

# ALLAHABAD HIGH COURT

Bhai Lal

Vs.

The Superintending Engineer

Civil Misc. Writ Petns. Nos. 307 and 1976 etc., of 1976, 5615 of 1974, 2735 of 1975, 2277 of 1977 etc. etc., 525 of 1978

(H.N. Seth and B.N. Sapru, JJ.)

11.09.1978

## JUDGMENT

**Seth, J.**

1. The dispute in these petitions under Art. 226 of the Constitution relates to the age of retirement of the workmen of the State Electricity Board, Uttar Pradesh, working in its various undertakings at Allahabad, Kanpur, Varanasi, Bareilly, Etawah, Mathura, and Jhansi.

2. It is the common case of all the parties that Electricity Undertakings at various places mentioned above were originally owned and controlled by private companies (hereinafter referred to as the erstwhile licensees), which had framed Standing Orders regulating the terms and conditions of their respective employees. Whereas, the Electricity Undertaking at Kanpur owned by Begg. Southerland & Co. was, after being taken over by the State Government, eventually transferred to the State Electricity Board, electricity undertakings at remaining places, were directly taken over from their respective owners by the State Electricity Board sometime between the years 1964-65.

3. Parties are also agreed that the standing orders, framed by the erstwhile licenses, excepting for those at Allahabad and Varanasi, did not prescribe any age of superannuation for their workmen. So far as the Electricity undertakings at Varanasi and Allahabad are concerned, there is some dispute between the parties with regard to the prescription of age of superannuation in the standing orders framed by the erstwhile licences. But as we will presently show, this controversy will not at all be relevant for deciding the petitions filed by the

employees of the undertakings at these two places.

4. On 28-5-70 the State Government in, exercise of powers conferred by S. 13-B of the Industrial Employment (Standing Orders) Act, and by Section 79 (c) of the Electricity (Supply) Act 1948, notified the regulation applicable to the employees of the State Electricity Board throughout the State, prescribing 58 years as the age for their superannuation. Acting on the basis of these regulations, the State Electricity Board issued notices to the petitioners informing them that they were, after attaining the age of 58 years to retire from service with effect from the date mentioned in the notice. The petitioners then came up before this Court and challenged the validity of the regulations notified by the State Government on 28-5-70.

5. Learned counsel appearing for the workmen in all these cases submitted that the standing orders which had been framed by the erstwhile licenses prior to the respective undertakings being taken over by the State Electricity Board continued to be operative even after those undertakings had been taken over by the State Electricity Board. Inasmuch as those standing orders did not lay down any age for compulsory retirement of the employees, they emphasized that according to terms and conditions of service applicable to them, the employees had a right to remain in the service of the undertaking till such time as they were physically and mentally fit to perform their duties and that they could not be retired at any fixed age. On the face of already existing standing orders framed under the Industrial Employment (Standing Orders) Act, the respondents did not have any jurisdiction to frame regulations under Section 79 (c) of the Electricity (Supply) Act (Act 54 of 1948.) prescribing the terms and conditions of the service of their workmen. The stand taken on behalf of the State Electricity Board, however, is that in view of S. 13-B of the Standing Orders Act and Section 79 (c) of the Electricity (Supply) Act, they had ample jurisdiction to frame regulations prescribing the conditions of services of their workmen and to lay down the age for their compulsory retirement.

6. A similar question came up for consideration before a Full Bench of this Court in the case of *Hari Shankar Jain v. Rural Electrification Divn., Etah. reported in* <sup>1</sup> The Full Bench laid down the following three propositions :- (at pp. 1733, 1734).

