
(1975) 02 P&H CK 0010
In the Punjab And Haryana At Chandigarh

Punjab Khadi Gram Udyog Sangh

APPELLANT

Vs

Jit Ram and Others

RESPONDENT

Date of Decision : 05-02-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Employment (Standing Orders) Act, 1946 — Section 11, 15, 4, 5, 6

Citation : (1975) 2 LLJ 413

Hon'ble Judges : Ajit Singh Bains, J

Bench : Single Bench

Judgement

Ajit Singh Bains, J.—This writ petition, has been filed under Articles 226/227 of the Constitution for quashing the order dated December 31, 1973, passed by the Presiding Officer, Industrial Tribunal, Punjab, Chandigarh (annexure "C" to the petition) with the prayer that the order dated April 30, 1969, passed by the certifying officer, respondent No. 4 (annexure "A" to the petition) be restored.

2. Punjab Khadi Gram Udyog Sangh (hereinafter called as "petitioner-society") is a body registered u/s 21 of Societies Registration Act, 1860, and is engaged in the manufacture and sale of Khadi goods and in the propagation of the use of the same since long. Under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter briefly referred to as "the Act"), the standing orders of the petitioner-society were certified on June 1, 1965. Rule 11 thereof provides that workmen employed by the petitioner-society shall retire from service on attaining the age of 65 years. It is also further provided in the standing orders itself that the power to make amendment and interpret the standing orders, etc., shall vest in the governing body of the petitioner-society.

3. The petitioner-society on November 25, 1968, by a resolution modified the service rules and decreased the age of retirement of its employees from 65 to 60 years and directed that the same be incorporated in the relevant para of the standing order. The proposed amendment of the standing order was sent by the petitioner-society to respondent No. 4, who is certifying officer under the Act.

The certifying officer issued the requisite notice along with a copy of the draft amendment to the representatives of the workmen because at the relevant time there was no trade union of the workers. However, during the course of the hearing, the union of the workmen known as Khadi Karya Karea Sangh was formed and recognised by the petitioner-society on April 2, 1969. Accordingly, notice was also issued by the certifying officer to the said union for hearing on April 5, 1969. On the said date of hearing, the representatives of the workmen and the elected representatives of the union appeared before the certifying officer, who certify, the said modifications in the standing orders vide his order dated April 30, 1969 (annexure "A" to the petition).

4. Aggrieved by the order of the certifying officer, the workmen and the union filed an appeal before the Appellate Authority u/s 6 of the Act. The Appellate Authority accepted the appeal and set aside the order of the certifying officer on the ground of insufficiency of notice, as required by Section 5 of the Act.

5. Unsatisfied with the order of the Appellate Authority, the petitioner-society filed civil Writ Petition No. 3701 of 1970 in this Court which was dismissed on August 27, 1971, by a learned single Judge. The petitioner-society then filed Letters Patent Appeal No. 514 of 1971 which was allowed by Hon"ble the Chief Justice and Mr. Justice B.R. Tuli on September 20, 1972, whereby both the orders of the Appellate Authority and the learned single Judge were set aside and the case was remanded to the Appellate Authority, for fresh decision on the merits of standing orders with the following observations:

It is thus evident that the order of the Appellate Authority setting aside the order of the certifying officer dated April 30, 1969, on the technical ground of insufficiency of notice to the workmen is not in accordance with Section 6 of the Act.

He had to pass the order on the merits of the standing order as certified by the certifying officer. The order is. therefore, bad in law and is to be set aside.

6. Consequently, the Appellate Authority by its order dated December 31, 1973 (annexure "C" to the petition) again set aside the order of the certifying officer on two grounds--that the age of superannuation cannot be provided for in the standing orders and that reduction of retirement age from 65 to 60 years is unjust and unreasonable. It is now this order of the Appellate Authority, which is impugned by the petitioner-society in the present writ petition.

7. Mr. Bhagirath Dass, the learned Counsel for the petitioner-society, mainly contended that the Appellate Authority had no jurisdiction to reject the order of the certifying officer u/s 6 of the Act--that earlier also the Division Bench, of this Court had to set aside the order of the Appellate Authority on the ground that it had no jurisdiction to reject the order of the certifying officer and that the Appellate Authority could itself modify or alter the same. Section 6 of the Act is reproduced below:

6(1) Any person aggrieved by the order of the certifying officer under Sub-section (2) of Section 5 may, within thirty days from date on which copies are sent under Sub-section (3) of that section, appeal to the Appellate Authority, and the Appellate Authority whose decision shall be final shall by order in writing confirm the standing orders either in the form certified by the certifying officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The Appellate Authority shall, within seven days of its order under Sub-section (1) send copies thereof of the certifying officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment, the standing order as certified by the certifying officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

8. A bare reading of the section will show that the Appellate Authority has no power to set aside the order of the certifying officer. It can either confirm the standing orders in the form certified by the certifying officer or amend the said standing orders by making such modifications thereof or additions thereto, as it thinks necessary so as to render the standing orders certifiable under the Act. The learned Counsel for the respondents also concede in all fairness that the Appellate Authority could not set aside the order of the certifying officer. Moreover, on this precise ground, the Division Bench of this Court had earlier set aside the order of the Appellate Authority and remanded the case to it for fresh decision. In this view of the matter, impugned order of the Appellate Authority, though well reasoned, is set aside.

9. The learned Counsel for respondent No. 2 contends that the order of the certifying officer is not valid and it may also be set aside. I find merit in the argument of the learned Counsel for the respondent.

