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(1966) 09 MAD CK 0022

In the Madras High Court

Raman Nambisan (P.) and Others — APPELLANT

Vs

Madras State Electricity Board and Others — RESPONDENT

Date of Decision : 05-09-1966

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17
Industrial Employment (Standing Orders) Act, 1946 — Section 12A, 13B, 14, 15, 2

Citation : (1967) 1 LLJ 252

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

Kailasam, J.—In all these throe writ petitions the main question that is raised is whether the order of the Madras State Electricity Board

directing the petitioners to retire at the age of 55 is Illegal and unsustainable in law. As the main question involved in all these three petitions is the

same, these three writ petitions may be dealt with together.

2. The Madras State Electricity Board is a body corporate constituted under the provisions of the Electricity Supply Act of 1948 (Central Act)

and was incorporated with effect from 1 July 1957. The Madras State Electricity Board is empowered to frame regulations in regard to the duties

of officers and servants of the Board and their salaries, allowances and other conditions of service by virtue of Section 79(c) of the Act. The Board

has not framed any regulations, but by way of transitory regulations, it directed that the provisions of Fundamental Rules which govern the service

conditions in regard to certain matters of Government servants would also govern the members of the clerical staff. According to the Fundamental

Rules the age of superannuation is fixed at 55 years.

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3. The Industrial Employment (Standing Orders) Act, 1946, came into force on 23 April 1946. The object of the enactment as seen from the

preamble is that it was found expedient to require employers in industrial establishments to define with sufficient precision the conditions of

employment under them and to make the said conditions known to workmen employed by them. The Act is applicable to all industrial

establishments wherein 100 or more workmen are employed. It la not. disputed that the State Electricity Board is an industrial establishment, to

which the Industrial Employment (Standing Orders) Act, 1946, is applicable. Section 3 of the Act requires that within six months from the date on

which the Act became applicable to an industrial establishment, the employer shall submit to the certifying officer draft standing orders proposed by

him for adoption in his industrial establishment. On receipts of the draft standing orders the certifying officer, after following the procedure

prescribed shall certify the draft standing orders and on such certification the standing orders will be binding on the industrial establishment as well

as the workmen. It is stated that the Board has submitted draft standing orders but they have not yet been certified. Pending certification of the

standing orders, provision is made u/s 12A of the Act for adopting the model standing orders in the establishment. Section 12A. provides that for

the period commencing on the date on which the Act became applicable to an industrial establishment and ending with the date on which the

standing orders as finally certified under the Act come into operation u/s 7 in that establishment, the prescribed model standing orders shall be

deemed to be adopted in that establishment. Section 15(b) of the Industrial Employment (Standing Orders) Act, 1946, empowers the Government

to frame rules setting out model standing orders for the purpose of the Act. In pursuance of the rule-making powers, the State Government have

framed model standing orders applicable to workmen. Standing order 21 of the model standing orders provides that every workman shall retire on

attaining the age of 58 years.

4. It is the contention of the petitioners that the model standing orders are binding on the industrial establishment u/s 12A pending certification of

the standing orders submitted by the industrial establishment and therefore the age of superannuation is 58 years, and the petitioners cannot be

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retired at the age of 55 years. On behalf of the Board it was contended that, as the Fundamental Rules are applicable to the workmen, the model

standing orders framed under the Industrial Employment (Standing Orders) Act of 1946 are not applicable to the Madras State Electricity Board.

It was further contended that the State Government had passed G.O. Ms. No. 2768 (Industries, Labour and Housing), dated 29 June 1966,

exempting for a period of one year or for such time as the standing orders are certified by the Commissioner of Labour, whichever is shorter, the

industrial establishments under the control of the Madras State Electricity Board as far as they cover the clerical staff of the said establishments

from the operation of the provisions of Section 12A of the Act. The validity of the Government order is questioned on the ground that the

Government is empowered only to exempt any Industrial establishments or class of industrial establishments from all or any of the provisions of the

Act, but it has not empowered the Government to exempt a section of any industrial establishment.

The questions that have to be considered, therefore, are:

(1) whether the establishments under the Madras State Electricity Board come within the provisions of Section 13B of the Act, and

(2) whether the Government is empowered to exempt the clerical staff alone in the establishment under the Madras State Electricity Board u/s 14

of the Industrial Employment (Standing Orders) Act, 1946.

