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W.P.Nos.22699 to 22709 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.22699 to 22709 of 2010

M.P.No.2 of 2010 (11 Nos.)

W.P.No.22699 of 2010:-

1. The Senior Regional Manager,
Food Corporation of India,
Regional Office,
5/54, Greaves Road,
Chennai – 600 006.

2. The District Manager,
Food Corporation of India,
District Office, Azeez Centre,
623, Mount Road,
Chennai – 600 006.

...Petitioners

-Vs-

1. The Presiding Officer,
Industrial Tribunal,
Tamil Nadu,
Chennai – 600 104.

2. J.Rangasamy

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records from the file of the first respondent herein the Presiding Officer, Industrial



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Tribunal, Chennai in I.D.No.19 of 2006 and quash the common award dated 31.07.2009 with regard to I.D.No.19 of 2006, relating to the second respondent herein.

For Petitioners
in all W.Ps. : Mr.M.Imthias

For Respondents in W.P.Nos.22699, 22701, 22702,
22706, 22707 of 2010

R1 : Court
For R2 : Mr.K.M.Ramesh, Senior Counsel
For Mr.S.Apunu

For Respondents in W.P.Nos.22700, 22703, 22705 of 2010

R1 : Court
For R2 : Ms.C.S.Monica

COMMON ORDER

These writ petitions have been filed challenging the common award dated 31.07.2009, passed by the first respondent in I.D.Nos.18 to 28 of 2006, thereby declared that the action of the petitioners' corporation in superannuating the second respondent in all the writ petitions is illegal and unjustified and deemed to be continuing in service till they attained their respective age of 60 and the said period deemed to be “period of service” for the purpose of granting terminal benefits.



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2. The petitioners' corporation is a government of India undertaking established under the Food Corporation of India Act, for the purpose of procuring and distribution of food grains to the public distribution system throughout India. The petitioner's corporation is having separate departmental labours to work at Madras harbour and their employment was controlled by a separate certified standing order viz., Standing Order for Workmen Employed at Madras Harbour by Food Corporation of India". According to the standing order, the age of superannuation of the employees is 58 years.

3. Further, the service condition, wage structure and other monitory benefits to the departmental labour of food corporation of India working at Madras harbour is on par with the workers of the Chennai Port Trust and Chennai Dock Labour Board as formed by the Ministry of Surface Transport. The departmental labours are governed only by the standing orders and they are enjoying the benefits on par with the workers of Dock Labour of Madras Port Trust.



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4. As per the standing order, the age of superannuation was increased from 58 years to 60 years, without issuing any notice under Section 96 of the Industrial Dispute Act, 1947, (hereinafter called as “the ID Act”) since the age of retirement is no one among the eleven conditions set forth in the Schedule IV to the ID Act. Similarly, when the Chennai Port Trust has reduced the superannuation age to 58 years, the petitioners' corporation has just followed it, since the same has been made by the Chennai Port Trust as per the gazette notification dated 05.01.2001 issued by the Ministry of Surface Transport. It has been implemented with effect from 31.05.2001.

5. After implementation of the notification dated 05.01.2001, the workers have not made any objections and their union also never raised any objections. After the period of three years, the second respondent in all the writ petitions (hereinafter called as “the workmen”) have raised dispute under Section 2(A)(2) of the ID Act, before the Assistant Commissioner of Labour. Since the conciliation was failed, the matter was referred before the first respondent.



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6. In fact, some of the labours were referred to Central Government Industrial Tribunal, Chennai and the workmen were referred to Industrial Tribunal, Chennai. Before the Central Government Industrial Tribunal, the labourers challenged their termination on the ground that though they attained the superannuation at 58 years, without giving notice under Section 9A of the ID Act, they were terminated as such, they are entitled to work till 60 years and they are entitled for difference in terminal benefits. However, the Central Government Industrial Tribunal dismissed all the industrial dispute holding that the action of the petitioners' corporation is legal and justified. Whereas, the first respondent by the common award decided the matter in favour of the workmen. Aggrieved by the same the petitioners' corporation filed the present writ petitions with the above prayer.

7. The learned counsel appearing for the petitioners submitted that the gazette notification issued by the Ministry of Surface Transport dated 05.01.2001 was challenged before this Court and the same was failed in W.P.Nos.18612 of 2000 etc., batch cases. The workmen having



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been received all the benefits after their termination dated 31.05.2001 and after the period of three years, they submitted the claim under Section 2(A)(2) of the ID Act, before the Assistant Commissioner of Labour. The age of superannuation is not one of the aspect covered under Schedule IV of the I.D Act as such, it doesn't require any notice under Section 9A of the ID Act.

7.1. He further submitted that earlier increasing of retirement age from 58 to 60 was done by the petitioners' corporation on par with the Chennai Port Trust only by circular and likewise the present reduction of age from 60 to 58 was also done by circular without altering the standing order because the petitioners' corporation only extended the benefits enjoyed by the Chennai Port Trust workers and Dock Labour Board workers to the Food Corporation of India workers working at Madras harbours. Hence, he prayed to allow all the writ petitions.

