

(2015) 03 KL CK 0298

In the High Court Of Kerala

Case No : Writ Petition (C). Nos. 2923 of 2009 (W) and 27605 of 2009, 25894, 31500, 31629, 33028, 35733, 36781 of 2010, 10779, 3379 of 2011 and 8740 of 2013

Travancore Titanium Products Ltd.

APPELLANT

Vs

The General Secretary, Titanium General Labour Union (CITU) and Others

RESPONDENT

Date of Decision : 16-03-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s)

Industrial Employment (Standing Orders) Act, 1946 — Section 10, 3, 4, 5, 6

Citation : (2015) 3 LLN 466

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : B.S. Krishnan, Senior Advocate, K. Anand and Latha Krishnan, for the Appellant; Elvin Peter P.J. and Thampan Thomas, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J—The issue agitated in the aforesaid cases is the retirement age of workmen in the Travancore Titanium Products Ltd.

2. W.P.(C).2923 of 2009 impugn the order of the Certifying Officer (Ext. P5) under the Industrial Employees (Standing Orders) Act, 1946, (for short "Standing Orders Act") which rejected the modification sought for by the Management to fix the retirement age of workmen at 58 and remove the discretion to extend it to 60 years. The appeal too (Ext. P7) went against the Management.

3. W.P.(C).10779 of 2011 is the writ petition filed by the Management wherein the decision of the Certifying Officer (Ext. P4) as confirmed in appeal (Ext. P6) before the Appellate Authority, are challenged. The application was for enhancement of retirement age, by workmen, which was allowed.

4. W.P.(C).27605 of 2009 is filed by a Union against the order of the Central

Government Industrial Tribunal-cum-Labour Court, Ernakulam in I.D.23 of 2008. The Labour Court answered the reference made, as to the justifiability of stoppage of the privilege of extension of service from 58 to 60 to workmen; against the workmen. All the other writ petitions are filed by individual workmen who were retired at the age of 58. The individual workmen alleged discrimination insofar as selectively retiring certain workmen and allowing others to continue. A consideration of W.P.(C).2923 of 2009 and W.P.(C).10779 of 2011 would substantially answer the question.

5. Background facts to be noticed is that the Management categorized its employees into three groups being officers, ministerial staff and workmen. As per the existing practice till 2008, ministerial staff, even by the certified Standing Orders was to retire at the age of 60. The retirement age of officers and workmen were prescribed as 58. However, there was provision for extension upto 60, at the discretion of the Management; on an individual being found fit to continue in employment. This Court is not concerned with the case of the Officers whose retirement age also was reduced, which was challenged unsuccessfully in W.P.(C).12120 of 2011 (judgment dated 28.05.2013).

6. The stipulation of the retirement of workmen at 58 years of age with probable extension to 60, was provided in the Standing Orders. In the year 2007, the Company is said to have been reeling under financial crisis. The Company had a total strength of 1474 employees in all the above categories. A study was conducted as to the measures to improve its financial condition, which resulted in a report, inter alia suggesting reduction in staff strength to 757. It was in that context that the Management decided to do away with the extension granted to Officers and workmen from 58 to 60. The ministerial staff who retired at 60 was also sought to be retired at the age of 58. The provision in the Standing Orders with respect to workmen and ministerial staff had to be necessarily modified to bring in such reduction of retirement age.

7. The Management approached the Certifying Officer under the Standing Orders Act to reduce the retirement age of ministerial staff from 60 to 58 and do away with the provision for extension to workmen. The same stood rejected by Ext. P5 order. The appeal filed also affirmed the order of the Certifying Officer at Ext. P7. W.P.(C).2923 of 2009 is the challenge made by the Management of the above orders.

8. Meanwhile, the Union of workmen approached the Certifying Officer with a request for modifying the Standing Orders enhancing their retirement age from 58 to 60 which was allowed by Ext. P4 and affirmed in Ext. P6, which are impugned in W.P.(C).10779 of 2011.

