
(1967) 03 MAD CK 0047
In the Madras High Court

Thiruvengataswami (K.)

APPELLANT

Vs

Coimbatore Municipality

RESPONDENT

Date of Decision : 07-03-1967

Acts Referred:

Factories Act, 1948 — Section 2
Industrial Employment (Standing Orders) Act, 1946 — Section 10, 12A, 13B, 2, 3
Payment of Bonus Act, 1965 — Section 2
Payment of Wages Act, 1936 — Section 2

Citation : (1968) 1 LLJ 361

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

Kailasam, J.—This petition is filed by an employee of the electricity department of the Coimbatore Municipality for the issue of a writ of tertiorari calling for the records of the municipality and to quash the order dated 20 February 1966 directing the petitioner to retire on his attaining the age of 55 on 26 December 1966.

2. The petitioner Joined service in the electricity department of the Coimbatore Mnnicipality on 15 February 1947 as a wireman and is continuing as such. He attained the age of 55 on 26 December 1966, It is contended on behalf of the petitioner that by virtue of the application of the Industrial Employment (Standing Orders) Act, 1946, and the model standing orders framed thereunder, his age of retirement has been increased to 58.

3. The Industrial Employment (Standing Orders) Act, 1946 (Central Act 20 of 1946), was enacted for the purpose of requiring the employers in industrial establishment to formally define the conditions of employment under them. The Act requires that within six months from the date on which the Act becomes applicable to an industrial establishment, the employer should submit to the certifying officer, draft standing orders proposed by him for adoption in the industrial establishment. Section 4 provides that the standing orders thus

submitted shall be certified under the Act If they fulfil certain conditions. Section 10(1) provides that the 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 the last modifications thereof came into operation. Penalties are provided for in the event of the employer falling to submit draft standing orders as required u/s 3. Section 12A makes provision for the application of model standing orders for the period commencing from the date on which the Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under the Act come into operation u/s 7. The Government have framed model standing orders for the purpose of the Industrial Employment (Standing Orders) Act. Standing order 21 provides that every workman shall retire on attaining the age of 58 years which shall be the superannuating age provided that the management may, in their discretion, extend the period of service of any workman on reaching the age of superannuating for such longer period as may be considered necessary

4. If the department in which the petitioner is working is an Industrial establishment to which the Industrial Employment (Standing Orders) Act is applicable, the model standing orders would govern as it is admitted that the municipality has not framed its own model standing orders.

5. The question that arises for consideration is whether the electricity department of the coimbatore Municipality is an industrial establishment. "Industrial establishment" is defined in Section 2(e) of the Industrial Employment (Standing Orders) Act as meaning

an Industrial establishment as defined in Clause (ii) of Section 2 of the Payment of Wages Act, 1938, or a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948.

It is unnecessary for our purpose to refer to Clauses (iii) and (iv) of Sub-section (e). "Industrial establishment" is defined in the Payment of Wages Act as follows:

Establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.

The relevant part of the definition is-

establishment in which work relating to the generation, transmission and distribution of electricity is being carried on,

The Coimbatore Municipality is a bulk consumer of electricity. They obtain energy from the State Electricity Board and transmit and distribute it. Any establishment in which any work relating to generation, or relating to transmission and distribution of electricity is being carried on would come under the definition. The

plea of the learned Government Pleader that the work must relate to all the three, namely, generation, transmission and distribution of electricity, before it could come under the definition cannot be accepted for there is a comma after the word "generation" and giving it its natural meaning, any work relating to generation or any word relation to transmission and distribution of electricity would come under the definition. The electricity department of the municipality would fall under the definition in Clause (ii) of Section 2 of the Payment of Wages Act.

6. Section 2(m) of the Factories Act, defines factory as meaning any premises including the precincts thereof where ten or more workers are working and the manufacturing process is being carried on with the aid of power. Manufacturing process in Section 2(k)(iii) means any process for generating, transforming or transmitting power. Section 2(m) read with Section 2(k)(iii) of the Factories Act would bring within the definition of factory any process for generating, any process for transforming and any process for transmitting power. As the municipality is engaged in the process of transmitting, it will also fall within the definition of Section 2(m) of the Factories Act. As the establishment falls u/s 2(11) of the Payment of Wages Act, 1936, and Section 2(m) of the Factories Act, 1948, It is an industrial establishment within the meaning of Section 2(e) of the Industrial Employment (Standing Orders) Act.

7. It was next contended that so far as the municipal administration is concerned, it is governed by the District Municipalities Act and the rules framed thereunder and as provision is made in the Municipal Manual regarding the retirement age of its servants, the provisions in the Industrial Employment Standing Orders Act, 1946, will not apply. Section 303 of the District Municipalities Act enables the State Government to make rules to carry out all or any of the purposes of the District Municipalities Act, Section 303(2)(a) empowers the Government to frame rules with reference to matters expressly required or allowed by the Act to be prescribed. Section 74 of the District Municipalities Act provide;

Subject to the provisions of this Act and any rules which the State Government may make in this behalf, the council may frame regulations in respect of officers and servants on the municipal staff.

