

(2016) 04 AHC CK 0247

In the Allahabad High Court

Case No : Special Appeal Defective No. 202 of 2012.

State of U.P. Thr. Secy. Irrigation and Others - Appellant @HASH Om Prakash

Date of Decision : 12-04-2016

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 13-A

Citation : (2016) 151 FLR 624 : (2017) LabLR 89

Hon'ble Judges : Satyendra Singh Chauhan and Dr. Vijay Laxmi, JJ.

Bench : Division Bench

Advocate : Anuj Kudesia, C.S.C, for the Appellant; G.K. Dwivedi, C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

Satyendra Singh Chauhan and Dr. Vijay Laxmi, JJ. - Heard learned Additional Advocate General on behalf of the appellants and learned counsel for the respondents.

Since common question of law and facts are involved in the present special appeals, therefore, the same are being decided by a common order.

2. Except Special Appeal Defective Nos.59 of 2012 and 60 of 2012, rest all the special appeals have been filed against the judgment and order dated 09.12.2011 passed by the learned Single Judge. Special Appeal Defective Nos.59 of 2012 and 60 of 2012 have been filed against the judgment and order dated 11.10.2011 and 19.10.2011 respectively, passed by the learned Single Judge.

3. The learned Single Judge while passing the judgment has relied upon the judgment rendered in Writ Petition No.9656 (SS) of 2006.

4. The controversy in the present cases is in respect of the employees, who are working in the Irrigation Workshop at Kanpur. The issue is in regard to retirement age of the employees working therein. The question is as to what should be the retirement age of the employees working at Kanpur Workshop.

5. Submission of learned counsel for the appellants is that there has been a special agreement in respect of Jhansi, Bareilly and Meerut, but in respect of employees of Kanpur, Gorakhpur and Allahabad, they will be governed by the Certified Standing Orders framed under the Industrial Employment (Standing Order) Act, 1946 (for short "the Act of 1946"). Learned counsel for the appellants, relying upon Section 13-B of the Act of 1946, has submitted that until and unless there is declaration in regard to the employees working therein, they shall be deemed to be workmen and their age shall be 58 years.

6. Learned counsel for the appellants has also placed reliance upon a Division Bench judgment of this Court rendered in Special Appeal No.548 of 2012: Moti Lal Kushwaha v. State of U.P. and others, decided on 04.02.2016, and has emphasised that the Division Bench of this Court has held that in absence of any declaration as contemplated under Section 13-B of the Act of 1946, the persons working in the Workshop will be deemed to be workmen and will be controlled by the Certified Standing Orders framed under the Act of 1946.

7. Learned counsel for the respondents, on the other hand, has submitted that the appellants themselves have framed the Rules known as "The Uttar Pradesh Irrigation Department (Irrigation Workshop Circle Kanpur) Semi Technical Service Rules, 1984" (for short "the Rules") and the said Rules embraced within itself the posts specified in Appendix-A. Learned counsel submits that all the posts are included within the ambit of the said Appendix-A and the service has also been defined in the said Rules and under Rule-3 of the Rules, service has been defined as Uttar Pradesh Irrigation Department (Irrigation Workshop Circle Kanpur) Semi Technical Service and the member of the service has been defined as a person, who has been appointed as Class-III and Class-IV employee prior to promulgation of the Rules or thereafter.

8. Learned counsel for the respondents, therefore, submits that all the respondents are covered under the ambit of the Rules and the Standing Orders will not be applicable when the appellants themselves have framed the Rules in respect of the employees of the present Workshop. He also submits that the Division Bench at Allahabad while deciding the controversy has failed to take into consideration the applicability of these Rules and neither the Rules of 1984 were considered by the Division Bench nor the said Rules were brought to the notice of the Division Bench. He also submits that the Division Bench, therefore, considered in the judgment in respect of Workshop at Allahabad and in respect of Workshop at Allahabad, no Rules have been framed, whereas in respect of Workshop at Kanpur, Rules have been framed.