9. In fact, till 1980, the Ministerial staff and the workmen had different Standing Orders prescribing different retirement age. In the year 1990, a unified standing order was brought in, wherein again, the different prescription of superannuation with respect to the ministerial staff and workmen were retained. In 1990, there

was a Memorandum of Understanding (MOU) entered into between the Management and the representative Unions produced as Ext. P7 in W.P. (C).10779 of 2011. Therein, there was a proposal which was accepted by the Management to enhance the retirement age of workmen from 58 to 60. Despite an agreement as evidenced by the MOU, the said proposal did not crystallize, for reason of no sanction being accorded by the Government. Here, it is to be noticed that the Management Company is a fully owned State Government undertaking.

10. The learned Senior Counsel Sri. Anand appearing for the Management would contend that, contrary stance have been taken by the Certifying Officer in the case of the separate applications filed. When the Management approached the Certifying Officer for reduction of retirement age of ministerial staff, Certifying Officer found that he has no authority to meddle with the Standing Orders since it stood unified in 1980 and despite a settlement for uniform retirement age, specifying the age at 60, the Government of Kerala had refused approval. The Certifying Officer hence found that he has no power to certify a modification proposal overriding the terms of settlement.

11. However, in the case of modification sought for by the workmen to enhance their retirement age, the Certifying Officer found that, what both the Management and the Union wants is a unification of the retirement age. Since no modification to the detriment of the workmen can be caused, enhancement was ordered, which, according to the learned Senior counsel, would run counter to the established prerogative on the Management to decide on the conditions of service.

12. The learned Senior counsel would rely on the decision of the Honourable Supreme Court in *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others*, AIR 1970 SC 512 : (1969) 19 FLR 293 : (1970) LabIC 411 : (1969) 2 LLJ 540 : (1969) 2 SCC 598 : (1970) 1 SCR 808 to contend that what is required in a consideration under Section 10 is an adjudication as to whether the modification suggested is fair and reasonable. *Union of India (UOI) Vs. Pushpa Rani and Others*, (2008) 8 JT 474 : (2008) 10 SCALE 567 : (2008) 9 SCC 243 : (2008) 2 SCC(L&S) 851 : (2009) 1 SLJ 1 is relied on to emphasize the prerogative of the Management to prescribe the conditions of service including the retirement age. The judgment in O.P. 13668 of 1994 dated 12.10.1994 is relied on to contend that the workmen who sought extension upto 60 years on the basis of the Standing Orders, was declined such prayer on the finding that there is no automatic right conferred on a workman to claim an extension.

13. The learned counsel Sri. Thampan Thomas appearing for the majority of the workers and one of the Unions in the writ petitions, filed by the Management would stress on the fact that the ministerial staff and workmen are not two categories of employees but belong to the category of "workmen" as defined under the Industrial Disputes Act, 1947. Sri. Thampan Thomas also relied on *State of Uttar Pradesh Vs. Dayanand Chakrawarty and Others*, (2013) 7 AD 469 :

AIR 2013 SC 3066 : (2013) 139 FLR 272 : (2013) 9 JT 494 : (2013) 8 SCALE 74 : (2013) 7 SCC 595 : (2013) 7 SCC(L&S) 791 : (2013) 4 SCT 145 : (2013) 3 SLJ 1 : (2013) AIRSCW 4374 : (2013) 5 Supreme 24 to contend that there cannot be any discrimination of employees in a Management establishment on the question of superannuation and if such a discrimination is made, and workers are superannuated on the basis of such discriminatory action, then, necessarily they would be entitled to claim the monetary benefits during the period they were illegally kept out of employment.

14. The background facts would establish that there is a precedent, custom and practice and the workmen were granted extension upto 60 merely on production of a medical certificate, is the plea. The discrimination is alleged specifically on the ground that, when such precedent, custom and practice was in existence; between 2007 to 2010, the workmen who attained 58 were retired without consideration of an extension. The 1990 Memorandum Of Understanding is relied on to contend that the agreed settlement, on conciliation, between the parties was that the retirement age of the workmen would also be enhanced to 60.