The matters on which regulations may be framed are enumerated in the section. A reading of Sections 303(2)(a) and 74 makes it clear that the Government is entitled to frame regulations in respect of officers and servants of a municipal council. In exercise of this power, the Government has framed rules relating to the service conditions of the municipal servants. Rule 14 of the Municipal Manual says that no officer or servant of a municipal council in superior service whether ministerial or non-ministerial shall be retained in its service after he has attained the age of 55 years. The rule prescribing the age of retirement; as 55 years is thus statutory, having been framed by the Government under the powers vested in it by the District Municipalities Act.

8. The question, therefore, arises whether the provisions of the District Municipalities Act would prevail over the provisions of the Industrial Employment (Standing Orders) Act, 1946. The District Municipalities Act is a Stats general enactment dealing with the administration or Municipalities, whereas the Industrial Employment (Standing Orders) Act, 1916, is a special enactment relating exclusively to the service conditions of parsons employed in industrial establishments. The Industrial Employment (Standing Orders) Act, being a later special Act, would prevail over the earlier general Act, and the provisions of the District Municipalities Act and the rules framed thereunder which are not in conformity with the Industrial Employment (Standing Orders) Act and the model standing orders will not apply. The provision in the Municipal Manual providing the age of retirement as 55 cannot prevail over the model standing orders framed under the Industrial Employment (Standing Orders) Act prescribing the age of retirement as 58,

9. It was urged by the learned Government Pleader that, in any event, Section 13B of the Industrial Employment (Standing Orders) Act exempt the application of the Industrial Employment (Standing Orders) Act to municipalities. Section 13b runs:

Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification Control and Appeal) Rules, Civil Services (Temporary service) rules, Revised Leave Rules, Civil service Regulations, Civilians in Defence service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations which may be notified in this behalf by the appropriate Government in the official gazette, apply.

10. The learned Government Pleader sought to bring this case u/s 13B on the ground that the Revised Leave Rules are applicable and that the municipal rules would be rules notified by the appropriate Government for purposes of exemption under Clause 13B. The servants of Coimbatore Municipality are not governed by the Revised Leave Rules. But what is submitted is that under Rule 11(3) it is provided that in the case of officers and servants employed on or after 4 September 1033, the Madras Leave Rules, 1933, as for the time being in force shall apply. Merely Because the Madras Leave Rules, 1933, are made applicable under the rule-making power of the Government under the District Municipalities Act, the municipal servants will not be governed by the Revised Leave Rules, as contemplated u/s 13B. The attempt of the learned Government Pleader to bring the muncilpal rules under the Revised Leave Rules falls.

11. The only other contention raised by the learned Government Pleader is that the muncilpal rules should be regarded as rules notified in this behalf by the appropriate Government, in the official gazette as required (?) u/s 13B of the Industrial Employment (Standing Orders) Act, It is admitted that the rules were not notified for the purpose of the Industrial Employment (Standing Orders) Act.

The clause:

any other rules or regulations that may be notified in this behalf by the appropriate Government in the official gazette.

can only mean the rules and regulations that may be notified by the appropriate Government for the purpose of the Industrial Employment (Standing Orders) Act. It is admitted that no rules were notified under this Act. Rules framed under the District Municipalities Act long before the Act came into force cannot be said to be rules notified in this behalf by the appropriate Government. It may be that Section 13B can be brought into operation when the Government is empowered to frame rules regulating the conditions of employment in certain, industrial establishments and If the Government frames rules and notifies them under the provisions or Section 13B. It has been held in *Raman Nambisan (P.) and Others Vs. Madras State Electricity Board and Others*, that Section 13B cannot be availed of for purposes of framing rules to govern the relationships in an industrial establishment under private management or in a statutory corporation. This rule can apply only to industrial establishments in respect of which the Government is authorized to frame rules and regulations, relating to the conditions of employment in industrial establishments. I am unable to accept the contention that the rules under the Madras District municipalities Act will be " rules notified in this behalf by the appropriate Government.

12. In the result, it has to be held that the provisions of the Industrial Employment (Standing Orders) Act and the model standing orders framed thereunder are applicable to the employees of the electricity department of the Coimbatore Municipality. The contention of the learned Counsel for the petitioner that the electricity department is an industrial establishment has to be accepted. The District Municipalities Act and the rules framed thereunder cannot override the Industrial Employment (Standing Orders) Act and the model standing orders framed there u/s 13B relied on by the Government cannot be availed of for exempting the industrial establishment (electricity department of the Coimbatore Municipality) from the operation of the Industrial Employment (Standing Orders) Act.

13. The writ petition is allowed. No order as to costs.