
(2015) 06 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 7370 of 2011

Shirish Pandharinath Joshi and Others

APPELLANT

Vs

The General Manager and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 18(1), 2(p), 2(s)

Citation : (2016) 2 MhLj 158

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Yawalkar S.B., for the Appellant; R. Patil, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J.—RULE. Rule made returnable forthwith and heard finally by the consent of the parties.

2. I have heard Mr. Yawalkar, learned Advocate for the Petitioners, Mr. Patil, learned Advocate for Respondent Nos. 1 and 5 and the learned AGP on behalf of Respondent No. 3. Respondent Nos. 2 and 4, though served, have chosen not to cause an appearance either through the Advocate or any person.

3. The Petitioners are aggrieved by the judgment and order dated 10.02.2011 delivered by the Industrial Court in Complaint (ULP) No. 45/2009 filed by the Petitioners herein.

4. The grievance of the Petitioners is two fold. Firstly that the age of retirement needs to be enhanced from 55 years to 58 years in the light of the settlement dated 14.07.2009 signed by Respondent No. 1 with Respondent No. 2 Union. The Petitioners were members of Respondent No. 2 Union. Secondly, the arrears, in view of the settlement having been signed on 14.07.2009 and having been given effect to from 01.07.2008, are payable to the Petitioners.

5. This Court by the order dated 02.12.2013 had, prima facie, considered the effect of Clause-A vis-a-vis Clause 59 of the New Settlement and had directed Respondent Nos. 1 and 5 to calculate the arrears in the event it is concluded that the Petitioners are entitled to the benefits of Clause 59 in the light of the duration of settlement set out in Clause A. The last issue as above stands settled due to the statement graciously made by Respondent Nos. 1 and 5.

6. Respondent No. 1 has deposited an amount of Rs. 87,169/-by Demand Draft No. 844029 dated 05.12.2013 in this Court. By the order dated 18.07.2014 passed by this Court on Civil Application No. 3230/2014, the Petitioners were permitted to withdraw the said amount deposited in this Court.

7. In this back-drop, Respondent Nos. 1 and 5 have made a statement that the amount disbursed to the Petitioners be retained by them and this issue be closed without treating it to be a precedent for any other employee, past or present, to raise a dispute by virtue of the gracious statement made by Respondent Nos. 1 and 5. Mr. Yawalkar, on instructions from the Petitioners, accepts the statement and submits that the said issue stands closed.

8. It needs mention that I have not considered the said issue on it's merits in the light of the fact situation recorded above and in the light of the consent of the parties.

9. The only issue, therefore, that survives for the adjudication of this Court is, whether, the contention of the Petitioners can be accepted that they be continued in employment by virtue of the new settlement till attaining the age of 58 years or they would be covered by Standing Order 27 of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946. The Petitioners' grievance is that by the impugned judgment of the Industrial Court, the complaint has been dismissed.

10. The employment details of the Petitioners are as under:-

(a) Petitioner No. 1 joined duties with the Respondent/ Management on 01.04.1991. He attained permanency on 01.07.1991. He was retired upon completion of 55 years of age on 31.05.2009.

(b) Petitioner No. 2 joined duties with the Respondent/ Management on 21.05.1985. He attained permanency on 06.09.1985. He was retired upon completion of 55 years of age on 28.08.2008.

(c) Petitioner No. 3 joined duties with the Respondent/ Management on 16.03.1986. He attained permanency on 27.06.1986. He was retired upon completion of 55 years of age on 10.02.2009.

(d) Petitioner No. 4 joined duties with the Respondent/ Management on 16.04.1988. He attained permanency on 17.07.1988. He was retired upon completion of 55 years of age on 31.05.2009.

(e) Petitioner No. 5 joined duties with the Respondent/ Management on

01.03.1984. He attained permanency on 01.06.1984. He was retired upon completion of 55 years of age on 12.02.2009.

11. The specimen appointment order is placed on record. It pertains to Petitioner No. 1. It is not in dispute that identical orders have been issued to all the Petitioners.

12. Clauses 2, 12 and 15 of the appointment order, relevant to this case, read as under:-

"2. You will be entitled to other allowances as per the rules applicable to the workman of your category.

12. During the employment, you will be subject to the service regulation applicable from time to time on the establishment where you are required to work. Your other service conditions will be same as for the employees of your category in the Organization.

15. It is hereby agreed that other things being equal you shall retire from the services of the company on completing the age of fifty five years."

13. Mr. Yawalkar has contended that clause 15 of the appointment order would not apply to the Petitioners since a new settlement has been signed on 14.07.2009, given effect to from 01.07.2008. He places reliance upon clause "A" of the new settlement which reads as under:-

"A. Duration of the Settlement:-

The provisions of this settlement (except para 58) shall become effective from 01.07.2008 and shall be valid for a period of three years i.e. up to 30.06.2011 and shall further continue to remain in force and binding thereafter until and unless amended or terminated by any other subsequent settlement/ award as per the provisions of the Industrial Disputes Act, 1947."

