

(2004) 07 RAJ CK 0063
In the Rajasthan High Court
Case No : Civil Writ Petition No. 786 of 1997

Prakash Chand Lodha

APPELLANT

Vs

Judge, Labour Court and Another

RESPONDENT

Date of Decision : 22-07-2004

Acts Referred:

Certified Standing Order — Order 14
Industrial Employment (Standing Orders) Act, 1946 — Section 3(2)
Rajasthan Model Standing Order, 1963 — Order 20

Citation : (2005) 104 FLR 3 : (2005) 1 RLW 278 : (2004) 4 WLC 548

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sunil Samdaria, for the Appellant; Rajesh Joshi, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—This petition is directed against the award of the Labour Court, Bhilwara dated 25.3.1996.

2. The facts, which are not in dispute and are relevant for the present purposes are that, the petitioner was first appointed as Apprentice in the establishment of respondent No. 2 (M/s. Udaipur Mineral Development Syndicate Pvt. Limited, Bhilwara) and thereafter on 1.1.1967 he was appointed as Mechanic Grade II. On 14.9.1991, respondent No. 2 passed an order that as per the record of the Company, the petitioner had served the company for 26 years and for that reason there is decline in the efficiency of the petitioner and, therefore, in terms of Standing Order 14(d), he is relieved from his services w.e.f. 16.9.1991. It was further stated in the order that the petitioner shall be paid emoluments; for one month's notice and payment under the Payment of Gratuity Act, 1972, for which he has to till-up the requisite forms.

3. The petitioner raised dispute about this order, alleging that it was illegal termination- of his services and raised an industrial dispute, which was referred to Labour Court, Bhilwara vide notification dated 1.5.1992. The reference made

to the Labour Court, Bhilwara was :-

"Whether the termination of the services of workman Shri Prakash Chandra Lodha by the management of M/s. Udaipur Mineral Development Syndicate Pvt. Limited; Bhilwara is reasonable and valid and, if not, what relief the workman is entitled ?"

4. Amongst the other contentions regarding unfair labour practice in the case of termination to get rid of the petitioner, who was a trade union leader, it was contended that Certified Standing Order 14(1) (d) does not accord with Model Standing Order prevailing in the State of Rajasthan than under the Industrial Employment (Standing Orders) Act, 1946, and, therefore, the Certified Standing Order 14(1) (d) to the extent it is at variance with Model Standing Order 20, it is invalid and inoperative.

5. The employer contended that the Standing Orders have been duly certified and supersedes the Model Standing order. The Certified Standing Order which binds equally the employer and employee and the workman has been superannuated in accordance with the Certified Standing Order No. 14(d).

6. Bereft of other ancillary contentions, the Labour Court found that it cannot be said that the certified Standing Orders are not reasonable and not in accordance with law. The order dated 14.9.1991 was held to be in accordance with Standing Order 14(d) Justifying termination of the workman's services.

7. As a result of the aforesaid finding, repelling further contentions of the petitioner-workman that the termination was a result of unfair labour practice, the reference was answered against the workman and his claim was rejected. Hence, this petition.

8. Learned counsel for the petitioner has raised two-fold contentions in support of his petition.

9. Firstly he challenges the validity of the Standing Order 14(d) of the Certified Standing Order, being ultra vires Section 3(2) of the Industrial Employment (Standing Orders) Act, 1946 read with Model Standing Order 20 of the Rajasthan Model Standing Orders. In this connection, it was pointed out by the learned counsel for the petitioner that the Model Standing Orders of Rajasthan provide for determining superannuation age. The superannuation of any incumbent is to be determined with reference to attaining particular age by a workman. The superannuation under Model Standing Order is not related to the length of service. To that extent, the part of Certified Standing Order which provides for superannuation on completion of 25 years of service, if it comes prior to attaining age of 55 years, is ultra vires Model Standing Orders. There being no ground whatsoever on which it can be said that without variance it was not practicable to adhere to Model Standing Order relating to age of superannuation, the Standing Order with such variation could not have been certified validly by the Certifying Officer and such a Standing Order at variance with Model Standing

Order is ultra vires. Learned counsel in this connection places reliance on The Associated Cement Co. Ltd. Vs. P.D. Vyas and Others,