15. Sri. Rajendran the learned counsel appearing for six employees in W.P.(C).31629 of 2010 and Sri. Ajith Kumar appearing for one employee in W.P.(C).8740 of 2013 have identical contentions. It is argued that they were persons who had approached this Court when they were sought to be retired at the age of 58. A learned single Judge had permitted them to be continued at their risk and without any wages. The Management filed an appeal and on the basis of a stay, it is contended that they were "ousted" from service and not actually superannuated. Ext. R9(a) produced in W.P.(C).10779 of 2011, a communication received under the Right To Information Act, 2005, is projected to contend that in the year 2010, in fact, some of the workmen were continued and petitioners in the above writ petitions were ousted unceremoniously only on the ground that they had approached this Court.

16. The learned senior counsel for the Management would reply to the arguments of the counsel for workmen specifically pointing out that, in 2010 there was an agreement between the workmen where the extension of workmen beyond 58 years was permitted only on stringent conditions. The conditions were that there should be no disciplinary action in process, or any punishment in the preceding three years. Neither should the workmen have sought long leave for going abroad or outside the Company or have irregular attendance in the preceding three years. The performance rating and working hours was also a stipulation and as of now, there is no difficulty in continuing the extension since the said conditions, on which extension is granted, have been agreed to by the Unions also. On the aspect of discretion exercised and arbitrariness, it is contended that Ext. R3(a) pointed out by the petitioner in W.P.(C).8740 of 2013 only indicates the extension granted after 2010 on the conditions aforementioned. In 2007 itself, the Company had decided to retire the Officers and workmen at the age of 58 and it was to bring parity and uniformity to all

categories of employees.

17. Looking at the appellate orders challenged by the Management, in the writ petitions, this Court is of the opinion that, the Appellate Authority misdirected itself in both the instances. In W.P.(C).2923 of 2009, the Appellate Authority, but for listing out the various arguments, has not considered the issue at all, as would be required under the Standing Orders Act. On the ground that the policy decision of the Management to reduce the retirement age is not substantiated, and finding the same to be detrimental to the interest of the workmen, as also for reason of no convincing evidence; the Appellate Authority refused to interfere with the order of the Certifying Officer. It was also noticed by the Appellate Authority that, there is no agreement between the employer and the workmen to permit modification.

18. In Ext. P6 produced in W.P.(C).10779 of 2011, the Appellate Authority has completely gone overboard insofar as finding that there is no power conferred under the Act to set aside the duly certified standing orders, if the same has been certified by the Certifying Officer. The Appellate Authority should have introspected on why then, a remedy by way of an appeal was provided. Both the appellate orders having not considered the issue, this Court would have normally remanded the matter to the Appellate Authority for fresh consideration. However, the learned counsel on both sides contend that a remand, at this stage, would only further delay the resolution of the issue. All the aggrieved workmen are now retired. Their claim is only for the wages for the two year period when they were illegally kept out of employment. The varied conditions from 2010 would indicate that the decision herein would have no enduring effect on the existing employees. Those already retired at 58 between 2007-2010, would alone be affected. Hence, on consent of all parties, this Court proceeds to consider the issue.

19. The Standing Orders Act was introduced to bring in uniformity in the conditions of service of workmen in Industrial establishments as also to ensure fair terms and conditions of employment. It is the disadvantageous position in which the workmen are placed, despite the advent of trade unions and the lack of adequate bargaining strength, which resulted in the legislature bringing out the aforesaid Act.

20. The certification of the standing orders, is made under Section 5 of the Standing Orders Act. The draft of the standing orders has to be submitted to the Certifying Officer, by the employer, under Section 3. Under sub-section (1) of Section 5, the draft under Section 3 has to be forwarded to the Trade unions of workmen requiring objections to be submitted. The Certifying Officer, under sub-section (2) is conferred with the power to hear the employer and the workmen as also make any modification or additions to the draft submitted by the employer, as found necessary to certify the same under the Standing Orders Act.

