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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
17.06.2021	13.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3249 of 2020

and

W.M.P.Nos.16158 and 3765 of 2020

M.Thangam

... Petitioner

-vs-

1.Government of India

Rep. by its Secretary
Ministry of Commerce and Industry,
Department of Commerce,
Udyog Bhawan, New Delhi-110 107.

2.The Executive Director

The Plastics Export Promotion Council,
Crystal Tower, Gundivali Road,
No.3, Off Sir M.V.Road,
Andheri East, Mumbai-400 069.

3.The Regional Director

The Plastics Export Promotion Council,
Rasheed Mansion, 3rd Floor,
408, Anna Salai, Chennai-600 006.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring that the action of the 2nd Respondent in reducing the age of retirement of employees from 60 to 58 years unilaterally and contrary to the Service Rules of the Plastic Export Promotion Council as illegal, arbitrary and contrary to law and consequently, direct the Respondents to retain the petitioner in service till he completes the age of 60 years, i.e., on 28.02.2022.

For Petitioner : Mr.Balan Haridas

For R1

: Mr.K.Seetha Ram
Central Govt. Standing Counsel



For R2 & R3 : M/s.Gupta & Ravi

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The Writ Petition has been filed, seeking to declare the action of the 2nd Respondent in reducing the age of retirement of employees from 60 to 58 years unilaterally and contrary to the Service Rules of the Plastic Export Promotion Council as illegal, arbitrary and in contravention to law, with the consequential direction to the Respondents to retain the petitioner in service, till he completes the age of 60 years on 28.02.2022.

Facts leading to filing of this Writ Petition are as follows:

2. It was the case of the petitioner that the 2nd Respondent, namely, The Plastics Export Promotion Council (in short 'PEPC'), which is an Organization sponsored by the 1st Respondent and is governed by the Articles and Memorandum of Association, plays a role in advising the Government in respect of the policies to be adopted by it and mostly the members would be Central Government nominees. The 2nd Respondent, which is duty bound to comply with the directions of the 1st Respondent, is an instrumentality of the State as defined under Article 12 of the Constitution of India.

2.1. It was further case of the petitioner that he, who belongs to SC community, joined the 2nd Respondent in the year 1991 as Peon on daily wage basis and was appointed in the regular post of Peon by an order dated 30.01.1993 in Chennai. Thereafter, he was promoted as Daftry and Senior Daftry and his service is governed by the Service Rules of the Plastic Export Promotion Council. In the Council, there are 21 elected members, 3 nominated members by the Central Government and an Executive Director.

2.2. It was also the case of the Petitioner that as per Clause 8.3 of the Articles of Association, the retirement age for all the permanent employees is prescribed as 60 years, thereby, the date of retirement of the petitioner falls on 28.02.2022. When he sought for a loan of Rs.2,50,000/- from the 3rd Respondent on 09.12.2019, it was communicated to him that since his revised age of retirement is 58 years, it is difficult to recover the amount in instalments and therefore, no loan can be granted to him. The petitioner was never informed about the revision of age and no amendment can be carried out without notice under Section 9-A of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947'), that too without amending the service rules. All the benefits, perks, etc., being paid to Central Government employees have been extended to the permanent



employees of the 2nd Respondent and when the age of retirement of Central Government Employees is 60 years, it cannot be changed unilaterally in respect of the permanent employees of the 2nd Respondent without any intimation.

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2.3. It was finally stated that the monthly salary is the only source of income for his livelihood and the Respondents 2 and 3, by taking into account the revised age of retirement as 58 years, falling on 11.02.2020, have been hurriedly taking steps to retire him from service. Aggrieved by the action of the Respondents 2 and 3, the petitioner is before this Court for a suitable declaration with regard to the age of retirement.