10. The other contention raised by the learned counsel for the petitioner in support of his challenge to the award holding the termination order to be valid is that assuming that the Standing Order 14(d) is valid and applies to the establishment, where the petitioner was serving, it cannot be read as a rule providing for compulsory retirement on attaining particular age, if he is not found suitable for continuing in service until he attains the age of superannuation prescribed in the Standing Order. The impugned order is not to give effect to the superannuation in terms of the Standing Order 14(d) but it clearly goes to convey that the petitioner is compulsorily retired before completion of full period of service by opining that the petitioner's efficiency has declined due to long period of service. Thus, the foundation of order relieving the petitioner is not completion of 25 years of service but decline in efficiency as ground to invoke discretion of the management to retire him compulsorily before reaching ordinary age of superannuation. This makes it a case not of superannuation but termination by compulsory retirement at the discretion of management before attaining the age of superannuation, on the ground of satisfaction about falling efficiency and loss of utility, the order was violative of Standing Order itself. Annex. 1 is an order terminating the services prematurely before he can be superannuated under the terms of agreement or under Standing Order 14(d) and from that point of view the termination w.e.f. 16.9.1991 cannot be sustained as an order of superannuation in terms of Standing Order 14(d).

11. Learned counsel for the respondent urged that the Certified Standing Order, in terms of provision of Section 4-5 of the Act of 1946 carries with it a declaration of finality. No that such Standing Order cannot be challenged by way of invoking extraordinary jurisdiction but the finality attached to the Certified Standing Order immunes it from attack in any civil court or other court of ordinary jurisdiction as an ancillary issue. Challenge to certified Standing Order is challenge to order certifying the Standing Order itself and not de hors it. Since there is no challenge to the order of competent Certifying Authority, it is not open to the petitioner to challenge the validity or operative field of the Certified Standing Order In question in reference u/s 10 of the I.D. Act in question. If he desires to challenge, he ought to have challenged the certification order itself by raising a dispute about it. He also contended that this is a case of superannuation under Standing Order 14(d) and is not a case of termination at all. The petitioner could be superannuated on completion of 25 years of service and since he has completed more than 25 years of service, he has been superannuated without waiting for completion of age of superannuation, which is 55 years under the Certified Standing Order of the respondent-establishment.

12. The contours of first submission made by the learned counsel for the petitioner needs firstly enquiry into the question whether the Standing Order as to retirement or superannuation could be subject matter of Standing Order at all

certified, which would include enquiry into the question what are the matters set out in the Schedule appended to the Act of 1946 or the matters which have been additionally provided for by framing rules by Appropriate Government in the present case. Government of Rajasthan, in that regard because only in respect of the matters set out in the Schedule or prescribed by the Rules by Appropriate Government any Standing Order can be made, as was laid down by the Hon"ble Supreme Court in Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Limited 1970(20) F.L.R. 243 , and The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen, It shall also require the consideration of provisions of the Model Standing Order, if the subject is found to be included In the list of matters in respect of which Standing Orders could be framed and also whether providing for certified Standing Order in conformity with Model Standing Order In that regard was not practicable to sustain the variation that may be found in Certified Standing Order.

13. In fact such variation does exist is not in dispute and can be seen obvious from placing the Model Standing Order 20 of the Rajasthan Model Standing Order, 1963 and the Standing Order 14(d) in juxta-position.

14. Standing Order 20 of the Model Standing Order reads as under :

"Age of superannuation - The age of retirement or of superannuation of a workman shall be 50 years or such other age as may be agreed upon between the employer and workman or as may be fixed under a settlement or an award under the Industrial Disputes Act, 1947."

15. The Standing Order which has been certified for respondent No. 2 reads as under :-

"Section 14(d)- A workman shall be liable to retirement on reaching the age of superannuation i.e. on attaining age of 55 years or on completing 25 years of service whichever is earlier. Employees services period can be extended, subject to the acceptance of the management his services are liable to be terminated at any time."

16. Apparently there appears to be variance between the two, which cannot be discerned. The Model Standing Order relates to superannuation with the attainment of age only. Such age as per Model Standing Order is 58 years. It also envisages that attainment of any other age can be agreed upon by the employer and the workman or may be determined by settlement or by an award under the Industrial Disputes Act, 1947. It does not provide for change in basis of superannuation by agreement is clear from the expression "Such other age" which qualifies the variation by agreement, settlement or award. However, Model Standing Order 14(d) certified for the establishment not only relates the superannuation with the attainment of 55 years of age by the workman but alternatively connects it with completion of number of period of services which is not the part of the Model Standing Order at all. This variation being writ large on the face of two standing orders, it would need further enquiry before

pronouncement of its validity can be made.

