

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11139 OF 2016**

Shri Prakash Sitaram Chaukade

..Petitioner

Vs.

Sandvik Ashiya Ltd through its Manager

..Respondent

Mr. Nilesh Wable for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 24th OCTOBER, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 10-11-2014 passed by the Learned Presiding Officer, 4th Labour Court, Pune, by which order the Reference in question being Reference IDA No.74 of 2009, came to be dismissed. The said Reference arose out of the industrial dispute raised by the Petitioner on account of his retirement on 1-6-2008 after attaining the age of 58 years. It seems that the certified Standing Orders and especially Standing Order No.27 thereof provided that the retirement of the workers working with the Respondent would be at the age of 58 years. It appears that one Sandvik Asia Employees Union filed an application under Section 10(2) of the Industrial Employment (Standing Orders) Act, 1946 read with Rule 9 of the Bombay Industrial Employment (Standing Orders) Rules 1959, seeking an amendment / modification in the said Standing Order No.27

in respect of the workman employed to do manual and technical work in the Respondent. The modification sought was as regards the age of retirement.

2 Suffice it would be to state that the said application came to be allowed by the Additional Commissioner Labour by order dated 28-11-2007 and the said Standing Order No.27 of the certified Standing Orders came to be modified and resultantly read thus :

“The age for retirement or superannuation of a workman employed to do manual, technical, clerical or supervisory work shall be 60 years.”

It is relying upon the said modified Standing Order that the Petitioner led his claim for being continued up to the age of 60 years. The Respondent denied the said claim on the ground that the order dated 28-11-2007 passed by the Additional Commissioner of Labour has been challenged by the Respondent by way of an Appeal before the Industrial Court, Pune and that the said proceedings are pending. In the Reference the Petitioner herein filed his affidavit of evidence in support of his case that he is entitled to continue up to the age of 60 years. However he did not make himself available for cross-examination on account of which his evidence had to be discarded in view of the fact that the Respondent company had led evidence.

In denial of the claim of the Petitioner and in the absence of any evidence led on behalf of the Petitioner, the Industrial Court came to a conclusion that the relief sought by the Petitioner could not be granted and accordingly dismissed the Reference by the impugned order dated 10-11-2014.

3 It is required to be noted that the order allowing the amendment in the said certified Standing Order No.27 was taken exception to by the Respondent by filing an Appeal being Appeal No.1 of 2007 before the Industrial Court. The said Appeal as indicated above came to be allowed by the Industrial Court by Judgment and order dated 12-1-2010 and the ground was that the demand raised by the Union in respect of the age of the retirement was contrary to the conditions agreed in the settlement between the Union and the Respondent, and also on the ground that the Union could not have raised the demand in the teeth of the fact that the union has withdrawn the said demand as settled. The said settlement was to operate between the period 1-7-2006 to 30-6-2009. The Learned Member of the Industrial Court therefore observed that the Union could not seek the amendment of the certified Standing Order in the matter of the age of retirement. It seems that pending the Appeal the order passed by the Additional Commissioner dated 28-11-2007 was stayed, hence when the Petitioner retired on 1-6-2008 the order dated 28-11-2007 passed by the Additional Commissioner Labour, modifying the Standing Order No.27 was

stayed and thereby its efficacy was denuded and as indicated above ultimately came to be set aside. In my view, the order rejecting the Reference for the reasons mentioned hereinabove cannot be found fault with. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]