2013 SCC OnLine Del 6476 : (2014) 140 FLR 1005 : 2014 LLR 126

In the High Court of Delhi
(BEFORE A.K. PATHAK, J.)

M/S. Delhi Printing and Publishing Co. Ltd.

and

Labour Court-X and another

W.P. No. 5167 of 1999
Decided on October 3, 2013

The Judgment of the Court was delivered by

A.K. PATHAK, J.:— Aggrieved by the Award dated 13th January, 1999 passed by the Presiding Officer, Labour Court-X, Delhi petitioner has preferred this writ petition under Article 226 of the Constitution of India. Upon appreciation of evidence adduced by the parties Industrial Adjudicator has held that appropriate date of retirement of respondent No. 2 would be 58 years, thus, he was entitled to 50% back wages till he attained the age of 58 years.

2. Factual matrix, as unfolded, is that respondent No. 2 raised an industrial dispute which was referred by the appropriate Government to Labour Court on 14th July, 1992 in the following terms:—

> "Whether the termination of services of Shri M.H. Nagvi by way of termination is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this regard?"

3. In the statement of claim respondent No. 2 alleged that he joined the petitioner on 1st October, 1960. However, he was made to work for several other companies, namely, Delhi Press, Delhi Book Company, Delhi Press Samachar Patra Pvt. Ltd., Delhi Press Patra Prakashan (P) Ltd. Ghaziabad Mudrak (P) Ltd., Vinapar P Ltd., Shobhika Saundarya (P) Ltd., Colour World (P) Ltd., Delhi Prakashan Vitran (P) Ltd. Pratichhaya (P) Ltd. and Vishv Vijay (P) Ltd. besides the petitioner. His job profile included disbursement of salary to the employees of all the aforesaid concerns. On 31st October, 1990 respondent No. 2 was told by Sh. Rakesh Nath of the petitioner that since he had reached the age of superannuation his account would be settled on 1st November, 1990.

Accordingly, on 1st November, 1990 respondent No. 2 was paid Rs 30,267/- through a cheque towards salary for the month of October, 1990, bonus and gratuity. Subsequently, respondent No. 2 came to know that employees used to be retired either on completing the age of 58 years or on completion of 30 years of service. He was only 53 years of age and had rendered continuous services of 30 years one month, thus, was wrongly retired. He further alleged that matter relating to applicability of Palekar Award was pending for adjudication before the Labour Court, thus, respondent No. 2 reserves his right to prefer the claims under the said award after the decision of Labour Court. He further alleged that case relating to the age of superannuation was pending in the High Court as also

before the Industrial Tribunal, Delhi. The age of superannuation in case of newspaper employees was 60 years. He served a demand notice on the petitioner on 17th December, 1990 *vide* registered A.D. as well as UPC calling upon to reinstate him in service with full back wages along with continuity of service but to no effect.

4. In written statement, petitioner alleged that respondent No. 2 was retired as per the standing orders of petitioner and was not entitled to the reliefs as claimed by him. It was also denied that respondent No. 2 was entitled to benefits of Palekar Award and Bachawat Wages Board. In rejoinder, respondent No. 2 denied the averments made in the written statement and reiterated the statements made in the statement of claim.

5. Respondent No. 2 examined himself as WW1. As against this, petitioner examined MW1 and MW2. Upon scrutiny of evidence adduced by the parties Industrial Adjudicator has held that employment of respondent No. 2 with the petitioner was not in dispute. It was also not in dispute that respondent No. 2 joined the petitioner on 1st October, 1960. Petitioner had retired the respondent No. 2 after he had completed 30 years of service on the basis of standing orders Ex. MWl/1. Clause 18(a) of Standing Order No. 18 provides that “an employee shall retire on completion of 30 years of service or attaining the age of 55 years, whichever is earlier”?. Respondent No. 2 had received Rs 30,267/- from the petitioner towards full and final settlement of all his claims. However, Industrial Adjudicator concluded that the superannuation clause as contained in the standing order, on the basis of which respondent No. 2 was retired, did not find mentioned in the schedule to the Industrial Employment (Standing Orders) Act,

1946, thus was not applicable. Reliance was placed on *Saroj Kumar Chose* v. *Chairman Orissa State Electricity Board*[1], wherein it was held thus "where a Standing Order certified by the certifying officer contains a clause relating to superannuation not covered by the Schedule of the Act nor by the Model Standing Orders, such certification cannot be a valid certificate as it cannot add enforceability to it merely on the ground that workers, did not challenge such provision before the said Certifying Officer". Reliance was also placed on *United Provinces Electric Supply Ltd.* v. *T.N. Chatterjee*[2], and *Workmen of Lakheri Cement Works Ltd.* v. *Associated Cement Companies Ltd.*[3] In the instant case, Industrial Adjudicator held that Clause 18(a) of the Standing Order, thus, could not have been enforced. It was further held that the standing orders on additional items applicable to all industries Schedule I-B of Industrial Employment (Standing Orders) Central Rules substituted by GSR 30(E), dated. 17th January, 1983 provides the age of retirement as 58 years. Thus, appropriate age of retirement in case of respondent No. 2 would be 58 years.