- (1) The Industrial Employment (Standing Orders) Act, 1946 applies to industrial establishment of the State Electricity Board :
- (2) The Standing Orders framed in an industrial establishment by an Electrical Undertaking do not cease to be operative on the purchase of the undertaking by the Board or on framing of the Regulations under Section 79 (c) of the Electricity (Supply) Act, 1948; and
- (3) S. 13-B of the Industrial Employment (Standing Orders) Act, 1946 applies only to the industrial establishment of the government and to no other establishments.

and hold that the notification under S. 13-B of the Industrial Employment (Standing Orders) Act did not in any way affect the relevant standing orders which continued to be applicable to the respective undertakings. As the standing orders framed under the Industrial Employment (Standing Orders) Act, had an overriding effect, the State Electricity Board was not, under Section 79 (c) of the Electricity (Supply) Act, 1948, competent to frame Regulations prescribing age limits for its employees and that they could not be retired on attaining the age of 58 years as laid down in those Regulations.

7. Being aggrieved, by the aforesaid decision the State Electricity Board went up in appeal before the Supreme Court which by its judgment (*U. P. State Electricity Board v. Hari Shanker Jain*)<sup>2</sup> upset the view of the full Bench of this Court in so far as third proposition was concerned. It held that power under S. 13-B of the Industrial Employment (Standing Orders) Act could equally be exercised in respect of the Industrial Establishments now owned by the State Electricity Board and observed thus :- (at pp. 1666- 67 of LIC).

"We therefore hold that the Industrial Employment (Standing Orders) Act is a special, law and in regard to the matter 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 S. 13-B or certified by the Certifying Officer under S. 5 of the Industrial' Employment (Standing Orders) Act. 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 the present case the regulations, made by the board with regard to age of superannuation have been duly notified by the Government, the regulations shall have effect notwithstanding the fact that it is a matter which could be the subject matter of Standing Order under the Industrial Employment (Standing Orders) Act. The respondents were, therefore, properly retired when they attained the age of 58 years."

(Emphasis supplied).

8. These observations in our opinion clearly mean that even though the Industrial Employment (Standing Orders) Act is a special enactment and generally speaking the standing order framed there under shall, in regard to the subject matter mentioned in the schedule to the Industrial Employment (Standing Orders) Act, prevail over the regulation framed by the State Electricity Board, but in case the regulations framed by the Board, have been notified under S. 13-B of the Standing Orders Act, those regulations shall prevail over the standing orders framed under the Standing Order Act.

9. Sri K.P. Agrawal learned counsel for the workmen urged that the aforesaid observation made by the Supreme Court must be confined to cases where there was a lacuna in the Standing Order, framed by the erstwhile license with regard to the age of superannuation of these employees. It was only in such cases where the regulations under S. 79 (e) of the Electricity (Supply) Act, if notified under S. 13-B of the Industrial Employment (Standing Orders) Act, were to be effective. As it has been held that Industrial Employment (Standing Orders) Act is a special Act which prevails over the Electricity (Supply) Act, no regulation framed under the latter Act can have the effect of overriding a specific standing order dealing with a particular subject. Learned counsel advanced this argument with a view to canvass that in some cases the Standing Orders framed by the erstwhile licensees do contain a specific provision laying down an age higher than 58 years for compulsory retirement of their employees. However, in view of the clear pronouncement made by the Supreme Court that the regulation framed under Section 79 (c) of the Electricity (Supply) Act, if notified under S. 13-B of the Industrial Employment (Standing Orders) Act, shall be effective notwithstanding the fact that the matter could be the subject-matter of the

Standing Orders under the Industrial Employment (Standing Orders) Act, it is not possible to accept this argument. Once the regulations framed under Section 79 (c) of the Electricity (Supply) Act, 1948 have been notified by the State Government under S. 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 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.

