

(2005) 08 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 14398 of 1999

The General Secretary, Karnataka Karya Niratha
Pathrakarthara Sangha

APPELLANT

Vs

The General Manager, Printers (Mysore) Limited, Prajavani
and Deccan Herald

RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Working Journalists and other Newspaper Employees (Conditions of Services) and
Miscellaneous Provisions Act, 1955 — Section 12, 16

Citation : (2005) ILR (Kar) 5414 : (2005) 6 KarLJ 69 : (2006) 1 KCCR 18 :
(2006) 1 LLJ 513

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : M.C. Narasimhan, for the Appellant; Pradeep S. Sawkar for
Sundaraswamy Ramdas and Anand, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—In this writ petition, common award passed by the Industrial Tribunal at Bangalore in ID Nos. 1 of 1995 and 6 and 7 of 1997 are challenged. The petitioner is a Trade Union of employees working in newspaper industry. They raised a dispute on behalf of one Sri N. Arjuna Deva, K.S. Ramachandra, B. Shankar, N.S. Gopal and P. Seetharam. A common grievance of all these workmen was that they were retired on reaching the age of 58 years long back and they ought to have been superannuated on completion of 60 years of age. The workman Sri Arjuna Deva has an additional grievance to the effect that he was denied promotion which he was otherwise legitimately entitled to on the ground that he was the office-bearer of the Union. Insofar as Sri K.S. Ramachandra is concerned, his additional grievance is that he has not been paid monetary benefits such as interim relief, educational allowance, promotion as proofreader etc., in terms of Memorandum of Settlement dated 21-4-1994. When the grievance of these workmen were espoused by the Union, it was not

accepted by the management. They raised an industrial dispute. On failure of the conciliation proceedings, the Government referred the disputes to the Industrial Tribunal for adjudication. Subject-matter of the industrial disputes are as under:

(1) Whether the management of Printers (Mysore) Limited was justified in retiring Sri Arjuna Deva, K.S. Ramachandra and B. Shankar on 30-4-1994, 31-10-1993 and 30-11-1994 respectively on the ground that they have attained the age of 58 years though they could have been continued on the production of medical certificates?

(2) Whether the management was justified in not granting promotional benefits to Sri Arjuna Deva in the years 1979, 1983 and 1991 while granting such benefits to his juniors?

(3) Whether the management was justified in refusing the benefits of Memorandum of Settlement signed on 21-4-1994 which came into force on 21-8-1994 such as interim relief, educational allowance, promotion to proofreader etc., to Sri K.S. Ramachandra on the ground that he had retired on 31-10-1993?

2. Petitioner filed a claim statement justifying their claim. Respondent has filed a detailed counter traversing the allegations made in the claim statement and setting forth their stand. Parties have adduced evidence both oral and documentary and they submitted the written arguments. Industrial Tribunal, on consideration of the entire material on record, by the impugned award dated 9-12-1998 (Annexure-A) rejected the claim. Aggrieved by the same, petitioner has preferred this writ petition.

3. The material on record discloses that Sri Arjuna Deva joined the respondent in the year 1967 as a Reporter. He has worked continuously for a period of 27 years. His grievance was that he was entitled for promotion as Chief Reporter in the year 1979 but one Sri Raghurama Shetty who was junior to him was appointed as the Chief Reporter. There was another vacancy of the Senior Reporter in the year 1980 which was not given to him but his junior by name Sridhar Achar was promoted to the said post. In the year 1981, one P. Ramanna was appointed as Assistant Editor ignoring his name. In the year 1983, he was promoted as Senior Reporter and transferred to Mysore just to promote other juniors and at Mysore he was promised that he would be promoted as special correspondent which is equal to Assistant Editor's post. After seven years at Mysore, he was brought back to Bangalore in the year 1991 but the promised promotion was not given to him whereas others were given promotions as Special Correspondent, Chief Reporter and Assistant Editor who were all juniors to him. When he was aged 57 years, he was promoted as Chief Sub-Editor. He was denied promotion because he was the office-bearer of the Union and he was holding the post of General Secretary and President. If the promotion had been given to him at the relevant time, he would have retired as Editor and would have been entitled to all the consequential monetary benefits flowing from such

promotion which was denied. Though he was physically fit, he was not granted extension upto 60 years whereas persons who were similarly placed, were extended the same benefit and therefore he has been discriminated.