5. Section 13B of the Industrial Employment (Standing Orders) Act 20 of 1946 exempts from the operation of the Act workmen employed in

industrial establishments 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 of 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, are made applicable. The rules referred to in the above section are applicable to members of the Civil Services,

Defence Services and Railway Services. The State Government is also empowered to exempt from the operation of the Act workmen in industrial

establishments to whom other rules or regulations that may be notified by the

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Government in the official gazette are made applicable. These rules

prima facie are not applicable to industrial establishments under private management or under the management of a statutory corporation. The mere

fact that the Board has adopted as its transitory rules and regulations the rules and regulations of the Government of Madras pending framing of its

own rules and regulations will not bring the workmen employed in industrial establishments under the Board within the scope of Section 13B of the

Industrial Employment (Standing Orders) Act of 1946. Therefore, the contention that Section 13B excludes the operation of the Industrial

Employment (Standing Orders) Act of 1946 to the industrial establishments under the Madras State Electricity Board has to be rejected.

6. As the Act is applicable, an Industrial establishment is bound u/s 3 to submit to the certifying officer draft standing orders within six months from

the date on which the Act became applicable. After the draft standing orders have been submitted to the certifying officer, the model standing

orders, which have been framed by the Government u/s 15(b) of the Act, are made applicable u/s 12A to an industrial establishment from the date

on which the Act came into force to the date on which the standing orders are finally certified under the Act. Reading Sections 3, 15(b) and 12A it

is clear that the provisions of the model standing orders shall be deemed to have been adopted for the industrial establishment pending final

certification of the standing orders submitted by the industrial establishment. But it is contended on behalf of the State that by virtue of the powers

conferred on the Government u/s 14, the Government has exempted from the operation of the Act the clerical staff of the establishments under the

control of the Madras State Electricity Board and therefore the members belonging to the clerical staff are not entitled to the benefits of the model

standing orders.

7. Section 14 enables the Government to exempt any industrial establishments or class of Industrial establishments from all or any of the provisions

of this Act. While the power of the Government to exempt an industrial establishment or class of industrial establishments from all or any of the

provisions of the Act is not disputed, It is contended that the Government is not entitled to exempt a section of the industrial establishment or

workmen in particular branches of the establishment. The question, therefore,

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that has to be considered is whether the power to exempt any

industrial establishment would include the power to exempt a section of the industrial establishment also. In this connexion the corresponding

provisions in other enactments were referred to. Section 5 of the Madras Shops and Establishments Act (Act 36 of 1947) empowers the State

Government to exempt any establishment or class of person or class of persons from all or any of the provisions of that Act. Section 17 of the

Employees'' Provident Funds Act (Act 19 of 1952) enables the Government to exempt any person or persona employed in an establishment.

Section 10 (2) of the Madras Industrial Establishments (National and Festival Holidays) Act (Act 33 of 1958) empowers the Government to

exempt any establishment or class of establishments or person or class of persons from all or any of the provisions of the Act. It will be seen that in

the Employees'' Provident Funds Act (Act 19 of 1952), Section 17 empowers the Government not only to exempt an industrial establishment but

also to exempt a person or class of persons employed in an establishment. For purposes of the Industrial Employment (Standing Orders) Act an

industrial establishment is taken as a unit and the power of exemption relates to an establishment. The Intention could not have been that a certain

section of the industrial establishment or certain class of persons of the industrial establishment alone can be exempted. For, if that were the

intention, it would have been specifically expressed as in the case of the Employees'' Provident Funds Act of 1952, and other enactments referred

to above. Otherwise, by exempting a particular section of the industrial establishment, there will be disparity in service conditions between the

workman in different sections of the establishment. In the present case, if the order of exempting of the clerical staff alone is held valid, the clerical

staff will be retired at the age of 55, while workmen in other sections will retire only at the age of 58. An intention to effectuate a disparity in service

conditions cannot be presumed, unless specifically expressed in the statute. Taking all the circumstances into consideration I am unable to consider

that the power conferred on the State Government u/s 14 of the Industrial Employment (Standing Orders) Act 20 of 1946 to exempt an industrial

establishment would also include the power to exempt a section of the establishment or a particular class of workers in the Industrial establishment.