3. The Respondents 2 and 3 have filed a counter affidavit, wherein, it has been inter alia stated as under:

3.1. The Writ Petition filed by the Petitioner is not maintainable against Respondents 2 and 3, as they do not fall under the definition of State or other Authority within the meaning of Article 12 of the Constitution of India. The Plastics Export Promotion Council is a company incorporated under Section 25 of the Companies Act, 1956 and the Council is administered by the Committee of Administration to perform duties as per the Articles of Association. The Committee of Administration consists of elected members with a maximum of 29 elected members and three nominated members and as per Clause 33.4 of Articles of Association, the Committee of Administration is authorized to make rules for regulation in respect of its employees. Clause 33.4 is reproduced hereunder:

"33.4. Employees (rules regarding):

(1) The Committee may, in respect of all employees of the Council, make rules to regulate the following matters, namely:

- (a) Conditions of service;
- (b) Appointment, Promotion and Dismissal;
- (c) Grant of pay, leave, allowances, pensions, gratuities and compassionate allowances;
- (d) Provided that the grant of leave and allowances to Government servants whose services have been tent or transferred to the Council shall be decided with the previous approval of the Government Officer competent to sanction his transfer to the Council.
- (e) Payment of travelling allowance; and
- (f) The establishment and maintenance of a Provident Fund and other funds for the welfare of the employees.

3.2. All the members are private individuals or companies incorporated under the Companies Act and the expenses of Council



are met by the annual contributions received from its members towards membership fee. There was no financial aid from the 1st Respondent to meet out the expenditure of the Council, as there are 27 similar Export Promotion Councils like that of the Respondents 2 and 3 and such Promotion Councils receive grants in exceptional cases from the Government under the Market Access Initiative Scheme for the purpose of opening of showrooms, opening of warehouse and the like.

3.3. It was not the 2nd Respondent, who had unilaterally taken a decision to reduce the age of retirement of employees, whereas the Human Resources Manual, defining and modifying the service conditions of the Employees dated 19.08.2019 was prepared by the 2nd Respondent, which was duly approved by the Commission of Administration in their meeting held on 14.06.2019, as the Commission of Administration has the power to alter the rules from time to time, which would become the condition of service of all the employees employed by the Council. The assumption of the petitioner, as if the 2nd Respondent, in his individual capacity has chosen to retire him from service, is totally incorrect and baseless and the 2nd Respondent, being the Executive Director is an employee of the Council administered by the Committee of Administration.

3.4. The averments made by the petitioner that the Council has to consult the Government in incurring any expenditure and that the 1st Respondent has power to give direction to the Council in respect of its performance and functions are incorrect, as, as per Clause 47.1, the 1st Respondent can give directions to the Council in the interest of national security alone and not otherwise. With regard to the age of retirement, in the Committee Meeting held on 08.08.2008, it was decided to enhance the age of retirement as 60 years and thereafter, by virtue of amendment in the service rules dated 19.08.2019, it was revised to 58 years.

3.5. The next averment made by the petitioner that he was not aware of the reduction of age of retirement and only after receipt of the email dated 19.08.2019, he came to know of the fact, is false in view of the fact that the change in HR policy was duly communicated to all the employees and in that regard, a representation dated 27.08.2019 annexed in his typeset of papers, was sent by the petitioner himself. Thus, it is clear that he was duly intimated about the HR policy, namely, revised age of retirement.

3.6. Finally, it was stated in the counter affidavit that the employees of the Council cannot be equated with the Central Government employees, as the service conditions of the employees of Council and other benefits are determined by the Committee of



Administration from time to time based on the revenue received from the members in the garb of subscription. It was also stated that the Writ Petition filed by the petitioner is not maintainable and the Petitioner has to invoke the appropriate provisions of the I.D.Act, 1947 to redress his grievance. The Petitioner is being continued in service beyond 58 years of age, pursuant to the interim order granted by this Court on 11.02.2020 and in case the Respondents 2 and 3 succeed in this Writ Petition, it is highly impossible for them to recover the amount from him. Thus, it is prayed that the Writ Petition is liable to be dismissed in limine.

4. The 1st Respondent has filed a counter affidavit, which is nothing, but a replica of the counter affidavit of the Respondents 2 and 3. The 1st Respondent, by way of an affidavit, has merely / formally put forth the facts in respect of their role in the Council. It was affirmed by the 1st Respondent that the Export Promotion Councils are governed by the Articles of Association for their day to-day functioning and its employees are appointed without any Government budgetary support. The Government does not provide any fund for its administrative expenses and the Government has no role to play in matters relating to appointment of employees for the Council.