4. Sri K.S. Ramachandra who joined the services of the respondent as proofreader, was retired on 31-10-1993 after reaching the age of 58 years. He was not granted any benefits under the settlement dated 21-4-1994 on the ground that though the said settlement was retrospective, to be eligible to the said benefits, he ought to have been in the services on the day the settlement came into force. Admittedly he was not in service on the day the settlement came into force and therefore, he was not granted any benefit under the settlement.

5. In the light of the aforesaid facts, the points that arise for consideration in this petition are as under:

(1) Whether the workmen are entitled to continuation of service upto the age of 60 years notwithstanding Clause 32.1 in the Certified Standing Orders?

(2) Whether Sri Arjuna Deva was wrongly denied the benefit of promotion on the ground that he was the President and Secretary of the Union as contended by him?

(3) Whether Sri Ramachandra was entitled to the monetary benefits under the settlement dated 21-4-1994?

6. Re: Point No. (1).-- The learned Senior Counsel Sri M.C. Narasimhan contended that petitioners claim strictly speaking is not based on Clause 32.1 of the Certified Standing Orders. On the contrary, it is based on Shinde Wage Board Recommendations. Once the recommendation is made u/s 12 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, the same is binding on the Government and they are bound to give effect to the same notwithstanding what is contained in the Standing Orders. Section 16 of the Act has a overriding effect and therefore when there was a recommendation for continuation of working journalists upto the age of 60 years, the workmen were entitled to be in service upto the age of 60 years. In fact, proprietor of the respondent was Secretary-Member of the Wage Board and at any rate, respondent cannot have any defence for implementation of the said Wage Report.

7. Even Clause 32.1 of the Standing Order provides for extension of the service of an employee upto the age of 60 years in case he being found physically fit and the said discretion conferred should be exercised reasonably. That apart, trend of judicial opinion, in particular that of Apex Court, clearly shows that retirement age should be raised to 60 years and therefore, the Industrial Tribunal ought to have gone into the question whether these workmen are entitled to continuation of services upto the age of 60 years and the Tribunal committed a serious error in simply rejecting their claim on the basis that Clause 32.1 of the Standing

Order do not support their claim.

8. Per contra, learned Counsel appearing for the respondent contended that Clause 32.1 of the Standing Order do not confer any such right on the workmen. The report of the Wage Board has to be confined only to the fixation of wage for the working journalists and any recommendation beyond the same is outside its jurisdiction and therefore the Central Government was fully justified in not accepting the Wage Board recommendation in respect of enhancement of retirement age. Though judgments of the Apex Court go to show that necessity to enhance age of retirement upto the age of 60 years unless the said enhancement is made in a manner known to law, that by itself would not confer any right on the employee to claim the right of retirement as 60 years. The management has the discretion under Clause 32.1 of the Standing Order to enhance the age of retirement subject to workmen being found fit, but that by itself would not confer any right on the workmen for claiming the said benefit. Therefore it was contended that neither under the Standing Orders nor under the Act nor in the judgment relied on by the learned Counsel for the petitioner, it can be said that working journalists have- a right to be in service upto the age of 60 years. Therefore, the Tribunal was justified in rejecting the said claim.

9. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short hereinafter referred to as "the Act") was enacted to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments. The Act is the beneficial legislation enacted for the purpose of improving the conditions of service of the employees of the newspaper establishments. Chapter II of the Act deals with certain conditions of service of the working journalists. These provisions relate to the retrenchment, payment of gratuity, hours of work, leave, fixation or revision of wages etc. Chapter II-A of the Act deals with similar conditions of service of non-journalist newspaper employees. Chapter III deals with application of certain Acts to newspaper employees. After the enactment, seven amendments have been carried out to the said Act based on the recommendations and judgments of the Supreme Court. Section 14 of the said Act provides that provisions of Industrial Employment (Standing Orders) Act, 1946 is applicable to every newspaper establishment wherein 20 or more newspaper employees are employed or were employed on any day of the preceding twelve months. Similarly Section 15 of the Act extends the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to the newspaper establishment. Section 16 of the Act provides that provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act. However, if an employee is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act the newspaper employee shall continue to be entitled to more favourable benefits in respect of that matter.

10. Section 8 of the Act deals with fixation or revision of rates of wages. Section 9 provides for procedure of fixing, revising rates of wages and for constitution of a Wage Board. Section 10 provides that the procedure to be adopted by such Wage Board in fixing the wages and revision of rates of wages of working journalists. Section 11 defines the powers and procedure of the Board. Section 12 deals with the powers of the Central Government to enforce recommendations of the Wage Board. Recommendation of the Wage Board should be confined to fixing or revising rates of wages and the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, and modifications should not affect important character of the recommendations. Therefore, it is clear that the report submitted by the Wage Board to the Central Government is only in the nature of a recommendation. It is for the Central Government to make an order in terms of the recommendation or make such modifications as they may think fit and then give effect to the same. Though the power of the Central Government to make modifications is conferred under this provision, the said power is circumscribed by the limitation that even the Central Government do not under the guise of modifications give a go by to the important recommendations or basic recommendations made by the Wage Board. After the Central Government decides to make an order u/s 12, the same shall be published in the official gazette together with recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date whether prospectively or retrospectively, as may be specified in the order. Therefore, it is clear that comprehensive procedure is prescribed under the Act for fixation and revision of wages to the working journalists under the Act and a Wage Board has been conferred with the power to make its recommendation in respect of fixation of wages and revision of wages only.

11. In pursuance of the power conferred, the Central Government constituted a Wage Board consisting of 7 members one of whom is the proprietor of the respondent-newspaper. The Wage Board made its recommendation revising the pay scales of working journalists. They also dealt with the age pf retirement. The relevant portion reads as under:

"3.40 Age of Retirement.-- The. Board is fully conscious of the fact that the proposal regarding the age of retirement is likely to be challenged on the ground that it does not strictly fall within the purview of the Board. The evidence recorded by the Board indicates that there is no uniform practice in respect of age of retirement. This disparity has given rise to some dissatisfaction amongst the employees. Besides as the wage scales have been formulated for a period ranging from 8 to 15 years, there is apprehension in the minds of the employees that in order to avoid paying the maximum pay of the scale, newspaper establishments may take the advantages of disparate practice and retire the employees earlier. This is likely to cause great hardship to those employees who have served for a number of years. For these reasons the representatives of the employers and employees were unanimously of the opinion that there should be

uniformity in respect of age of retirement in the industry and that the age of retirement should be 58 years. However, a working journalist shall be continued in service upto the age of 60 years on production of fitness certificate from the District Medical Officer. In order to give full and uniform effect to the proposed wage scales the Board decided to include this provision in this proposals. It may, however, be mentioned that if need be the Government may incorporate this provision in the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act by undertaking the necessary amendment.

(emphasis supplied)

4.34 The age of retirement of a working journalist shall be 58 years. However, a working journalist shall be continued in service upto the age of 60 years as production of fitness certificate from the District Medical Officer.

4.35 Re-employment for the same kind of work shall be on the basis of the last pay drawn by the employee at the time of retirement".

