

(2017) 01 KAR CK 0168
In the Karnataka High Court
Case No : 21257 of 2014 (L-RES)

THE MANAGEMENT OF M/S GEM PROPERTIES PVT. LTD.

APPELLANT

Vs

TUMKUR JILLA ENGINEERING AND GENERAL WORKERS
UNION, & ANR.

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Constitution of India, Article 226, Article 226, Article 227, Article 227 - Power of High Courts to Issue certain writs - Power of High Courts to Issu

Citation : (2017) 01 KAR CK 0168

Hon'ble Judges : B. Veerappa

Bench : SINGLE BENCH

Advocate : MADHUKAR, Z. N. HANSI, K. B. NARAYANA SWAMY, D. ASHWATHAPPA

Final Decision : Dismissed

Judgement

1. The petitioner Company has presented the above writ petition for a writ of certiorari to quash the impugned order passed by the Addl. Labour Commissioner, Bengaluru, made in No.SOA/CR-8/ 2012-13 dated 11th March 2014 restoring the retirement age from 55 years extended upto 58 years, as per Annexure-B.

2. It is the case of the petitioner that it is a small scale unit manufacturing polyurethane (POP) cement bags and has employed about 103 employees. The customers of the company are cement manufacturers. Petitioner has a recognized trade Union and has been entering into settlements with the said Union for many years. When the matter stood thus, the respondent Union, without consultation or dialogue with the petitioner approached the Certifying Authority under the Industrial Employment (Standing Orders) Act, 1946, to change the age of retirement from 55 years to 60 years. Essentially any certified standing order is certified only after due dialogue between the management and

the recognized trade Union of the establishment. It is not that any party can approach the Certifying Authority independently to make changes to the document. The respondent No.1 Union raised the matter before the certifying officer in SOA No.12/2012- 13 for change in retirement age, from 55 years to 60 years. However, the management was not inclined to make any changes to the existing age of retirement as stated above. It is the further case of the petitioner that it first asks the workman whether he wants to retire, and if the workman states that he wants to continue in service, a medical examination will be conducted by the Government Doctor as provided under the Factories Act and if the workman is found to be fit to work further, the management continues his services. Effectively if the workman is in a medically fit condition to work, he works upto the age of 58 years. Therefore, effectively the retirement age in the petitioner management is 58 years. It is further contended that the Deputy Labour Commissioner who is the Certifying Authority without applying its mind and without considering the evidence on record, has proceeded to pass the order on 23.09.2013 enhancing the age of retirement of the workman from 55 to 58 years by amending the certified standing orders of the petitioner Company.

3. Being aggrieved by the orders passed by the Deputy Labour Commissioner, the petitioner filed an appeal before the Addl. Labour Commissioner/2nd respondent who after hearing the parties, by the impugned order dated 11.03.2014 dismissed the appeal and confirmed the amended order dated 23.09.2013 passed by the Deputy Labour Commissioner fixing the age of retirement from 55 to 58 years. Hence the present writ petition is filed.

4. I have heard the learned counsel for the parties to the lis.

5. Sri Madhukar, learned counsel for Sri Z.N.Hansi, learned counsel for the petitioner vehemently contended that the impugned order passed by the authorities fixing the age of retirement from 55 to 58 years is contrary to the model Standing Orders of the company and the Appellate Authority has completely ignored the fact that age of retirement in the petitioner company is 58 years, subject to the workman found to be in a medically fit condition. Therefore, the impugned orders cannot be sustained in law. He further contended that the 2nd respondent Appellate Authority has not adjudicated the appeal and the impugned order dated 11.03.2004 is inconsistent and contradictory to the provisions of The Industrial Employment (Standing Orders) Act, 1946. Therefore, he sought to set-aside the orders passed by the authorities below. In support of his contentions, learned counsel relied on the dictum of the Division Bench of this Court in the case of Kunigal Stud Farm Employees Union vs. United Racing and Blood Stock Breeders Ltd., reported in 2012(3) SCT 622 (Karnataka) to the effect that the employee should be physically and medically fit to continue in the post up to the age of 58 years.

6. Per contra, Sri K.B.Narayana Swamy, learned counsel for the caveator respondent No.1 Union sought to justify the impugned orders and contended that in view of insertion of Clause 15A to Schedule I of The Karnataka Industrial

Employment (Standing Orders) Rules, 1961, the age of retirement or superannuation of the workman may be 58 years, and in support of his contention, learned counsel sought to rely on the dictum of this Court in the case of M/s Kennametal India Ltd. Vs. Kennametal India Employees Association made in W.A.No.2395/2012 dated 29.05.2014 and also in the case of M/s British Paints (India) Ltd vs. Its Workmen reported in AIR 1966 SC 732 and sought to dismiss the writ petition.

