
(2008) 01 GAU CK 0062
In the Gauhati High Court

Workmen of Sookerating Tea Estate	APPELLANT
Vs	
Management of Sookerating and Another	RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 2, 25
Industrial Employment (Standing Orders) Act, 1946 — Section 2, 3

Citation : (2008) 117 FLR 244 : (2008) 1 GLT 881 : (2008) 2 LLJ 144

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—This writ petition is directed against the award passed by the Labour Court answering the issues referred to it in favour of the management and against the workman.

2. The petitioner is a Trade Union registered under the Trade Union Act, 1926. A dispute relating to service conditions of workmen had arisen by and between the parties hereto and the same was referred to the Labour Court, Dibrugarh in the form of the following reference.

SCHEDULE

1. (a) Whether the Management of Sookerating Tea Estate are justified in refusing to follow the Wage Board recommendations of 1966 and other subsequent bilateral industry wise agreements for filling up of vacancies? (b) If not, in addition to their present strength of staff whether the management should fill up the vacancies as demanded by the Union?

2. (c) Whether the Management of Sookerating Tea Estate are justified in serving the notice of superannuation to Mr. K. C. Changkakati, Head Clerk at the age of 58 years w.e.f. 01.03.98.

(d) If not, as a member of Bharatiya Chah Parishad whether they should follow

their Standing Orders in retiring Mr. K. C. Changkakati at the age of 60 years?

3. During the course of hearing of the instant writ petition, learned Counsel for the parties submitted that by efflux of time the reference under No. 1 (a)(b) has become redundant and accordingly they confined their arguments in respect of reference No. 2 only.

4. According to the petitioner, the respondent No. 1, the Tea Estate is a member of Bharatiya Chah Parishad which is an Employees' Association in the Tea Industry. Being the member of the said Parishad, the respondent No. 1 has to follow the standing orders applicable to the gardens of the said Parishad. It is the case of the petitioner that as per the said standing orders (Clause 15), the retirement age of the employees is 60 years and they are entitled to continue in service till attaining the age of 60 years unless further extended on individual basis.

5. The petitioner has espoused the case of one Shri K.C. Changkakati, Head Clerk of the Tea Estate who has been made to retire before attaining the age of 60 years which he would have attained in March, 2000. However, he has been made to retire w.e.f. 01.03.98 about which due endorsement cast given by letter dated 27.08.97. According to the petitioner said Shri Changkakoti 's name was struck off from the roll w.e.f. 02.02.98 in violation of Section 25(f) of the Industrial Dispute Act, 1947.

6. It is the case of the petitioner that since the workman was elected as the Secretary of the petitioner's Sangha, he had attracted the wrath and displeasure of the management and became a victim of the same.

7. After the dispute relating to age of retirement was raised by the petitioner and the conciliation resulted in failure, the Govt. of Assam by its notification dated 06.03.98 made the aforesaid reference to the Labour Court, Dibrugarh and the same was registered and numbered as Reference Case No. 6/98. The parties to the said reference dully appeared before the Court and submitted their written statements. While it was the case of the petitioner that the management of the Tea Estate failed to follow the certified Standing Orders, it was the stand of the management that there no was violation of any of the provisions of law.

8. Both the parties to the aforesaid reference examined their respective witnesses and also exhibited certain documents. Learned Presiding Officer, Labour Court, Dibrugarh by his award dated 31.07.01 having upheld the contention of the management regarding the age of retirement which according to the management is 58 years, but according to the petitioner it is 60 years, the petitioner has assailed the legality and validity of the same by invoking the writ jurisdiction of this Court.

9. I have heard Ms. A. Bhattacharyya, learned Counsel for the petitioner as well as Mr. S.K. Kejriwal, learned Counsel representing the management. As regards the purported agreement by and between the parties agreeing for retirement age

of the employees as 60 years about which there is reference in the impugned award, it has been argued by Ms. Bhattacharyya, learned Counsel for the petitioner that such agreement cannot override the standing orders which has statutory force. In this connection, she has referred to the decision of the Apex Court reported in (1984) 3 SCC 469 (Sudhir Ch. Sarkar v. Tata Iron and Steel Co. Ltd.)