10. After giving my carefully consideration to the matter in dispute, I find that the certifying officer had no jurisdiction to certify the standing orders of the petitioner-society fixing the age of super annuation of the workmen as standing orders could be made only with regard to matters set out in the Schedule appended to the Act and admittedly the matter regarding superannuation is not mentioned therein. The Punjab Government has also issued model standing orders and there too is no mention of superannuation. Section 15 of the Act empowers the appropriate Government to make rules for carrying out the purposes of the Act. Under its rule-making powers, the Government can add matters to be included in the Schedule and prescribe the procedure to be followed in modifying standing orders certified under this Act. It can frame model standing orders for the purposes of the Act. Admittedly, the State Government has not added the matter concerning superannuation in the Schedule. The certifying officer and Appellate Authority are given the powers of a civil Court u/s 11(1) of the Act. When the draft standing orders are submitted for certification,

the inquiry which the certifying officer should make is two fold; firstly, whether the said standing orders are in conformity with the model standing orders issued by the Government and accordingly whether they are reasonable and fair. It is for this reason that the certifying officer and the Appellate Authority are given the powers of a civil Court so that they may summon any witness and may not find any difficulty in holding the inquiry. In the present case the certifying officer had not made any proper inquiry before certifying the draft standing orders and has also not gone into the second question whether the reduction in age of superannuation was reasonable and fair. It is apparent from the order of the certifying officer that the reduction in the age of superannuation of the workmen from 65 to 60 years is not based on reasonableness and fairness. The period of five years is a very big period in the life of a poor worker, specially in these days of economic hardship, and before certifying the draft standing orders, it was incumbent on the certifying officer to go into the reasonableness and the fairness of the same. Moreover, as earlier stated, the standing orders are not in conformity with the model standing orders. The model standing orders do not mention of superannuation but only mention about termination of employment and the notice thereof to be given by employer to workmen. It is now well-settled that the superannuation and termination are two entirely different matters. Superannuation takes place automatically on an employee reaching a particular age for which no notice is required, hence termination cannot include superannuation. The import of two expression is entirely different. According to Shorter Oxford English Dictionary. Third Edition, the meaning of the words "superannuation" and "termination" is as under:

"Superannuation"--1. The condition of being superannuated; impairment of the powers of faculties by old age; senile infirmity or decay. * * * *

2. The action of superannuating an official; the allowance or pension granted to one who is discharged on account of age. * * * *

"Termination"--1. The action of determining determination, decision.

2. The action of ending. * * * *

11. The Supreme Court in dealing with a similar matter in Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others, , has observed in para 10 of the report as under:

The second aspect of the matter which is relevant on this point is that the standing orders have to cover the matters specified in the Schedule attached to the Act. Item II in the said Schedule refers to any other matter which may be prescribed. We have already mentioned the fact that Section 15 confers power on the appropriate Government to make rules. Section 15(2)(a) provides that the appropriate Government may, by rules, prescribe additional matters to be included in the Schedule and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition. "Thus there can be no doubt that the Act contemplates that the standing orders must cover

matters initially included in the Schedule as well as matters which may be added to the Schedule by the appropriate Government in exercise of the authority conferred on it by Section 15.

In this case, Uttar Pradesh Government by virtue of its powers u/s 15 of the Act added several items in the list contained in the Schedule. They added issue of certificates, censor and warning notices, issue of wage slips, introduction of welfare schemes, provident fund, gratuity, etc., age of superannuation or retirement, rate of pension or any other facility which the employer may like to extend or may be agreed upon between the parties, etc. The argument of the learned Counsel for the petitioner was that the certifying officer cannot trespass upon the provisions of the original Act and it could only certify the draft orders in consonance with the model standing orders originally contained in the Act. Whatever was added subsequently by the Uttar Pradesh Government by virtue of its powers u/s 15 would be invalid and the certifying officer could not go into that. The Supreme Court in such circumstances has, observed that the appropriate Government could add any matter in the Schedule by virtue of its powers u/s 15(2)(a) of the Act and that the standing orders must cover matters initially included in the Schedule as well as matters which may be added to the Schedule by the appropriate Government. The matter of superannuation was not added in the original Schedule and it was subsequently added by the Uttar Pradesh Government.

12. The Act is a self-contained code for the fixation of conditions of employment in industrial establishments to which the Act applies and the certifying officer cannot travel beyond the matters which are not contained in the Schedule appended to the Act the Model Standing Order. Hence, I hold that the order of the certifying officer is invalid and cannot be sustained. In the view I take I am fortified by the decisions in *Saroj Kumar Ghosh Vs. Chairman, Orissa State Electricity Board*, in which Madras authority in *Management of the "Hindu"*, *Madras Vs. Secretary Hindu Office* and *National Press Employees Union and Another*, , was also noticed. The observations of the Hon^{ble} Judges on the point are as follows;

Where a standing order is certified by the certifying officer containing a clause relating to superannuation not covered by the Schedule of the act nor by the model standing order, such certification cannot be a valid certification u/s 4 of the Act. The certification cannot add enforceability to it merely on the ground that the workers did not challenge such provision before the certifying officer.

13. The learned Counsel for the petitioner-society has relied upon *Workmen of Bhupendra Cement Works (by Bhupendra Cement Workers' Union) Vs. Industrial Tribunal and Others*, . It is however, not applicable to the facts of the present case.

14. For the foregoing reasons, I, in exercise of my powers under Article 227 of the Constitution, set aside the order of the certifying officer as invalid. The writ

petition is consequently partly allowed but with no order as to costs.