice to the workmen as required U/s.9(A) of the I.D. Act, 1947. In order to answer the issue it is relevant to go into the brief facts of the case as per the pleading made by the parties in the writ petition and in the counter affidavits.

3. The case of the petitioner Paradeep Phosphates Ltd. is that it was incorporated on 24th day of December, 1981 as a joint venture company between Government of India and the Republic of Nauru with an objective to manufacture Di-Amonium Phosphates. In the year 1993, the Republic of Nauru disinvested its entire equity stake to the Government of India and Paradeep Phosphates Ltd. became a wholly owned public sector undertaking of the Government of India having its corporate and registered office at Paradeep in the district of Jagatsinghpur in the State of Odisha. The performance of Paradeep Phosphates Ltd. started declining since 1996-97 and for that reason Government of India under its disinvestment policy, disinvested 74% of its stake in Paradeep Phosphates Ltd. on 28.2.2002 in favour of Zuari Maroc Phosphates Ltd.

In the year 1998 the Government of India directed the Board of Directors of Paradeep Phosphates Ltd. when it was a public sector undertaking of Government of India to consider the enhancement of the age of superannuation from 58 years to 60 years on an experimental basis to see if it helps the Paradeep Phosphates Ltd. to cut its losses and the Board of Directors accordingly enhanced the age of retirement of its employees from 58 years to 60 years. However, no change has been made in this regard in the Service Rules which is in operation w.e.f. 26.4.1982 and Certified Standing Order effective w.e.f. 8.9.1995 which prescribes the age of retirement as 58 years. Subsequently, it was realised by the Government of India that the enhancement of age of retirement did not yield the desired result for which the Government of India issued direction to the Board of Directors of Paradeep Phosphates Ltd. to reconsider the enhancement of age of superannuation vide its letter dated 8.6.2000 and accordingly the Board of Directors in its 96th meeting dated 28.9.2001 reconsidered and recommended the proposal to implement the wage revision along with other conditions including the reduction of the age of retirement from 60 years to 58 years and when the matter was pending before the Government of India for consideration of the proposal given by the Board of Directors, Government of India on 28.2.2002 disinvested its 74% share in favour of the present management and the present management implemented the recommendations of the erstwhile Board of Directors including the rolling back of age of retirement from 60 years to 58 years for all non-executive employees.

The union functioning at Paradeep Phosphates Ltd. had filed a writ petition before this court being O.J.C. No.1625 of 2002 challenging the disinvestment of Paradeep Phosphates Ltd. and seeking protection of their service conditions. The said writ petition was disposed of by this court vide order dated 11.7.2002 which has been reported in 2002 (Supp) OLR 421 whereby and where under this court has been pleased to hold that any change in the service condition contained in the Certified Standing Orders of Paradeep phosphates Ltd. can only be made in accordance with law.

The age of superannuation has been reduced from 60 years to 58 years by virtue of order dated 17.7.2002 which is in conformity with the Certified Standing Order

and Service Rule of P.P.L. which prescribes the age of retirement as 58 years.

The opposite party ? workmen being aggrieved with the decision taken by virtue of office order dated 17.7.2002 have raised a dispute which is culminated into industrial dispute case being Industrial Dispute Case No.16 of 2003 in order to answer the reference to the effect that:

(1) "whether the action of the management of M/s. Paradeep Phosphates Ltd., Paradeep in reducing the prevailing retirement age limit from 60 years to 58 years through its office order No.10105/0223 dated 17.7.2002 amount to infraction of Section 9-A of the I.D. Act and whether such action of the Management is legal and / or justified?"

(2) "whether the action of the management of M/s. Paradeep Phosphates Ltd., Paradeep in retiring 1) Sri M.S. Kanwasi, 2) O.M. Prakash, 3) Mastilal Choudhury, 4) T.S. Rout and 5) Sitaram with effect from 31.8.2002 instead of allowing them to continue in service up to 60 years of age is legal and / or justified? If not, what relief are they entitled to?"

