The Atlas Cycle Industries, Ltd., Sonepat

Vs

Their Workmen

Civil Appeal No. 188 of 1961

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, K. Subha Rao, N. Rajgopala Ayyangar, J. R. Mudholkar JJ)

08.02. 1962

JUDGMENT

VENKATARAMA AIYAR, J. -

This is an appeal by special leave against the Order of the Industrial Tribunal, Punjab, dated September 11, 1959, in Reference No. 30 of 1957, overruling certain preliminary objections raised by the appellant to the jurisdiction of the Tribunal to hear the reference. The facts are that on February 14, 1955, the Government of Punjab referred under s. 10(1)(c) of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act", certain disputes between the appellant and the respondents to the Industrial Tribunal Punjab, Jallundur, for adjudication. That was numbered as Reference No. 3 of 1955. This Tribunal had been constituted on August 29, 1953, by a Notification issued by the Government of Punjab, which is as follows :-

> "In exercise of the powers conferred under section 7 of the Industrial Disputes Act, 1947 (Act XIV of 1947), the Governor of Punjab, in consultation with the Punjab High Court, is pleased to appoint Shri Avtar Narain Gujral Advocate, as Industrial Tribunal for Punjab."

The main contention pressed before us on behalf of the appellant is that Shri A. N. Gujral was not qualified under s. 7(3)(c) of the Act under which the Notification was issued to be appointed as Tribunal on August 29, 1953, as he was over sixty years of age on that date, having been born on June 4, 1892, and that there was therefore no Tribunal validly constituted in existence, and that in consequence the reference to that so-called Tribunal on February 14, 1955, was wholly inoperative.

While Reference No. 3 of 1955 was pending before the Tribunal, the provisions of the Industrial Disputes Act, 1947, were amended by the Industrial Dispute (Amendment and Miscellaneous Provisions) Act, 1956 (Act No. 36 of 1956), which came into force on March 10, 1957. This Amendment Act repealed s. 7 of the principal Act, and replaced it by ss. 7A, 7B and 7C. Section 30 of the Amendment Act contains a saving as regards proceedings in relation to any industrial dispute which had been pending before a Tribunal constituted under the principal Act. Acting under this section, the Punjab Government issued on April 19, 1957, the following Notification :-

> "No. 4194-C. Lab-57/652-RA - In continuation of Punjab Government Memorandum No. 3078-C-Lab-57/4224, dated the 1st/11th March, 1957, and in exercise of the powers conferred by section 7 of the Industrial Disputes Act, 1947, as in force before the commencement of the Industrial Disputes (Amendment and Miscellaneous

> Provisions) Act, 1956, read with Section 30 of the latter Act and all other powers enabling him in this behalf the Governor of Punjab is pleased to extend -
>
> (a) the period for which the Industrial Tribunal, Punjab, Jallundur, is constituted, and
>
> (b) the term of appointment of the Sole Member thereof.

up to the last day of October, 1957, or such date as the proceedings in relation to industrial disputes pending in the said Tribunal immediately before the 10th March, 1957, are disposed of, whichever is earlier."

To put it briefly, this Notification extended the life of the Tribunal constituted under the repealed s. 7, for the period specified therein, and it also continued the term of Shri A. N. Gujral, as a Member thereof, for the said period.

The contention of the appellant with reference to this Notification is that s. 30 of Act 36 of 1956 does not authorise the appointment of a Member to the Tribunal constituted under s. 7, and that the Notification in so far as it continued Shri A. N. Gujral as a Member of the Tribunal after his term of office had expired on March 10, 1957, was unauthorised and void.

On the same date on which the above Notification was issued, that is on April 19, 1957, the Government of Punjab issued a Notification under s. 7A of the Act of which the relevant portion is as follows :-

> "No. 4194-C-Lab-57/661-RA - In exercise of the powers conferred by Section 7A of the Industrial Disputes Act, 1947, as inserted by section 4 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (No. 36 of 1956), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to constitute an Industrial Tribunal with Headquarters at Jullundur and to appoint Shri Avtar Narain Gujral, B.A., L.L.B., as its Presiding Officer with effect from the date of the publication of this notification in the Official Gazette up to 3rd June, 1957."