6. Learned Counsel for the petitioner has vehemently contended that even though certified standing order was held not applicable, no fault could be found with the action of the petitioner in superannuating the respondent No. 2 after 30 years of service in terms of the contract of service to which respondent No. 2 had agreed. In the appointment letter, which was duly proved by the respondent No. 2 himself, it was categorically mentioned that respondent No. 2 shall retire from service on completion of 55 years of age or after 30 years of service whichever occurs earlier unless management at its discretion for special reasons permits him to continue thereafter. The terms and conditions of service as stipulated in

the appointment letter were duly accepted by the respondent No. 2 by signing the same in taken of acceptance thereof. It is contended that service of respondent No. 2 was governed by the terms of personal contract and in terms of the contract of service as agreed upon by the parties petitioner was entitled to superannuate the respondent No. 2 on his completing 30 years of service and which was done. Respondent No. 2 was not only conscious of the fact that he will retire on completion of 30 years of service but also accepted his superannuation which is evident from the fact that he had received all his terminal dues without any protest. As an afterthought respondent No. 2 had served the demand notice after lapse of two months. It is further contended that

since respondent No. 2 was superannuated in terms of contract of service same could not have been termed as unjustifiable, inasmuch as, respondent could not have assailed his termination after receiving the cheque for Rs 30,267/- towards full and final settlement of all his dues. Reliance has been placed on *Sagari Leathers (P) Ltd.* v. *Presiding Officer, industrial Tribunal (4), Agra*[1], *The Karnataka Agro Industries Corporation Ltd. Hebbal, Bangalore-24* v. *M. Krishnappa*[2], *Harmohinder Singh* v. *Kharga Canteeti, Ambala Cantt.*[3], and *Hantdard Dawakhana (Wakf) Laboratories* v. *Raunaq Hussain*[4].

7. *Per contra*, learned Counsel for the respondent No. 2 has vehemently contended that the case of petitioner as set out in written statement was that respondent No. 2 was retired on completion of 30 years of his service, in terms of the certified standing order. It was not pleaded that respondent No. 2 was superannuated on completion of 30 years of service in term's of the contract of service as contained in the letter of appointment duly accepted by respondent No. 2. Facts not pleaded cannot be taken note of. The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side such a contention has to be specifically pleaded and then proved. Reliance has been placed on *Shankar Chakravarti* v. *Britannia Biscuit Co. Ltd.*[5]. To counter this argument learned Counsel for the petitioner has contended that if an argument emerges from the documents, no fresh investigation of fact is required and only the question arises about simple application of law in the matter. Accordingly, such a legal argument by placing reliance on the proved documents is permissible. Reliance, has been placed on *Kalyani Sharp India, Ltd.* v. *Labour Court No. 1, Gwalior*[6].

8. During the course of arguments learned Counsel for the petitioner has failed to assail the findings returned by Industrial Adjudicator that clause regarding superannuation as contained in the certified standing order is not applicable in the present case. However, his contention is that superannuation of respondent No. 2 on his completion of 30 years of age cannot be termed to be illegal nor can it be termed as retrenchment within the meaning of section 25-F of Industrial Disputes Act, 1947 (“the Act”) for short) since petitioner superannuated in terms of personal contract of service to which parties had agreed. It is further Contended that respondent No. 2 had himself pleaded that other employees were superannuated on completing the age of 58 years or on completion of 30 years of service thus, he was conscious of the fact that

petitioner was well within its rights to retire an employee on his completing 30 years of service.

9. Relevant it would be to refer to the appointment letter of the respondent No. 2, which reads as under:—

"DELHI PRESS

JHANDEWALA ESTATE, RANI JHANSI ROAD, P.O. BOX 17,

NEW DELHI 55.

1st October, 1972

Shri M.H. Naqvi C-33, Irwin Road New Delhi

Dear Sir,;

The management has been pleased to appoint you as Asstt. Business Manager in our office on the following terms and conditions :—

1. You will be paid a sum of Rs 505/- (Rupees Three Hundred Ninety-Five basic pay plus Rupees One Hundred Ten as dearness allowance) per month as wages.
2. Your services can be terminated at any time by giving one month's notice either side.
3. You should observe all the rules and regulations of the Company as may be in force from time to time (a copy of which is being initiated by you in token of your acceptance) which *inter alia* provide that:—
   (i) You should be willing to accept transfer anywhere in India and also in any concern/concerns under the same ownership/management.
   (ii) You should not engage yourself in any outside work over and above your legitimate work in the Company while you are on duty, on leave or on holidays.
   (iii) You will be retired from service on completion of 55 years age or after 30 years services whichever occur earlier unless the management at its discretion for special reason permit you to continue thereafter.