5. Learned counsel for the Petitioner submitted that when there is a gross infringement of statutory provisions and violation of principles of natural justice, the Writ Petition can be entertained and it cannot be blindly thrown out on the ground of maintainability. In support of his submission, he referred to the following judgments of this Court, Bombay High Court and the Supreme Court:

i) Voltas Volkart Employees Union vs. Voltas Limited, rep. by its Branch Manager, Madras, reported in 1999 (4) LLN 1107 (Mad.) / 2000 (1) CTC 184;

"21. The last issue which remains to be considered is the question of maintainability of the writ petition. As a result of the finding that there is non-compliance of Section 9-A of the Act, it follows that there is gross infringement of a statutory provision and also the consequential violation of principles of natural justice which should be sufficient to eliminate the objections on the ground of alternative remedy, vide the judgment of the Supreme Court in Whirlpool Corpn v. Registrar of Trade Marks, MANU/SC/0664/1998 : AIR1999SC22. To the same effect is the judgment of K. Govindarajan, J., rendered in South Arcot Dist. Central Co-op Bank Ltd. Employees Assn. v. Deputy Commissioner of Labour, MANU/TN/0305/1998 : 1998(3)CTC143 . The submission



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that if the Union was aggrieved, an industrial dispute could be raised by the Union, cannot also be countenanced. The situation has been brought about by the unilateral action of the management and ignoring its statutory obligation under Section 9-A of the Act. The need to remedy the situation is emergent and grave enough from the point of view of the Union who have not only been deprived of the accustomed holiday for Good Friday, but also are deprived of wages for that day. As a result of the managements unilateral action of including Saturdays and Sundays, the employees have lost five holidays. It would not be reasonable to expect that the Union should raise a dispute and await indefinitely for the ultimate conclusion of the proceedings. Therefore, we are unable to sustain the objection based on alternate remedy."

ii) Indian Additives Ltd., Express Highway, Manali, Chennai
vs. Indian Additives Employees' Union, Chennai, reported in 2005
(1) CTC 1;

"5. Learned counsel for the first respondent then referred to the decision in Whirlpool Corporation v. Registrar of Trade Marks, MANU/SC/0664/1998 : AIR1999SC22 , and very heavily relied on the observations made in paragraph 10 thereof, which we quote below :

"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

In our opinion, the above observations of the Supreme Court cannot be held to mean that a writ petition cannot be dismissed on the ground of alternative remedy when there is an allegation of violation of any of the Fundamental Rights or the principles of natural justice or the proceedings are without jurisdiction.



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No doubt, it is well-settled that alternative remedy is not an absolute bar a writ petition but it is equally well-settled that ordinarily if there is an alternative remedy, the discretion under Article 226 should not be exercised and the party should be relegated to avail the alternative remedy. Hence, even if there is violation of any of the Fundamental Rights or of natural justice or the proceedings are without jurisdiction, the High Court under Article 226, on the facts of the particular case, can still dismiss the writ petition on the ground of availability of alternative remedy and ordinarily it should do so if there is an alternative remedy.

6. On the other hand, learned counsel for the appellant relied on the Full Bench decision of this Court in P. Pitchumani v. The Management of Sri Chakra Tyres Ltd., 2004 (3) CTC 1. After referring to the "various decisions including the decisions in Premier Automobiles Limited case, Rajasthan State Road Transport Corporation, cited supra, the Full Bench categorically held in paragraph 14 (ii) as follows :

"that dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. Act, have to be adjudicated only by the forums created under the said statute and not otherwise".

7. In the present case, when the first respondent Union complains that the appellant had breached the provisions of Section 9-A of the I.D. Act, the only remedy available to it is to raise an 'Industrial Dispute' and seek adjudication of the same before the appropriate forum created under the I.D. Act rather than approaching this Court under Article 226 of the Constitution, by passing the alternative remedy available under the Act."

iii) P.Theetha Pillai vs. The Director, Gandhigram Institute of Rural Health and Family Welfare Trust, reported in MANU/TN/2813/2013;

"15. The Hon'ble Supreme Court in the matter of Hindustan Petroleum Corporation Ltd. and another v. Dolly Dass, 1999 (4) SCC 450 has held that when the facts are not in dispute relegating the parties to alternative remedy is not required. As observed earlier, the date of joining, the date of retirement age at 60, subsequently reduced to 58 years and applicability of Section 56(1)(a) of the Fundamental Rules, the status of the Employees as Class-IV



Employees, there was no notice as contemplated under Section 9-A of the Industrial Disputes Act, 1947, the Management receiving grant-in-aid from the Government are all admitted facts.