4. The Industrial Tribunal has answered the reference in favour of the opposite party ? workmen by holding therein that reduction of age of superannuation from 60 years to 58 years amounts to privilege in the shape of service condition hence comes under clause 8 of Schedule 4 as referred in Section 9-A of the Industrial Disputes Act, 1947 which mandates that before altering the service condition a notice is required to be given to the workmen, but since the requirement as laid down U/s.9-A has not been fulfilled, hence it has been held by the Industrial Tribunal that the action of the management, the Paradeep Phosphates Ltd. is not justified in reducing the age from 60 years to 58 years without complying the statutory provision of Section 9-A of the Act, 1947.

5. Learned senior counsel Mr. Ganeswar Rath while arguing the case has assailed the award mainly on the ground that age of superannuation cannot be said to be a service condition, hence there is no requirement to issue notice as required U/s.9-A of the I.D. Act, 1947 and the Tribunal while dealing with the issue has not appreciated this aspect of the matter.

The other ground as has been agitated by the learned senior counsel that even for a period of four years if the benefit of enhancement of age of superannuation from 58 years to 60 years has been extended in favour of the workmen, they have got no right to retain the same for the reason that the Service Rules and the Certified Standing Order applicable to the workmen stipulates a condition of superannuation at attaining the age of 58 years and since the same has not been amended in accordance with law, hence the provision of Service Law and the Certified Standing Order are binding upon the workmen and merely for a period of four years if the benefit has been given to superannuate on attaining the age of 60 years, it will not ipso-facto replace the age of superannuation as has been provided in the Service Rule or the Certified Standing Order.

He has argued that period of four years cannot be said to be a custom and in support of his argument he has taken help of Section 3 of Hindu Marriage Act.

The other ground taken that the Tribunal ought to have taken into consideration the judgment passed by this court in similar circumstances in W.P.(C). No.8419 of 2008 and if the Tribunal would have taken into consideration the judgment passed in W.P.(C). No.8419 of 2008 the reference would not have been answered in favour of the workmen, it is for the reason that this court in the said writ petition has been pleased to hold that the age of superannuation cannot be said to be a service condition within the meaning of Section 9-A of I.D. Act.

6. Per contra learned senior counsel Mr. Budhadev Routray and Mr. Sanjaya Kumar Mishra representing two different unions have argued out the case at length and opposed the argument of the learned counsel for the petitioner. It has been submitted by them that there is no infirmity in the award, rather the tribunal has passed the award after taking into consideration the fact that the age of superannuation being a service condition coming under the privilege clause as has been referred in clause 8 of Schedule 4 referred in Section 9-A of the I.D. Act, 1947 and since it has been altered to the detriment of the interest of the workmen, hence provision of Section 9-A is well attracted and since the provision of Section 9-A has not been followed by the management, hence reduction of age of superannuation from 60 years to 58 years cannot be said to be justified.

It has further been submitted by them rebutting the argument of learned senior counsel for the petitioner regarding non-consideration of judgment passed by this court in W.P.(C). No.8419 of 2008 that the judgment has been rendered on 21.4.2010 while the award has been passed on 17th April, 2010 which is prior to the date of judgment passed in W.P.(C). No.8419 of 2008, hence there is no question of consideration of the judgment passed by this court in W.P.(C). No.8419 of 2008 by the Industrial Tribunal.

It has been submitted that Certified Standing Order or the Service Rule contains a condition for age of superannuation fixing it up to the age of 58 years but it is the admitted case of the petitioner that in the year 1998 the Government of India directed the Board of Directors of P.P.L to consider the enhancement of age of superannuation from 58 years to 60 years and accordingly the age of superannuation has been enhanced from 58 years to 60 years and once it has been enhanced and implemented w.e.f. 27.5.1998 and the benefit has also been given to the workmen who were to retire in between the period from 27.5.1998 to 16.7.2002, hence the right has been accrued and since it has been issued by the Board of Directors being the competent authority on the direction of the Government of India and if it has not been incorporated either in the Service Rule or the Certified Standing Order, it cannot be said that the age of superannuation is not up to the age of 60 years. It has been submitted that the enhancement of age of superannuation has been given effect to w.e.f. 27.5.1998 as would be evident from the office order dated 19.11.1998 which has been

decided and taken on the basis of the Board of Directors in its 81st Board Meeting as such it cannot be said that the same has got no force, rather by its implementation it has been taken as a service condition.

