The Jaipur Udyog Ltd.

Vs

The Cement Work Karmachari Sangh, Sahu Nagar

Civil Appeal No. 1166 (NC) of 1971

(G. K. Mitter, C. A. Vaidialingam, I. D. Dua JJ)

28.01.1972

JUDGMENT

MITTER, J. -

1. This is an appeal by special leave from an award of the Central Government Industrial Tribunal, Rajasthan directing the reinstatement of one Bhisham Verma in the service of the appellant with full back wages.

2. The facts are as follows. The appellant is a public limited company with its registered office at Sawaimadhopur in the State of Rajasthan. It has a cement factory at the said place besides a limestone quarry at Phallodi situate at a distance of 24 kms. from the cement factory. It has two separate sets of Standing Orders for the workmen employed in the factory and in the quarries. Both sets of Standing Orders were certified in accordance with the provisions of the Industrial Employment (Standing Orders) Act, 1946. The Standing Orders applicable to the workmen employed in the factory were certified in the year 1954, while those applicable to the workmen of the quarries were certified in the year 1961. Up to April, 1967, both sets of Standing Orders provided for superannuation of the workmen at the age of 55 with a stipulation for extension up to 60 years if a workman was found fit to work. On a dispute having been raised for the raising of the age of superannuation of the workmen at the cement factory, a settlement was arrived at between the appellant and the respondent (a registered trade union of the employees) on December 16, 1966, whereby it was agreed that Standing Order No. 21 applicable to the cement factory be amended by raising the age of superannuation from 55 to 58 years without making any provision for further extension. A joint application following upon the agreement was moved by the appellant and the respondent for modifying the Standing Order No. 21 with respect to the age of superannuation which was accordingly done. Nothing was however done with regard to the of age superannuation of the employees at the quarry, the relevant clause in the Standing Order remaining unaltered.

3. On April 3, 1968, the appellant intimated the said Bhisham Verma, incline driver at the quarry, that he "had exceeded the age of retirement on April 3, 1968", and as such he was given "notice of retirement in accordance with Clause 21 of the Standing Orders of the quarries with effect from the close of work on May 2, 1968". On April 30, 1968, the said workman wrote to the appellant that although according to the service file had completed the age of 55 years as indicated, his proper age according to his horoscope was about 50 years and his service record should be amended accordingly. The appellants' reply to the above, dated July 9, 1968, was to the effect that his case had been re-examined and that his retirement, as already intimated on April 3, 1968, would stand. The Union took up the cause of the worker and addressed a letter on July 18, 1968, to the Regional Labour Commissioner requesting that arrangements may be made to put the worker back to work

and take proper legal proceedings. On behalf of the workman it was represented that he had been working in the company since October 11, 1957, that the Personnel Manager of the quarry had given orders dismissing him from service on April 3, 1968, and that in spite of objections made by the workman that there was a mistake in the papers of the company with regard to his age which was 50 as supported by his horoscope and doctor's certificate, the action of the quarry manager was illegal and contrary to service contract. The record does not show what if any other steps were taken by the parties when the Central Government made an order of reference under Section 10(1)(d) of the Industrial Disputes Act reading :

> "Whether the action of the management of the Jaipur Udyog Limited, P.O. Phallodi Quarry, Sawaimadhopur in terminating the services of Bhisham Verma, incline driver, with effect from July 9, 1968, on ground of superannuation was legal and justified ? If not, to what relief is he entitled ?

Before the Tribunal, the respondent Union filed a statement of claim wherein after reciting the action taken by the appellant and the representation made by the workman it was stated that the quarry and the cement factory were under one and the same management and there was complete financial integrality between the activities of the company at both the places. It was also said that workmen could be transferred from one place to another and that as a result of the settlement mentioned, the company could not retire any workman before he attained the age of 58 years. The settlement was said to apply to the workmen employed at both the places. The Union further submitted that the company could not insist on two sets of conditions of service covering different sections of the same workmen in the same establishment, that the age of retirement was not a subject mentioned in the Schedule to the Industrial Employment (Standing Orders) Act and as such no Standing Order could be certified on this topic.

