

Hari Shankar Gaur and Another

Vs

Delhi Transport Corporation and Others

Writ Petition (Civil) No. 1244 of 1986

Khazan Singh and Others

Vs

Delhi Transport Corporation and Another

Special Leave Petition (Civil) No. 8948 of 1986

(G. L. Oza, K. Jagannatha Shetty JJ)

30.11.1988

JUDGMENT

OZA, J. -

1. This special leave petition is filed against the judgment of the Delhi High Court rejecting a petition filed by the petitioners. A separate writ petition for the same relief is also filed in this Court. The two matters raise a simple question about the age of retirement of the employees in the Delhi Transport Corporation, who were originally employed in the erstwhile Gwalior and Northern India Transport Company ('GNIT Company' for short) in 1946 or before that.

2. It is not in dispute that before 1948 these petitioners were employed in the GNIT company which was a company owned by the Rules of Gwalior in the erstwhile native State of Gwalior. The said company was operating the transport services in Delhi and areas around up to May 13, 1948. On May 14, 1948 the transport services in Delhi were taken over by the Government of India, the Ministry of Transport and it was named as "Delhi Transport Service". The services of all the employees of the erstwhile GNIT company were taken over by the Government of India but they were continued to be governed by the rules which were in force before taking over. Subsequently it was taken over by the Delhi Municipal Corporation. Later on by the Delhi Transport Undertaking which came to be termed as "Delhi Transport Corporation".

3. Clause 7 of the agreement by which the GNIT services in Delhi were taken over by the Government of India provided that the services of the employees who were employed prior to October 28, 1946 and were in continuous service till May 14, 1948 shall not be taken over on the terms not less liberal than those they were governed by and therefore the employees who were in employment prior to October 28, 1946 were treated as protected employees.

4. These facts are not in dispute. According to the petitioners, before they were taken over, the service conditions of the employees of GNIT company were governed by the Gwalior State Civil Service Rules. But the respondent denied that and said that they were governed by the Madhya

Bharat Civil Service Rules. Admittedly, Madhya Bharat came into existence in 1948 only. Before that there was no State of Madhya Bharat. Repeatedly opportunity was given to the respondent counsel to find out as to what rules were applicable to the employees of the GNIT company before Madhya Bharat was formed. Ultimately they pleaded their inability to place any rule. So far as Gwalior State Civil Service Rules are concerned, a copy of it in Hindi has been filed by the petitioners with the English translation thereof. It is not disputed that these were the rules governing the civil servants in the Gwalior State. It is also not disputed that GNIT company was originally a company incorporated in India where it was owned by the rulers of the erstwhile Gwalior State. According to petitioners Civil Service Rules of Gwalior were made applicable to these people. In addition to what has been stated in the petition and which has not been controverted, they have also filed a judgment of the Industrial Court in Madhya Pradesh where this question about the conditions of service about retirement came into dispute after the formation of Madhya Bharat and the part of GNIT company which was operating in the territories of the erstwhile State of Madhya Bharat was taken over by the state of Madhya Bharat Road Transport Corporation. There too, a similar agreement was reached and the question arose as to whether the persons who were in employment before the taking over, were governed by the rules of the Gwalior State Civil Servants. It was held that those were the rules and in those rules the normal age of retirement was 60 years.

5. In view of these circumstances it appears beyond doubt that these people who were employed in the GNIT company before taking over in Delhi by the Government of India were governed by the Gwalior State Civil Service Rules. The Gwalior Civil Service Rules provided :

#### Chapter 1-A

7(a)(1) every employee has a right to seek retirement from service after attaining the age of 55 years.

(2) The government also has authority not to allow any employee to continue in employment after attaining the age of 55 years and order his retirement.

(3) In case an employee does not seek retirement from service after attaining the age of 55 years or the government also does not order his retirement from service, then he shall continue in service till he attains the age of 60 years.

(4) Every employee shall compulsorily retire after attaining the age of 60 years provided his service are not ordered to be terminated earlier.

(5) An employee who retires under these rules shall be entitled for pension or gratuity to which he is entitled according to the rules.

Note 1. These rules will not apply to the police personnel.

Note 2. The concerned department shall initiate retirement proceeding against those employees who have attained age of 60 years at the time of enforcement of the rules but immediate action shall be taken for release of pension or gratuity in case of those who have become entitled for gratuity or pension and till pension or gratuity is not sanctioned they shall not be retired. In future this procedure shall be followed that action for pension or gratuity shall be initiated one year in advance to which he is entitled at the age of 60 years in case of an employee who retires at the age of 60 years so that there shall be no delay in retiring him after attaining the age of 60 years.

6. The above rules indicated clearly an employee who does not seek retirement from service after attaining the age of 55 years or if the government does not order his retirement at that age, shall continue in service till he attains the age of 60 years. It is also indicated in unmistakable terms that every employee shall compulsorily retire after attaining the age of 60 years provided his services are not ordered to be terminated earlier. In other words the age of retirement was 60 years. Option however was there for the employee to seek voluntary retirement at 55 years and for the government to compulsorily retire him at 55.

7. Counsel for the respondent does not dispute the above provisions. He however, argued that the age of 55 years at which an employee could be asked to retire has been raised by the Corporation from 55 to 58 and if an employee has been retired at 58 it was not prejudicial to him since he could have been retired in his erstwhile company at 55 itself. Our attention was invited to Service Regulations of the Corporation providing for these matters. The argument is attractive but on a deeper consideration we find little merit in it. If the Delhi Transport Corporation had exercised its right to retire the petitioners on attaining the age of 58 years, the argument would have been tenable. But that was not done by the Corporation. The Corporation retired the petitioners on the ground that they attained the age of superannuation at 58 years. It is so stated by the notice (Annexure E) dated January 2, 1986 issued by the Deputy Personnel Office I to Hari Shankar Gaur - petitioner in W.P. No. 1244 of 1986 the notice reads :

# Delhi Transport Corporation A Government of India Undertaking I.P. Estate : New  
DelhiNo. PLD-IX (PF)/85/128 Dated January 2, 1986##

Shri Hari Shankar Gaur s/o. Shri M. L. Gaur, Office Superintendent will attain the age of superannuation i.e. 58 years on January 31, 1986. He shall, therefore, retire from the service of this Corporation with effect from January 31, 1986 in accordance with Clause 10 of the D.R.T. (Conditions of Appointment and Service) Regulations, 1952 read with office order No. PLD/2479 dated March 7, 1974. He may avail earned leave due to him prior to January 31, 1986, if he so desires.

We are told similar notices were issued to other employees as well. That means the Corporation was under the impression that the petitioners have no right to continue beyond the age of 58 years.

8. We are, therefore, of the opinion that the persons who originally were in the employment of GNIT and were employed prior to October 28, 1946 and who continued in service till May 14, 1948 and onwards will have the right to remain in service up to 60 years unless the option to retire was exercised by the person or by the Corporation at 55 years.

9. In the result the writ petition and the SLP are allowed to the extent indicated above.

10. No order as to costs.

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