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16. In such a situation, relegating to an alternative remedy and direct them to go and approach the Industrial forum even though the Management is an Industry as per the Industrial Disputes Act, 1947, we feel that such an exercise need not be given to the Employees, as based on the admitted facts, the Employees will have to succeed. The Management unfortunately without acting as a model employer has driven them to the Court to get the two years wages when the money value got down.

17. We, therefore, dismiss the Writ Appeals in W.A.(MD) Nos.570 to 572 of 2012 as the Clause 16 of the Service Rules, 2003 has been held to be bad as in violation of Section 9-A of the Industrial Disputes Act, and in view of this, there is no adjudication required in W.A.(MD) No.477 of 2011. It is a fit case for payment of costs. Since the Management is a Trust and hoping that henceforth the Management would be a model employer, we refrain from imposing costs. The Management is directed to pay the wages for two years with interest @ 6% per annum from the date of Writ Petition, and other consequential benefits including terminal benefits, if any, like Gratuity with statutory interest as per Payment of Gratuity Act, 1947, from the date of the money became due. Consequently, the connected Miscellaneous Petitions are also dismissed. No costs.

iv) Paradeep Phosphates Limited vs. State of Orissa and others, reported in 2005 (1) CTC 1;

"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.

14. No doubt, the enhancement of the superannuation age was temporary in nature in order to



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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."

5.1. Learned counsel for the Petitioner drew the attention of this Court to the judgment of Bombay High Court in the case of Seema T.Shetty vs. Union of India [W.P.(Lodging) No.87 of 2005] decided on 21.04.2005, wherein the very same PEPC was the 3rd respondent, to state that the similar contention raised by PEPC therein that the Council is not amenable to Writ jurisdiction, was negatived. The relevant paragraph of the said judgment reads as under:

"3..... We have gone through the same and we find that there is sufficient control of the Commerce and Industries Ministry on the functioning of this Council.

.... In the circumstances there is no substance



6. Per contra, learned counsel for the Respondents 2 and 3 contended that the petitioner was appointed on 30.09.1993 and is governed by the appointment order and the service conditions, being modified from time to time. In this case, there are certain aspects, which have got to be considered, apart from the issue regarding non-maintainability of the Writ Petition. He further contended that there are disputed question of facts involved and therefore, the remedy lies to the petitioner only before the appropriate Industrial Forum. The petitioner, without exhausting the appeal remedy, has straightaway approached this Court. The Respondents 2 and 3 are not under the direct control of the Central Government and there are four sets of Rules, namely, Old Rule, New Rule, HR Manual and Model Standing Orders and PEPC is governed by the Model Standing Orders. He also contended that when the Model Standing Orders prescribed the retirement age as 58 years, unless or otherwise there is a statutory amendment, increasing the retirement age from 58 to 60 years, the petitioner, as a matter of right, cannot demand the retirement age as 60 years. In the appointment orders issued to the employees of PEPC, it was clearly mentioned that though the age of retirement was normally 60 years, they may be asked to retire either on completion of 30 years' of service or at the age of 50 or 58 years, depending upon the discretion of PEPC.

6.2. It was the further contention of the learned counsel for the Respondents 2 and 3 that service rules applicable to Central Government employees are not relevant to the petitioner and other employees, as they were given appointment order by PEPC and in terms of the appointment order, the petitioner was allowed to retire at the age of 58 years. As stated supra, if the petitioner has any grievance, he could have easily raised a dispute and therefore, the question of violation of Sections 33 and 9-A of the Industrial Disputes Act, 1947, do not arise in the present case on hand. For the sake of convenience, Sections 33-1 and 9-A of the Industrial Disputes Act, 1947 are extracted hereunder:



"Section 33 of The Industrial Disputes Act, 1947

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall -

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending."

Section 9A of The Industrial Disputes Act, 1947

"9-A. 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 such 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.

6.3. It was also the contention of the learned counsel for the Respondents 2 and 3 that the clause referred to by the petitioner in respect of the age of retirement as 60 years does



not have a statutory force. Even assuming that it has got the statutory force, the same yardstick would be applicable to the HR Manual published by PRPV. If the contention of the petitioner is accepted, the service regulation, after issuance of appointment order to the petitioner has no validity and also the subsequent HR Manual cannot be pressed into service. To be more precise, as per the original order coupled with the service condition existed at that point of time, it is open to the Management to alter the retirement age to 50, 58 or 60 years.