4. In its reply to the above, the company took the stand that the settlement arrived at in respect of the Cement Works Karmachari Sangh, Sawaimadhopur was not ipso facto applicable to the quarry inasmuch as the proper authority under the Industrial Disputes Act, 1947, in respect of the cement works was the Government of Rajasthan whereas the appropriate Government in respect of the quarries was the Government of India. It was said further that in pursuance of the settlement arrived at in 1966 the Standing Orders were amended by the Certifying Officer of the Government of Rajasthan as a result whereof the age of superannuation in the works at Sawaimadhopur was raised to 58. This however did not alter or modify the position prevailing in the quarries which were governed by a separate set of orders certified by the Certifying Officer of the Government of India.

5. The Tribunal took the view that the cement factory and the quarries were two units of the same establishment and that consequently there should be a uniform set of rules for the workmen of the company as a whole and it was immaterial that in the case of one unit the Standing Orders had to be certified by the Certifying Officer of the Government of India and in the other by the Officer appointed by the Government of Rajasthan. The Tribunal was further of the view that the clause as to superannuation could not be provided in the Standing Orders under the relevant Act and certification could not attach enforceability to them even on the ground that the workers did not challenge such provision before the Certifying Officer. In the result the Tribunal held that there could not be a lower age limit of superannuation for workmen at the Phallodi quarry specially in view of the fact that workmen were admittedly transferable from one place to the other. As a consequence of the above finding, the Tribunal quashed the order and directed the reinstatement of the workmen with full back wages.

6. On behalf of the company the first contention raised by Mr. Setalvad was that the Tribunal had gone wrong in construing the order of reference to include a dispute as to whether it was open to the company to have two sets of Standing Orders providing for different ages of superannuation. Mr. Setalvad argued that in view of the correspondence terminating with the representation by the Union of the Conciliation Officer, it was abundantly clear that the dispute between the parties was whether or not the company was justified in coming to the conclusion that the workman concerned had reached the age of 55 on April 3, 1968 and as such was to be superannuated in terms of the Standing Orders, The letter of the July 9, 1968, by the Company to the workman reads as follows :

> "Please refer to your application, dated April 30, 1968, received by us on May 8, 1968, along with a copy of your horoscope in Hindi. The Management has re-examined your case and come to a final conclusion that your retirement from the service of the company as intimated to you vide our Memo. No. PQ/B/186, dated April 3, 1968, should stand. You are, therefore, directed to collect your dues, if any, from our Accounts Department on any working day after producing necessary clearance certificate."

Of necessity, reference had to be made by the Tribunal to the application of the workman, dated April 30, 1968, with a copy of his horoscope. The said letter expressly complained of the alleged inaccuracy in the service record pertaining to him according to which the writer had not completed the age of 55 years on 3rd April. The workman's representation was that his age had been inaccurately recorded, that his proper age was 50 and that the records should be corrected accordingly.

7. In our view, if the Tribunal had taken care to examine what was the dispute between the parties when the Government made the order of reference it would have had no difficulty in realising that no dispute was raised either by the workman or the Union that the age of superannuation governing the workman was not 55 years. It was certainly open to the workman to contend that his age of superannuation should be fixed at 58 and not 55 years and it would have been equally open to the union to raise the point in their representation to the Conciliation Officer. If that had been done, the Government of Rajasthan could have properly made a reference of a dispute between the parties regarding the correct age of superannuation and the adjudication of the dispute regarding the superannuation of the workman concerned on that basis. Nothing was however shown to us, apart from the documents already referred to enable us to find that any question had been raised before the Government of Rajasthan relating to the age of superannuation of the workman at the quarries or that there was any basis for apprehension of such a dispute and it was therefore not open to the Tribunal to enlarge the ambit of the dispute between the parties by reference to the difference in the age of superannuation under the two sets of Standing Orders. Mr. Setalvad drew our attention to the judgment of this Court in The Sindhu Resettlement Corporation Ltd. v. The Industrial Tribunal of Gujarat and Others, [(1968) 1 SCR 515 : (1968) 1 Lab LJ 834 : AIR 1968 SC 425] for the proposition that unless a dispute was raised by the workman with their employer it could not become an industrial dispute. Respondent No. 3 before this Court in that case was employed by the appellant as an accounts clerk at Gandhidham in the year 1950. Some years thereafter his services were placed at the disposal of the subsidiary company of the appellant. The respondent was appointed in the said subsidiary company on a different set of conditions of service. He worked with that company up to February, 1958, when his services were terminated after payment of retrenchment compensation and other dues by the said subsidiary company. The respondent then went to the appellant and requested that he might be given posting orders. The appellant declined to do so on the ground that the post which he was occupying in 1953 had been permanently filled up.

