Jeewanlal (1929) Ltd.

Vs

The Workmen and Another

Civil Appeal No. 1890 Of 1967

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

16.02.1972

JUDGMENT

MITTER, J. -

1. This is an appeal by special leave from an award and order, dated August 23, 1967, of the Industrial Court Maharashtra under Section 6 of the Industrial Employment (Standing Orders) Act, 1946, read with the provisions of the Bombay Industrial Employment (Standing Orders) Rules, 1959. The questions involved relate to the fixation of the age of superannuation and proof of age of a workman in case of dispute between him and the appellant.

2. The facts are as follows. The appellants who manufacture and sell aluminium wares took over the managements of the business formerly carried on by a Canadian firm in 1951 and issued a notice to all the employees on July 19, 1951, to the effect that such of them as had put in 30 years of active service or who were already 55 years of age and/or infirm, debilitated by age or disease were liable to be retired and further continuation of their service after such age or period of service would be at the discretion of the management. This however could not be enforced at law.

3. The original Standing Orders of the appellants for workmen (other than clerical staff) were certified by the Commissioner of Labour under Section 5 of the Industrial Employees (Standing Orders) Act on December 13, 1951. The State Government had in the meanwhile prescribed certain model Standing Orders as contemplated by the said Act. Neither of the two sets of Standing Orders contained any provision for the age of superannuation of industrial employees.

4. The appellant made an application to the Commissioner of Labour under Section 10 of the Act for insertion of Clause 22-A in their Standing Orders reading :

> "Those employees who have put in 30 years of active service and/or have attained or may hereafter attain the age of 55 years and/or are infirm and debilitated by age or disease are liable to be discharged by the management and further continuation of their service after such age or period of service will be at the discretion of the management. Such discharged workmen will be given 14 days' notice prior to their discharge or payment of 14 days of wage in lieu of such notice."

After some correspondence on the subject the Commissioner rejected the application. An appeal to the Industrial Court was also fruitless.

5. The Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957, had in the

meanwhile been passed by the State Legislature. Section 2-A and matter No. 10-A in the Schedule to the Act were introduced there in the year 1958. The said matter read :

> "The age for retirement or superannuation".

Omitting the proviso Section 2-A provided :

> "Where this Act applies to an industrial establishment, the model standing orders for every matter set out in the schedule applicable to such establishment shall apply to such establishment from such date as the State Government may be notification in the Official Gazette appoint in this behalf."

6. By an order, dated October 29, 1960, the Commissioner of Labour acting as Certifying Officer under the provisions of the Bombay Act modified the Standing Orders as applicable to the workmen (other than clerks) employed at the works of the appellants by introducing a new Clause 22-A reading :

> "The age for retirement or superannuation of the workmen shall be 58 years. Extension up to two years may be granted in proper cases purely at the discretion of the Company subject to fitness of the workmen concerned."

Simultaneously with the above, a separate Clause 21-A was inserted in the Standing Orders for clerical staff reading :

> "The age for retirement or superannuation of the clerks shall be 60 years."

7. Aggrieved by the said orders the appellants preferred appeals under the provisions of Section 6 of the Standing Orders Act, read with the relevant rules to the Industrial Court, Maharashtra. The said Court disposed of the appellants' appeals as also two Cross Appeals filed by Jeewan Lal Employees' Union by a common order, dated February 17, 1961. The appellants' contentions in the appeals were that the age of superannuation of the workmen should not have been increased from 55 to 58 and that the age of superannuation for clerks should also not have been increased. It was argued that so far as the workmen were concerned, it would not be proper to fix the retiring age at 58 with an option of extension for two years in view of the arduous and hazardous nature of their duties. Importing his own knowledge of the conditions in the engineering industry and his experience in his capacity as Chairman of the Technical Committee (Provident Funds) appointed by the Government of India, the Court took the view that the work in the engineering industry was arduous and hazardous in varying degrees and it would ordinarily be difficult for an operative to work efficiently in a large number of operations in the engineering industries after he had attained the age of 58 years. With regard to clerks however he held the view that the age of superannuation should be fixed at 60.