It has been submitted that the High Court sitting under Article 226 of the Constitution of India can only interfere if the order is without jurisdiction or it is based upon perverse finding or there is error apparent on the face of record, but no such exception is available in the award for making interference by this court by reversing the fact finding.

7. After appreciating the rival submissions of the parties and before answering the issue it is relevant to discuss the provision of Section 9(A) of the I.D. Act, 1947 which is being reproduced herein below:-

"9A. Notice of change.- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change--

(a) where the change is effected in pursuance of any 1 settlement or award]; or

(b) where the workmen likely to be affected by the change 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 Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

Fourth Schedule

(See Section 9A)

"Conditions of Service for change of which Notice is to be given

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;

6. Starting alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;
10. Rationalization, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;
11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control."

From bare reading of section 9(A) it is evident that the object of this section is to prevent a unilateral action on the part of the employer changing the conditions of service to the prejudice of the workmen. The real purpose of enacting this provision is to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to present their point of view on the proposal and such consultation would further serve to stimulate a feeling of common joint interest of the management and the workmen in the industrial progress and increase productivity. In other words Section 9(A) was enacted with a view to protect the interests of workmen who may be affected by a proposed change by the employer. This section is a mandatory provision. Therefore, any change made in the conditions of service applicable to any workmen in respect of any matters specified in the Schedule 4, without complying with the requirements of this section shall be a nullity and void ab initio and as such inoperative in law.

The legislature has contemplated three stages in making provision for the notice of change under Section 9(A). The first stage is the proposal by the employer to effect a change; the second stage is the time when he gives a notice and the third stage when he effects the change on the expiry of 21 days from the date of the notice.

The provision of section 9(A) has been dealt with and discussed by the Hon^{ble} Apex Court in the case of *Tata Iron & Steel Co. Ltd. v. Workmen*, (1972) 2LLJ 259 wherein the view taken by the Hon^{ble} Apex Court is to put a liberal construction on the wording used in the Fourth Schedule read with change. Any change without complying with the provision of section 9(A) would be illegal inviting penal action under section 31(2) of the I.D. Act.

Similar view has been taken by the Hon^{ble} Apex Court in the case of *Food Corporation of India Workers' Union v. Food Corporation of India and Another*, (1996) II LLJ 920 wherein at paragraph 16 it has been held that it is necessary to bear in mind that while construing the provisions of the items mentioned in the Fourth Schedule, read with Section 9-A of the I.D. Act, the Court has to

adopt a liberal construction. In paragraph 15, the Hon^{ble} Apex Court has observed that in order to effectively achieve the object underlying Section 9-A, it would be more appropriate to place on the Fourth Schedule read with Section 9-A, a construction liberal enough to include change of weekly rest day from Sunday to some other week day.

Thus it is evident that section 9-A is mandatorily to be followed before any change is to be made in the service condition of the workmen.

8. Provision of Section 33 also needs to be referred in the context of this case which contains provision, i.e. conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. While section 33-A provides special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding.

Thus the provision of Section 33 read with Section 33-A also contains provision putting restrictions in change of service condition, however during pendency of proceeding but the service condition can be changed with the leave of the Tribunal. While on the other hand Section 9- A contains provision of change in the service condition but with the prior notice to the workmen if the proceeding is not pending.

9. In the light of these statutory provisions it is now to be seen the finding given by the Tribunal. The admitted case of the petitioner is that the Central Government in order to reduce the workforce of the staff working in the management has directed the Board of Directors to reduce the age from 60 years to 58 years by virtue of the office order dated 17.7.2002. It is also the admitted case of the petitioner that the Central Government has directed the Management, P.P.L. to enhance the age of superannuation from 58 years to 60 years and accordingly it was enhanced by the order passed in this regard by the competent authority, however, the same has not been incorporated in the Certified Standing Order or the Service Rules. But the fact remains that it has been enhanced from 58 years to 60 years and the benefits has been given to the workmen who were to be effected during the relevant period, i.e. from 27.5.1998 to 16.7.2002.