10. Mr. S.K. Kejriwal, learned Counsel for the management upon a reference to Section 2(p) and Section 18 of the Industrial Disputes Act, 1947, has submitted that the agreement in question is binding on the parties. Referring to the decision in W.P. (C) No. 566/02 involving the same parties, he has submitted that the same very petitioner having claimed the retirement benefits under similar agreement and having agitated the same before this Court, the petitioner is now precluded from taking the stand contrary to what they claimed in the said proceeding. He emphasized that the petitioner cannot approbate and reprobate. He has also referred to the documents on record relating to membership of the Tea Estate and the instances of the retirement of the members of the petitioner at the age of 58 years. Upon a reference to the Industrial Employment (Standing Orders) Act, 1946, he also submitted that the same having not contained any provision relating to age of retirement, there was nothing wrong in arriving at a consensus relating to age of retirement. He has also placed reliance on the decision of this Court reported in (1997) 1 GLR 351 (Bansidhar Sarma v. State of Assam).

11. I have given my anxious consideration to the submissions made by the learned Counsel for the parties. I have also gone through the entire records and considered the same.

12. In the proceeding in W.P. (C) No. 566/02 about which the learned Counsel for the Tea Estate has made a reference, the questions referred for adjudication to the Labour Court were as follows:

1. Whether the Managements of the Mankhowa Tea Estate and Sookerating Tea Estate were justified in refusing to arrive at a fresh settlement over staff member's retirement scheme to replace the terms of conciliation settlement dated 06.10.70 in the matter after termination of the aforesaid settlement dated 06.10.70 by the Management or not?

3. (a) If not, to what relief, in the form of retirement benefits, the workmen are entitled to?

(b) What should be provisions of retirement scheme for the staff members employed in these two Tea Estates, which will replace the settlement dated 06.10.70 in the matter?

13. As stated above, the aforesaid proceeding was by and between the same parties and the grievance made by the petitioner was the refusal on the part of the Tea Estate to arrive at a fresh settlement over the staff members retirement

scheme to replace the terms of conciliation settlement arrived at on 06.10.70. As per the said settlement dated 06.10.70, the age of superannuation is 58 years and the same was accepted by the petitioner. However, they made a demand for replacement of the same. The plea of the management was that the conciliation settlement dated 06.10.70 was drawn up and executed by the parties concerned and after that industrywise settlement was arrived at by and between the Assam Tea Planters' Association, Bharatya Chah Parishad and Assam Chah Karmachari Sangha on 18.11.70 which was to be effective from 01.11.70. Although the management had given notice of its intention to cancel the conciliation settlement dated 06.10.70, the matter did not proceed and there was no demand on the part of the workmen for a fresh settlement. It was only in the year 1989, i.e. after a lapse of 25 years when the demand for benefits under the conciliation settlement dated 06.10.70 was once again raised resulting in another consequential conciliation proceeding which also failed.

14. It was contended by the management that gratuity to the retiring workmen was payable in accordance with the provisions of the Payment of Gratuity Act, 1972 which had come into force in the meantime and pension was also paid to the retiring persons as per their entitlement. It was pointed out that insistence of workmen all along had been for implementation of the settlement dated 06.10.70.

15. The reference Court found from the evidence and the materials on record that there was no demand on the part of the workmen for substitution of 1970 settlement by a fresh settlement. Rather, the demand raised was for implementation of the settlement. Such finding of the reference Court based on records was not interfered with by this Court holding that the Labour Court was justified in arriving at a conclusion in Question No. 1. The second question referred to being only consequential to the first question, this Court found nothing wrong in the finding recorded by the Labour Court.