10. Sri K. P. Agrawal learned counsel appearing for the workmen next pressed the grounds which he has been permitted to add today. In substance his contention is that prior to the framing of the impugned regulation, the petitioners had already acquired a vested right to continue in service so long as they were physically and mentally fit to carry on their duties. Their services could not be determined except in accordance with Standing Orders which contemplated determination of their employment either for some misconduct and in the manner laid down therein or by giving them a particular notice. Accordingly, the rule of retirement contained in the regulation framed by the Board and notified on 28th of May, 1970, should not be applied retrospectively to the employees who were already in service on that date, instead the rule providing for the age of retirement as 58 years, should be applied only to the employees who have been recruited in the service of the Board on or after 28th May, 1970. In this connection, he placed reliance on a case decided by the Supreme Court in the case of *Workmen of Kettlewell Bullen & Co. Ltd. v. Kettlewell Bullen & Co. Ltd.* reported in<sup>3</sup>

11. In our opinion it is not possible to accept the submission, in *Hari Shanker Jain's case (1978 Lab IC 1657) (SC)* (supra), in which the State Electricity Board went up in appeal before the Supreme Court (Civil Appeal No. 2199/77 decided on 28-8-1978) also the controversy was with regard to the age of superannuation of the employee who had been in the service of the erstwhile licensees from before framing of the impugned regulations. The Supreme Court

ruled that such employees were governed by the regulation and would retire on attaining the age of 58 years. However, in the case cited by the learned counsel for the petitioner the Supremo Court discussed the impact of its decision in *Guest, Keen William (Private) Limited v. P. J. Starling* <sup>4</sup> and observed that in that case the court had to consider the impact of certain standing orders, fixing the age of superannuation at 55 years of persons who had joined the Company's service before the date of standing orders. It held that the age of retirement as fixed by the standing orders did not apply to the prior employees and thereafter it proceeded to fix the age of retirement of the employees who had been in service prior to the enforcement of the standing orders as 60 years. The Supreme Court went on to observe that the retirement age as 55 years fixed by the standing orders, was not to be applied to the existing employees till it was shown that they had agreed to that age of retirement. In our opinion, the observations in this regard made by the Supreme Court merely meant that where service condition had been voluntarily agreed upon between the parties, the same could not be altered unilaterally by framing the standing orders and in such cases the standing orders should be applied to the existing employees either if the standing orders expressly said so or that the conditions mentioned in such standing orders had been voluntarily accepted by the employees. This decision, in our opinion, has no bearing in interpreting statutory regulation laying down the terms and conditions of service of an employee. Whenever, the terms and conditions of the service are laid down by statutory regulations, no question of a party voluntarily agreeing to it arises. If the regulations so framed are valid, they would affect the rights of party, whether it likes it or not. The regulation framed in this case, on the face of it, applies to all employees of the Board whether they had been in service from before or had been recruited subsequently. In this view of the matter, it is not possible to accept the argument either that the regulations are being applied retrospectively or that they are being applied to such persons who are not intended by the Regulation Making Body to be covered by these regulations.

12. In the group of writ petitions which have been heard by us today, there are four writ petitions viz. Nos. 1979 of 1976, 2277 of 1978, 505 of 1977 and 2010 of 1977 wherein certain workmen of the Electricity Supply Undertaking at Allahabad have claimed that they are being compulsorily retired even before reaching the age of 58 years, and that the notice issued to them stating that they

stand superannuated is accordingly invalid. Learned counsel appearing for the petitioners urged that in some of these cases the petitioners made representations to the authorities of the State Electricity Board bringing the fact that they had not reached the age of 58 years to their notice but those representations have not been considered by the authorities so far. Learned counsel for the respondents stated that as such representations were never received by them, no question of deciding them arose. However, in case the petitioners in all these cases made fresh representations, the authorities would consider the same on merits afresh and if ultimately they get satisfied that the petitioners or any of them have in fact not reached the age of 58 years, they will have no hesitation in correcting the error. In these circumstances, it is not necessary for us to go into this controversy with regard to the real age of these petitioners.

13. In the result all these petitions are dismissed, the interim orders passed in these cases are vacated. In these circumstances, we direct the parties to bear their own costs.

Petitions dismissed.

Cases Referred.

1. (1977) 2 Lab LJ 429: (1976 Lab IC 1720)
2. Dated 28th Aug., 1978 in Civil Appeal No. 2199 of 1977: (reported in 1978 Lab IC 1657)
3. (1964) 2 Lab LJ 146
4. (1959) 2 lab LJ 405: (AIR 1959 SC 1279)