

U. P. State Electricity Board and Another

Vs

Labour Court (I), U. P. Kanpur and Another

Civil Appeal No. 3549 (NL) of 1982

(D. A. Desai, O. Chinnappa Reddy JJ)

06.10.1983

JUDGMENT

VARADARAJAN, J. -

1. This appeal by special leave is directed against the award of the Labour Court, Kanpur on Adjudication Case No. 8 of 1980 holding that retirement of the second respondent Jag Dutt from March 31, 1979 is unjustifiable and directing his reinstatement with back wages with a right to work so long as he is physically fit.

2. The second respondent entered service as a cooly on April 11, 1945 under the then Kanpur Electricity Supply Corporation Limited. No date of birth was mentioned in his service card and there was no age of retirement for employees in that concern. That establishment was nationalised on September 15, 1947 and thereafter it became a department of the Government of Uttar Pradesh. The new management Kanpur Electricity Supply Administration filled up the second respondent's age as 20 years 9 months without asking him for any certificate regarding his date of birth. His date of birth is June 24, 1924 and an entry about his date of birth has been made in the Police Station, Chawani, Basti at the instance of the chowkidar of that village. The new management got its standing orders certified without making any provision for age of retirement. The State Government made it clear that the workmen to whom the Industrial Employment (Standing Orders) Act, 1946 applied would not be governed by the Civil Service (Classification, Control and Appeal) Rules. The Electricity Board constituted under the Electricity (Supply) Act, 1948 took over the workmen of the erstwhile Kanpur Electricity Supply Administration from April 1, 1949 making it clear that their service conditions will not be adversely affected. That position regarding the service conditions of the employees was reiterated in Government Order No. 3679-E/71-21-PB dated April 1, 1971 and the Electricity Department's Chief Engineer's letter dated March 2, 1972. The initial condition was that the second respondent should work so long as he was physically fit to work without any age of retirement. However, the Kanpur Electricity Supply Administration retired the second respondent from March 31, 1979 on the ground that he has completed 58 years. This retirement is invalid for two reasons, namely that his date of birth is June 24, 1924 and that there is no age of retirement so far as employees like the second respondent who had joined service under the Kanpur Electricity Supply Corporation Limited are concerned. The new management had allowed 19 named workmen to retire when they were 60 to 75 years old. The second respondent has thus been retired not only before he completed 58 years, his date of birth being June 24, 1924 but also in contravention of his conditions of service, according to which there is no age of retirement. This was the second respondent's case before the Labour Court.

3. The defence of the appellant-management was that though when the Electricity Board was

constituted and the management of the Kanpur Electricity Supply Administration was taken over in 1948 no age of retirement was prescribed for the employees the Electricity Board framed regulations under Section 79-C of the Electricity (Supply) Act, 1948 subsequently prescribing the age of retirement as 58 years and 60 years, and the second respondent was retired on March 31, 1979 under those regulations. It is open in law for the Electricity Board to frame regulations prescribing the age of retirement of its employees even where initially there was no age of retirement, as has been held by the Allahabad High Court and this Court. The second respondent's retirement is valid and cannot be set aside.

4. The Labour Court found that the second respondent joined service as a cooly under the Kanpur Electricity Supply Corporation Limited on May 11, 1945 and he became the State Government's employee on September 16, 1947 when that establishment was taken over by Kanpur Electricity Supply Administration and the employees of that Administration became the employees of the State Electricity Board when it took over that Undertaking after that Board was constituted on April 1, 1959. It was not disputed that by the regulations framed under Section 79-C of the Electricity (Supply) Act, 1948, age of retirement was fixed at 58 or 60 years and that those regulations were notified on May 28, 1972 under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946. But the Labour Court found that even after the publication of those regulations the new management made it clear to the employees by Government Order No. 3679-E/71-23-PB dated July 1, 1979 that even after absorption of the employees their old conditions of service would continue in the same way and that a similar assurance had been given to the second respondent by the documents marked as Exs. B-9 to B-15 that the regulations would not apply to him and he could work so long as he was physically fit without any age of retirement. In this view the Labour Court held that the second respondent's retirement from March 31, 1979 in spite of the fact that he is physically fit is invalid in law and it accordingly allowed the second respondent's claim as mentioned above.