10. Thus it is evident from bare reading of provision of section 9-A of the I.D. Act, 1947 that before alteration in the service condition a notice is required to be issued to the concerned workmen and this provision is mandatorily to be followed by the management ? employer.

However, the sole question raised by the petitioner in this writ petition is that reduction of age of superannuation from 60 years to 58 years cannot be said to be a service condition and as such the same is not coming under Fourth Schedule referred in Section 9-A of the Act, 1947, but this argument is not acceptable to this court for the reasons that Clause 8 of Fourth Schedule referred in Section 9-A speaks regarding "privilege" and the moment the age of superannuation has been enhanced from 58 years to 60 years, it amounts to "privilege" having been

granted to the workmen and when the privilege once granted if to be taken away the notice required U/s.9-A is to be issued against the proposed action of the management ? petitioner herein and as such we are of the considered view that the enhancement or reduction in age of superannuation will come under the purview of privilege as defined under clause 8 of Fourth Schedule referred in Section 9-A of the Act, 1947 and accordingly we are of the considered view that the argument advanced on behalf of the petitioner in this respect has got no force and further the Tribunal after taking into consideration this aspect of the matter has held that the reduction in age of superannuation from 60 years to 58 years since is coming under privilege as contained in clause ? 8 of Fourth Schedule, referred in Section 9-A of the Act, 1947, the management is required to follow the statutory condition as provided U/s.9-A of the Act and accordingly we hold that the Tribunal has passed the award based upon well reasoning.

11. The other aspect of the matter also needs to be referred herein, i.e. clause 11 of Fourth Schedule which speaks that "any increases or reduction in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control."

In the light of this condition we have examined the pleading of the petitioner ? management and it is the case of the management that in order to reduce the number of persons employed under the management the Government of India has directed the Board of Directors to reduce the number of persons employed in the management and for that purpose the age of superannuation from 60 years to 58 years has been directed to be done as would be evident from the letter annexed as annexure-3 which is being quoted herein below:-

"Dear Shri Mishra, Considering that the financial performance of your company is not satisfactory and the company has been incurring losses, measures for cost cutting including reduction of manpower may be considered. In this context, you may also like to review the decision in regard to raising the age of retirement from 58 years to 60 years for employees of the company. The matter may be placed before the Board for consideration and making recommendations in case it helps the company in cutting the losses."

Thus it is evident that the whole purpose for reducing the age of superannuation from 60 years to 58 years is for reduction in the number of persons and as such it will attract the provision of clause 11 of Fourth Schedule and on this ground also notice U/s.9-A of the Act, 1947 ought to have been issued by the petitioner ? management.

There is no dispute about the settled proposition as has been settled by the Hon?ble Apex Court in the case of Tata Iron & Steel Co. Ltd. v. Workmen (supra) and Food Corporation of India Workers? Union v. Food Corporation of India and Another (supra) the view taken by the Hon?ble Apex Court is to put a liberal consideration on the wording used in the Fourth Schedule and any change

without complying with the provision of Section 9-A would be illegal inviting penal action and as such relying upon the settled proposition, we are of the conscious view that the provision of Section 9-A has not been followed by the petitioner ? management so far as it relates attracting clause 8 containing "privilege" and clause 11 of Fourth Schedule referred in Section 9-A.

We after having discussed all aspects in detail accordingly answered the issue framed by us.

12. We have also thought it proper to answer the submission advanced by learned senior counsel appearing for the petitioner after having appreciating the rival submission of the parties and the same is being answered as under. The contention of the learned senior counsel for the petitioner is that since it has not been incorporated in the Certified Standing Order or the Service Rules, hence it cannot be said that a right has been accrued to the workmen and since the right has not been accrued, rather the Certified Standing Order or the Service Rules contains the age of superannuation to be 58 years, as such there is no requirement to give any notice to the workmen as stipulated U/s.9-A of the Act, but this submission of the petitioner cannot be accepted for the reason that the Certified Standing Order or the Service Rules contains provision for normal superannuation on attaining the age of 58 years but the Government of India who during the relevant time was competent authority has directed the Board of Directors in the year 1998 to enhance the age of superannuation from 58 years to 60 years and accordingly the Board of Directors in its meeting has enhanced the age of superannuation from 58 years to 60 years by virtue of office order issued in this regard on 19.11.1998 making it effective retrospectively w.e.f. 27.5.1998 and thereby the benefit has also been given to the concerned workmen who were to retire on attaining the age of 58 years during the relevant period. Thus a right has been accrued in favour of the workmen and the same is coming under clause 8 of the Fourth Schedule as referred in Section 9-A under the "Privilege". Thus according to us the provision of Section 9-A is well attracted in the facts and circumstances of this case.