8. The Employees' Union of the operatives filed an application on February 9, 1966, before the Commissioner of Labour under Section 10 of the Standing Orders Act proposing various modifications to the certified Standing Orders. The existing Standing Order with respect to the age of superannuation was sought to be replaced by one reading :

> "The workmen shall retire from service on attaining the age of 60 years, but a male worker shall be retained in service, if he continues to be efficient, up to the age of 63 years provided that when retrenchment becomes necessary a person who has

> completed the age of 60 years may be retrenched, if he so desires in preference to a younger man.
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> Note. - In the event of a disputed age at the time of retirement under this Standing Order and in the absence of any documentary proof of birth to be produced by the workman, a certificate of age from the Presidency Surgeon or other Medical Officer of an equivalent status shall be taken as conclusive and final proof of the age of the workman, if and when produced by the workman."

The appellants objected to the said modification.

9. By an order, dated November 28, 1966, the Deputy Commissioner of Labour directed that the age for retirement or superannuation of a workman shall be 60 years according to a note thereto that :

> "In the event of a disputed age at the time of retirement under this Standing Order and in the absence of any documentary proof of birth to be produced by the workman, a certificate of age from the Presidency Surgeon or other Medical Officer of the equivalent status shall be taken as conclusive proof of the age of workman, if and when produced by the workmen."

Reference was made in the judgment to a concession or admission made by the appellants in the course of the arguments that provision should be made in the Standing Orders fixing the age of superannuation at 60 without any extension.

10. On December 22, 1956 the appellants filed an appeal under the provisions of Section 6 of the Act to the Industrial Court, Maharashtra. They took exception to the observations made by the Certifying Officer regarding their alleged acceptance of the age of superannuation as canvassed for by the Union. The appellants and the Union made separate applications before the Industrial Court requesting it to visit the factory to ascertain the nature of operations for actual assessment of the kind of work done by the operatives.

11. The Industrial Court rejected the appellant's appeal and confirmed the order of the Certifying Officer fixing the age of retirement at 60 years. It was not however inclined to accept that the appellants had consented to the age of superannuation being fixed at 60 years as recorded by the Certifying Officer. It referred to the application made on behalf of the appellants for taking additional evidence in the shape of photographs taken of operatives actually working at some of the machines to show that the nature of work was arduous and hazardous. According to the Court a mere look at the photographs would not convince one that the nature of work was either arduous or hazardous. It also held that it was for the appellants to have put forward a specific case and led evidence in support thereof that the work of the operatives was of the nature contended for by them. His conclusion was :

> "In any case there is nothing on record to show that the nature of the work is analogous to the nature of the work in heavy engineering concerns. It may be analogous to the nature of work carried on in a light engineering concern."

12. After noticing several decisions of this Court and specially that in Hindustan Antibiotics Ltd. v. Their Workmen, ([1967] 1 LLJ 114 : AIR 1967 SC 948) the Tribunal opined :

> "..... normally the age of retirement of an industrial worker should be 60. It would be

> permissible to depart from this rule if it is shown that the nature of work is particularly difficult, heavy or hazardous."

In consequence he accepted the modification and fixed the age of retirement at 60 years. With regard to the Note of the Commissioner of Labour, he directed that the agreed draft submitted to him by the parties should be incorporated in the Standing Orders as a Note to Clause 22-A. The said draft reads :

> "The company shall within two weeks from the receipt of a written request by any workman concerned, furnish the information about the date of birth and/or age mentioned in the Company's record and the copies of supporting document or documents, if any, furnished by the workman concerned or from any other source. If the age of birth and/or age as so recorded in the company's record is disputed by the workman concerned he shall be given an opportunity within three months from the date of furnishing such information to adduce evidence such as birth-certificate, school leaving certificate or vaccination certificate to prove the correct date of birth and/or age and the Company after considering such evidence as is adduced by the workman concerned may accept the same and amend the records of the company accordingly. If, however, the birth date and/or age is not accepted by the company, then the parties, that is, the concerned workman acting through the Union and the company shall agree to have the said dispute referred to adjudication by a competent authority under Section 10 (2) of the Industrial Disputes Act, 1947."