21. Section 10 restricts any modification except on agreement between the

employer and the workmen till the expiry of six months from certification. After six months, under Sub-section (2) of Section 10, the employer or workmen have been enabled to submit an application to have the Standing orders modified; upon which, the Certifying Officer shall again follow the procedure with respect to the certification itself. The conditions of certification of standing orders, as laid down in Section 4 specifically confer power, on the Certifying Officer and the Appellate Authority, to adjudicate upon the "fairness or reasonableness" of the provisions of any standing orders. Hence, when certifying the standing orders under Section 5 or considering the appeal under Section 6 and when deciding upon an amendment as suggested by either the employer or the employee, the procedure for certification requires an adjudication upon the "fairness or reasonableness" of the provisions of any standing orders.

22. The power under the Standing Orders Act has been dilated upon by the Honourable Supreme Court in *Agra Electric Supply Co. Ltd.* (supra) in the following manner -

"To do away with such diversity and bargaining with each individual workman, the legislature provided by Section 3 of the Act that every employer of an industrial establishment must, within 6 months from the date of the Act becoming applicable to his industrial establishment, submit to the certifying authority under the Act draft standing orders preferred by him for adoption in his industrial establishment providing therein for all matters set out in the Schedule to the Act and where model standing orders are prescribed to have such draft standing orders in conformity with them. The draft standing orders are to be accompanied by particulars of workmen employed in the establishment as also the name of the union, if any, to which they belong. This requirement clearly means particulars of the workmen in employment at the date of the submission of the draft standing orders for certification and not those only who would be employed in future after certification. Under Section 4, such draft orders are certifiable if they provide for all matters set out in the Schedule, are otherwise in conformity with the Act and are adjudicated as fair and reasonable by the certifying Officer or the appellate authority. Section 5 requires the certifying officer to forward a copy of the draft standing orders to the union or in its absence to workmen in the prescribed manner with a notice requiring objections, if any from the workmen. After giving the employer and the union or the workmen's representatives an opportunity of being heard, the certifying officer has to decide whether or not any modification to the draft submitted by the employer is necessary and then certify the draft standing orders and send copies thereof and of his order in that behalf to the employer, the union or the representatives of the workmen. Section 6 confers the right of appeal to any person aggrieved by such order to the appellate authority, who by his order, can either confirm or amend the standing orders. Under Section 7 such standing orders are to come into operation on the expiry of 30 days from the date on which their authenticated copies are sent by the certifying officer to the parties where no appeal against these orders is filed or where such appeal is filed on

expiry of 7 days from the date on which copies of the appellate authority's orders are sent as required by Section 6(2). Section 9 requires the employer to post the standing orders as finally certified on boards maintained for that purpose at or near the entrance through which the majority of workmen enter the industrial establishment and in all departments thereof. Section 10 confers the right to an employer or any of the workmen to apply for modification after expiry of 6 months from the date on which they or the last modification thereof came into operation. The Schedule to the Act sets out matters which the standing orders must provide for. These matters are classification of workmen, shift working, periods and hours of work, holidays, pay days, wage rates, conditions and procedure for applying for grant of leaves, closing and reopening of sections of the industrial establishment, temporary stoppage of work, liabilities and rights of the employer and the workmen arising therefrom, termination of employment disciplinary action, penalties etc.

The obligation imposed on the employer to have standing order certified, the duty of the certifying authority to adjudicate upon their fairness and reasonableness, the notice to be given to the union and in its absence to the representatives of the workmen, the right conferred on them to raise objections, the opportunity given to them of being heard before they are certified, the right of appeal and the right to apply for modifications given to workmen individually, the obligation on the employer to have them published in such a manner that they become easily known to the workmen, all these provisions abundantly show that once the standing orders are certified and come into operation, they become binding on the employer and all the workmen presently employed as also those employed thereafter in the establishment conducted by that employer. It cannot possibly be that such standing orders would bind only those who are employed after they come into force and not those who were employed previously but are still in employment when they come into force."

The orders of the Certifying Officer herein, has to be looked at in the said perspective of a quasi-judicial exercise.