If you accept and agree to the above terms and conditions of your appointment please sign the duplicate copy of this letter of appointment as token of your acceptance.

Yours faithfully

DELHI PRESS

Sd/

ASSTT. SECRETARY

I have read and understood above terms and conditions of my appointment.

I accept them and agreed to abide by the same and in token of my acceptance I sign below :—

Sd/

(M.H. Naqvi)"

10. It may be noted here that respondent was initially appointed as Proof Reader on 1st October, 1960 for a period of one year. Subsequently, his appointment was extended on yearly basis by issuing fresh appointment letter(s). Ultimately he was appointed on regular basis on 1st October, 1972 and the above referred appointment letter was issued. Clause 3(iii) of appointment letter clearly indicates that age of superannuation was agreed upon as completion of 55 years of age or after 30 years of service whichever occurred earlier. Thus, even in absence of the certified standing order petitioner was Well within its right to superannuate the respondent No. 2 on completion of 30 years of service unless it desired to extend

his service in its discretion. In this case, petitioner did not deem it fit to extend the period of service of respondent No. *2* beyond 30 years. Respondent No. 2 was conscious of this clause and in fact, had accepted the cheque for Rs 30,267/- towards all his retiral dues. This amount was accepted by respondent No. 2 without any protest, obviously, because he was conscious that he was to retire on completion of 30 years of service in terms of the contract of service. In *Karnataka Agro Industries* (supra), it has been held as under:—

11. It is true that in case the standing orders provide for a subject even if there are service rules or conditions on the same subject, they get superseded by the standing orders. It is equally true that if the standing orders do not provide for any subject, the contract between the parties prevails. It is not in dispute in the instant case that the employee has opted to retire on completing 55th year under the contract of service. That being so, there being no standing order in the subject of superannuation the contract prevails and there is absolutely no breach of provision of any standing order or subject-matter of the contract in the facts of this case.

12. Accordingly, even though Industrial Adjudicator held that the clause of superannuation as contained in the standing order was not applicable he could not have concluded that respondent No. 2 was retired illegally in view of the present letter of appointment. In this

case, contract of service would prevail in the subject of superannuation. I do not find any force in the contention of learned Counsel for the respondent that in absence of the pleadings this argument could not have been considered. The legal argument arises from the document already on record and proved by the respondent No. 2 himself and no further investigation and/or enquiry in this regard is required to be undertaken. This argument is based on interpretation of the document.

13. Section 2(oo)(bb) of the Act envisages that termination of - service of workman as a result of the non-renewal of the contract of employment between the employer and employee concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein would not amount to retrenchment. Accordingly, question of compliance of section 25-F of the Act would not be attracted in this case.

14. Learned Counsel for respondent No. 2 has next contended that in this case period of 30 years would commence from 1st October, 1972 when the service of respondent No. 2 was regularised; meaning thereby that he would have completed 30 years of service in the year 2002.1 do not find any force in this contention of learned Counsel. Respondent was initially appointed on 1st October, 1960 for one year. His employment was extended thereafter on year to year basis till he was regularised in the year 1972. He remained in continuous employment of petitioner all throughout without any break. He received all his benefits treating him in continuous service rights from the initial appointment. During the course of hearing it has been admitted that even terminal benefits were given to respondent No. 2 after 30 years of service treating him in continuous service from his initial appointment. Even in the statement of claim respondent No. 2 has stated that he was superannuated after 30 years of service. Accordingly, the period of service would commence from the date of initial appointment and not from the date he was regularised. For the foregoing reasons, I am of the view Industrial Adjudicator has committed error of law in overlooking and/or ignoring the terms and conditions as set out in the appointment letter which envisaged superannuation of respondent No. 2 on completion of 30 years of service. Accordingly, writ petition is allowed and impugned Award is set aside.

15. *Petition Allowed*

[1.] AIR 1970 Ori 126.

[2.] 1972 (25) FLR 269 (SC).

[3.] (1970) 20 FLR 243.

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1. 2006 (110) FLR 1043 (Alld.).

2. 1981 LAB. I.C. 647.

3. 2001 (90) FLR 548 (SC).

4. 1971 (22) FLR 197.

5. 1979 (39) FLR 70 (SC).

6. 2001 (89) FLR 321 (SC).