13. Before us Mr. Pai for the appellants argued that the original Standing Orders which provided 58 years as the age of superannuation of the workman subject to extension up to two years to be granted purely at the discretion of the company where the workman was found to be physically fit should not have been altered to raise the superannuation age to 60 in all cases. He contended further that the Note which made the certificate of a Presidency Surgeon or other medical officer of the rank of a Presidency Surgeon conclusive of the proof of age of a workman when it was disputed, did not fall under matter No. 10-A of the Schedule to the Standing Orders Act and should not have found a place in the Standing Orders of the appellant. He also referred to Section 11 of the Standing Orders Act under which every Certifying Officer and appellate authority were given the powers of a civil court for the purpose of receiving evidence and to Rule 13(5) of the rules which enabled the appellate authority to call for necessary evidence and submitted that these provisions should have been availed of by the appellate authority when both parties wanted him to take additional evidence so as to be able to appreciate correctly whether the work of the operatives was arduous or hazardous before making up his mind about the proper age of their superannuation.

14. Reliance was placed on several decisions of this Court to show that generally it had been considered proper to fix the age of operatives in an engineering industry where the work was arduous or hazardous at 58 and it was argued that the Tribunal should not have departed from the same. According to him the decision in Guest Keen, Williams Private Ltd., v. J.P. Sterling and Others, ([1960] 1 SCR 348 at 366 : AIR 1959 SC 1279 : 1960 SCJ 281) relied on by the Industrial Court in disposing of the appeal did not lay down an inflexible rule that the age of retirement of operatives in an engineering industry should be fixed at 60. He submitted that this Court had fixed that age as the one for superannuation only of such employees as had entered service of the Company (Guest, Keen, Williams) when there was no age of superannuation prescribed. In particular counsel referred to the questions for consideration in fixing the age of superannuation of industrial workmen by the Tribunals which according to this Court were :

> "What is the nature of work assigned to the employees in the course of their employment ? What is the nature of the wage structure paid to them ? What are the retirement benefits and other amenities available to them ? What is the character of the climate where the employees work and what is the age of superannuation fixed in comparable industries in the same region ? What is generally the practice prevailing in the industry in the past in the matter of retiring its employees ?"

Counsel submitted that the Industrial Court had not addressed itself to these aspects at all.

14. The decision in S.S. Railway Company v. Workers' Union, ([1969] 2 SCR 131 at 142 : AIR 1969 SC 513 : (1969) 1 Lab LJ 734) was cited by Mr. Pai in aid of the proposition that an application for modification of standing orders by the Certifying Officer should ordinarily be made only on discovery of new and important matters of evidence, a mistake or error apparent on the face of the record or on any other sufficient reason. It was said that no such case had been made out by the Union for modification of the age of superannuation which had already been fixed.

15. Reference was also made to the decisions in Workmen of Kettlewell Bullen & Co. Ltd. v. The Kettlewell Bullen & Co., Ltd. ([1972] 25 FLR 90); Workmen of Balmer Lawrie & Co. Ltd. v. Balmer Lawrie & Co., ([1964] 5 SCR 344 : AIR 1964 SC 728 : (1964) 1 Lab LJ 380) Workmen v. Jessop & Co. Ltd., ([1964] 1 LLJ 451 (SC)) Associated Power Company Ltd. v. Its Workmen, ([1964] 1 LLJ 743 (SC)) etc. as tending to show that the age of superannuation of industrial workers varied in different regions and the age fixed in any particular case would not necessarily be applicable in another concern.

16. On the other hand, Mr. Dudhia learned counsel for the respondent referred us to the decision in Burmah Shell O.S. and D. Co. v. Their Workmen, ([1970] 1 LLJ 363 (SC)) This decision fixing the age of retirement of the workmen at 60 was based on the evidence on record. The Court noted therefrom that in many cases the age of superannuation of workmen had been fixed either by settlement or by awards at 60 years and although the general trend in West Bengal was to fix it at 58 years, so far as Bombay and Delhi areas were concerned, the trend appeared to be to fix the age of superannuation at 60 years.