23. W.P.(C).2923 of 2009 is on an application made by the Management to remove the discretion conferred to extend the age of retirement of workmen and reduce that of the ministerial staff to 58. The application is produced at Ext. P2. The impugned order at Ext. P5 merely found that, when the Government directed that the retirement age would be continued as it existed and settlement between the Management and the workmen stipulated that there would be uniform retirement age for Ministerial staff and the workmen to be fixed at 60, then the Certifying Officer does not have any power to make a modification overriding the terms of settlement as stipulated. This finding is incongruous since obviously the MOU, at least the clause of uniform retirement age, did not crystallize into a right for reason of the Government having not sanctioned it. None sought implementation of the terms of the MOU.

24. It was also found that, since there was no agreement there could be no

modification made. It has to be noticed that sub-section (1) of Section 10 of the Standing Orders Act prohibits any modification within six months of a certification unless otherwise by agreement and Sub-section (2) provides that an application by either the employer or the Trade unions or the workmen could be made for modification of the certifying standing orders. Hence it cannot at all, be said that in the absence of an agreement between the Management and the Unions, there could be no modification made to the standing orders. The said proposition would be applicable only till the expiry of six months from the certification of the standing orders. Further, even if an agreement is arrived at between the Union and the workmen, the Certifying Officer under Section 4, and the Appellate Authority, has the power coupled with a duty to adjudicate upon the "fairness or reasonableness" of the provisions of the standing orders. The existence of an agreement or the absence of one, thus does not fetter the power of the Certifying Officer or the Appellate Authority.

25. As to the settlement made between the Union and the Management, reliance is placed on the Memorandum of Understanding entered into in 1990, produced as Ext. P7 in W.P.(C).10779 of 2011. It is the admitted position that at that point of time, the Management after assessing the then financial condition of the establishment, conceded to the demand of the workmen that their retirement age would also be fixed at 60, at par with those of the ministerial staff. It is also the admitted position that the Government of Kerala, who fully owns the Company has not sanctioned such enhancement of retirement age. None have taken up the matter before any authorities under the Industrial Disputes Act or otherwise.

26. The settlement of the year 1990, at least with respect to the enhancement of retirement age of workmen to 60, never crystallized into a right. Despite the stipulation in the MOU, the retirement age of workmen continued to be 58, with possible extension to 60 on the terms indicated in the Standing Orders. Then, seventeen years after the MOU, when an application was made to fix the retirement age of workmen to 58, with an extension, the Government had sanctioned the same. The Certifying Officer either way, even without the Government sanction, would be entitled to look into the "fairness and reasonableness" of the provisions of the standing orders. Government too stands only in the position of the Management establishment. The Certifying Officer, is not bound by the decisions of the Government, which acts in the capacity of an entity having full and complete ownership of the Company, entitled to take policy decisions, ie : the Management.

27. In such circumstances, what is to be looked into, is the reasons stated for such modification as is disclosed from Ext. P1 (W.P. (C).2923/2009). The establishment was said to be facing acute marketing problems in the post globalization and liberalization context, especially due to cheap import of Titanium Dioxide from countries like China; the product manufactured in the Management Company, The Company was also obliged to incur huge financial

expenses on account of setting up of pollution control projects as directed by the Supreme Court Monitoring Committee and this Court. It was in such circumstances that a Consultant was appointed to study the re-engineering aspect which inter alia recommended reduction of manpower. The tentative loss of Rs. 1.5 Crores in the year 2007-08 and previous year's loss at Rs. 15.5 Crores also weighed with the Management in seeking reduction of the man-power strength. It is an admitted fact that the intention was to bring in uniform retirement age. Even the Officers were sought to be retired at the age of 58. The reduction in the case of the Officers, was upheld by this Court in W.P.(C).12120 of 2011.