16. From the above materials it will be seen that while in one hand, for the purpose of present proceeding, the petitioner has taken the plea of having overriding effect of the certified standing orders over any agreement, but the same very petitioner had agitated for implementation of the conciliation settlement dated 06.10.70 which provided for retirement age of the workmen as 58 years. It is in this context, learned Counsel for the management argued that the petitioner cannot approbate and reprobate and advance different pleas under similar situation.

17. From the above, it will be seen that the same very petitioner agreed for implementation of the agreement providing retirement age as 58 years and the retirement benefits on that basis. However, for the purpose of the present proceeding the argument advanced is that such agreement cannot override the standing orders.

18. The decision in Sudhir Ch. Sarma (supra) is to bring home the point of

argument that the certified Standing Orders have got statutory force and no other provision can override the same. There cannot be any quarrel with the said law.

19. Section 2(p) of the Industrial Dispute Act, 1947 defines "settlement" as the settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employers and the workmen arrived at otherwise than in the course of conciliation proceeding. Section 18 of the Act indicates as to the person whom settlement and awards are binding. Having regard to such provisions in the Act and also the aforesaid fact relating to conciliation settlement by and between the same parties, I am of the considered opinion that the petitioner cannot resile back from their own stand. The petitioner having entered into an agreement with the management agreeing for retirement age as 58 years cannot fall back on the certified standing orders so as to claim retirement age as 60 years.

20. It has also to be seen as to whether the Industrial Employment (Standing Orders) Act, 1946, does provide for making any provisions for retirement age. Section 2(g) of the Act of 1946 defines "standing orders" as the Rules relating to matters set out in the Schedule. Section 3(2) of the said Act provides for making provision in the draft standing orders for every matter set out in the Schedule which may be applicable to the industrial establishment. The schedule to the Act under the head "matters to be provided in standing order under this Act" while dealing with 11 items relating to service and other conditions of workmen, does not provide for incorporation of any retirement age. Such retirement age has been prescribed in the agreement arrived at by and between the parties providing the same to be 58 years. This Court in the case of Bansidhar Sarma (supra), observed that the standing orders certified by the certifying officer containing a clause relating to superannuation not provided by the schedule of the Act, can be a valid certification.

21. Ext. F is the standing orders of Bharatiya Chah Parishad certified on 07.02.68, Ext. 2 is the letter from the Assam Tea Planters' Association certifying that the respondent Tea Estate was the member of the said Association during the period from 1952-81 and resigned from the membership in 1982. It is in this context, Mr. Kejriwal, learned Counsel for the Tea Estate has argued that the standing orders on which the petitioner has placed reliance, cannot be pressed into services at the time of coming into force of the said standing orders, the respondent Tea Estate was not a member of the Assam Chah Parishad and the respondent Tea Estate had no occasion to pray for modification of the standing orders.

22. Ext. 5 to Ext. 9 are the documents to show that some other workmen retired from their services at the age of 58 years. Thus, the workman in question in the present proceeding is not an exception.

23. Ext. 3 is the agreement dated 26.11.70 reached between the Assam Tea

Planters" Association, Bharatiya Chah Parishad and Assam Chah Karmachari Sangha on the subject of retirement scheme for the staff of Tea gardens under ATPA & BCP. The said agreement came into force from 01.11.70. As per the scheme of the agreement, every employee belonging to clerical and medical category and artisan having minimum period of 5 years of continuous service, shall retire on attaining the age of 58 years.

24. Learned Presiding Officer, Labour Court, Dibrugarh having regard to the above aspects of the matter has passed the impugned award dated 31.07.01. I am of the considered opinion that the Labour Court was justified in arriving at the conclusion and passing the impugned award: For the forgoing reasons, I do not find any merit to interfere with the findings arrived at by the Labour Court, Dibrugarh. Consequently, the challenge to the impugned award dated 31.07.01 passed by the learned Presiding Officer, Labour Court in reference case No. 6/98 fails.

25. Writ petition is dismissed leaving the parties to bear their own costs. Registry shall transmit the case records to the Court below with a copy of this judgment and order.