SUPREME COURT OF INDIA

Paradeep Phosphates Limited

Vs.

State of Orissa

C.A.No.3997-3998 of 2018

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

19.04.2018

JUDGMENT

R.K.Agrawal,J.,

SLP(C) No.35347-35348 of 2016

1. Leave granted.

2. The above appeals have been preferred against the impugned common judgments and orders dated 30.08.2016 and 06.10.2016 passed by the High Court of Orissa in WPC No. 9180 of 2010 and RVWPET No. 236 of 2016 respectively whereby the Division Bench of the High Court dismissed the appeal and the review petition filed by the appellant herein while upholding the decision dated 17.04.2010 passed by the Industrial Tribunal, Bhubaneswar in I.D. Case No. 16 of 2003.

3. Brief facts:-

> "(a) In the year 1981, the appellant-Company was incorporated as a joint venture between the Government of India and Republic of Nauru with an objective to manufacture Di-Ammonium Phosphates.
>
> (b) Later on, in the year 1993, the Republic of Nauru disinvested its entire equity stake to the Government of India and the appellant-company became a wholly owned Public Sector Undertaking of the Government of India having its corporate and registered office at Bhubaneswar.
>
> (c) Due to deteriorating financial position of certain Public Sector units, the Government of India on 19.05.1998 decided to temporarily enhance the age of retirement of all Central Public Sector Employees from 58 years to 60 years with a view that the same may help industries to cut down their losses. Pursuant to the said

order dated 19.05.1998, the appellant-Company implemented the said order vide order dated 19.11.1998 in Company with retrospective effect from 27.05.1998.

(d) Inspite of the enhancement of retirement age, the financial performance of the appellant-Company still not improved. As a result, the Government of India issued an Office Memorandum dated 22.08.2001 to all Central Public Undertakings including the appellant intimating its decision to roll back the age of retirement of all the employees of Public Sector Undertaking from 60 years to 58 years. Before this Memorandum, the Government of India, on 08.06.2000, had advised the appellant-Company to review the decision on enhancement of age of retirement. However, the appellant-Company did not take any decision on the said advisory.

(e) In the meanwhile, the Government of India, on 28.02.2002, divested its 74% shareholding in the appellant company in favour of one M/s Zuari Maroc Phosphates Ltd. ("Zuari"), thereby, keeping only 26% shareholding in its favour. As per the share holding agreements, under Clause 7.2 (j) it was provided that all the decisions taken by the Board of Directors of the appellant-Company, prior to the date of the disinvestment, shall be binding on all concerned.

(f) On 17.07.2002, the appellant-Company, by office order, withdrew the earlier office order dated 19.11.1998 and restored the age of retirement to 58 years in respect of all the employees in terms of Certified Standing Orders and Services Rules of the appellant-Company.

(g) Being aggrieved, the Trade Union raised dispute with regard to the above and as a consequence of the same, the Government of Orissa, Labour and Employment Department made Reference under Section 12 read with Section 10 of the Industrial Disputes Act, 1947 (in short "the Act") to the Industrial Tribunal, Bhubaneswar. The Industrial Tribunal, vide order dated 17.04.2010, disposed off the Reference and invalidated the action of the appellant-Company of rolling back the age of retirement from 60 years to 58 years due to contravention of Section 9A of the Act which says prior notice must be given to the employees by the employer which the employer intentionally omitted to give in the present case.

(h) Being dissatisfied, the appellant-Company challenged the decision of the Industrial Tribunal by way of filing writ petition in the High Court of Orissa. The Division Bench of the High Court, vide order dated 30.08.2016, dismissed the writ petition and held, inter alia, that there was no error apparent in the decision of the Industrial Tribunal. Thereafter, the appellant-Company also preferred a review petition but the same again got dismissed vide order dated 06.10.2016.

(i) Consequently, the appellant-Company has filed these appeals by way of special leave before this Court."

4. We have given our solicitous consideration to the submissions of learned senior counsel for the parties and perused the relevant material placed before us. Point(s) for consideration:-

5. Whether in the light of present facts and circumstances of the case, any intervention of this Court is required in the impugned decision of the High Court?

Rival contentions:-

6. At the outset, leaned senior counsel for the appellant-Company contended that the High Court failed to appreciate that the age of retirement laid down in the appointment letters, the Service Rules and the Certified Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 are binding upon all workmen governed by the same and, therefore, a temporary concession of allowing persons to continue to serve until the age of 60 years pursuant to a government circular issued as a temporary measure to combat losses in Central Public Sector Undertakings cannot amount to a change in the settled service conditions.

7. In other words, contention of the appellant-Company is that even if the benefit of enhancement of age of superannuation from 58 years to 60 years has been extended in favour of the workmen, they have got no right to retain the same for the reason that the Service Rules and the Certified Standing Orders applicable to the workmen stipulates a condition of superannuation on attaining the age of 58 years and since the same has not been amended in accordance with law, hence, the provisions of Service Rules and the Certified Standing Orders are binding upon the workmen and merely because the benefit has been given to superannuate on attaining the age of 60 years instead of the age of 58 years for a period of four years i.e., 1998 to 2002, it will not ipso facto replace the age of superannuation as has been provided in the Service Rules or the Certified Standing Orders. Hence, no question of applicability of Section 9A of the Act arises in any case. Therefore, the impugned decision of the High Court is liable to be set aside.

8. Per contra, learned senior counsel for the respondent submitted that the present appeals have been filed against the well reasoned impugned judgments dated 30.08.2016 and 06.10.2016 which were rightly passed by the Division Bench of the High Court. Further, it was also submitted that the action of the appellant-Company amounts to contravention of Section 9A of the Act read with Fourth Schedule which postulates the necessity of prior notice to the workers if employer proposes to effect any change in the conditions of service. Hence, this appeal is devoid of merits and deserves to be dismissed.