6.4. Learned counsel for the Respondents 2 and 3, in support of his contention that the Writ Petition is not maintainable and that the petitioner has to redress his grievance only before the Industrial Forum, cited the following judgments:

i) Management of GE Power Controls Private Ltd. and Ors. vs. Workmen of GE Power Controls Pvt. Ltd. and Ors., reported in 2005 (1) LLN 285;

"15. In the rejoinder affidavit of the writ-petitioner-union there is no rebuttal to the allegation in Para 4 of the counter affidavit. Hence, the allegation in Para. 4 of the counter affidavit that the appellant company (respondents in the writ petition) is a private body and is not State under Article 12 of the Constitution is not rebutted and has to be taken as correct. In view of the above, the writ petition itself was not maintainable and should have been dismissed straightaway by the learned single Judge, as it was a writ petition filed against a private body, not discharging any public duty.

16. That apart, we have held in W.A. No. 3837 of 2004, dated December 14, 2004 that when there is allegation of violation of some provision of the Industrial Disputes Act, the only remedy for the workmen is to raise an industrial dispute under the Industrial Disputes Act, and get the matter referred to the Labour Court or Industrial Tribunal. No writ petition will directly be entertained without first approaching the fora under the Industrial Disputes Act. We reiterate the same view. In the above judgment, we have also referred to the decisions of the Supreme Court vide Rajasthan State Road Transport Corporation v. Krishna Kant MANU/SC/0786/1995 : (1995)IILLJ728SC , Uttar Pradesh State Bridge Corporation Ltd. v. Uttar Pradesh Rajya Setu Nigam S. Karamchari Sangh MANU/SC/0130/2004 : (2004)IILLJ9SC as well as the Full Bench decision of this Court in P. Pitchumani v. Management of Sri Chakra Tyres Ltd., MANU/TN/0527/2004.



Hence, also the writ petition was not maintainable.

17. For the reasons stated above, this writ appeal is allowed, and the impugned judgment is set aside. The writ petition is dismissed. No costs."

ii) Indian Additives Ltd. vs. Indian Additives Employees' Union, reported in 2005 (1) CTC 1;

"7. In the present case, when the first respondent Union complains that the appellant had breached the provisions of Section 9-A of the I.D. Act, the only remedy available to it is to raise an 'Industrial Dispute' and seek adjudication of the same before the appropriate forum created under the I.D. Act rather than approaching this Court under Article 226 of the Constitution, by passing the alternative remedy available under the Act.

iii) P. Pitchumani vs The Management of Sri Chakra Tyres , reported in 2004 (3) CTC 1;

"14. In view of what is stated supra, we hold that

(i) only such violations under I.D. Act, which involve public duties, are amenable to Writ jurisdiction under Article 226 of Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. Act, have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by I.D. Act have to be resolved only by common law Courts;

(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act;

(v) the appellants/petitioners-employees shall be entitled to seek for reference by filing application under Section 10 of the ID Act within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums, be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants/ petitioners-employees, one week time from



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the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect to such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents-managements shall sympathetically consider the payments of wages/salaries to the appellants/petitioners-employees so as to maintain the industrial peace and harmony.

The Writ Appeals and Writ Petitions are disposed of accordingly. No costs. Consequently, the connected W.A.M.Ps. are closed."

iv) Hindustan Steel Works Construction Ltd. and Ors. vs. Hindustan Steel Works Construction Ltd., Employees Union, reported in 2005 (6) SCC 725;

"7. In a catena of decisions it has been held that writ petition under Article 226 of the Constitution of India, 1950 (in short 'the Constitution') should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out."

v) G.E.Power Controls India & Ors. v. S.Lakshmipathy & Others, reported in (2005) 11 SCC 509;

"7. The reasoning of the High Court is contradictory to say the least. If the High Court had held that it was unable to grant relief in respect of orders of transfer under Article 226 of the Constitution, it certainly was not in a position to adjudicate upon or grant relief in respect of orders of termination of service or abandonment of the service as the case may be. This is settled law and has been clearly laid down in State of Orissa v. Madan Gopal Rungta. In this case, the Court declined to decide on the rights of the parties under Article 226 of the Constitution relating to removal of assets from mining areas. The High Court, however, granted interim relief by injuncting the State of Orissa from disturbing the possession of the writ petitioners over the mining areas for a period of one week after the institution of the suit which, according to the High Court, was the more appropriate remedy. This is what this Court said: (SCR p.35)