14. His contention, therefore, is that because the settlement has been made applicable from 01.07.2008 for a period of three years upto 30.06.2011, all the Petitioners stand covered by the said long term settlement owing to the duration of the settlement having been defined therein. He, therefore, submits that the Court need not look any further beyond clause A.

15. In the alternative, Mr. Yawalkar submits that standing order 27 of the Model Standing Orders prescribes the age of retirement as 60 years. The benefit of Standing Order 27 deserves to be given to the Petitioners since the Act prescribes 60 years of age. He, therefore, submits that even if it is concluded that the new settlement is not applicable to the Petitioners, the Respondent Management would be duty bound to implement Standing Order 27 in favour of the Petitioners.

16. He further submits that the Petitioners have filed the complaint before the Industrial Court bearing Complaint (ULP) No. 53/2008 along with the Respondent

Union. A purshis was filed below Exhibit-25 dated 24.03.2009 seeking withdrawal of the complaint as the Respondent Union was negotiating with the Respondent Management. By order dated 24.03.2009 the said complaint was disposed of as withdrawn since the settlement talks were going on.

17. In this back drop, he relies upon the judgment of the Apex Court in the case of Dunlop India Limited Vs. Their Workmen, AIR 1972 SC 2326 : (1972) LabIC 1007 : (1972) 2 LLJ 1 : (1972) 3 SCC 616 : (1972) 3 SCR 741 . He, therefore, prays that this petition be allowed and the impugned judgment and order be quashed and set aside.

18. Mr. Patil representing Respondent Nos. 1 and 5/ Management, has strenuously supported the impugned judgment. He submits that the Petitioners have consistently claimed that they were members of Respondent No. 2 Union. They cannot alter their stand as per changing situations. The settlement binds them to the extent that they stand excluded by virtue of Clause A.

19. Mr. Patil relies upon Clause 58 of the settlement which reads as under:-

"58. Age of Retirement:-

It is agreed that All Daily Rated and Monthly Rated Permanent Workmen, who are on the muster roll of the company on the date of signing the agreement i.e. 14.07.2009 and only after total implementation of this settlement, the normal age of retirement will be raised from 55 years to 58 years.

The workmen who have already retired before 29.06.2009 shall not get any benefit of this provision in any way."

20. He submits that though the settlement is made applicable from 01.07.2008, Clause 58, which pertains to the enhancement of retirement age, excludes the Petitioners as it is specifically provided that the workmen who have already retired before 29.06.2009 would not get any benefit of this provision. He, therefore, submits that merely because the said clause does not suit the interest of the Petitioners, would not mean that clause 58 of the settlement should be altered. He relies upon Section 18 r/w Section 2(p) of the Industrial Disputes Act, 1947, to contend that the Courts would not have the jurisdiction to alter the clause of the settlement. He, therefore, submits that the petition is baseless and deserves to be dismissed with costs.

21. At this stage, it is necessary to consider the effect of standing order 27 which reads as under:-

"27. The age for retirement or superannuation of the workmen may be sixty years or such other age as may be agreed upon between the employer and the workmen by any agreement, settlement or award which may be binding on the employer and the workmen under any law for the time being in force."

22. It requires no discussion/ debate that standing order 27 while prescribing the age of 60 years, provides for such other age of retirement or superannuation as

may be agreed upon between the Employer and the Workmen by any agreement, settlement or award, which may be binding on the Employer and the Workmen under any law. An appointment order is an agreement between the Employer and the Employee. Clause 15 of the appointment order reproduced above, binds the Petitioners as well as Respondent Nos. 1 and 5 as long as the same is not altered by any agreement or settlement. In short, the age could be enhanced by a settlement.

23. The peculiar facts of this case are that all the Petitioners had retired prior to the date of signing of the new settlement. If the submissions of Mr. Yawalkar are to be accepted, all the Petitioners would have to be brought out of retirement and would have to be reinstated. This may not sound cumbersome, but for the fact that the settlement does not support the contentions of the Petitioners.

24. Clause A of the settlement specifically excludes Clause 58 as can be seen from the very first sentence in clause A. This indicates the will of the workers who were represented by the Union by signing the said settlement with the Management. The settlement has been signed under Section 2(p) and Section 18(1) of the Industrial Disputes Act, 1947 and necessary compliance has been done under Rule 62(4) of the Industrial Disputes (Bombay) Rules, 1957. The said settlement would, therefore, bind the parties.