The submission of learned counsel for the petitioner that since the enhanced age of superannuation has not been incorporated in the Certified Standing Order or the Service Rules, hence the enhancement of age from 58 years to 60 years has got no binding effect, but we are not in agreement with the submission of learned counsel for the petitioner for the reason that when the competent authority, the Government of India has directed the Board of Directors of the P.P.L. to enhance the age of superannuation from 58 years to 60 years and accordingly it has been enhanced by virtue of order dated 19.11.1998 in its 81st meeting, the benefit has been given and thereafter it has been recalled by virtue of 96th meeting and vide order dated 17.7.2002 meaning thereby when it has been recalled by virtue of the decision taken by the Board of Directors on the direction of the Government of India and accordingly they have taken decision in its 96th meeting which shows that the Board of Directors being the competent

body has recalled the benefit / privilege of age of superannuation from 60 years to 58 years and now this cannot be urged by the petitioner that merely on account of not incorporating the provision of age of superannuation from 58 years to 60 years the workmen has got no right to claim the same.

It is settled proposition that the authority who is competent to take decision is always competent to recall it and following this principle the Government of India in its initial stage has directed the Board of Directors being the competent body to enhance the age of superannuation from 58 years to 60 years and subsequently directed to reduce the same from 60 years to 58 years and accordingly it has been given effect to by altering the service condition.

The submission of learned senior counsel for the petitioner that the judgment rendered by this court in W.P.(C). No.8419 of 2008 has not been taken into consideration by the Tribunal, but the same has also got no force for the reason that the judgment rendered by this court in W.P.(C). No.8419 of 2008 on 21.4.2010 while the award has already passed on 17.4.2010, hence there is no question of consideration of the judgment rendered by this court in W.P.(C). No.8419 of 2008 by the Tribunal. We after going through the award have found that the Tribunal has discussed each and every aspect of the matter and also gone into the order passed by this court in O.J.C. No.1625 of 2002 wherein this court has been pleased to observe as follows:-

"Moreover, there are stipulations in the share-holders Agreement between the President of India and Zuari Maroc Phosphates Private Ltd. dated 28th February, 2002 which protect the service conditions and the benefits enjoyed by the employees working under the PPL at the time of transfer of the undertaking from the Government of India to the strategic partner. Recital-F of the Share-holders Agreement provides that all employees of the company will continue in the employment of the PPL. "Employees" has been defined to mean persons who are in the rolls of PPL on the closing date and shall include workmen, managers and supervisors??"

The order passed by this court in O.J.C. No.1625 of 2003 since has attained its finality, it is binding upon the parties but the Management ? petitioner herein in complete defiance of the order passed by this court has reduced the age of superannuation from 60 years to 58 years by altering the same. The tribunal has also taken note of the judgment rendered by Hon?ble Apex Court in the case of BALCO Employees Union (Regd.) v. Union of India and Others, 2002 SC 350 wherein at paragraph 59 it has been held that the service conditions are governed by the certified orders of the company and any change in the condition thereof can only be made in accordance with law.

However the facts of this case is little bit different because the necessary modification has not been incorporated either in the Service Rules or in the Certified Standing Order enhancing the age of superannuation from 58 years to 60 years, but the Central Government being the competent authority has

directed the Board of Directors to enhance the age of superannuation and accordingly it has been enhanced in the year 1998 and thereafter it has been reduced vide order dated 17.7.2002 by the same process, hence we are of the considered view that by passing the order dated 17.7.2002 the privilege has been granted to the workmen which has been recalled by altering the same by reducing the age of superannuation from 60 years to 58 years is alteration which is detrimental to the interest of the workmen.