"But when the Court declined to decide on the rights of the parties and expressly held that they



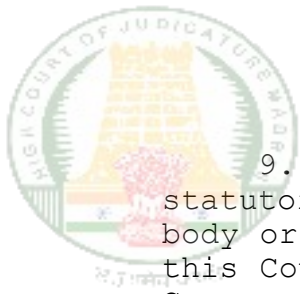
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should be investigated more properly in a civil suit, it could not, HC-NIC Page 14 of 17 Created On Sat Oct 22 04:29:28 IST 2016 C/LPA/884/2016 CAV ORDER for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution."

8. In view of this, the direction of the High Court as quoted above, is set aside. However, no dispute under the Industrial Disputes Act has been raised by the respondent employees because of the pending litigation before this Court. We accordingly extend the time within which the industrial disputes may be raised within a period of four weeks from today and the time within which the Industrial Tribunal/Labour Court must dispose of the reference is correspondingly extended. All points on merits raised by the respective parties in this petition on merit will be open for decision by the forum concerned."

7. Heard the learned counsel on either side, including the learned Central Government Standing Counsel appearing for R1 and perused the material documents available on record.

8. A careful scrutiny of the entire facts discloses that the petitioner was employed in the 2nd Respondent Council in the year 1991 as Peon on daily wage basis and was thereafter absorbed in the regular post of Peon by an order dated 30.01.1993 in Chennai. The main plea of the Petitioner was that his service is governed by the Service Rules of the Plastic Export Promotion Council, which, according to him, is controlled by the Central Government. It was argued on the side of the petitioner that when the Central Government employees were allowed to retire at the age of 60 years, the same yardstick should be adopted to the case of the petitioner. The said submission was vehemently repudiated by the learned counsel for PEPC, stating that PEPC is a company incorporated under Section 25 of the Companies Act, 1956 and there is a Committee of Administration with elected members, which administers the entire activities of PEPC in terms of Articles of Association. The decision with regard to the reduction in the age of retirement of the petitioner and other employees of PEPC was taken by the Committee by way of Human Resources Manual for regulation of the service conditions of the employees. The main objection of the Respondents 2 and 3 was to the maintainability of the Writ Petition, on the ground that PEPC is an independent organization and therefore, Writ is not maintainable against any private body.



9. It is needless to mention here that when there is a statutory violation, writ is maintainable even against a private body or any other statutory body in the light of the judgment of this Court in the case of K.Marappan vs. The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal and another reported in 2006-4-L.W.495

However, this Court, without going into aspect of the maintainability of the Writ Petition and without accepting the contention of the petitioner, proceeds on the basis that the Writ petition is maintainable (instead of closing the Writ Petition on the sole ground of non-maintainability at the threshold itself), so as to decide the issue on merits. The reason for not rendering any finding with regard to the maintainability of the Writ petition is that in case this Court holds that the Writ Petition is not maintainable against PEPC and if the said finding is reversed in Appeal, holding that writ is maintainable and remanded for fresh adjudication on merits, it would pave way to multiplicity of litigation, especially, when there are no merits in the case of the petitioner.

10. The contention of PEPC is that the service condition of the employees of PEPC had been modified from time to time and having accepted such modifications and having allowed to come into force, the petitioner cannot make a hue and cry that there is a statutory violation. In case the petitioner feels that there is a dispute with regard to the increase and reduction in the retirement age and that the Model Standing Orders alone will prevail, then he is entitled to raise an Industrial Dispute through Union and question the reduction of retirement age from 60 years to 58 years. As it is a disputed question of fact, that has got to be decided only by the appropriate Industrial Tribunal or Labour Court.

