

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.1803/2001**

% **11th March, 2015**

MR. L.N. KHEMKA AND ORS. Petitioners

Through: None.

versus

IFCI LIMITED AND ORS. Respondents

Through: Mr. Dinkar Singh, Advocate for
respondent No.1.

Mr. Sanjay Bhatt, Advocate with Mr.
Abhishek Anand, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioners who are employees of the respondent no.1/IFCI Limited, impugn the action of the respondent no.1 in issuing the impugned H.R. Circular no.32/2000 dated 14.12.2000 whereby the retirement age was reduced from 60 years to 58 years. Earlier, the retirement age was enhanced to 60 years from 58 years in terms of the memorandum no.21/98-99 dated 27.5.1998.

2. The simple issue in this case is whether an employer can reduce the retirement age from 60 years to 58 years.

3. With respect to the terms and conditions which existed of the employees of the respondent no.1 in the year 1993 when it ceased to be a statutory corporation and became a company under the Companies Act, 1956, no doubt under Section 8(1) of the Industrial Finance Corporation (Transfer of Undertaking and Repeal) Act, 1993 the conditions could not have been changed i.e on or before 1993 if the retirement age was 60 years, then, the retirement age thereafter could not have been reduced, however, in the present case the age of retirement was enhanced not before 1993 but only from the year 1998 i.e not before the repeal of the statute-the Industrial Finance Corporation Act, 1948 the erstwhile avtar of the respondent no.1, but only after the respondent no.1 became a company under the Companies Act, 1956. Therefore, if the respondent no.1 could through its Board of Directors in 1998 enhance the age of retirement from 58 years to 60 years, there is no law by which the respondent no.1 cannot reduce the age from 60 years to 58 years inasmuch as it falls in the exclusive privilege of the employer to decide the retirement age of the employees.

4. That it is the employer who has the exclusive right to fix the retirement age of the employee is no longer *res integra* and has been decided

by many judgments of the Supreme Court as also this Court. One such judgment of this Court is the judgment in the case of ***Krishan Gopal Vs. Union of India and Ors.*** 2012 (130) DRJ 170. Paras 23 and 24 of this judgment are relevant and the same read as under:-

“23. We have considered the submissions of learned counsel on both sides. At the outset, we would like to point out that fixing of retirement age of an employee is the prerogative of the Government. Thus, it is for the Government, as employer, to decide what is the appropriate age of superannuation of different classes of employees. Since this is the Executive's function in which Courts have no role, Courts would be loath to interfere with such a decision of the Executive fixing age of retirement. In ***State of U.P. & Ors. v. Hirendra Pal Singh***, (2011) 5 SCC 305, Supreme Court had explained this principle in the following manner:

“8....So far as the issue of reduction of age from 62 to 60 years is concerned, it has not been brought to the notice of the High Court that it is within the exclusive domain of the State Government to reduce the age even in Government services. So in case of purely professional engagement, the age could validly be reduced by the State Government unilaterally.

9. A Constitution Bench of this Court in ***Bishun Narain Misra v. The State of Uttar Pradesh and Ors.***, AIR 1965 SC 1567 held that new rule reducing the age of retirement from 58 to 55 years could neither be invalid nor could be held to be retrospective as the said rule was a method adopted to tide over the difficult situation which could arise in public services if the new rule was applied at once and also to meet any financial objection arising in enforcement of the new rule.

10. In ***Roshan Lal Tandon v. Union of India and Ors.***, AIR 1967 SC 1889, a similar view has been reiterated by this Court observing that emoluments of the Government servant and his terms of service could be altered by the employer unilaterally for the reason that conditions of service are governed by

statutory rules which can be unilaterally altered by the Government without the consent of the employee. (See also *B.S. Vadera v. Union of India and Ors.*, AIR 1969 SC 118; *The State of Jammu and Kashmir v. Triloki Nath Khosa and Ors.*, AIR 1974 SC 1; *B.S. Yadav and Ors. v. State of Haryana and Ors.*, AIR 1981 SC 561; and *State of Jammu and Kashmir v. Shiv Ram Sharma*, AIR 1999 SC 2012.

11. In *K. Nagaraj and Ors. v. State of Andhra Pradesh*, AIR 1985 SC 551, this Court examined the amended provisions of Andhra Pradesh Public Employment (Regulation of Conditions of Service) Ordinance, 1983 by which the age of retirement was reduced from 58 to 55 years and this Court upheld the amended provisions being neither arbitrary nor irrational. The court further rejected the submission of the Appellants therein that the said amended provisions would have retrospective application taking away their accrued rights. (See also *State of Andhra Pradesh etc. etc. v. S.K. Mohinuddin*, AIR 1994 SC 1474).”

24. As a fortiori, it also becomes the prerogative of the Government to enhance the age of superannuation. Furthermore, while doing so, it is again the prerogative of the Government/employer to increase the age of superannuation in respect of certain categories of employees only. However, it would be with one caveat. When age of superannuation is increased in respect of a particular class of employees, then it has to be made applicable to all employees falling in the same category as otherwise it would result in invidious discrimination. Thus, if certain categories of employees who belong to same class are left out, they can legitimately make grievance and question the decision of the Government on the ground that it amounts to hostile discrimination and is thus violative of Article 14 of the Constitution.”

5. In view of the above, petitioners have no legal entitlement to raise a grievance to question the fixing of the age of the superannuation by the employer/respondent no.1. There is therefore no arbitrariness in the

action of the respondent no.1 in reducing the age from 60 years to 58 years, taking note of the fact that the age of retirement was increased in the year 1998 after repeal of the Industrial Finance Corporation Act, 1948 by the repealing Act of 1993 and thereby there does not arise any issue of vested right of existing any term and condition of retirement age being 60 years even prior to the year 1993.

6. Dismissed.

MARCH 11, 2015
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VALMIKI J. MEHTA, J