

(1995) 11 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No's. 22038 of 1995 etc.

Shankar

APPELLANT

Vs

Karnataka Land Army Corporation Ltd.

RESPONDENT

Date of Decision : 17-11-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) ILR (Kar) 1407

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Krishna S. Dixit, Yatakal Laxmikant, R. Padmanabha and Vagdevi Associates, for the Appellant; Meena Ramachandran, R.H. Chandangoudar and Vasantha Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—What is the age of superannuation applicable to the employees of Respondent-Karnataka Land Army Corporation is the moot question that falls for determination in this batch of Writ Petitions. Most of the petitioners were working as Task Force Commanders while one each out of them was working as a Tracer, a Second Division Clerk an attender and Assistant Task Force Commander. Each one of the petitioners appears to have received an endorsement from the Respondent Corporation intimating to them that they will superannuate from the service of the Corporation with effect from the date they attained the age of 55 years. The petitioners contend that the endorsement issued to them are illegal as the age of superannuation applicable to the employees of the Corporation is 58 years and not 55 years, as suggested by the Respondent. They have therefore assailed the endorsements and prayed for a Mandamus directing the Corporation to continue them in service till such time they attain the age of 58 years.

2. Learned Counsel appearing for petitioners argued that even though the Respondent-Corporation has framed what are known as "Karnataka Land Army

Corporation Service Rules", yet the said Rules are inoperative as the same have not been approved by the Government. They relied upon a resolution passed by the Board of Directors of the Corporation in its 74th Meeting held on 17th May 1991 whereby the Corporation had resolved to follow the Karnataka Civil Service Regulations except the provisions relating to Pension and other allied matters. They contend that according to the KCSRS, the age of retirement being 58 years, the impugned endorsement and the superannuation of the petitioners on the basis thereof was wholly unsustainable.

3. On behalf of the Corporation it was argued that the Resolution passed by Board of Directors made the KCSRS applicable only in respect of such matters as were not otherwise covered by the Rules framed by the Corporation. They urged that since the Rules framed by the Corporation specifically provided for the age of superannuation of its employees, the provisions of KCSRS, had no application to the said employees in so far as the retirement age was concerned. They contended that the Service Rules framed by the Corporation had come into force with effect from 9th August, 1974, and had been implemented by the Corporation over the years. The said Rules according to the learned Counsel for the Corporation did not require any approval of the Government in order to be effective. Reliance was also placed by the Respondents upon the subsequent Board Resolutions passed in the 87 and 89th Meeting held on 31st December, 1993 and 29th June, 1994 by which the request made by some of its employees for extension of the age of retirement from 55 years to 58 years was rejected.

4. The Respondent-Corporation is a Company incorporated under the Companies Act. In terms of Paras 88 and 89(xx) of the Articles of Association of the Company, the Board of Directors are empowered to frame Service Rules applicable to the employees of the Corporation. In exercise of the said power, the Corporation has framed The Karnataka Land Army Corporation Service Rules which in terms of Rule 1.1 (b) thereof came into force with effect from 9th August, 1974. Rule 3.18 of the said Rules, pertains to superannuation and retirement, the relevant portion whereof reads thus :

"Rule 3.18 :-Superannuation and retirement:

(a) Every employees appointed to the service of the Corporation shall retire when he attains the age of 55 years."

5. The argument that the Rules aforementioned were inoperative so long as the Government did not approve the same appears to me to be without any substance. I say so because Para 94 of the Articles of Association of the Respondent-Corporation which identifies matters reserved for the approval of the Government, does not include the framing of the Service Rules applicable to the employees of the Corporation as one of such matters. Para 94 of the Articles of Association reads thus :

"Clause-94 (i) Subject to the provisions of the Act any proposal or decisions of the Board in respect of following matters shall be reserved for approval of the

Government;

- a) Increasing or reducing the issued capital of the Company;
- b) Undertaking capital works involving an expenditure of Rs. 25.00 lakhs or more;
- c) Issue of debentures or bonds;
- d) Appointment to posts carrying a maximum pay of Rs. 4,550/- or more per mensem;
- e) Appointment of Financial Adviser of the Company;
- f) Formation of a subsidiary Company;
- g) Sale, lease or disposal of the property of the value of Rs. 10,00 lakhs or more;
- h) Winding-up of the Company;
- i) Any other matter which in the opinion of the Chairman is of such importance as to be reserved for the approval of the Government;
- ii) No action shall be taken by the Company in respect of any proposal or decision of the Board reserved for the approval of the Governor until his approval has been obtained thereto;

A plain reading of the aforesaid provision does not obviously support the submission made on behalf of the petitioners.