5. The Labour Court has not recorded any finding regarding the second respondent's actual date of birth. In this Court no argument was advanced by the learned counsel on either side on that question. The only point argued before this Court by Mr. S. Markandeya, learned counsel for the appellants and Mr. Hari Swarup, learned senior counsel appearing for the second respondent was as to the binding nature of the regulations framed by the Electricity Board under Section 79-C of the Electricity (Supply) Act, 1948 fixing age of retirement as 58 years in regard to workmen like the second respondent who were originally employees of the Kanpur Electricity Supply Corporation Limited. By order dated October 3, 1978 of the General Manager of the U.P. State Electricity Board in the department of Kanpur Electricity Supply Administration eleven employees including the second respondent were retired on attaining the age of superannuation with effect from March 31, 1979 on the basis that according to the Board's records they were completing 58 years on that date. There is no dispute that the Board has framed regulations under Section 79-C of the Electricity (Supply) Act, 1948 fixing the age of retirement of employees like the second respondent at 58 years and that the regulations have been notified under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946. Mr. Hari Swarup admitted before us that the regulations have statutory force. The Member Secretary of the U.P. State Electricity Board had informed the Government employees whose services had been lent to the Board on deputation that their salary, allowances and other conditions of service shall be governed by regulations made by the Board under Section 79-C of the Electricity (Supply) Act, 1948 from time to time. It is not disputed that the second respondent had thereafter exercised his option to serve in the U.P. State Electricity Board. The second respondent is, therefore, bound by the regulation by which the age of retirement has been fixed in regard to employees like him at 58 years. A similar question arose before a Division Bench of the

Allahabad High Court in *Bhai Lal v. Superintending Engineer, Allahabad* (1979 Lab IC 110, 112) where it has been held as follows :

Once the regulations framed under Section 79-C of the Electricity (Supply) Act, 1948 have been notified by the State Government under section 13-B of the Industrial Employment (Standing Orders) Act, the standing orders framed by the erstwhile licensee to the extent they concerned the subject dealt with by the regulations became ineffective and inoperative and that in respect of such matter, the right of the parties would be governed only by the regulation so notified. In the circumstances even if it be a fact that the standing orders, framed by the erstwhile licensee contained a clause specifying an age higher than 58 years, as age of superannuation for its employee, the employee would none the less, as provided in the notified regulation, be superannuated at the age of 58 years.

6. A similar question arose before this Court in *U.P. State Electricity Board v. Hari Shankar Jain* ((1979) 1 SCR 355 : (1978) 4 SCC 16 : 1978 SCC (L & S) 481 : (1978) 2 LLJ 399 : 1978 Lab IC 1657) to which two of us were parties. There it has been held that the Industrial Employment (Standing Orders) Act, 1946 is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect unless such regulations are either notified by the Government under Section 13-B or certified by the Certifying Officer under Section 5 of the Industrial Employment (Standing Orders) Act, 1946. In regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect of which no regulations have been made by the Board, the Industrial Employment (Standing Orders) Act shall continue to apply. In that case the regulation made by the Board with regard to the age superannuation had been duly notified by the Government and it has been held that the regulation had effect notwithstanding the fact that it was a matter which could be the subject matter of standing orders under the Industrial Employment (Standing Orders) Act, 1946 and that the respondents in that appeal had been properly retired when they attained the age of 58 years. In view of the admitted fact that the regulations framed by the Board under Section 79-C of the Electricity (Supply) Act, 1948 have been notified by the Government under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946 we hold that the second respondent is bound by those regulations in which the age of retirement has been admittedly fixed at 58 years and that he has no reason to complain against his retirement on that basis with effect from March 31, 1979. The appeal is accordingly allowed and the order of the appellant retiring the second respondent with effect from March 31, 1979 is upheld. It is, however, made clear that the second respondent shall not be liable to refund any amount paid to him under orders of the Court pending these proceedings and that he is entitled to draw the sum of Rs. 2000 which has been directed to be deposited towards his costs in this appeal.

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