SUPREME COURT OF INDIA

Tej Bahadur Ram

Vs.

State of U.P.

C.A.No.3976 of 2006

(Dr. A.R. Lakshmanan and Tarun Chatterjee JJ.)

07.09.2006

JUDGMENT

DR. AR. LAKSHMANAN, J.

Leave granted.

Heard Dr. R.G. Padia, learned Senior Counsel for the appellant and Mr. Subhrajyoti Borthakur, learned counsel for the respondents.

This appeal is directed against the final judgment and order dated 26.7.2005 of the High Court of Judicature at Allahabad passed in Civil Misc. Writ Petition No.51499 of 2005. The appellant filed the writ petition before the High Court with the following prayer: i a writ, order or direction in the nature of Certiorari quashing the impugned order dated 13.8.2004 passed by respondent no.3 (Annexure 4) so far it relates to the petitioner only;

ii a writ, order or direction in the nature of Mandamus commanding the respondents to allow the petitioner to continue in service till 31.7.2007 the due date of superannuation age;

iii Any other writ, order or direction which this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

The High Court dismissed the writ petition filed by the appellant on the ground that there is no discretion to the Management for extending the age of retirement of individual employee, and therefore, the decision of the Supreme Court has no application. Our attention was also drawn to the judgment of the Supreme Court in Hindustan Antibiotics Ltd. vs. The Workmen, reported in AIR 1967 SC 948. In our opinion, the High Court has rightly dismissed the writ petition since there is no discretion to the Management for extending the age of retirement of individual employee.

Our attention was also drawn to Rule 2 of U.P. State Electricity Board (Employees' Retirement) Regulations, 1975, which deals with date of compulsory retirement and reads thus: "2. Date of compulsory retirement:

(a) Notwithstanding any rule or oder or practice hitherto followed and except as provided otherwise in other clauses of this Regulation, the date of compulsory retirement of a Board's employee other than a Board's employee in inferior service, is the date on which he attains age of 58 years. He may be retained in service after the age of compulsory retirement with the previous sanction of the Board in writing, but he must not be retained after the age of 60 years except in very special circumstances.

....." Dr. Padia submitted that the High Court has erred in not appreciating that the guidelines provided under the Regulations of 1975 particularly Regulation 2(a) for the Board did not provide that as to when an employee should retire at the age of 60 years and when he can continue beyond 60 years and for all practical purposes, there being no difference in the powers of the Board to continue an employee up to 60 years or up to any age whatsoever without fixing even the maximum age and such a provision is totally hit by Articles 14 and 16 of the Constitution of India.

The said Rule gives discretion to the Management to retain the employee in service after the age of compulsory retirement with the previous sanction of the Board in writing, but he must not be retained after the age of 60 years except in very special circumstances. There is no discretion to the management for extending the age of retirement of individual employee.

Dr. R.G. Padia, learned Senior Counsel for the appellant, also raised another contention that the High Court has failed to consider that in accordance with Section 23(1) of the Uttar Pradesh Electricity Reforms Act, 1999, passed by the U.P. Legislature, when all the interests, rights and liabilities of the Board vested in the State Government and nothing was left with State Electricity Board, then all its officers and employees also became the officers and employees of the State Government because on any other interpretation the situation will be totally incongruous as Board will only have employer without any funds and properties and without any function. To a query put by us as to whether this point was raised before the High Court, Dr. Padia drew our attention to the ground no.1 in the writ petition, which reads thus:

"1. Because in view of Section 23 of the U.P. Electricity Reforms Act, 1999, the petitioner became employee of the State and, therefore, he is entitled to get benefit of Rules framed by the State for this employees hence entitled to be continue in service till the age of 60 years."

Though the ground in regard to Section 23 of the U.P. Electricity Reforms Act, 1999 had been raised, there is no indication from the order impugned that the said contention was argued before the High Court. The High Court was not called upon to decide the issue which was not argued before it. We have already extracted the prayer made in the writ petition. The prayer is to quash order dated 13.8.2004 passed by respondent no.3 insofar as it relates to the appellant and for a consequential mandamus commanding the respondents to allow the appellant to continue in service till 31.7.2007 the due date of superannuation age. The appellant has not questioned the validity of provisions of U.P. State Electricity Board (Employees' Retirement) Regulations, 1975.

