



WEB COPY



W.P.No.25114 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.25114 of 2017

and

W.M.P.Nos.26554 and 26555 of 2017

G.S.Gill

... Petitioner

Vs.

1. The Chief Operating Officer,
SAIL Refractory Company Ltd.,
Steel Authority of India,
Salem-636 005.

2. The Assistant General Manager(P&A),
SAIL Refractory Company Ltd,
Steel Authority of India,Salem - 636 005.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of retirement made in SRCL/P&A/ 2017/0194 dated 01.07.2017 issued by the 2nd respondent and the consequent order made in SRCL/P&A/2017/00230 dated 22.08.2017 issued by the 1st Respondent



W.P.No.25114 of 2017

and quash the same and consequently seeking for direction directing the respondents to continue the petitioner in the service as Manager (Sales) till attaining the age of 60 years as per the guidelines of Department of Public Enterprise.

For Petitioner : No appearance

For Respondent : Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co.,

ORDER

This Writ Petition has been filed to quash the order of retirement made in SRCL/ P&A/ 2017/0194 dated 01.07.2017 issued by the 2nd respondent and the consequent order made in SRCL/ P&A/2017/00230 dated 22.08.2017 issued by the 1st respondent and consequently seeking for a direction directing the respondents to continue the petitioner in the service as Manager (Sales) till attaining the age of 60 years as per the guidelines of Department of Public Enterprise.



W.P.No.25114 of 2017

WEB COPY

2.The petitioner entered the service as Junior Officer on 04.07.1984 and appointed in the erstwhile Burn Standard Company Limited at Jabalpur. During the month of November, 1997, the petitioner was transferred to the erstwhile Burn Standard Company Limited at Salem. At present, he is working as Manager (Sales) in the respondents Company. The executives discharging managerial functions including the petitioner were governed the Burn Standard Company Limited Conduct, Discipline and Appeal Rules, 1976. Now, they are governed by Conduct, Discipline and Appeal Rules, 1977. The said rules do not speak about the age of superannuation of the executives working in the managerial category.

3.The age of retirement of the employees and executives was 58 years in the erstwhile management of Burn Standard Company from 1965 to 1998. Then the age of superannuation was enhanced to 60 years from 1998 to 2001, and thereafter, it was lowered down to 58 years for the reasons that the said Company became sick and incurred heavy losses. The Steel



W.P.No.25114 of 2017

WEB COPY

Authority of India Limited has taken over the said Company on 16.12.2011 and renamed as 'SAIL Refractory Company Limited'. The executives working in the Burn Standard company retired at the age of 58 years whereas the executives transferred from SAIL retired at the age of 60 years. During the month of April 2007, the Department of Public Enterprise has laid down a guideline in respect of the age of superannuation. There was a note for Cabinet Committee on Economic Affairs issued on 14.05.2010 stating that board recommended that the revision of pay scale and enhancement of retirement age will be looked into based on the DPE guidelines after the transfer of the said units to them. Subsequently, on 06.05.2011, there was decision arrived at in the meeting of the Department related Parliamentary Standing Committee. The Regional Labour Commissioner(C), Chennai passed an order dated 06.03.2015 modified the clause of retirement of the standing order and certified as the workmen shall retire from service of the company on attaining the age of 60 years', The Respondent Management preferred an appeal before the Appellate Authority under the Industrial Establishment Act and the same was



W.P.No.25114 of 2017

WEB COPY

dismissed on 20.11.2015 confirming the order of Regional Labour Commissioner (C). The 1st respondent filed a writ petition and this Court was pleased to pass an order of interim direction in M.P.No.56 of 2016 against M.P.No.1 of 2015 in W.P.No.37471 of 2015 dated 21.12.2015 directing the respondents to permit the employees who attained the age of 58 years to continue their services.

4.By a subsequent order dated 05.07.2016, the above interim order was extended by this Court until further orders. In pursuance of the said orders, the employees are being permitted to continue their service beyond the age of 58 years. The petitioner was issued an order of retirement dated 01.07.2017 by the 2nd respondent informing that he would be retired from service as on 30.09.2017 on attaining the age of 58 years. The petitioner sent a petition dated 02.08.2017 requesting the 1st respondent to permit the petitioner to continue the service upto the age of 60 years by withholding the order of retirement issued by the 2nd Respondent. Therefore, the 1st



W.P.No.25114 of 2017

respondent issued an order dated 22.08.2017 denying continuing the service upto the age of 60 years Hence this writ petition.