17. It must however be remembered that the work in this concern (Burmah Shell Co.) could not be described as arduous or hazardous.

18. In M/s. British Paints (India) Ltd. v. Its Workmen, ([1969] 2 SCR 523 : AIR 1966 SC 732) a case from West Bengal cited by Mr. Dudhia..... the company being manufacturers of paints - it was said that the work in the factory was not particularly arduous and therefore there was no reason for fixing the age of retirement at a level lower than that of clerical and subordinate staff which was 60 years. Counsel relied on the observations at p. 526 reading :

> "..... generally speaking, there is no reason for making a difference in the age of retirement as between clerical and subordinate staff on the one hand and factory workmen on the other, unless such difference can be justified on cogent and valid grounds. It is only where work in the factory is of a particularly arduous nature that there may be reason for fixing a lower age of retirement for factory workmen as compared to clerical and subordinate staff."

The Court incidentally noted that the case of Jessop and Company (supra), cited at the Bar was one

of a heavy engineering concern where presumably the work of factory workers was more arduous as compared to that of its clerical and subordinate staff.

19. Reference was also made to the case of Hindustan Antibiotics Ltd. v. Their Workmen (supra), where the Tribunal had raised the age of retirement from 55 to 58 years with a discretion to the company to continue the employee beyond that age. In this case the Court held that the age of retirement of the employees of the company should be raised to 60 years and that it was not proper to give a discretion to the company whether to raise the age of retirement or not, inasmuch as the vesting of such uncontrolled discretion in the employer might lead to manipulation and victimisation. The Court relied on the report of the Normus Committee which had taken the view that the retirement age of workmen in all industries should be fixed at 60.

20. The above decisions clearly show that the present day tendency is to fix the age of superannuation generally at 60 unless the Tribunal feels that the work of the operatives is particularly arduous or hazardous where workmen may lose efficiency earlier. The photographs which are on record show that in at least some sections of the factory workmen have to work at machines which resemble some in use in heavy engineering industries. On the materials we do not find it possible to come to any definite conclusion on the point. We may also note that whereas in engineering concerns in West Bengal the age of retirement generally fixed for operatives is 58 years, there is a divergence of opinion as regards operatives in Bombay and Delhi. Much will therefore depend on the actual assessment of the nature of the work of the operatives to find out whether it is really so arduous or hazardous as to lead the Certifying Officer the court in appeal to the conclusion that the proper age of superannuation should not be raised beyond 58 years. It is rather unfortunate that the Industrial Court ignored the prayer of both parties to make a personal inspection of the factory of the appellants to come to this conclusion. Such personal inspection would have been more valuable than oral evidence by the parties before the Certifying Officer. In this case the Certifying Officer went by his own previous impression without caring to inspect the factory and the Industrial court ignored the joint prayer in that behalf. We therefore feel that the matter should be re-investigated and the Certifying Officer should inspect the conditions in the factory to come to a conclusion whether the age of superannuation should be left at 58 years or whether it should be raised to 60 years.

21. On the question as to whether the note appended to Standing Order 22-A should be incorporated therein, it seems to us that both the parties took a practical view of things in agreeing to the terms of the Note. We are not impressed by Mr. Pai's argument that matter No. 10-A of the schedule to the Bombay Act does not give jurisdiction to the Certifying Officer to incorporate any clause as to the determination of the age of a particular workman when there is a dispute about it. We do not however wish to express any final opinion on this point but it appears to us that the Note jointly prepared would avoid many disputes.

22. With the above observations, we allow the appeal, set aside the order of the Industrial Court and remand the matter back to the Certifying Officer to deal with it in the light of our observations and dispose of the matter expeditiously, preferably within six months. The appellants must pay the costs of the respondents before this Court in view of the order made at the time when they obtained the special leave to appeal.

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