25. It is also set out in clause 58 that the workmen who have retired before 29.06.2009 would not get any benefit of this provision in any way. This, therefore, amounts to an exclusion not by picking and choosing the Petitioners, but by way of a general exclusion applicable to all such workmen who have retired before 29.06.2009.

26. Reliance placed upon the judgment of the Apex Court in the case of Dunlop India Limited (*supra*), by the Petitioners is misplaced. Paragraphs 12, 16, 17, 18, 23, 25 and 26 of the said judgment read as under:-

"12. We have already referred to the fact that the Tribunal has disbelieved the case set up by the workman regarding the assurance stated to have been given at the time of his appointment by the Employment Officer, Mr. Edward. At the time when the workman entered the service of the appellant in 1944, admittedly there were no rules regulations or agreements regarding the age of superannuation. In the absence of any such rules, regulations or agreements regarding the age of superannuation, it was the case of the workman that he was entitled to continue in service so long as he was physically and mentally fit. The Tribunal relying on the decision of this Court in *Guest, Keen, Williams, Private Ltd. v. P.J. Sterling and others* (*supra*) and *Workmen of Kettlewell Bullen and Co. Ltd. v. Kettlewell Bullen and Co. Ltd.* (1964) 2 LLJ 146) has held that the Standing Orders which are rules fixing the age of retirement, framed by a Company, would have no application to its prior employees unless it is shown that such employees accepted the new rules as part of their conditions of service. These decisions have further laid down that in the absence of any such

indication that the employees have accepted the new rules as part of their conditions of service, they are entitled to be in service till they attain the age of 60 years. In support of his 1st contention Mr. Pai pointed out that the above two decisions, relied on by the Tribunal have been explained by this Court in a recent decision in *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others*, AIR 1970 SC 512 : (1969) 19 FLR 293 : (1970) LabIC 411 : (1969) 2 LLJ 540 : (1969) 2 SCC 598 : (1970) 1 SCR 808 . On the basis of the said decision, he contended that the Standing Orders framed in 1955 providing in cl. 28 the age of retirement of an employee as 55 years, is binding on the appellant, though the Standing Orders were framed long after he had entered service. The counsel further re-enforced this argument relying on the agreement of 1956 and the finding of the Tribunal that the said agreement was binding on the concerned workman. Mr. Pai urged that the agreement of 1956, which is binding on the concerned workman, clearly establishes that the employees represented by the Union including the concerned workman have accepted the rule regarding the age of retirement as part of their conditions of service. In short, according to Mr. Pai when concerned workman is entitled to continue in service only till the age of 55 years, he has really been given a benefit by being allowed to continue till he attained the age of 58 years.

16. It must be noted that the Tribunal has found that the agreement of 1956 has not been given effect to by the appellant. This finding is attacked by Mr. Pai. Even here, in our opinion, the finding of the Tribunal is justified. That the retirement age provided under cl. 14 of the agreement of 1956 was not acted upon by the appellant Company is clear from the following circumstances : The appellant issued a circular on April 20, 1960 to the effect that the management will not ask any employee to retire before attaining the age of 58 years. In the said circular, it is stated that the question of fixing the retiring age of employees, both in public and private sectors, has received considerable attention and publicity and that in West Bengal though the retiring age is almost uniformly 55 years, in Government service, the Industrial Tribunals throughout the country have awarded age of retirement varying from 55 to 60. From this circular it is clear that the management have decided not to retire any employee before attaining the age of 58 years, though the age of retirement was 55 years as per clause 28 of the Standing Orders framed in 1955 and clause 14 of the agreement of 1956.

17. It is also pertinent to note that in Bombay area, disputes were raised by the employees of the appellant regarding the age of retirement for clerical and subordinate staff to be raised from 55 to 60 years. The Industrial Tribunal raised the age of retirement to 60 years. The appellant had challenged the decision of the Industrial Tribunal before this Court. This Court in its decision in *The Dunlop Rubber Co. (India) Ltd. Vs. Workmen and Others*, AIR 1960 SC 207 : (1959) 2 LLJ 826 : (1960) 2 SCR 51 , rendered on October 16, 1959, upheld the order of the Tribunal and dismissed the Company's appeal. Following this judgment the appellant had issued the circular, referred to above, on April 20, 1960. The

appellant entered into an agreement with the Dunlop Rubber Factory Labour Union on June 29, 1961 fixing the age of retirement at 58 years. The same has been reiterated in the second agreement between the same parties on December 6, 1960.

18. Even on December 6, 1962 there is an inter office letter issued by the appellant stating that those staff employees who are over 52 or will attain the age of 52 on 1st January, 1963, will continue to work until the age of 60 years and all others will retire at 58. Admittedly, as on January 1, 1963, the concerned workman was over 52 years and as such by virtue of this letter he was entitled to continue in service till the age of 60 years. All these circumstances clearly indicate that the appellant has departed from the original age of retirement fixed at 55 by the 1956 agreement.