It will be noticed that this Notification firstly constituted a new Tribunal being the Industrial Tribunal, Jullundur, and secondly it appointed Shri A. N. Gujral as its Presiding Officer up to June 3, 1957. The significance of that date is that, under s. 7C(b) enacted by the Amendment Act, 1956, the age of retirement for members was fixed at sixty-five, and under that provision, Shri A. N. Gujral would have to retire on June 3, 1957. The Punjab Legislature intervened at this stage and enacted two statutes which are material for the present dispute. One of them was the Industrial Disputes (Punjab Amendment) Act 8 of 1957. Section 3 of this Act amended s. 7C(b) of the principal Act by substituting for the words "he has attained the age of sixty-five years", the word "he has attained the age of sixty-seven years". Thus the age of retirement was raised to sixty seven years. By the operation of this Act, the tenure of Shri A. N. Gujral could be extended from June 3, 1957 to June 3, 1959, and that in fact was done by a number of Notifications issued from time to time. The appellant contends that this legislation was intended to benefit a single individual Shri A. N. Gujral, and is therefore void as offending Art. 14 of the Constitution. The result, according to the appellant, is that after June 3, 1957, there was no one validly holding the office of Member of the Industrial Tribunal.

The second statute enacted by the Punjab Government is the Industrial Disputes (Amendment and Miscellaneous Provisions) (Punjab Amendment) Act 9 of 1957. It introduced in s. 30 of the

Amendment Act, 1956, a new sub-s. (2) conferring on the State Government authority to re-constitute Tribunal established under the Industrial Disputes Act, 1947, where those Tribunals had come to an end and there were matters pending before them for adjudication. Going back to the Tribunal which was constituted under the repealed s. 7 of the Act it will be remembered that a Notification had been issued on April 19, 1957, under s. 30 of the Amendment Act, 1956, keeping it alive until the pending matters were disposed of or until October 31, 1957, whichever was earlier. The expectation that the proceedings before that Tribunal would be completed by that date was however, not realised and therefore acting under s. 33B(1) of the Act, and s. 30 of the Amendment Act 1956, as further amended by Punjab Act, 9 of 1957, the Government of Punjab issued on October 31, 1957 a Notification transferring the matters pending before the old Tribunal constituted under s. 7 to the new Tribunal constituted on April 19, 1917, under s. 7A. In accordance with this Notification, Reference No. 3 of 1955 was transferred to the new Tribunal and was renumbered as 30 of 1957. The contentions urged by the appellant against this order of transfer are, firstly, that the Tribunal to which the transfer had been made was not, for the reasons already given, validly constituted and had no legal existence, and, secondly, that the new provision introduced by the Punjab Act 9 of 1957 has no retrospective operation and that, in consequence, the proceedings which had been pending before the old Tribunal on March 10, 1957, could not be transferred to the new Tribunal under this section.

The present reference 30 of 1957 was pending till June 3, 1959, when Shri A. N. Gujral retired. The Punjab Government then issued a Notification appointing Sri Kesho Ram Passey, retired Judge of the Punjab High Court as the Presiding Officer of the Industrial Tribunal, Jullundur. Before him, the present appellant filed an application on September 4, 1959, raising a number of preliminary objections to the hearing of the reference. By its Order dated September 11, 1959, the Tribunal overruled these objections and posted the matter for hearing on the merits. It is the correctness of this Order that is now challenged before us in this Appeal.

Though a number of objections were raised to the hearing of the reference before the Tribunal, the contentions advanced before us for the appellant are the following :-

> (1) Shri A. N. Gujral was not qualified to be appointed to the Tribunal under s. 7(3)(c) of the Act that, in consequence, the reference to him dated February 14, 1955, was incompetent;
>
> (2) that the Notification of the Punjab Government dated April 19, 1957, appointing Shri A. N. Gujral as a Member of the Industrial Tribunal, Jullundur, and the subsequent Notifications extending his tenure of office are unauthorised and inoperative;
>
> (3) that the Notification of the Punjab Government dated October 31, 1957, transferring the proceedings pending before the old Tribunal to the new Tribunal was inoperative, because (i) the Punjab Act 8 of 1957 is void being repugnant to Art. 14 of the Constitution and the appointment of Shri A. N. Gujral as Member under that Act is also void; and (ii) s. 30(2) enacted by Punjab Act 9 of 1957 under which the transfer was made, did not authorise transfer of proceedings, which had been pending on or before March 10, 1957.
>
> (1) Taking up first the contention that Shri A. N. Gujral was not qualified to be appointed to the Tribunal on August 29, 1953, by reason of the fact that he was over

sixty years of age, the question is one of interpretation of the language of s. 7(3)(c) of the Act. Section 7, in so far as it is material for the present purpose, is as follows :-

"7. Industrial Tribunals. - (1) The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act.