11. In this case, the applicability of Section 9-A is doubtful, but, in any event, as stated supra, there is a dispute and if the contention of the petitioner is accepted, several such petitions will get piled up before this Court. In that event, the purpose of constitution of Tribunal and Labour Court will be defeated. In Voltas Volkart Employees Union vs. Voltas Limited, rep. by its Branch Manager, Madras (supra), this Court entertained the Writ Petition, on the reasoning that the facts were not in dispute. In the present case on hand, the age of retirement of employees of PEPC is disputed by both parties. The petitioner stated that as per the Service Regulation, he is to retire only at the age of 60 years. Though the petitioner relied on the Old Rule, it has been subsequently modified, consequent to which, there was an amended HR Manual, which restricted the age of retirement at 58. The service condition has also been altered pursuant to the said Regulation and therefore, the subsequent Regulation, by fixing the age at 58 years will also hold good. However, this Court do not want to render any finding

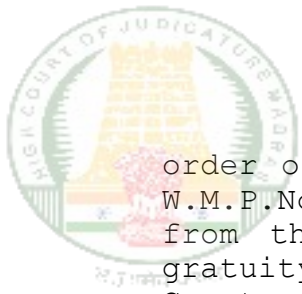


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on that aspect, as the said issue is kept open for the appropriate Tribunal or Labour Court, when a reference is made. As the service of the petitioner has been disengaged at the age of 58 years, even an individual can question the non employment, stating that the age of retirement is only 60 years and not 58 years or it is open to the Union, if any, to raise a dispute on behalf of its members, with regard to its demand, that the action of the Management in reducing the age of retirement from 60 years to 58 years is not justified. If there is a Union, the Government shall refer the matter for adjudication before the appropriate Forum. In case there is no Union, it is open to the petitioner to raise a dispute under the amended Section 2-A of the Industrial Disputes Act, 1947, which came into force vide Notification No.2278 (E) dated 15.09.2010, providing a direct access for an individual to the Labour Court or Tribunal to question his retrenchment, discharge, dismissal, termination of services, etc. and in that event, there will be no need for the individual to approach the 'appropriate Government' for making a reference. That is, with regard to the service condition, dispute has to be raised by the Union. If it is a case of depriving of employment, it is open to the individual to raise a dispute.

12. If there is an existence of a Union and any application is made by the Union, the 1st Respondent / Government is directed to refer the matter to the appropriate Tribunal or Labour Court for adjudication in the light of the judgment of A.P.Foods vs. S.Samuel, reported in 2006 (5) SCC 469, wherein, it was held that it is for the State Government to take a decision in the matter of reference, when a dispute is raised, within a period of one month from the date of receipt of such application. In exceptional cases, the Court can also refer the dispute directly to the appropriate Tribunal / Labour Court, instead of directing the Government to do so, as could be seen from Paragraph No.9 of the very same judgment.

13. This Court makes it very clear that the petitioner and other employees shall be paid all the terminal benefits upto the age of 58 years and not beyond that, including gratuity. In case the petitioner succeeds in the Industrial Dispute, the difference in backwages, if any, shall be paid, after adjusting the amount already made pursuant to the interim orders of this Court. It is open to the petitioner and other employees to accept the terminal benefits without prejudice to their rights, as it is supported by the judgment of this Court in the case of The Management of Chandra Textiles Private Limited Coimbatore vs. N.Palaniswami and Others, reported in (1987) 1 LLJ 458 Mad. It is made clear that pursuant to the dismissal of this Writ Petition, there is no impediment for PEPC to recover the amount paid beyond 58 years from the petitioner in terms of the interim



order of this Court dated 11.02.2020 in W.P.No.3249 of 2020 and W.M.P.No.3765 of 2020 and the amount can be recovered either from the Provident Fund payable by the employer or from the gratuity amount, in the light of the judgment of the Supreme Court in the case of Steel Authority of India Ltd., vs. Raghubendra Singh and Others, reported in MANU/SCOR/46090/2020.

14. With the above observation, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. It is also made clear that, any observation touching upon the merits of the matter will not bind the Tribunal / Labour Court or the parties and the same is only for the disposal of the Writ Petition and in case, the matter is not settled and is referred to Tribunal / Labour Court for adjudication, then, the Tribunal / Labour Court is expected to decide the same on merits and in accordance with law, by proceeding with the matter without adjourning the dispute beyond seven working days at any point of time, within a period of six months from the date of receipt of the Reference, and all the issues are kept open for the Tribunal / Labour Court to decide.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

ar

To:

The Secretary,
Ministry of Commerce and Industry,
Department of Commerce,
Udyog Bhavan, New Delhi-110 107.

+1cc to M/s.Balan Haridas, Advocate, S.R.No.40548

+1cc to M/s.Gupta & Ravi, Advocate, S.R.No.40616

PRE-DELIVERY ORDER IN
W.P.No.3249 of 2020

AJS (CO)
SU(02/09/2021)