28. The objections of the workmen, as seen from Ext. P2 in W.P.(C).2923 of 2009 as also the application made for enhancement of retirement age as indicated in Ext. P2 in W.P.(C).10779 of 2011 are identical and refers to uniformity in the age of superannuation. It is to be noticed that, this is what the Management also intended. However, while bringing in uniformity, workmen wanted enhancement of the retirement age to 60 and the Management wanted to remove the discretion conferred on the Management to permit a person to continue upto 60 and bring down the retirement age of ministerial staff also to 58. The workmen also contended that they were not responsible for the loss caused and it cannot, at all, be said that the extension of service of the workmen was the reason for the financial stringency.

29. It is not a question of any one person or an identifiable group being responsible for the financial situation in which the Management found itself. The fact that the Company was running at a loss, cannot be disputed. The study conducted inter alia required reduction of staff strength to around 757. The managerial staff were retired at the age of 58. Even then, the staff strength, as seen from Ext. P3, at the time the modification of the Standing Order was sought, is 260 ministerial staff, 620 workmen and 134 managerial staff; bringing it to a total of 1040. It was on an over all analysis, that the decision was taken to modify the Standing Orders bringing a uniform age of 58 for all workmen including ministerial staff and the managerial staff. The workmen's reliance on the MOU of 01.02.1990 to contend that, there should be parity in retirement age, and the age of superannuation being fixed at 60, is not significant due to sheer passage of time. That clause in the MOU never crystallized into a right. It could not have been enforced at a distant future time.

30. It is to be specifically noticed that the Standing Orders as it existed, provided the age of superannuation for workmen at 58. No workman could have claimed extension as a matter of right which was in the exclusive discretion of the Management. The contention of a consistent practice having been followed, is dispelled by a reading of the Award in I.D.23 of 2008 which is challenged in W.P.(C).27605 of 2009. Ext. M9 and Exts. M11 to M14 are the documents indicating superannuation of employees in 2004 and 2006 at the age of 58. At this point, it is apposite that a reference is made to the Award in the aforesaid I.D; which

could take in the challenge in the said writ petition.

31. The Labour Court specifically found the contention of the union, that the retirement age of the workmen was always 60, to be incorrect. This is in consonance with the findings of this Court that the Standing Orders fixed the age of superannuation at 58. The discretion conferred on the Management could never have been claimed as a right. The Labour Court rightly found that the retirement age of workmen as per the Standing Orders was 58 with only provision for extension of two years and initially such extension being granted for each year. The Labour Court has also considered the issue of whether the alleviation of the financial crisis of the Management could be best served by reducing the strength of workmen. The various modes of reducing the strength of employees, was noticed as : (i).stopping fresh recruitment, (ii).effecting retrenchment and (iii).refusing grant of extension of retirement age. As to curtailing recruitment, definitely in certain posts where skill is required, there can be no prohibition as such. Retrenchment on the other hand, adds to the financial burden of the Management, since it requires compensation to be paid over and above the eligible retirement benefits. Hence, refusal to extend the service beyond the retirement age, was found to be a valid exercise adopted by the Management to reduce the staff strength. This Court does not find any reason to interfere with such findings.

32. At the risk of repetition, it has to be noticed that the retirement age was always 58. There was only discretion conferred on the Management to grant extension upto two years. There is no specific instance of arbitrariness shown in the exercise of discretion. Even if such instance had been there, definitely individuals could have taken it up. Though specifically; precedent, custom and practice is pleaded, that was only at the will of the Management, which discretion the Management decided not to exercise in view of the financial constraints. This Court does not find any reason to find fault with the same.

33. As is the case with the Appellate Authority, the Certifying Officer, in both the instances, has mistook the issue which arose for adjudication. The reduction sought by the Management in the age of the superannuation was to be effective for both workmen and ministerial staff. As rightly pointed out by the learned counsel for the unions, both the workmen and the ministerial staff come within the definition of "workmen" under Section 2(s) of the I.D Act. There could be no discrimination between these two categories of employees. The Management has a case that the workmen in the factory are engaged in more strenuous and hazardous work than that engaged in, by the ministerial staff in the Office. However, this Court is not called upon to consider that issue now.