(2) A Tribunal shall consist of such number of independent members as the appropriate Government may think fit to appoint, and where the Tribunal consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) Where a Tribunal consists of one member only, that member, and where it consists of two or more members, the Chairman of the Tribunal, shall be a person who -

(a) is or has been a Judge of a High Court; or

(b) is or has been a District Judge; or

(c) is qualified for appointment as a Judge of a High Court;

Provided that no appointment under this sub-section to a Tribunal shall be made of any person not qualified under clause (a) or (b) except with the approval of the High Court of the State in which the Tribunal has, or is intended to have its usual seat."

Shri A. N. Gujral was appointed under s. 7(3)(c) being an Advocate. The question is, whether he was then qualified for appointment as a Judge of a High Court under that clause. The Constitutional provision hearing on this point is Art. 217, which in so far as it material is as follows :-

"217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office in the case of an additional or acting Judge, as provided in article 224, and in any other case until he attains the age of sixty years;

Provided that.....

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is citizen of India and -

(a) has for at least ten years held an Judicial office in the territory of India, or

(b) has for at least ten years been a advocate of a High Court or of two or more such Courts in succession.

Explanation....."

While Art. 217(2) prescribes the qualifications for appointment as a Judge, Art. 217(1) lays down that the Judge shall hold office until he attains the age of sixty years. The whole of the controversy

before us is as to the inter-relation between these two clauses. The contention of Mr. Pathak, learned counsel for the appellant, is that though Art. 217(1) refers, in terms, to the termination of the office of Judge, in substance, it lays down a qualification for appointment, because the appointment of a person over sixty as a Judge would clearly be repugnant to Art. 217(1) even though he might satisfy all the requirements of Art. 217(2). It is accordingly argued that it is an implied qualification for appointment as a Judge under Art. 217 that the person should not have attained the age of sixty at the time of the appointment.

We agree that there is implicit in Art. 217(1) a prohibition against appointment as a Judge of a person who has attained the age of sixty years. But in our view, that is in the nature of a condition governing the appointment to the office - not a qualification with reference to a person who is to be appointed thereto. There is manifest on the terms and on the scheme of the article a clear distinction between requirements as to the age of a person who could be appointed as a Judge and his fitness based on experience and ability to fill the office. Art. 217(1) deals with the former, and, in form, it has reference to the termination of the office and can therefore be properly read only as imposing, by implication a restriction on making the appointment. In strong contrast to this is art. 217(2) which expressly refers to the qualifications of the person to be appointed such a his having held a judicial post or having been an Advocate for a period of not less than ten years. We think that on a true construction of the article the prescription as to age is a condition attached to the duration of the office and not a qualification for appointment to it.

Mr. Pathak also relied on Arts. 224 and 376 as lending support to his contention that age is to be regarded as an implied qualification under Art. 217. Art. 224 relates to the appointment of additional and acting Judges and it is provided in cls. (1) and (2) that the person to be appointed as additional or acting Judge by the President should be a duly qualified person. There is nothing about the age of the person to be appointed in these clauses. That is provided in Art. 224(3) when enacts that "no person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty years". This article is also framed on the same lines as Art. 217 and does not carry the matter further. Nor is there anything in Art. 376 which throws any further light on this point. It has reference to persons who were Judges in the High Courts of the States specified in part B of the First Schedule at the time when the Constitution came into force, and provides that they shall become Judges of the High Courts in those States under the Constitution, and then enacts a special provision that they "shall notwithstanding anything in clauses (1) and (2) of article 217 but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine." We see nothing in the terms of this article which lends any support to the contention that age is to be regarded as a qualification.