6. It was then argued that in terms of Para 94(i) (supra) the Chairman of the Corporation could reserve any matter for the approval of the Government, looking to the importance thereof. It was urged that the Reference made to the Government for the approval of the Rules framed by the Corporation must be deemed to be in exercise of the powers vested in the Chairman under Para 94(i) and therefore so long as the Government did not approve the Rules, the same could not be said to be enforceable. There is no substance in this submission either. It is no doubt true that the Chairman of the Corporation has the power to direct any matter to be reserved for the approval of the Government, looking to the importance thereof, yet there is nothing on record before me to show that the powers so reserved by Para 94(i) was actually invoked by the Chairman in so far as the Service Rules of the Corporation were concerned. That apart, the Rules having been framed by the Board of Directors of the Corporation and made effective from the date indicated in the Rules themselves, there was no occasion for the Chairman to keep the same in suspended animation till such time the Government granted its approval.

7. In any event, unless it is demonstrated that notwithstanding the specific provisions contained in the Rules as to the date from which they become effective, the same had been rendered ineffective by reason of the Chairman exercising his powers under Para 94(i), the question of the Rules remaining inoperative does not arise. It must be shown that the Chairman had actually

invoked his powers under Para 94(i) and reserved the matter for the approval of the Government looking to its importance. Nothing of this sort has been placed on record. So also there is no specific averment made in the Writ Petitions that the Chairman had actually in exercise of his power under Para 94(i) reserved the matter for the approval of the Government under Para 94(i) of the Articles, it is therefore difficult to hold that the Rules framed by the Corporation had remained ineffective notwithstanding the provision contained in Rule 1.1 (b) thereof specifically promulgating the same with effect from 9th August, 1974.

8. It was next argued by the learned Counsel for petitioners that the Resolution passed by the Board of Directors of the Corporation in its 74th Meeting adopted the Karnataka Civil Services Regulations and made them applicable to the employees of the Corporation. In order to properly appreciate this argument, it is necessary to reproduce the relevant portion of the proceedings of the 74th Meeting of the Board, which reads thus:

"Subject No. 2: Adopting K.C.S. Rules 1958 and Allied Rules by KLAC.

KLAC has framed separate service Rules for the employees which have been adopted by the Board in its 1st meeting held on 26-8-1974. These Rules came to effect from 9-8-1974, but the same have not been approved by the Government. When the existing Rules are not self explanatory and do not provide for various contingencies arising in day-to-day administration, as it is, the KLAC is now following various provisions of KCSR(KCSR) 1958 and its allied Rules such as the Probation Rules of 1977, KCS (Seniority) Rules 1957 KCS(Confidential Reports), Rules, 1976 KCS(Conduct) Rules 1966, KCS (Recruitment to Ministerial Staff) Rules 1978, KCS (General Recruitment) Rules 1977, KSCS (Temporary Service) Rules, 1967, KSCS (Regularisation of Promotion, Pay and Pension, Act, 1973 and Rules 1979, KCS (Confidential Report) Rules 1983. It is necessary to have separate Rules for KLAC, till the Government framed separate sets of Rules including C & R Rules for KLAC. The KLAC now adopts following Rules for its day-to-day administration :

PROCEEDING OF BOARD OF 74TH MEETING :

Subject No. 2 Resolved to follow KCSR except the provisions relating to Pension and other allied Rules till the KLAC service Rules are REVISED UP-TO-DATE."