Learned senior counsel appearing for the petitioner has submitted that the age of superannuation cannot be said to be a condition of service but this submission is not accepted to us for the reason that the expression condition of service includes everything from the stage of appointment to the stage of termination of service and even beyond, and relates to matters pertaining to disciplinary action. Reference in this regard may be made to the judgment rendered by the larger Bench of Hon^{ble} Apex Court in the case of Lilly Kurtan v. Sr. Lowina & Others, AIR 1979 SC 52.

It is also not acceptable for the reason that even in the Certified Standing Order or the Service Rules the age of superannuation has been stipulated up to the age of 58 years which itself suggests that the age of superannuation is a condition of service and that is the reason it has been incorporated in the Certified Standing Order and in the Service Rules. Thus according to us there is no infirmity in the award. Rather the Tribunal after discussing the provisions of law and the factual aspect has given finding with respect to the fact that there is violation of Section 9-A of the Industrial Disputes Act, 1947 which is mandatorily to be followed by the Management and admittedly it has not been followed.

13. So far as scope of this court under Article 226 of the Constitution of India to reverse the fact finding it has already been settled by catena of decision that High Court sitting under Article 226 of the Constitution of India is not supposed to reverse the fact finding by assuming the power of appellate court.

Reference in this regard may be made to the judgments rendered by Hon^{ble} Apex Court in the case of Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 SC 477 wherein it has been held that the High Court sitting under Article 226 of the Constitution of India may not exercise its power to review the fact finding given by the Tribunal after appreciation of the factual aspect produced before it, otherwise also it will be said that the High Court has acted as appellate court.

The proposition laid down by the Hon^{ble} Apex Court in the case of Syed Yakoob (supra) still holds good and in this respect reference may also be made to the judgment rendered by Hon^{ble} Apex Court in the case of M/s. Pepsico India Holding Pvt. Ltd. v. Krishna Kant Pandey, (2015) 4 SCC 270 wherein their Lordships while discussing the scope of Article 226 of the Constitution of India in the matter of showing interference with the finding of the Tribunal has been pleased to hold after placing reliance upon the judgment rendered in the case of

Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447 as follows:

"17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarta* where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and re-appreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at p. 1301 of the report as follows: (SCC p. 864, para 7)

"The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in *Waryam Singh v. Amarnath* that the ... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in *Dalmia Jain Airways v. Sukumar Mukherjee* to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in *Nagendra Nath Bose v. Commr. of Hills Division* and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case: It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."

However the High Court can interfere if there is any error of jurisdiction or if there is perversity in the finding but here since there is no error of jurisdiction and also there is no perversity in the finding, in our considered view there is no infirmity in the order passed by the Tribunal, as such there is no need of interference.

14. Learned senior counsel for the petitioner has relied upon several judgments in order to substantiate the case that merely on account of the fact that the age of superannuation has been enhanced from 58 years to 60 years for a period of four years, cannot be said to be custom and concession and in order to substantiate his argument he has relied upon the judgment rendered by Hon^{ble} Apex Court in the case of *Commissioner, Hindu Religious and Charitable Endowments (Admn.) Madras and another v. Vedantha Sthapna Sabha*, (2003) 6

SCC 497, Bhimashya and others v. Janabi (Smt) Alias Janawwa, (2006) 12 SCC 627 but according to our considered view the petitioner cannot take help of Section 3 of Hindu Marriage Act since the provision of Hindu Marriage Act cannot be made applicable with respect to the Industrial Disputes and in order to regulate the industrial dispute the legislature had passed a separate Act in the name of Industrial Disputes Act, 1947 to look into the dispute in between the management and the workmen and as such the petitioner cannot take help of section 3 of the Hindu Marriage Act, accordingly the judgments relied upon by the learned senior counsel for the petitioner has got no application in the present facts and circumstances of the case.

15. In view of the discussion made herein above we are of the considered view that there is no error apparent in the face of record, the award is not without jurisdiction rather it is based upon cogent evidence and as such we refrain ourselves from interfering with the same. Accordingly we are not inclined to interfere with the finding given by the Tribunal in the award. Hence the writ petition is dismissed having no merit.