Thereupon the respondent demanded retrenchment compensation from the appellant also. As the representations of the respondment were not fruitful, conciliation proceedings were started and ultimately, on the report of the Conciliation Officer, the State of Gujarat referred the dispute to the Industrial Tribunal. The matter referred for adjudication was, "whether the said respondent should be reinstated in the service of the appellant and be paid back wages from February 21, 1958". The Tribunal directed reinstatement and payment of back wages. In allowing the appeal, this Court observed that the respondent workman had only asked for payment of retrenchment compensation and did not raise any dispute for reinstatement. According to this Court (see p. 622) :

> "....the evidence produced clearly showed that no such dispute (i.e. relating to reinstatement) had ever been raised by the respondent with the management of the appellant. If no dispute at all was raised by the respondents with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer."

Relying on the above decision Mr. Setalvad argued that in order that a reference can be construed to embrace a particular dispute it must be shown that a demand had been made by the workman and not accepted by the employers so as to give rise to a dispute which in the view of the Government required adjudication. Mr. Ramamurty on behalf of the respondents drew our attention to the provisions of Section 10(1) of the Industrial Disputes Act and in particular to clauses (c) and (d) thereof. He argued that it was open to the appropriate Government in an appropriate case to refer a dispute along with any matter appearing to be connected with or relevant to the dispute and no objection could be taken to the award of the Tribunal where the Tribunal had not transgressed the limits of clauses (c) and (d) of Section 10(1) of the Act. It was further contended that the proper age of superannuation applicable to the company as a whole was so intimately connected with or relevant to the dispute which actually arose between the parties prior to the order of reference as to lead us to hold that the Tribunal had not gone beyond its jurisdiction in construing the order of reference to embrace an adjudication as to proper age of superannuation of a workman like Bhisham Verma. In our view, the finding of the Tribunal that the Company could not fix a lower age limit of superannuation for workmen at the quarries went beyond the scope of reference which had to be gathered from the circumstances preceding the Government Order. The Tribunal never addressed itself to the point of view of the workman that his proper age was only 50 and 55; nor did it come to a finding that the true age of the workman being 50 years in 1968 there was no question of his superannuation in that year.

8. Mr. Setalvad raised a further point that so long as the quarries had a different set of Standing Orders prescribing a different age of superannuation from that fixed under the Standing Orders relating to the cement works, the Tribunal could not have disregarded the Standing Orders as it had purported to do and lay down that the age of superannuation of all workmen should be 58 as found by it. Our attention was drawn to Section 2(g) of the Industrial Employment (Standing Orders) Act and to Section 3(2) of the said Act under which provision had to be made in Standing Orders for all matters set out in the Schedule to the Act. According to Mr. Setalvad, Item 8 of the Schedule reading :

> "Termination of employment, and the notice thereof to be given by employer and workmen."

allowed the framing of Standing Orders with regard to age of superannuation. Mr. Ramamurty on the other hand contended that this item could not possibly embrace such a matter as the age of

superannuation but was limited to voluntary acts of the employer or the workmen to put an end to the employment without any question of superannuation. Arguments were advanced at some length by counsel on either side on this point, but in the view which we have taken on the first point as to the jurisdiction of the Tribunal, we find it unnecessary to decide this point.

9. In the result we hold that the award of the Tribunal was incompetent as the dispute which it sought to adjudicate upon was not the one referred. The award will therefore be set aside, but in the circumstances of the case, we make no order as to costs.

</html