More to the point under consideration is Art. 165(1) that the "Governor of each State shall appoint a person who is qualified to be appointed as a Judge of a High Court to be Advocate-General for the State." The question has been discussed whether on the terms of this article, a person who has attained the age of sixty could be appointed as an Advocate-General. If the age of a person is to be regarded as one of his qualifications, then he could not be. The point arose for decision in G. D. Karkare v. T. L. Shevde (I.L.R. (1952) Nag. 409.), where a Judge who had retired at the age of sixty had been appointed as Advocate-General. The validity of the appointment was challenged on the ground that he was disqualified by reason of his age. The learned Judges of the Nagpur High Court held that cl. (1) of Art. 217 of the Constitution prescribed only the duration of the appointment of a Judge of the High Court and could not be construed as prescribing a qualification for his appointment. It is argued for the appellant that the appointment of an Advocate-General under Art. 165 might stand on a different footing from that of a Judge under Art. 217. because of the special

provision in Art. 165(3) that the Advocate-General is to hold office at pleasure, whereas a Judge holds office during good behaviour. But this difference bears only on the power of the appropriate authority to terminate the appointment and not on the qualification of the person to be appointed to the office. In our view, the interpretation put upon Art. 217 in G. D. Karkare's case (I.L.R. (1952) Nag. 409.) is correct.

Though the true meaning of Art. 217 has figured largely in the argument before us, if is to be noted that we are primarily concerned in this appeal with the interpretation of s. 7(3)(c) of the Act, and that must ultimately turn on its own context. Section 7(3)(a) provides for the appointment of a High Court Judge, sitting or retired, as a Member of the Tribunal. Age is clearly not a qualification under this sub-clause, as the age for retirement for a Judge of the High Court is sixty. Likewise, cl. (b) provides for the appointment of a District Judge, setting or retired, as a Member. A retired District Judge who is aged over sixty will be eligible for appointment under this sub-clause. Thus the age of a person does not enter into his qualifications under sub-cls. (a) and (b). It would therefore be legitimate to construe sub-cl. (c) as not importing any qualification on the ground of age. But it is said that sub-cls. (a) and (b) form a distinct group having reference to judicial officers, whereas, cl. (c) is confided to Advocates, who form a distinct category by themselves, and that in view of this difference, considerations as to age applicable to cl. (a) and (b) need not be applicable to cl. (c). There is undoubtedly a distinction between cls. (a) and (b) on the one hand and cl. (c) on the other. But the question is whether this has any reasonable relation to the difference which is sought to be made between the two classes with reference to the age of appointment. If a retired Judge of the age of sixty can fittingly fill the office of the Member of the Tribunal under s. 7, an Advocate of that age can likewise do so. In our view, there is no ground for importing in s. 7(3)(c) an implied qualification as to age, which is not applicable to cl. 7(3)(a) and (b).

This question was considered by a Bench of the Punjab High Court in Prabhudayal v. State of Punjab (A.I.R. (1959) Punj. 460). There the validity of the appointment of Shri A. N. Gujral under the notification dated August 29, 1953, which is the very point now under debate, was challenged on the ground that as he was over sixty on that date, he was not qualified to be appointed under s. 7(3)(c). The Court held approving of the decision in G. D. Karkare's case (I.L.R. (1952) Nag. 409.), that the prescription as to age in art. 217(1) was not a qualification to the office of a Judge under Art. 217(2), and that a person who was more than sixty was qualified for appointment under s. 7(3)(c).

Reliance is placed for the appellant on the terms of s. 7C which was substituted by the Amendment Act 36 Act of 1956 in the place of s. 7 as supporting the contention that age is a qualification for the appointment under s. 7(3)(c).

Section 7C is as follows :-

> "No person shall be appointed to, or continue in, the office the presiding officer of a Labour Court, Tribunal or National Tribunal, if -
>
> (a) he is not an independent person;
>
> or
>
> (b) he has attained the age of sixty-five years."
>
> The marginal note to that section which was also relied on is as follows :-

> "Disqualifications for the presiding officers of Labour Courts, Tribunals and National Tribunals."