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Learned Government Pleader submitted that as regards other staff in the establishment, rules have been framed and accepted, thereby taking them

out of the purview of Section 12A of the Act, and the only section that remained was the clerical staff and therefore the exemption granted was in

effect applicable to the entire industrial establishment, which was not already covered. I am unable to accept this contention. This statement itself is

challenged by the learned Counsel for the petitioners who submitted that apart from the non-clerical staff there were other departments to whom

rules have not been framed and Section 12A is therefore applicable, I do not think the contention of the Government Pleader is entitled to any

weight, for the mere fact that the rules have framed for certain other departments would not enable the Government to frame rules for the remaining

departments as the power vested in the Government is only to exempt an industrial establishment and not a section of the industrial establishment.

In this view G.O. Ms. No. 2768 (Industries, Labour and Housing), dated 29 June 1966, is beyond the powers conferred on the Government u/s

14 of the Act, and as such invalid.

8. Apart from the questions of law that arose in all the three petitions, other contentions were also raised in each of these writ petitions and they

may now be considered.

9. Writ Petition No. 1530 of 1966.-The petitioner joined the services of the South Arcot Electricity Distribution Company, Ltd., in July 1934 as a

clerk. In the service record and the provident fund pass book the petitioner has given his date of birth as 7 December 1911. When the company

was taken over by the Madras State Electricity Board, the petitioner was asked to furnish certain information, and he grave his date of birth as 7

December 1911. When called upon to furnish details with regard to proof of the date of birth, etc., ha produced the S.S.L.C. book. On 23 April

1961 the petitioner wrote to the Chief Distribution Engineer requesting him to correct his date of birth from 15 June 1911 to 7 December 1911

and submitted an extract from the birth register. After some correspondence the Board on 8 November 1965 rejected the request of the petitioner

to alter the date of birth. The petitioner preferred an appeal to the Chairman of the Board on 4 December 1965 praying for alteration of the date of

birth, but no decision has been taken in the appeal. On 5 February 1966 the

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petitioner was directed to retire from the forenoon of 15 June 1966

on attaining the age of superannuation of 65 years. The learned Counsel for the petitioner contended that the correct date of birth of the petitioner

was 7 December 1911 and not 15 June 1911. The question regarding the date of birth is one of fact, and, as the facts are not admitted, this Court

ID not the proper forum to determine the correct date of birth. Further, as it has been held that the age of superannuation is 58 years, according to

the model standing orders, which are applicable to the workers, this question does not arise for determination.

10. Writ Petition No. 1436 of 1966.-The petitioner was appointed as a lower division clerk under the Electricity Department of the Government of

Madras on 4 August 1936. On 1 July 1957 the petitioner''s services were taken over by the Madras State Electricity Board. On 4 May 1966 ho

was temporarily promoted as Assistant (Administration) in the time-scale of pay of Rs. 370-20-475 and has been working under the

Superintending Engineer, Technical (Electrical). The question that arises for consideration in this petition is whether the petitioner, an Assistant

(Administration), is a workman within the definition of Section 2(i) of the Industrial Employment (Standing Orders) Act, 1946. A person employed

in any industrial establishment to do any skilled or unskilled manual, supervisory, technical or clerical work comes within the meaning of

workman."" But a person, who is employed mainly in a managerial or administrative capacity, or who being employed in a supervisory capacity,

draws wages exceeding Rs. 500 per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers

vented in him, functions mainly of a managerial nature is excluded from the definition of "" workman."" Thus, a person doing supervisory work comes

within the definition of "" workman,"" while a person employed in a managerial or administrative capacity is excluded. A person employed in a

supervisory capacity, if he draws wages exceeding Rs. 500 or exercises functions of a managerial nature, is also excluded.