7. In view of the aforesaid contentions urged by the learned counsel for the parties, the only point that arises for consideration is:

"Whether the Appellate Authority/2nd respondent is justified in confirming the order dated 23.09.2013 passed by the Deputy Labour Commissioner fixing the age of retirement of the workman of the petitioner company from 55 to 58 years, in the facts and circumstances of the present case?"

8. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties to the lis.

9. It is undisputed fact that the petitioner company is manufacturer of polyurethane (POP) cement bags and the request of the respondent No.1 Union for enhancement of age of retirement from 55 to 58 years was not considered by the petitioner company. Therefore, the Union approached the Certifying Authority to amend the Standing Orders and the agreement entered into with the petitioner. The Deputy Labour Commissioner being the Competent Authority to amend the Standing Orders of the petitioner company, considering the entire material on record, exercising powers under the provisions of Section 5 (3) of the Industrial Employment (Standing Orders) Act, 1946 proceeded amend the Standing Orders of the petitioner company by extending the retirement age from 55 to 58 years. It is also not in dispute that the Division Bench of this Court in the case of M/s Kennametal India Limited (supra) held that, "there is no substance in the submission made by the learned counsel for the appellant that the respondent Association ought to have filed another fresh application after the expiry of period of settlement. The very same application was again considered by the Certifying Authority on merits and came to be allowed enhancing age of retirement from 58 to 60 years as considered order keeping in mind the reported opinions in the case of Guest Keen, Williams Pr.Ltd., Calcutta vs. P.J.Sterling and others reported in AIR 1959 SC 1279 and The Life Insurance Corporation of India vs. D.J. Bahadur and others reported in AIR 1980 SC 2181 and other cases and various parameters such as nature of work assigned to the employees in their course of employment, the nature of wage structure paid to them, the retirement benefit and other amenities available to them, the age of superannuation fixed in comparable industries in the same region, the general practice prevailing in the industry in the past in the matter of retiring its employees, the appellate authority ratified the decision of the Certifying Authority and ultimately dismissed the writ appeal holding that there is no error committed by the certifying authority, appellate authority and the learned single Judge while enhancing the

age of retirement as 60 years which is fair and proper".

10. The Hon^{ble} Supreme Court in the case of *British Paints supra*, at para-4 and 7 held as under:

"4. Then there is the question as to future workmen and whether their age of retirement should also be fixed at the same level as in the case of existing workmen. We are of opinion that generally speaking there should not be any difference in the age of retirement of existing workmen and others to be employed in future in a case like the present unless there are special circumstances justifying such difference. In this connection our attention is drawn to the case of *Guest, Keen, Williams (P) Limited*. (1960) 1 SCR 348: 1959-2 Lab LJ 405: (AIR 1959 SC 1279), where the age of retirement of future workmen was 55 years. In that case however the age of retirement of future workmen was- fixed at 55 years by the Standing Order and the question whether that age of retirement should be changed was not before this Court for consideration. All that this Court had to consider in that case was whether the age of retirement of existing employees, before the Standing Order fixing the age of retirement at 55 years was introduced, should be 60 years or not. In the present company so far there is no age of retirement and unless there are valid and cogent reasons for making a difference in the age of retirement of existing workmen and those employed in future, the future workmen should also have the benefit of the same, age of superannuation.

7. As to the factory workmen, it is urged that their age of retirement should be fixed at a lower level as work in the factory is more arduous than the work of clerical and subordinate staff, and in this connection reliance is placed on the decision of this Court in *Jessop and Company Ltd.*, [1964] 1 L.L.J.

451 (SC), where one age was fixed for clerical and subordinate staff and a slightly lower age was fixed for the factory workmen. Here again we are of opinion that generally speaking, there is no reason for making a difference in the age of retirement as between clerical and subordinate staff on the one hand and "factory workmen on the other, unless such difference can be justified on cogent and valid grounds. It is only where work in the factory is of a particular arduous nature that there may be reason for fixing a lower age of retirement for factory workmen as compared to clerical and sub-ordinate staff. This appears to have been so in the case of *Jessop and Company Ltd.*, for that was a heavy engineering concern, where presumably work in the factory was much more arduous as compared to the work of clerical and subordinate staff. There might, therefore, have been then some justification for fixing a lower -age, of retirement for factory workmen in the case of those factories where the work is of a particularly arduous nature. But the present company is a paints manufacturing company and there is in our opinion no reason to suppose that the work in the factory in the present case is particularly arduous as compared to the work of clerical and subordinate staff. We therefore think that even in the case of future factory-workmen in the present concern there is no special reason why the age

of retirement should be fixed at a lower level. It is of course always possible for an employer to terminate the services of a workman if he becomes physically or mentally incapable of working before the, age of retirement. This power being there, there is no reason to suppose that there will be inefficiency in work on account of fixing the age of retirement at 60 years; on the other hand with the age of retirement at 60 years there will be added advantage that more experienced workmen will be available to the management and that would be a cause for greater efficiency. On the whole therefore we are of opinion that the age, of retirement in the case of factory workmen also in the present company should be fixed at the age of 60 years. We therefore modify the award of the tribunal and fix the age of retirement for the clerical and subordinate staff as well as for the factory-workmen, whether existing or future, at the age of 60 years."