9. A plain reading of the back-ground in which the Resolution on subject No. 2 (supra) was passed shows that the existing Rules were found to be deficient in various contingencies arising in the day today administration of the affairs of the Corporation. It is also pointed out that the Corporation was following the various provisions of the Rules applicable to Civil Servants of the State of Karnataka. It was in the context of the deficiencies in the existing Rules framed by the Corporation that the Resolution adopting the Karnataka Civil Service Regulations appears to have been passed by the Board. The background Note to the Resolution further shows that the same was passed not with a view to totally supplant the existing Rules framed by the Corporation but supplement the same

so as to cover all such situations as were not specifically provided for or covered by the Rules framed by it. This would mean that the Karnataka Civil Services Regulations would be applicable only in regard to matters which were not otherwise covered by the Rules framed by the Corporation. In other words, the adoption of the KCSR was not a measure aimed at abrogating the existing Rules and where ever the Corporation Rules, made a provision the KCSR would have no application. When seen thus, it is apparent that the provisions contained in Para 3.18 of the Rules framed by the Corporation prescribing the age of superannuation of the employees continued to remain operative despite the adoption of the KCSR. This follows a harmonious construction of the two sets of Rules.

10. There is yet another reason why the argument advanced on behalf of the petitioner cannot be accepted. This is based on the understanding of the Corporation itself as to the effect of its Resolution, passed in the 74th Meeting of the Board. The Respondent-Corporation has on affidavit stated that it has all along understood the Rule position as to the age of retirement to be 55 years. It has placed on record copies of two Resolutions passed in the 87th and 89th Meeting of the Board on 21st of December, 1993 and 29th of June, 1994, respectively declining to grant any extension in the age of superannuation of the employees working in the Corporation from 55 years to 58 years. It is also not disputed that the Corporation has uniformly applied the 55 years Rule while retiring its employees. There may however be cases where some employees have been given extensions but that does not make any material difference as the grant of extension in individual cases looking to the need of the Corporation, the capacity and the potential of the employee, the physical fitness of the employee and so on and so forth is a matter which lies in the discretion of the appointing authority. No employee can as of right demand an extension in the age of his retirement merely because some other employees have been granted such extensions. The first ground urged by the learned Counsel for the petitioners thus fails and is accordingly rejected.

11. It was next argued by the learned Counsel that following the Government decision, to enhance the retirement age of Civil Servants from 55 years to 58 years, a large number of Public Sector Corporations like the KSRTC, Karnataka Power Corporation, Agro Industries Corporation, Karnataka Milk Federation, Karnataka State Financial Corporation etc., had increased the age of retirement from 55 years to 58 years. Inasmuch as the Respondent Land Army Corporation had not similarly enhanced the age of superannuation, contended the petitioners it had committed an illegality and brought about a hostile discrimination as between the employees of the Corporation and those situate similarly but serving in other Public Sector Corporations mentioned above. I see no substance even in this submission also. The employees working in one Corporation cannot claim any parity in the matter of age of retirement or other service benefits with employees working in some other Corporations. The Rule of Equality enshrined in Articles 14 and 16 of the Constitution does not extend to equality in matters

regarding service or service conditions of people serving under different employers. There is nothing like absolute equality in matters relating to pay scales or other conditions of service of employees even when they are working under the same employer. The pay scales or other conditions of service including the age of super annuation may vary from one class of employees to the other. What is important is that while classifying the employees there should not be arbitrariness or irrationality. In other words the classification ought to be based on an intelligible differentia which distinguishes those grouped together from others kept out of the group. So long as the classification is made on a rational basis and the same has a nexus with the object sought to be achieved, no grievance on the touch stone of the Article 14 or 16 of the Constitution, can be made. This applies with equal force to employees working under two different employers, who may or may not be comparable with each other in all relevant respects. For instance the employees working in a Government owned Company like the respondent - Corporation; cannot be compared with the employees working in the Government itself. The very nature of duties of the employees and the function of the employees is different. The employees of the Company cannot complain of discrimination in matters of service conditions vis-a-vis the Government employees. This is true even about employees of one Company or Corporation complaining of discrimination based on the service conditions applicable to the employees of the other. Suffice it to say that as to what conditions of service can an employer offer be it by way of the age of super annotation or otherwise would depend upon a variety of factors peculiar to the employer, its business, the nature of skills and expertise required of the employees, the availability of fresh manpower to take over from the old employees etc. These considerations would vary from one institution to the other with the result that it would be impossible to apply the Rule of Equality to them or their employees to bring about a uniformity in the conditions of service. It follows that merely because some of the Corporations have accepted the pattern adopted by the Government in the matter of prescribing the age of retirement would not oblige every other Company or Corporation to follow suit, for no better reason than that they are also owned by the Government. The charge of discrimination levelled by the petitioners is therefore without any merit and is accordingly rejected.