17. However, looking to the contentions before us, it would be appropriate to examine the second question in the first instance because in case it is answered in favour of the petitioner, the question of validity of Standing Order would become of academic interest and would not be required to be gone into. It is well settled that the validity of any Rule or Statute ought to be examined only when it is absolutely essential not otherwise.

18. Coming to the second contention raised by the learned counsel for the petitioner and considering the material on record and the Standing Order, the contention deserves to be accepted.

19. From the perusal of Standing Order 14(d) noticed above, it is apparent that so far as superannuation is concerned, it has no element of adjudging efficiency or performance of the incumbent in superannuation to become effective under Standing Order 14(d). Superannuation takes effect automatically. The superannuation takes place either on attaining, the age of 55 years or on completing 25 years of service whichever is earlier. There is no point of time superannuation can take place in between the two limits automatically. In the present case on admitted facts, the petitioner had completed more than 26 years of service, before the order (Annex. 1) was passed to relieve him from services w.e.f. 16.9.1971. The petitioner has not completed 55 years of age, therefore, the second point is not at all being reached. Apparently, the order (Annex. 1) betrays that it is founded on assessment of efficiency of incumbent to serve further and finding that he is no more fit to discharge his duty as efficiently as he was, he must be asked to go immediately. That is a situation, which is squarely governed by Standing Order 14(e) applicable to the establishment which has been referred to in the writ petition and about which there is no dispute. It reads as under :-

"14(e) The management reserves the right to dismiss any worker if he is not found physically and mentally well. In the event of such condition, the workmen will have to obtain a medical fitness certificate from the C.M.H.O. Or any medical officer, who are appointed by the management. In this respect, his report will be final."

20. Apparently on decline of fitness of the workman, whether physically or mentally he may be dismissed by the management in the event of such condition, the workman is required to obtain a fitness certificate from C.M.H.O. or any other Medical Officer appointed by the management in this respect and his report will be final. That is to say that, to discharge services of a person who is found to be physically or mentally deficient in discharging of his duties, is to be founded on a certificate of fitness obtained from the C.M.H.O. or any other Medical Officer. That is to say, if the management desires to dispense with the services of a workman, who is presumed to be in physically and mentally ill-health, it can require such workman to furnish fitness certificate from a

competent officer and on that premise the decision has to be taken.

21. Order dated 19.9.1991 (Annex.1) does not speak of mere superannuation but it speaks that on completion of 26 years of service his physical and mental capacity has declined as he is not efficient, which goes to show as if the management was exercising its power of compulsory retirement to retire a workman compulsorily before attaining the age of superannuation but on completion of more than 26 years of service and finding him a dead-wood for the purpose of further continuation in service. There is no scope of invoking Standing Order 14(d) at all for this purpose. No provision has been made for compulsory retirement in the Standing Orders as such would enable the employer to retire the workman compulsorily before attaining the age of superannuation. Apparently termination has taken place as a result of the satisfaction reached by the management about the inefficiency and undesirability of continuing the petitioner only before his attaining age of 55 years is de hors the Standing order, provides for superannuation, but it becomes a case of termination falling within Item No. 8 in the Schedule for which provisions could be made in the Standing Orders and which provision apparently finds place in Clause (e) of Standing Order 14 where a medical fitness certificate by the C.M.H.O. or any other Medical Officer appointed by the management, is required on the basis of which alone, the action can be taken. It does not depend on mere satisfaction of the management who are not medico- men to pronounce upon the physical and mental welfare of its workman. Apparently the order on its own term was not sustainable. The Labour Court has clearly erred in mechanically considering the case to be a case of superannuation instead of reaching to a conclusion that it is a case of termination. The workman has specifically urged before the Labour Court that the impugned order dated 14.9.1991 relieving him from service was not a case of superannuation but was a case of termination.

22. In view of the aforesaid conclusion, I need not enter into the question of validity of certified Standing Order 14(d).

23. The writ petition is allowed. The award of the Labour Court is set aside. Termination of services of petitioner-workman by respondent No. 2 is held to be invalid.

24. I am informed that during this period, the petitioner has attained the age of 55 years and otherwise reached the age of superannuation. In that circumstances the relief of reinstatement cannot be granted. However, he would be entitled to emoluments as if he had continued in the service. His retirement benefits should be recomputed and on that premise arrear falling due on account of aforesaid direction shall be paid to the petitioner after making adjustment of retiral benefits, if any, already paid to him within a period of four months with interest (a) 8% per annum from the date of making of reference.