12. The Government accepted the said recommendation subject to certain minor modifications and the same was published in the official gazette on 27-10-1967. The modification made by the Government was deletion of paragraphs 4.34 and 4.35 of the report. But in specific terms in the notification issued it was not stated that the recommendation made at paragraph 3.40 dealing with the age of retirement is not accepted. Based on this omission it was contended that the recommendations made by the Wage Board at paragraph 3.40 is accepted by the Government and, therefore, it has to be given effect to. In view of the aforesaid recommendation these petitioners are entitled to be in service till 60 years. In support of this contention they relied on a judgment of a Division Bench of the Orissa High Court in O.J.C. No. 1001 of 1989 where it was held that, no doubt paragraph 4.34 occurring under the heading "Miscellaneous" says that the age of retirement of a working journalist shall be 58 years; but however a working journalist shall be continued in service up to the age of 60 years on production of fitness certificate from the District Medical Officer. The exclusion of paragraph 4.84 would not, therefore, even by implication mean that the provision as to age of retirement contained in paragraph 3.40 has not been intended to be given effect to by the Government. It was also observed that according to the provisions contained in Section 16 of the Act, the provisions of the Act has overriding effect on the provisions of any other law, award, agreement of contract of service which are inconsistent therewith. In this view of the matter, the provisions contained in the Standing Order of the petitioner's establishment as to age of retirement would be deemed to be superseded by the recommendation of the Wage Board which has been accepted by the Government of India by virtue of Section 12 of the Act. Therefore, they rejected the argument that paragraph 3.40 would not govern the age of retirement of working journalists in view of the exclusion of paragraph 4.34 in the notification while accepting the Wage Board recommendations.

13. Hence, it was pointed out that the Labour Court committed a serious error in overlooking the binding judgment of the Orissa High Court as well as the recommendations of the Wage Board contained in paragraph 3.40 which has been accepted by the Government which would have an overriding effect even in respect of the provisions contained in the standing orders of the petitioners' establishment.

14. Having regard to the object with which the Act was passed and the various provisions contained therein it is amply clear that the Act deals with only fixation and revision of pay scales of working journalists and other newspaper employees. u/s 9 a Wage Board is constituted only for the purpose of fixing or revising rates of wages in respect of working journalists and nothing else. Therefore, the recommendations by the Wage Board should be only with reference to the fixation or revision of wages in respect of working journalists and whether it should be prospective or retrospective in nature. "Any other circumstances" referred to in Sub-Section (4) of Section 10 is only with reference to fixing or revising the wages having regard to the cost of living, the prevalent rates of wages for comparable employment and the circumstances relating to the newspaper industry in different regions of the country. Therefore, the adjudication to be made by the Wage Board should be strictly confined to fixation and revision of pay scales. When such a recommendation is made by the Wage Board to the Government u/s 12, the Government has the power to accept the entire recommendation as a whole or make some modifications as they think fit. Even while modifying the recommendations such power should not be exercised so as not to effect important alterations in the charter of recommendations. Therefore, neither the Wage Board nor the Central Government under the provisions of the aforesaid Act can traverse beyond the scope and object of the Act. If the Wage Board in its recommendations make recommendations in respect of matters which are outside the scope of the Act and if the Government were to accept such recommendations without proper application of mind such recommendations and the acceptance of such recommendations by the Government would be wholly without jurisdiction, void ab initio and unenforceable even if such recommendations are published in the official gazette as required under Sub-section (3) of Section 12 of the Act. Such recommendations de hors the scope of the Act i.e., fixation and revision of wages would not confer any right to any person.

15. A reading of the recommendation to the Wage Board as contained in paragraph 3.40 makes it very clear they were fully aware that their proposal regarding the age of retirement do not strictly fall within their purview and if they were to make any recommendation it is likely to be challenged on that ground. But still the evidence recorded by-them indicated that there is no uniform practice in respect of age of retirement which give rise to dissatisfaction among the employees. It is in that context after being convinced that, this anomaly is not good for the industry, they were of the view that a working journalist is to be continued in service upto the age of 60 years provided he is