The argument of the appellant is that, in prescribing the age as a qualification under s. 7C, the Legislature only made explicit what was implicit in s. 7(3)(c), and that therefore the qualification on the basis of age should also be imported in s. 7(3)(c). This inference does not, in our opinion, follow. The insertion of age qualification in s. 7C is more consistent with an intention on the part of the Legislature to add, in the light of the working of the repealed s. 7, a new provision prescribing the age of retirement for Members. We agree with the decision of the Punjab High Court in Prabhudayals case (A.I.R. (1959) Punj. 460.) and hold that s. 7(3)(c) does not import any qualification based on the age of the person to be appointed, and that the appointment of Shri A. N. Gujral on August 29, 1953, was valid under s. 7(3)(c).

(2) The next contention advanced for the appellant is that the Notification dated April 19, 1957, appointing Shri A. N. Gujral as a Member of the Tribunal issued under s. 30 of the Amendment Act 36 of 1956 was not the authorised by the terms of that section and that therefore there was no validly constituted Tribunal from that date.

Section 30 is as follows :-

> "Savings as to proceedings pending before Tribunals : If immediately before the commencement of this Act there is pending any proceeding in relation to an Industrial dispute before a Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947), as in force before the such commencement, the dispute may be adjudicated and the proceeding disposed of by that Tribunal after such commencement, as if this Act had not been passed."

The contention urged before us is that s. 7 under which Shri A. N. Gujral had been constituted Tribunal was repealed on March 10, 1957, the notification dated April 19, 1957, appointing him as a Member of the Tribunal is void. There is no substance in this contention. Section 30 expressly provides for the life of the Tribunal being extended for the period specified therein, and that the necessarily implies a power to continue Shri A. N. Gujral as the Tribunal, and we should add that in view of our decision on point No. 3 this objection is practically of no importance.

(3) Lastly, it is contended that the transfer of the proceedings pending before the old Tribunal to the new Tribunal under the Notification dated October 31, 1957, as invalid and inoperative. Two grounds were urged in support of this contention. One is that Shri A. N. Gujral attained the age of sixty-five on June 4, 1957, and his term of office would have then expired under s. 7C. Then the Punjab Legislature enacted Act 8 of 1957 raising the age of retirement under s. 7C(b) from sixty-five to sixty-seven. That was with a view to continue Shri A. N. Gujral in office. And this legislation came into force only on June 3, 1957. This Act, it is said offends Art. 14. As its object was to benefit a particular individual, Shri A. N. Gujral, and reference was made to a decision of this Court in Ameeroonissa v. Mehboob ((1953) S.C.R. 404.) as supporting this contention. There is no force in this contention. There the legislation related to the estate of one Nawab Waliuddoula, and it provided that the claims of Mahboob Begum and Kadiran Begum, who claimed as heirs stood dismissed thereby and could not be called in question in any court of law. And this Court held that it was repugnant to Art. 14, As it singled out individuals and denied them the right which other citizens have of resort to a court of law. But the impugned Act, 8 of 1957 is of general application, the age being raised to sixty-seven with reference to all persons holding the office under that

section. The occasion which inspired the enactment of the statute might be the impending retirement of Shri A. N. Gujral. But that is not a ground for holding that it is discriminatory and contravenes Art. 14, when it is, on its terms, of general application.

The second ground of attack against the order of transfer is that it is not competent under s. 30(2) of the Amendment Act 36 of 1956 as further amended by the Punjab Act 9 of 1957. Section 30(2) is as follows :-

> "If immediately before the commencement of this Act there was pending any proceeding in relation to an industrial dispute before a Tribunal constituted under the Industrial Disputes Act, 1947, as in force before such commencement and such proceeding could not be disposed of by that Tribunal due to the Tribunal having come to an end on the expiry of the period for which it was constituted, the State Government may re-constitute that Tribunal for adjudicating that dispute and disposing of that proceeding after such commencement as if this Act had not been passed, and the proceeding may be continued by that Tribunal from the stage at which it was left."

The contention urged before us is that this provision has no retrospective operation and that in consequence the proceedings which had been pending before the old Tribunal on March 10, 1957, could not be transferred to the new Tribunal under this section. This contention is clearly untenable, because the whole object of s. 30(2) is to provide for the hearing of disputes which were pending before the old Tribunal, and its operation is entirely retrospective. This contention must therefore be rejected.

In the result, the repeal fails and is dismissed with costs.

Appeal dismissed.

</html