12. It was then contended by the learned Counsel for petitioners that the petitioners were workmen within the meaning of Section 2(i) of the Industrial Employees (Standing Orders) Act, 1946 read with Section 2(s) of the I.D.Act, 1947, It was argued that the Respondent-Corporation was an industrial establishment within the meaning of the Act aforesaid and was therefore obliged to draft proper Standing Orders and have the same certified u/s 5 thereof. It was urged that till such time, the Respondent did not prepare the Standing Orders and have the same certified, the model Standing Orders prescribed by the Rules framed under the Act, were applicable to the workmen employed in the establishment in view of the specific provisions made to that effect by Section 12-

A of the Act. Age of retirement according to the model Standing Orders applicable to the workmen employed in an Industrial Establishment, it was submitted was admittedly 58 years and any retirement contrary to the provisions of the said Standing Orders was legally bad.

13. On behalf of the Respondent-Corporation, it was urged that the provisions of the Industrial Employment (Standing Orders) Act, 1946 were not applicable to the Corporation. It was contended that the Respondent-Corporation was wholly owned by the Government of Karnataka and worked as the designated agency of the Government for undertaking Rural Development works for the benefit of the rural poor without there being any profit motive in the activities undertaken by it. It was urged that the nature of the duties discharged by the Corporation were relateable to the Sovereign functions of the Government and therefore the Corporation could not be said to be carrying on an Industry nor could the provisions of the Industrial Employment (Standing Orders) Act, 1946, be said to be applicable to it. Reliance was placed upon the provisions of Section 13-A in support of the argument that any question as to the application or interpretation of a Standing Order certified under the Act could be raised only by way of a reference to the Labour Court constituted under the Industrial Disputes Act and not otherwise. The claim made by the petitioners that they were workmen within the meaning of the Act was also stoutly disputed.

14. Two questions arise for consideration. These are : (i) Whether the petitioners are workmen within the meaning of Section 2(i) of the Industrial Employment (Standing Orders) Act 1946 read with Section 2(s) of the Industrial Disputes Act 1947 and (ii) Whether the respondent-Corporation is an. "Industrial Establishment" within the meaning of Section 2(c) of the former Act read with Section 2(ii)(g) of the Payment of Wages Act, 1936. An answer to both these questions would in the light of the averments made in the pleadings of the parties require an investigation into facts, which cannot be undertaken in the present Writ Proceedings. As to what was the nature of duties that the petitioners were and some of them still are discharging as also the amount of the wages/salary drawn by them, are matters which will have a bearing upon the answer to the first of the two questions referred to above. Similarly, whether the respondent-Corporation can be said to be an Industrial Establishment, looking to the nature of the functions assigned to it by the Government or otherwise carried on by it, is also a mixed question of law and fact which is not amenable to a satisfactory answer in the absence of an enquiry into the factual aspects of the respective cases set up by the parties, no matter summary in nature. Suffice it to say that in the very nature of the controversy raised by the parties, the forum chosen by the petitioners for adjudication of the matter does not appear to be proper. A dispute like the one raised in these petitions could be more appropriately raised and resolved in an alternative forum with jurisdiction to go into disputed questions of fact. The extra ordinary Writ Jurisdiction of this Court is obviously not available for such a trial or enquiry.

15. Learned Counsel for the petitioners then placed reliance upon a judgment and order of the 2nd Additional Labour Court, Bangalore in ID No. 148/90 and connected matters DD 1.2.1991 and urge that the Labour Court has already taken a view in their favour on both the questions formulated above. They argued that the judgment of the Labour Court would bind the Corporation making a fresh reference unnecessary. I find no substance in this submission also. This is so because, the petitioners herein were not parties to the proceedings in which the Labour Court has passed the interlocutory order in question deciding two preliminary issues framed by it. It is therefore difficult to hold that the questions have been finally determined by a judgment delivered inter parts so as to attract the principles of *resjudicata*. In the absence of a judgment of a binding nature the respondent-Corporation would be entitled to demand a fresh enquiry and determination of the questions on the basis of the materials it may have to place on record.

16. In the result, these Writ Petitions fail and are hereby dismissed reserving liberty to the petitioners to seek such other remedy as may be open to open to them in accordance with law. No costs.