11. Though learned counsel for the petitioner sought to rely on the dictum of this Court in Kunigal Stud Farm case (*supra*), which was a case where the employees had to work in the Stud Farm and naturally they should be physically and mentally fit to handle the horses as the job performed was of hard nature which would require physical and medical fitness. The same would in no way establish as a general principal that every employee should be physically or medically fit immediately on attaining the age of 55 years, as the said condition may vary from person to person. There can be no evidence or material to establish that every employee in such nature attaining age of 58 years would be fit or vis a vis. In the present case, petitioner company is engaged in manufacture of polyurethane cement bags and therefore, the facts of the said case (Kunigal Stud Farm) case has no application to the facts of the present case.

12. It is not the case of the petitioner company either before the Certifying Authority or before the Appellate Authority that the workmen are physically and medically unfit to work beyond the age 55 years. In the absence of the same, the orders passed by both the authorities who have concurrently held that age of retirement may be enhanced from 55 to 58 years, can not be interfered under writ jurisdiction of this Court.

13. Admittedly in the present case, what is challenged is only an order of the Appellate Authority and not the original order passed by the Certifying Authority dated 23.09.2013. Clause 15(A) of the schedule I to Karnataka Industrial Employment (Standing Orders) Rules, 1961, prescribes the age for retirement or superannuation of the workmen may be 58 years or such other age as may be agreed upon between the employer of the workman by any agreement, settlement or award which may bind on the employer and the workman under any law for time being in force.

14. According to the petitioner management, the tripartite agreement entered into between the parties on 03.06.2013 to subsist for the period from 01.04.2013 and 31.3.2017 as it is agreed upon and agreement is executed, that no demands resulting in additional financial burden would be placed during the said period. The said contention cannot be accepted in view of the provisions of

the Section 10(1) of the Industrial Employment (Standing Orders) Act, 1946, which reads as under:

10. Duration and modification of standing orders-(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen (or a trade union or other representative body of the workmen) be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation."

15. A reading of the said provision makes it clear that any Standing Orders finally certified under the Act shall not except on agreement between the employer and the workmen be liable to modification until the expiry of six months from the date on which the standing orders or last modification thereof came into operation.

16. Therefore it is clear that there is a scope to file an application for amendment. Based on the said provision, the Union has filed an application to amend the Standing Orders before the Certifying Officer on 18.10.2012 for amendment, to increase the retirement age of workmen from 55 to 60 years in the Certified Standing Orders of the company. In the said application for amendment of retirement age of the workman before the arrangement of tripartite agreement on 03.06.2013 would not amount to demand.

17. In view of the provisions of Section 10 and Clause 15A of schedule I to The Karnataka Industrial Employment (Standing Orders) Act & Rules, 1961, there is no bar for the competent certifying authority to fix the date of retirement of the employees of the respondent Union from 55 to 58 years.

18. Admittedly in the present case, the petitioner has not produced any substantial evidence or documents that there is a depletion in the efficiency of work performed by the workmen who are above the age of 50 years and that workman above the age of 55 years cannot work to meet daily production requirements and mere enhancement of retirement age from 55 to 58 years as contemplated under Clause 15A to schedule I of the Karnataka Industrial Employment (Standing Orders) Rules, 1961, does not cause additional finance burden on the management.

19. Both the authorities below exercising powers under Sections 5 and 6 of the Industrial Employment (Standing Orders) Act, 1946, have recorded concurrent finding of fact that respondent Union has made out a case to amend the Standing Orders of the petitioner company from 55 to 58 years and the company has not produced any material document either before the authorities or before this Court. How the petitioner company is prejudiced by enhancing the age of retirement from 55 to 58 years is not answered and as this Court in the case of Kennametal India Limited (supra) has held that the age of retirement enhanced upto 60 years in the absence of any material documents to prove that respondent Union/ Workmen is not fit to work beyond 55 to 58 years, the

contention of the petitioner raised in the present writ petition cannot be accepted.

20. For the reasons stated above, the point raised in the present writ petition has to be answered in the affirmative holding that the Appellate Authority is justified in dismissing the appeal confirming the order passed by the Certifying Authority fixing the age of the respondent Union from 55 to 58 years by amending the Standing Orders of the company. Same is in accordance with law.

21. In view of the aforesaid reasons, the impugned orders passed by the appellate authority confirming the order of the Certified Authority is based on the oral and document evidence on record. Petitioner has not made out any ground to interfere with the impugned orders made by the authorities below exercising powers under Articles 226 and 227 of the Constitution of India. Accordingly writ petition is dismissed.