11. It is contended on behalf of the petitioner that he is not employed mainly in a managerial or administrative capacity. As he is not drawing wages

exceeding Rs. 500 per mensem he is not excluded unless he exercises functions mainly of a managerial nature. The powers and duties of the

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petitioner are stated in memorandum No. M/32 B5(16)/1, dated 4 May 1966, of the proceedings of the Superintending Engineer, Technical

(Electrical). According to this memorandum, the petitioner is empowered to draw bills and pass vouchers and payment orders, to incur or sanction

expenditure on contingencies, to sanction advances of travelling allowances on tour to the non-gazetted employees, to sign travelling allowance bills

of the establishment, to verify entries and attest the same in the service books and service rolls, and also to conduct the periodical verification of the

service books, and to sanction the increments to all the non-gazatted staff of the office. In deciding the question whether a person is employed in a

managerial capacity the Supreme Court has laid down several testa in Prem Sagar v. Standard Vacuum Oil Company, Madras 1934 I L.L.J. 47.

the Supreme Court observed:

It is difficult to lay down exhaustively all the tests which can be reasonably applied in deciding this question as several considerations would

naturally be relevant in dealing with this problem. It may be enquired whether the person had a power to operate on the bank account or could ho

make payments to third parties and enter into agreements with them on behalf of the employer, was ho entitled to represent the employer to the

world at large in regard to the dealings of the employer with strangers, did he have authority to supervise the work of the clerks employed in the

establishment, did he have control and charge of the correspondence, could he make commitments on behalf of the employer, could he grant leave

to the members of the staff and hold disciplinary proceedings against them, has he power to appoint members of the staff or punish them; these and

similar other tests may be usefully applied in determining the question about the status of an employee ...

It is not contended that the petitioner is empowered to operate on the bank account, or to make payments to third parties and enter into

agreements with them on behalf of the employer, or to represent the employer to the world at large. The petitioner is not empowered to supervise

the work of the clerks and he has no control or charge of the correspondence; he cannot make commitments on behalf of the employer he cannot

grant leave to the members of the staff and hold disciplinary proceedings against them; he is not empowered to appoint members of the staff or

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punish them. It is submitted on behalf of the respondent that the petitioner is empowered to incur or sanction expenditure on contingencies under

the Madras Financial Code and to sanction advances of travelling allowances on tour to the non-gazetted employees and to sanction increments to

all the non-gazetted staff of his office and those functions would come under the managerial functions. The power to incur or sanction expenditure

is only for contingencies and not in the management of the office. It is common knowledge that even head clerks are given small amounts and

authority to incur expenditure on contingencies. This would not imply that the petitioner is employed in a managerial capacity. So also the power to

sanction advances for travelling allowances on tour to non-gazetted employees is only routine in nature and does not involve any exercise of

managerial authority. The power to sanction increments to the non-gazetted staff of the office is also, according to the rules, and the petitioner has

no discretion in the matter. All these functions taken together do not indicate that the petitioner is exercising managerial functions. As already

pointed out, the petitioner does not satisfy any of the tests laid down by the Supreme Court in T. Prem Sagar Vs. The Standard Vacuum Oil

Company Madras and Others, In the circumstances, I accept the contention of the learned Counsel for the petitioner that the petitioner is not

employed mainly in a managerial or administrative capacity and therefore not excluded from the definition of "" workman."" He is entitled to the

benefits of workmen under the Industrial Employment (Standing Orders) Act.

12. Writ Petition No. 1763 of 1966.-The petitioner joined the service of the Tiruvellur Panchayat Board, Electricity Department, at Tiruvellur, in

1937, as a clerk. He was an accountants in the Madras Electricity System of the Tiruvellur Municipality when the State Electricity Board took

over. The services of the petitioner were transferred to the Madras State Electricity Board on 1 July 1957. On 17 June 1966 the petitioner was

directed to join duty in the Revenue South Unit at Saidapet. He was given additional charge of the post of the Deputy Chief Accountant on 18

June 1966. The petitioner was directed to hand over additional charge of the Deputy Chief Accountant on 7 July 1966 and was relieved of those

duties. The petitioner continued as an accountant in the Revenue North Unit, when he was asked to retire on 15 July 1966. It is not contended on

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behalf of the respondent that the petitioner, who was an accountant, was exercising functions in a managerial capacity and as such was not a

workman within the definition of Section 2(f) of the Industrial Employment (Standing Orders) Act, The petitioner is, therefore, entitled to the

benefits of the model standing orders framed under the Industrial Employment (Standing Orders) Act,

13. In the result all the three writ petitions are allowed with costs. Counsel''s fee Rs. 100 in each petition.

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