9. Learned counsel for the respondents further submits that the Rules have excluded the applicability of Certified Standing Orders and Rule-25 of the aforesaid Rules also provides that whatever has not been provided in these Rules, the same will be adopted from the State Government employees Rules and will be applicable in respect of present employees.

10. The controversy, therefore, in the present case is as to whether the Certified Standing Orders would be applicable in the case in hand in spite of the fact that the appellants themselves have framed the Rules of 1984. The appellants in their own wisdom has taken a decision to make the service Rules in 1984 and those Rules have been prevailing since then. Rule-8 specifies the category of posts and also specifies the post in Appendix-A. The posts, therefore, which are included within the ambit of the Rules, will fall exclusively within the domain of the Rules and the Certified Standing Orders cannot be said to be applicable in respect of these posts.

11. Learned Additional Advocate General has drawn the attention of the Court towards Rule-25 of the Rules and on that basis, it has been submitted that since no age of retirement has been prescribed under the Rules, therefore, the Certified Standing Orders would be applicable wherein the date of retirement is mentioned as 58 years.

12. The aforesaid argument has to be tested in the light of the language used in Rule-25 of the Rules, which says that in respect of the matters, which have not been provided in these Rules or special orders, the provisions related to State Government employees will apply. The applicability of the Rules has to be tested in the light of the fact that the Certified Standing Orders came into existence after promulgation of the Rules and the appellants consciously framed the Rules so as to place the category of persons indicated in the Rules outside the ambit of the Certified Standing Orders. The Certified Standing Orders, therefore, in the wake of the Rules framed by the appellants would not apply in respect of the category of employees, who are falling under Rule-8 and Appendix-A of the Rules.

13. The Division Bench of this Court while considering the issue at Allahabad was seized with the matter, in respect of which, no Rules were existing and neither framed in respect of Allahabad Workshop. In those very circumstances, the Division Bench came to the conclusion that until and unless there is declaration as contemplated under Section 13-B, the Government Servant Rules will not be applicable, but in the case in hand, the appellants themselves have framed the Rules and the employees have been subjected to the aforesaid Rules, and whatever has not been provided in these Rules, the same will be adopted from the Rules applicable in respect of U.P. State Government employees, so in these circumstances, if the age of retirement has not been provided in these Rules, then the age of retirement, which is applicable in respect of U.P. State Government employees would be applicable.

14. The argument of learned Additional Advocate General that the Certified Standing Orders would be applicable, relying upon the judgment of the apex court in the case of *The U.P. State Electricity Board and another v. Hari Shankar Jain and others* (1978) 4 SCC 16, does not come to the rescue of the appellants on account of the fact that in the said case, in Para-10 of the judgment, it has been held as under:

"10. We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely the conditions of service, enumerated in the schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hard-won and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity Supply Act and Parliament never meant that the Standing Orders Act should stand pro tanto repealed by Section 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies."

15. In the aforesaid case, the situation was otherwise, wherein the Electricity Supply Act was framed prior to promulgation of the Standing Orders and therein, the Supreme Court came to the conclusion that special rule excludes the general will not apply in that case because the special provision was in existence prior to promulgation of the Act of 1946.

16. Here, in the case in hand, the Industrial Employment Standing Orders Act, 1946 was framed and thereafter the Certified Standing Orders were framed and the Rules have been framed in 1984 and the said Rules are applicable in respect of the employees of Kanpur Workshop. The State Government was conscious of the fact and, therefore, took a conscious decision and framed the Rules so as to keep the employees of the Kanpur Workshop outside the purview of the Certified Standing Orders, otherwise there would have been no necessity of providing under Rule-25 of the Rules that whatever has not been provided in these Rules, the same shall be adopted from the State Government employees Rules and shall be applicable in respect of present employees.

17. In these circumstances, the argument of learned counsel for the appellants fails.

18. We do not find any merit in these special appeals. They are accordingly dismissed.