

(1993) 01 GUJ CK 0034
In the Gujarat High Court

T.K. Dutta

APPELLANT

Vs

National Textile Corporation (Gujarat) Ltd. and Others

RESPONDENT

Date of Decision : 25-01-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Sick Textile Undertakings (Nationalisation) Act, 1974 — Section 14(2), 14(2)

Citation : (1993) 2 GLR 1776

Hon'ble Judges : S. Nainar Sundaram, C.J;S.D. Dave, J

Bench : Division Bench

Judgement

S. Nainar Sundaram, C.J.—This Letters Patent Appeal is preferred against the order of the learned single Judge passed in Special Civil Application No. 948 of 1985. The petitioner in the Special Civil Application is the appellant in this Letters Patent Appeal and the respondents in the Letters Patent Appeal are the respondents in the Special Civil Application. The appellant calls in question the office order in and by which the age of superannuation for an employee like him was fixed at 58 years. The appellant was entertained in the services of a sick textile undertaking by name Mahalaxmi Mills, by respondent No. 1 after it was taken over and has come to vest in respondent No. 1 by virtue of the Sick Textile Undertakings (Nationalisation) Act, 57 of 1974, hereinafter referred to as the Act. The very appointment of the appellant happened on 2-4-1978 and that was after the appointed day under the Act, namely, 1-4-1974. There is no dispute that at the time the appellant was so appointed the age of superannuation for employees like the appellant was 60 years. However, pursuant to the recommendation of the Sub-committee of Board of Directors of respondent No. 1 dated 26-12-1984, the Board of Directors of respondent No. 1 resolved that the age of superannuation for employees like the appellant will be 58 years. The appellant challenges the concerned office order dated 2-1-1985. The learned single Judge who heard the Special Civil Application found that so far as the appellant is concerned he could not avail of the benefit of Section 14(2) of the Act since he was not employed in the Sick Textile Undertaking in question before

the appointed day. The learned single Judge held that the controversy fell purely within contractual sphere and any complaint of breach of contract of service will have to be justiciated elsewhere and even if the question is to be answered in favour of the appellant, it will be only a question of award of damages and not the appellant enforcing any right to be retired at the age of 60 years only. Thus, viewing, the learned single Judge dismissed the Special Civil Application.

2. In this Letters Patent Appeal Mr. Y.N. Oza, Learned Counsel for the appellant urged several points coveting interference at our hands. He would first submit that on the day when his client was appointed he was assured that his age of superannuation would be 60 years and that assurance cannot be given a go-by and the respondents are bound by the principle of promissory estoppel. We are not expressing any opinion as to whether the ingredients for application of the principle of promissory estoppel are satisfied in the instant case or not, but once it is found that no statutory rule or provision of law precludes respondent No. 1 from reducing the age of superannuation of employees like the appellant, as held by learned single Judge, the controversy remains only in the contractual sphere and the appellant could only work out his remedies on the basis of alleged breach of contract of service. There is no question of any promissory estoppel in respect of a contract already concluded. The principle of promissory estoppel is one of equity and in the field of contract there is no scope; for its application. It has to be further remembered that the contract of service is not one entered into by respondent No. 1 pursuant to any statutory duty or obligation, even for considering the question of issuance of a writ of mandamus.

3. The Learned Counsel for the appellant would secondly contend that all the Textile Mills in the State have adopted the age of 60 years as the age of superannuation for employees similarly placed like the appellant and even otherwise there is a discrimination unjustifiably brought out by the offending resolution and the office order, between the awarded staff and non-awarded staff and this would violate Article 14 of the Constitution of India. Here again the answer is found in the fundamental principle that no question of violation of Article 14 would arise in contractual sphere.

4. Thirdly, the Learned Counsel for the appellant would submit that the age of superannuation prescribed could be only prospective and not retrospective, in the sense the resolution dated 16-1-1985 and the consequent impugned office order dated 22-1-1985 could apply only to future appointments and not to the case of employees like appellant who entered service earlier.

5. The Learned Counsel for the appellant would cite the following pronouncements to press forth this point before us:

Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others, .

P. Mahendran and others Vs. State of Karnataka and others, .

Kantibhai Parmabhai Vankar and Others Vs. District Superintendent of Police and

Others, .

The first of the pronouncements concerned a case of industrial employment and the Supreme Court was dealing with a case under the Industrial Disputes Act. As pointed out by the learned single Judge, any principle discussed therein may not apply to the facts of the present case which squarely falls within the contractual sphere of employment and when the appellant is not a workman within the meaning of the Industrial Disputes Act. The other two decisions were concerned with statutory rules. There is no gainsaying that statutory rules unless expressly provided or the necessary intendment is evident could only be prospective. We do not think that the citations pressed forth by the Learned Counsel for the appellant would advance the cause of his client.

6. Lastly, the Learned Counsel for the appellant would submit that Section 14(2) of the Act requires a liberal construction, in that, the Court may read the said provision so as to say that the terms and conditions of service be applicable to the employees of the sick textile undertakings, irrespective of the fact that they were employed immediately before the appointed day or not. This Court while construing a statutory provision cannot travel beyond the explicit language of the provision, which has no ambiguity either in its verbalism or implication. Answering the points argued by the Learned Counsel for the appellant against his client, we dismiss this Letters Patent Appeal, with no order as to costs.