34. The Certifying Officer considering the application of the Management for fixation of uniform superannuation age, found the said application as one which is detrimental to the existing conditions of workmen. There is no warrant for such assumption, since the superannuation age for workmen was always 58. As far as the ministerial staff was concerned, the Management wanted it to be reduced

and fixed at 58. With respect to the workmen, what the Management intended was to take away the discretion vested in them. The Management could have decided to not exercise the discretion uniformly in all the cases of workmen, as a matter of financial discipline, which could not have been found fault with by the authorities under the Standing Orders Act or by this Court.

35. As far as the enhancement of age was concerned, the same again, is on the question of parity between the ministerial staff and workmen. Both cannot be considered independent of each other. At least, before this Court, since both the orders are under challenge, this Court has to consider it together and look upon the uniformity claimed by each party on different aspects and decide upon the "fairness and reasonableness" of the respective claims.

36. Uniformity hence, is the bulwark of the contentions of both the Management and the employees. It cannot at all be said that, any modification made to the service conditions which is detrimental to the workmen has to be struck down on that sole ground. Industrial adjudication as a different mode, definitely has been brought in, to mitigate hardship of workmen and to bring in certain amount of balancing amongst unequally placed groups, being the Management and the workmen. However, that cannot result in the interest of workmen being protected without an over view of the many factors which advances the cause of industries in particular and the public interest in general. Employment is generated only if the industry is in existence. No over protective measure benefiting the workmen, can be sought to be implemented; to the detriment of the existence of an industry itself. The present case is one in which such over all considerations have to be taken into account.

37. The facts leading to the decision of the Management to superannuate workmen at 58, without any exercise of discretion for extension, and the reasons for such a decision have been detailed earlier in this judgment. On an over all view of such considerations, this Court cannot at all, find any illegality in the decision arrived at by the Management. Useful reference can be made to Pushpa Rani and Others (supra), wherein the settled legal position regarding the incidence of service being in the exclusive domain of the employer, was reiterated. In the present case, there is no discrimination or arbitrariness in the decision of the Management. The Management, as an economic measure, intended reduction of staff strength and to that end, brought in uniform retirement age of the employees of the establishment including that in the Managerial cadre.

38. As was noticed above, the retirement age for workmen was always 58 and in the teeth of the financial crisis in which the Management found itself, there was no reason why the workmen should be granted a uniform extension to 60 for superannuation. The fact that an enhancement to 60 favours the workmen, cannot be disputed. However, as is noticed above, that is not the only consideration. What the Management intended by modification sought to the Standing Orders was a curb on their power to exercise discretion to grant

extension to such workmen; who are found fit, as permitted by the Standing Orders. On the facts which were detailed herein before, this Court does not find any unfairness or unreasonableness in such modification. The demand of the workmen to seek enhancement in that context, as a necessary corollary, would have to be found to be not fair and reasonable.

39. Dayanand Chakrawarty & Ors. (supra) was a case in which a Local Self Government Engineering Department was formed from the earlier existing Public Health Engineering Department created during the British period. Subsequently, a Jal Nigam was constituted. Regulations were framed as to the conditions of service of persons appointed to the said Department. Regulation 31 specifically provided that inter alia the rules of retirement shall be regulated by the orders applicable generally to the Government servants. Therein also, the retirement age provided specifically by Rule 56 (a) was 58 with a provision of retention in service, on public grounds, with the sanction of the Government upto 60 years. The Rule so applicable to the Government servants were amended and the retirement age was enhanced from 58 to 60.

40. A query was made by the Nigam to the Government as to the retirement age of employees of the Nigam. The Government replied that it shall be as before, ie, 58 with a provision of extension upto 60. The same was assailed before Court and eventually the Honourable Supreme court in Harwindra Kumar Vs. Chief Engineer, Karmik and Others, AIR 2006 SC 365 : (2005) 107 FLR 1194 : (2005) 10 JT 32 : (2006) 1 LLJ 452 : (2005) 9 SCALE 452 : (2005) 13 SCC 300 : (2006) SCC(L&S) 1063 : (2006) 2 SLJ 19 : (2005) AIRSCW 5995 : (2005) 8 Supreme 140 held that, since the Regulations of the Nigam adopted, the orders applicable generally to the Government servants, the retirement age of employees of the Nigam also has to be enhanced to 60. However, it was also found that the Nigam would have liberty, with the previous approval of the Government to make suitable amendment to the Regulations.