8. The learned Senior Counsel appearing for the second respondent/ workmen in W.P.Nos.22699, 22701, 22702, 22706, 22707 of 2010, submitted that the petitioners' corporation failed to issue notice



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under Section 9A of the ID Act, since the change of service conditions require to be issue notice under Schedule IV of the ID Act. Therefore, the retrenchment of the workmen who were working at Chennai Port Trust is illegal and they are entitle to work till their age of 60. Insofar as the delay of three years is concerned, in any interpretation relating to social welfare legislation technicalities cannot stand in the way of rendering substantial justice. That apart, the delay was occurred only due to the delay in getting the retirement benefits by the workmen. Though they were retired from service by an order dated 31.05.2001, their retirement benefits were settled later.

8.1. In support of his contention he relied upon the judgment reported in *(1971) 2 SCC 383* in the case of *M/s. Tata Iron and Steel Co. Ltd., Vs. the workmen an ors.*, in which the Hon'ble Supreme Court of India held that Section 9A of the ID Act relates to change in conditions of service in respect of any matter specified in the IV Schedule shall not have effect unless a notice is given to the workmen likely to be affected by such change.



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8.2. The learned Senior Counsel appearing for the workmen also relied upon another judgment of the Hon'ble Supreme Court of India reported in **(1999) 6 SCC 275** in the case of **Lokmat Newspapers Pvt. Ltd., Vs. Shankarprasad.**, which held that introduction of the rationalized scheme by itself would amount to alteration of the conditions of service of the workmen to their prejudice. It therefore, follows that before effecting such a change, meaning thereby, before introduction of such a rationalization scheme which has a tendency to change the conditions of service of the workmen, notice under Section 9A of the ID Act, as a condition precedent becomes a must.

9. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

10. The second respondent in all the writ petitions were engaged by the petitioners' corporation and they are enjoying the benefits on par with the workers of Dock Labour of Madras Port Trust. As per the standing order, the superannuation age is only 58 years. However, the petitioners' corporation increased the age of superannuation from 58 to



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60 on par with the dock labourers. It is also significant to note that no notice was issued to the employees by the employer for increasing the age of superannuation from 58 to 60, since the age of retirement is not one among the eleven conditions set forth in the Schedule IV of the ID Act.

11. The Schedule IV of the ID Act - the conditions of service for change of which notice is to be given, is reads as follows :-

- i. Wages, including the period and mode of payment;*
- ii. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;*
- iii. Compensatory and other allowances;*
- iv. Hours of work and rest intervals;*
- v. Leave with wages and holidays;*
- vi. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;*
- vii. Classification by grades;*
- viii. Withdrawal of any customary concession or privilege or change in usage;*



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- ix. *Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;*
- x. *Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;*
- xi. *Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control.”*

Thus it is clear that, the age of retirement is not mentioned in the Schedule IV of the ID Act. Thereafter, the Chennai Port Trust reduced the age of superannuation from 60 to 58 and the petitioners' corporation also followed it, since the same has been made by the Chennai Port Trust as per the gazette notification dated 05.01.2001, issued by the Ministry of Surface Transport.

12. Further, the gazette notification dated 05.01.2001 and the consequent resolutions were challenged before this Court by the Chennai Port Trust labourers and employees in W.P.No.18612 of 2000 etc., batch cases, and this Court by an order dated 16.11.2007, held that the age of



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superannuation was 58 years and pursuant to the policy of the government as well as the recommendations of the Fifth Pay Commission, the age of retirement of the central government employees was increased to 60 years. All the public sector undertakings including major Port Trusts were given the liberty to increase the retirement age as 60 years. Therefore, the Chennai Port Trust, in exercise of the power conferred under Section 28 of the Major Port Trusts Act, 1963, amended the regulations and increased the age of retirement as 60 years. However, due to a change of policy by the central government, once again, all the public sector corporations were given power to roll back the age of retirement to 58 from 60 years. Accordingly, the Chennai Port Trust rolled back the age of retirement by resolution and reduced the age of superannuation to 58 years.

13. Further held that though Section 9A of the ID Act, contemplates 21 days notice, the proviso to the said Section clearly states that if there are statutory regulations, no notice is required. The only criteria is that those statutory regulations have to be published in the government gazette. Accordingly, the amendments with regard to



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reduction of superannuation age from 60 years to 58 years have been published in the government gazette. Therefore, the notice issued under Section 9A does not arise. Further the IV Schedule of the ID Act sets down certain matters and the age of retirement as such is not one of the aspects dealt with not any general conditions of service.

14. Further the workmen filed claim application only on 25.09.2004 viz., after the period of three years and eight months from the date of their retirement, under Section 2(A)(2) of the ID Act before the Assistant Commissioner of Labour. Though the workmen had taken specific stand that in any interpretation relation to social welfare legislation, the technicalities cannot stand in the way of rendering substantial justice, since they were issued retirement benefits belatedly, the said stand cannot be accepted, since nowhere in the claim petitions, the workmen had stated that they were received retirement benefits belatedly as such, there was huge delay. Therefore, the finding of the first respondent is perverse and it cannot be sustained.



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15. In view of the above discussions, the common award dated 31.07.2009, passed by the first respondent in I.D.Nos.18 to 28 of 2006, is hereby set aside and all the writ petitions stand allowed. Consequently connected miscellaneous petitions are closed. There shall be no order as to cost.

31.08.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Presiding Officer,
Industrial Tribunal,
Tamil Nadu,
Chennai – 600 104.



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G.K.ILANTHIRAIYAN. J.

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