physically and mentally fit. It is in that context though it is not within their purview they included it in the proposals made by them for the Government to take note of the said fact and suitably amend the Act incorporating a provision to that effect which is conspicuously missing in the Act. Therefore, it is clear it is not a proposal or a recommendation which they have made to the Government for acceptance u/s 12 of the Act which only would have a binding effect. If what is contained in para 3.40 is not deleted as the Government did in respect of paras 4.34 and 4.35, the result would be that the Government is considering the said proposal and may amend the Act incorporating the said provision. But, by no stretch of imagination it can be said that what is contained in paragraph 3.40 is the recommendation made by the Board to the Government for the purpose of acceptance u/s 12 and for implementing the same. The fact that the Government deleted expressly paras 4.34 and 4.35 makes it clear that not only the Government was conscious that the said recommendation is one without jurisdiction, outside the purview of the Wage Board, they were not prepared to accept the said recommendation. In the light of these express words contained in the aforesaid paragraphs and the notification issued by the Government it cannot be said that what is contained in para 3.40 is a recommendation accepted by the Government. With great respect to the learned Judges of the Division Bench of the Orissa High Court who have rendered the aforesaid judgment I am unable to agree with the same.

16. In the respondent-establishment there are certified separate standing orders governing the service conditions of journalists and non-journalists. The Journalists Standing Order is produced in the proceedings as Ex. M. 3. Clause 32 of the said Standing Order deals with superannuation. It reads as under:

"32. Superannuation.-- 32.1 The company shall retire from its service any employee who has attained the age of 58 years. No employee shall have any claim whatsoever in continuing in the service of the Company thereafter. The company may, however at its sole discretion and subject to medical fitness of the employee give extension of service for a specific period in writing".

17. A reading of the aforesaid provision makes it clear 58 years is prescribed as the age of superannuation. It is explicitly made clear that no employee shall have any claim for continuing in service beyond the age of 58 years. It also vests a discretion with the management to grant an extension of service beyond the age of 58 years for a specific period in writing subject to such employee found medically fit. Therefore, it does not confer any right on an employee to seek for extension on the medical fitness. Even if he is medically fit, he cannot insist that the management has to exercise its discretion in his favour under this provision and extend his age of retirement. The said discretion solely belongs to the management. If they do not choose to exercise the discretion in favour of an employee notwithstanding that he is found to be medically fit, an employee who has been denied such extension cannot have any grievance whatsoever and no such right lies in him to enforce the same before the Labour Court. The

contention that once a discretion is conferred on the management under this provision that discretion has to be exercised in a judicious manner, not arbitrarily and if the management is not extending the said benefit in favour of an employee who is found medically fit, they have to assign reasons and such a reason would be amenable to judicial review is without any substance. In the first place the discretion which is vested with the management is not a judicial discretion. It is a sole discretion and it is for the management to exercise or not to exercise the said discretion. The said discretion is not amenable to judicial review.

18. When once the Standing Orders are certified and it is in conformity with the schedule attached to the Industrial Employment (Standing Orders) Act and when the management acts in terms of the said Certifying Orders they cannot be found fault with. Section 4 of the Industrial Employment (Standing Orders) Act provides for modification and alteration of the Certified Standing Orders. It is always open to the Union or the employees to move the appropriate authority under the Act for modifications or alterations of any Standing Order. If the authority is convinced about their grievances certainly it has the power to make such alterations or additions. Admittedly in the instant case till today the petitioners have not made any attempt to get the Certified Standing Orders modified/alterd fixing the age of superannuation as 60 years. Therefore, as the Standing Orders says the age of retirement is 58 years and retirement of these journalists in terms of the said Standing Orders is legal and valid and cannot be found fault with.