Discussion:-

9. The relationship of the employer and employee is of utmost faith and, as a result, it falls under the ambit of fiduciary relationship. In order to regulate such relationship, legislature came up with legislation i.e., the Industrial Disputes Act, 1947. The purpose of the Act is to protect the interest of employees as they are the weaker sections since time immemorial. In order to safeguard the rights of the employees, certain amendments have been made

subsequently in the Statute. In 1956, legislature inserted Section 9A of the Act which makes it obligatory on the part of the employer that he is bound to give advance notice to the employee if he intends to change certain things as envisaged under Section 9A of the Act read with Fourth Schedule. For the sake of convenience, it is apt to re-produce Section 9A of the Act which is as under :-

> "9A. Notice of change-No, employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the fourth Schedule shall effect such change,-
>
> (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected: or
>
> (b) within twenty-one days of giving such notice:
> Provided that no notice shall be required for effecting any change-
>
> (a) where the change is effected in pursuance of any settlement or award: or
>
> (b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette, apply."

10. At the first sight of the provision, prima facie, it appears that the employer is bound to give minimum 21 days' notice to the employee if employer intends to change any material terms of service. Section 9A of the Act is a provision in consonance with the Constitutional mandate which assures the protection of principles of natural justice i.e., no one shall be condemned unless heard. For the guidance, legislature prescribed the Fourth Schedule and it is clearly mentioned in Section 9A of the Act that before changing either of the things as envisaged in the Fourth Schedule, prior notice must be given to the employee. In the instant case, the grievance of the Trade Union before the Tribunal was that withdrawal of the age of superannuation i.e., restoration of the age from 60 years to 58 years, amounts to contravention of Clause 8 of the Fourth Schedule, hence, employer was bound to give prior notice which employer cannot escape. Therefore, the action of the employer is bad in law and liable to be set aside which was eventually upheld by the Tribunal and the High Court.

11. Undoubtedly, it is a cardinal principle of law that beneficial laws should be construed liberally. The Industrial Dispute Act, 1947 is one of the welfare legislations which intends to provide and protect the benefits of the employees. Hence, it shall be interpreted in a liberal and broad manner so that maximum benefits could reach to the employees. Any attempt to do strict interpretation would undermine the intention of the legislature. In a catena of cases, this Court has held that the welfare legislation shall be interpreted in a liberal way.

12. The grievance of the appellant-Company before this Court is that the increase in the superannuation age of the employees was temporary in nature in order to combat the losses and in no circumstances, it can be said that withdrawal of it amounts to withdrawal of customary concession or privilege or change in usage. Eighth clause of the Fourth Schedule says "withdrawal of any customary concession or privilege or change in usage". The whole dispute revolves around the interpretation of the terms customary concession, privilege or change in usage. In the instant case, we are mainly concerned with the term 'privilege'. The word "privilege" as such is not defined in the Act. In the absence of statutory definition, we have to take recourse of the dictionary or general meaning of the term "privilege". The Dictionary meaning of the word privilege means a "special right, advantage or immunity granted or available only to a particular person or ground". In other words, a particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of others.

13. It is admitted position that the Board of Directors took the decision of enhancement of age of retirement and it came into force with retrospective effect from 27.05.1998 as mentioned in the order dated 19.11.1998. Though, this decision implemented without the amendment in the Standing Orders and Rules, yet impliedly it got the force as a service condition since it directly relates with the service condition of the employees. Age of superannuation is an integral part of the service condition of the employee. Also, enhancement of superannuation age would impliedly amount to a privilege since it was provided particularly for the central public sector employees. At this juncture, the Division Bench of the High Court held as under:

> "However the facts of this case is little bit different because the necessary modification has not been incorporated either in the Service Rules or in the Certified Standing Order enhancing the age of superannuation from 58 years to 60 years, but the Central Government being the competent authority has directed the Board of Directors to enhance the age of superannuation and accordingly it has been enhanced in the year 1998 and thereafter it has been reduced vide order dtd 17.7.2002 by the same process, hence we are of the considered view that by passing the order dtd 17.7.2002 the privilege has been granted to the workmen has been recalled by altering the same by reducing the age of superannuation from 60 years to 58 years is alteration which is detrimental to the interest of the workmen."

14. No doubt, the enhancement of the superannuation age was temporary in nature in order to achieve certain objectives and also it is not deniable that yet employees would be governed by the Service Rules and the Certified Standing Orders which were not amended. However, if we allow the plea of the appellant-Company then it would defeat the object of legislature because legislature could never have intended that employees would be condemned without giving them right of reasonable hearing. Naturally, every employee is under the expectation that before reducing his superannuation age, he would be given a proper chance to be heard. Right to work is a vital right of every employee and in our view, it shall not be taken away

without giving reasonable opportunity of being heard otherwise it would be an act of violation of the Constitutional mandate.

15. Moreover, the contention of the appellant-Company that the object of enhancement of superannuation age was just to save the industries from huge losses, therefore, it does not violate any statutory right of the employees, cannot be sustained in the eyes of law and also it does not give the license to the appellant-Company to act in contravention of law since it is a cannon of law that everyone is expected to act as per the mandate of law.

16. To sum up, we are of the view that at the very moment when the order of enhancement of superannuation of the employees came into force though temporary in nature, it would amount to privilege to employees since it is a special right granted to them. Hence, any unilateral withdrawal of such privilege amounts to contravention of Section 9A of the Act and such act of the employer is bad in the eyes of law.

17. In view of above detailed discussion, we are of the considered view that there is no error in the impugned judgment of the High Court, hence, we are not inclined to interfere in it. Accordingly, these appeals are hereby dismissed leaving parties to bear their own cost.