23. Coming to the second contention of Mr. Pai, the agreement of 1966, can be safely left out of account as it came into effect only on December 6, 1966 long after the notice dated August 2, 1966 issued by the appellant to the concerned workman. Coming to the agreement of June 29, 1961 that was one entered into between the appellant and the Dunlop Rubber Factory Labour Union. At the time when this agreement was entered into, there is no controversy, that there were three labour unions, namely, Dunlop Rubber Factory Labour Union, Dunlop Workers' Union and Dunlop Workers' Association. It is not disputed by the appellant that the concerned workman was a member of the Dunlop Workers' Union, which was not a party to any such agreement with the appellant. If the age of retirement at 58 had been fixed in the Standing Orders of the Company after following the procedure indicated in the relevant statute, as the appellant originally did in 1955, then the position may be different. On the other hand, what the appellant did was to enter into an agreement with the Dunlop Rubber Factory Labour Union, which represented only one section of the staff employees. When that is so, such an agreement will bind only such of the staff employees who were members of the Dunlop Rubber Factory Labour Union, which was a party to the agreement. The concerned workman who was not a member of the said union was justified in contending that he was not bound by the agreements of 1961 and 1966 and the Tribunal was also justified in upholding that contention.

25. The last contention of Mr. Pai need not detain us very long. When the order of the management directing the workman to retire on his attaining the age of 58 years was being challenged as illegal, the Tribunal had necessarily to consider what is the proper retirement age for the concerned workman. It is only when a finding is given that the concerned workman is entitled to continue beyond 58 years that the Tribunal can hold the order of the Company directing his retirement at 58 years as illegal. So the Tribunal was justified in going into that aspect. The Tribunal has relied on the decisions of this Court in *Guest, Keen, Williams Private Ltd. v. P.J. Sterling and others* (supra) and *Workmen of Kettlewell Bullen and Co. Ltd. v. Kettlewell Bullen and Co. Ltd.* (supra) for holding that the concerned workman who had joined service at a time when there were

no rules, regulations, agreements or Standing Orders regarding the age of superannuation, was entitled to continue in service till he attained the age of 60 years. These decisions prima facie support the view of the Tribunal that the concerned workman, in the present case, is entitled to continue in service till he attained the age of 60 years. We have already referred to the fact that the said decisions have been explained by this Court in *Agra Electricity Supply Co. Ltd. v. Sri Alladin and others* (supra).

26. However, the finding of the Tribunal that the concerned workman was entitled to continue in service till he attained the age of 60 years can be supported on other grounds. We have already referred to the decision of this Court in *The Dunlop Rubber Co. (India) Ltd. v. Workmen and others* (supra) relating to the age of retirement being 60 years in respect of the appellant's staff employed in Bombay region. Though that decision related to the employees of the appellant in Bombay region, it should be noted that this Court rejected the contention of the Company that it being an all India concern it should have uniform conditions of service throughout the country for its employees. It was further emphasised by this Court that industrial adjudication in India being based on industry-cum-region basis, the Industrial Tribunals have jurisdiction to make necessary changes in a uniform scheme so that it might accord with the prevailing conditions in the region where the employees were working, as the changes found necessary by the Tribunal were to ensure fair conditions of service."

27. The facts of the case in hand are apparently distinguishable from the facts in *Dunlop India Limited* (supra). The Employees in *Dunlop India Limited* (supra) were appointed in 1944. The Standing Orders Act was brought into effect by the Industrial Employment (Standing Orders) Act, 1946 subsequent to their appointments. The settlement was signed in 1956 which was never implemented. In this back drop, similarly placed employees were permitted to work beyond 55 years and it is in this back drop that the Apex Court concluded that the employees concerned would continue to work till the age of 60 years.

28. In the light of the above, the Petitioners can neither be said to be entitled to the benefits flowing under clause 58 of the settlement nor standing order 27. Considering the above, I do not find that the reasons assigned by the Industrial Court, after analyzing the oral and documentary evidence on record, in support of its conclusions, could be termed as being perverse or erroneous or indicative of non application of mind. I do not find any reason to cause any interference in the impugned judgment.

29. Learned Advocate for Respondent Nos. 1 and 5/ Management submits that the issue as regards, whether, the Petitioners are workmen or not, is given up. In the light of the same, the conclusions drawn by the Industrial Court that the Petitioners are not workmen, stands set aside by consent.

30. In the light of the above, the Writ Petition is partly allowed by setting aside the conclusions of the Industrial Court that the Petitioners are not workmen

under Section 2(s) of the Industrial Disputes Act, 1947. Rest of the conclusions are sustained.

31. Rule is, accordingly, made partly absolute.