Dr. Padia has cited AIR 1967 SC 948 (Hindustan Antibiotics Ltd. vs. The Workmen of Kerala State Electricity Board) and drew our attention to paragraph 39, which reads thus: "The next question is the fixation of the age of retirement for the employees. The existing age of retirement is 55 extendable to 60 years at the discretion of the management if the workmen are considered suitable and if they are medically fit and mentally alert. The Tribunal raised the age of retirement from 55

years to 58 years but gave a discretion to the Company to continue an employee after that age. The learned counsel for the Workmen contended that the superannuation age fixed by the Tribunal does not reflect the social changes that have taken place in the country and has also ignored the judicial trend in that regard. Reliance is placed upon the decision of this Court in G.M. Talang v. Shaw Wallace and Co. Ltd., (1964) 7 SCR 424. Therein this Court held that the opinion furnished by the several documents on record clearly showed a consistent trend in the Bombay region to fix the retirement age of clerical and subordinate staff at 60 years. In the course of the judgment, this Court noticed the Report of the Norms Committee in which the following opinion was expressed:

"After taking into consideration the views of the earlier Committees and Commissions including those of the Second Pay Commission the report of which has been released recently, we feel that the retirement age for workmen in all industries should be fixed at 60. Accordingly, the norm for retirement age is fixed at 60."

But it is said that the scope of the judgment was confined only to the Bombay region and it should not be extended to the Poona region. A perusal of the Tribunal's Award shows that it followed the decision given by it in the dispute of Shaw Wallace and Co. Ltd., which was reversed by this Court. That part, the Tribunal also recognised that the retirement age should be raised from 55 years to 58 years and that even thereafter discretion should be given to the employers to continue the employees or not to do so. This indicates that in the view of the Tribunal, the retirement age in the case of the employees of the industry in question could reasonably be raised beyond 58 years. We do not think it is proper to give a discretion to the company to raise the age of retirement or not to do so, for, the vesting of such uncontrolled discretion on the employer might lead to manipulation and victimisation. We would, therefore, following the trend of judicial opinion, hold that the retirement age of the employees of the Company should be raised to 60 years."

That decision was given in a case where under the Rule the age of retirement was prescribed as 55 years extendable to 60 years at the discretion of the management, if the workmen were considered suitable and if they were medically fit and mentally sound. The Supreme Court said this kind of discretion should not have been left to the Management as it could result in manipulation and victimization and, therefore, the retirement age of the employee should be the upper age of 60 years. As already noticed, in the case in hand, the Regulation fixes the retirement age of 58 years. The employee may be retained in service after the age of 58 years with the previous sanction of the Board in writing, but he must not be retained after the age of 60 years except in very special circumstances. In our opinion, the decision of the Supreme Court is distinguishable on facts and has no application.

The learned counsel for the respondents submitted that the High Court is fully justified in passing the judgment challenged herein and there is no perversity or illegality in the impugned judgment. He also submitted that the decision of this Court in Hindustan Antibiotics Ltd. (supra) has no applicability to the present case and the High Court has rightly distinguished the same. He would further submit that the issue of augmenting the age of superannuation of the employees of the Corporation from 58 years to 60 years was considered both by the State Government as well as by the Corporation, and the age of superannuation after due consideration was retained at 58 years. He would further submit that the services of the appellant were never acquired by or vested into the State Government and hence the appellant is not and cannot be the employee of the State Government and as such the Rules of the State Government relating to age of superannuation of their employees do not ipso facto apply to the appellant.

We have carefully considered the rival submissions made by the learned counsel appearing on either side. We do not find any merit and substance in the arguments advanced by the learned Senior Counsel for the appellant. We are, therefore, of the opinion that there is no warrant for interference with the order passed by the Division Bench of the High Court. The Civil Appeal stands dismissed. There will be no orders as to costs.