19. Insofar as the contention that the Supreme Court in the case of Hindustan Antibiotics Ltd. Vs. The Workmen and Others, , has declared that the age of retirement should be raised to 60 years is concerned, on consideration of the material placed before it the Supreme Court was of the view that it is high time the age of retirement in this country is to be raised to 60 years. Supreme Court by itself by its order cannot raise the age of all employees in the country. That opinion, suggestion of the Supreme Court is to be accepted by the authorities and appropriate amendments have to be carried out to the service conditions governing such employees. That is precisely what even the Wage Board has said. In fact the Wage Board has gone one step further and has suggested amendment to be carried out to the Act or to the Industrial Employment (Standing Orders) Act, 1946. It is also open to the employees to seek for modification of the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 for amendment to the Certified Standing Orders of their establishment. But, without the Act being amended introducing a provision regarding date of retirement or the certified standing orders being amended in accordance with law providing for the age of retirement at 60 years merely because the Supreme Court has opined that the age of the employees have to be raised to 60 years, it cannot be said that an employee has a right for such declaration before the Labour Court. The Labour Court has to pass award after adjudicating the dispute in accordance with law and the standing orders governing the parties. Any order

to be passed if it is contrary to the statutory provisions, settlement or the standing orders it would become void and unenforceable. In that view of the matter, the Labour Court committed no error in passing the impugned order and holding that the petitioners are not entitled to the age of retirement of 60 years as claimed by them.

20. It is also contended that the management has granted the extension of two years in terms of Clause 32.1 of the Standing Orders to persons who are similarly placed in the establishment. In support of the said contention no evidence is adduced before the Labour Court. On the contrary, the material on record establishes on completion of 58 years those employees were retired and all retire mental benefits to which they are entitled to in law were given. Thereafter their services will utilized on contract basis.

21. It is not a case of extension. It is a case of fresh appointment on contract basis of specialized category of journalists only. This appointment on contract basis is not limited to only those who retired from the establishment but in some cases outsiders who have worked as journalists in other establishments have also been taken on contract basis for a particular period. Therefore, the plea of discrimination has no substance and accordingly it has to fail.

22. Re: Point No. (2).-- The grievance of Sri Arjundeva is, because he was the Secretary of the Union and for trade union activities he has been denied promotion which he was lawfully entitled to and, therefore, he is entitled to promotion and consequential monetary benefits. The material on record discloses as per Exs. M. 1 and M. 2 he has been given promotion whenever he was found suitable. There is no stipulation in the settlement at Ex. M. 4 which is for the period of 1976 to 1997, that promotion is by way of seniority. On the contrary it shows promotion is by selection. The promotion which he claims should have been given to him in 1977, 1983 and 1991. He retired from service on reaching the age of superannuation on 30-4-1994. He did not raise any dispute or agitate his right for promotion while he was in service. There is no material placed on record to show as contended by him persons who are less meritorious and who are juniors to him have been promoted overlooking his claim. Therefore, if he choose to raise the dispute regarding denial of promotion only after his retirement it lacks merits and bona fides. The Labour Court on proper appreciation of the oral and documentary evidence on record has categorically held that Sri Arjundeva has failed to prove his claim for promotion. As the said finding is based on legal evidence, I do not find any justification to interfere with the said finding of the Labour Court.

23. Re: Point No. (3).-- This claim pertains to denial of monetary benefits to K.S. Ramachandra under the terms of the settlement. The settlement is dated 21-4-1994. Under the terms of the settlement retrospective monetary benefit is given to employees who are on the rolls of the establishment on the date of signing of the settlement. But, no monetary benefit is given to such of those employees who had retired prior to the date of settlement. Sri K.S. Ramachandra

retired on 31-10-1993 prior to the date of settlement. Therefore, in terms of the settlement he is not entitled to any monetary benefits. Realising the futility of this claim it is urged that if he had been retired at the age of 60 years then he was entitled to the benefit of the settlement. When while answering point No. 1 it is held that none of these employees were entitled to continuation of service upto the age of 60 years the claim based on that hypothetical argument has to fail. The Labour Court has rightly declined to grant the relief of the benefits accruing under the settlement on the ground the employee had retired on the day the settlement came into force. I do not find any infirmity or error in this finding recorded by the Labour Court.

24. For the aforesaid reasons I do not see any merit in this writ petition. No infirmity in the impugned award is made out. Hence, I pass the following order.--

Writ petition is dismissed. No costs.