41. The Nigam in exercise of its powers brought in a Regulation by which the employees of the Nigam, who were in erstwhile employment of LSGD, were granted a superannuation age of 60 while the employees, directly appointed to the Nigam, were to be superannuated at the age of 58. Dayanand Chakrawarty & Ors. (supra) was a decision on the challenge to such allegedly discriminatory treatment of employees. It was specifically noticed that in Harwindra Kumar (supra), liberty was reserved to amend Regulation 31 of the Nigam Regulations. That having not been amended, there could be no discrimination amongst employees, with respect to the age of superannuation, was the finding. It was on the above facts that the Honourable Supreme Court found that there could not be a separate treatment of the employees on the basis of the source from which recruitment is made.

42. This Court is at a loss to understand as to how that decision would be applicable herein. True, there was a discrimination insofar as the retirement age of workmen was fixed at 58 and those of the ministerial staff at 60. In all

probability, that could have been for the reason of the workmen engaged in a hazardous process, being retired at an earlier age with a provision only for continuation on medical fitness being ensured; that too at the discretion of the Management. The ministerial staff engaged in the Office was allowed to continue for a further period of two years. The Standing Orders specifically contains such provision and there was no challenge to the same by the workmen.

43. As was specifically contended by the Union, precedent, custom and practice indicated that retirement age of the workmen is 58 with only provision of extension on the discretion of the Management. What was attempted to be brought in was, uniformity in the age of retirement bringing down the age of retirement of ministerial staff also to 58 years and remove the discretion conferred on the Management to continue workmen beyond the age of 58. On an over all view of the considerations, this Court is unable to find that the same is vitiated either by discrimination or by arbitrariness. The amendment sought by the Management is found to be fair and reasonable and this Court is of the opinion that, the order of the Certifying Officer rejecting the application of the Management to remove the discretion conferred on the Management to extend the retirement age of workmen beyond 58 years and to bring down the retirement age of ministerial staff to 58, is bad and hence, is set aside. As a necessary corollary, the order of the Certifying Officer enhancing the retirement age of workmen also would stand set aside.

44. W.P.(C).2923 of 2009 would stand allowed setting aside Exts. P5 and P6 produced therein. W.P.(C).10779 of 2011 would stand allowed setting aside Exts. P4 and P6. On the aforesaid findings, W.P.(C).27605 of 2009, challenging the Award of the Central Government Industrial Tribunal-cum-Labour Court in I.D. 23 of 2008, would also stand dismissed upholding the impugned Award. The retirement of the workmen at the age of 58 on the basis of the decision of the Management, not to exercise discretion is found to be correct. Discrimination alleged by the workmen stands unsubstantiated. All the other writ petitions would hence, stand dismissed.

45. Considering the fact that the workmen were relentlessly before this Court and then the Labour Court, it is only appropriate that, those who were permitted to work after the age of retirement, on the basis of the interim orders issued by this Court, be granted the wages for such work. The Management shall disburse such amounts within three months from today. This direction is only on equitable considerations and does not at all impale the findings of the Labour Court or this Court as to the decision of the Management to retire them at 58.

46. Necessary consequence of setting aside of the orders of the Certifying Officer would be the modification sought by the Management to be allowed and the modification sought by the workmen annulled. The modification sought by the workmen for enhancement of retirement age would definitely stand annulled. However, considering the fact that there has been a subsequent agreement by the Management and the Unions in 2010, fairness and reasonableness of which

has not been gone into by this Court, the Management or the workmen shall be entitled to approach the Certifying Officer on the basis of the subsequent agreement, if not already approached. Parties are left to suffer their respective costs.