5.The learned counsel for the respondents would submit that the Burn Standard Company Limited, a Central Public Sector Undertaking under the Administrative Ministry of Heavy Industries was a multi unit company having units at Salem, Howrah, Burnpur and other locations. Since the company as a whole has turned sick, it was referred to BIFR under the provisions of Sick Industrial Companies Act and declared by BIFR as a sick company. In the above back ground pursuant to Government of India guide lines, the age of retirement for the employees of Burn Standard Company was determined and fixed at 58 years. As per decision taken by Government of India, the business of Salem works of Burn Standard Company Ltd, Salem works (BSCL) was transferred to SAIL Refractory Company Ltd., (SRCL) a wholly owned 100% subsidiary of SAIL, upon execution of a Deed of Transfer on 16.12.2011 between BSCL and SRCL. Even after take over, the age of retirement for the employees was continued



W.P.No.25114 of 2017

only at 58 years. The learned counsel would submit that the Trade Unions operating for workers (Non executive category) at SRCL have filed an application before the Regional Labour Commissioner (Central), Chennai who is the certifying officer under the provisions of Industrial Employment (Standing Orders) Act, 1946, seeking modification in the company's certified standing orders to enhance the age of retirement from 58 to 60 years. The Regional Labour Commissioner (C), Chennai has passed orders dated 06.03.2015 modifying the company's Standing orders to enhance the age of retirement from 58 to 60 years. The above modification was subsequently confirmed by the Deputy Chief Labour Commissioner (Central), Chennai who is the Appellate Authority under the Act vide his orders dated 20.11.2015 in the appeal filed before him by the Management of SRCL.

6.The learned counsel for the respondents would submit that the above orders of Regional Labour Commissioner (C), and Deputy Chief Labour Commissioner (C) Chennai were challenged by the Management of



W.P.No.25114 of 2017

WEB COPY

SRCL before this Court by way of Writ P. No.37471/2015. This Court granted interim stay against the operation of these orders vide order dated 25.11.2015 by way of an interim arrangement has directed that the workmen covered under the orders which are under challenge in the Writ Petition and who are due for retirement from 31.12.2015 onwards shall be continued to be employed till the matter is heard in the next hearing date. Pursuant to the subsequent orders of this Court, these interim orders are still being continued and the non executive employees are now permitted to continue in their services beyond their age of retirement i.e., 50 years of age.

7. Admittedly, since the petitioner is working in managerial capacity, he is excluded from the definition of "workman" as contemplated under Sec 2(s) of the Industrial Disputes Act, 1947 and consequently under Sec. 2 (i) of the Industrial Employment (Standing Orders) Act, 1946. Accordingly, the certified standing orders of the company as modified by the Certifying officer under the provisions of Industrial Employment (Standing Orders) Act, 1946 raising the age of retirement from 58 to 60 years are not



W.P.No.25114 of 2017

WEB COPY

applicable to the petitioner in view of your specific exclusion from its purview. Therefore, the petitioner is not entitled to serve till the completion of 60 years of age as demanded in your letter dated 02.08.2017 as neither the certified standing orders as modified by the Regional Labour Commissioner (C) nor the interim arrangement as ordered by this Court is applicable to the petitioner. There is a clear stipulation in his appointment order dated 04.07.1954 that the petitioner will retire from the services of the company on completion of 58 years of age. Since that age of the petitioner is being 05.09.1959 the petitioner is completing 58 years of age as on 04.09g 25.08.1959 and you are completing 58 years of age as on 04.08.2017.

8.On 22.09.2017, the Writ Petition has been admitted and interim orders has been granted. Thereafter, on 30.10.2023, the learned counsel for the petitioner would submit that the petitioner died and he could not contact the legal heirs of the deceased petitioner. Hence, the Registry was directed to print the name of the legal heirs on 20.11.2023. In view of the said



W.P.No.25114 of 2017

WEB COPY

circumstances, this Court is of the view that the petitioner is no more and the prayer sought for by the petitioner has become infructuous.

Accordingly, this Writ Petition is dismissed as infructuous. No costs.

Consequently, connected Miscellaneous Petitions are closed.

20.11.2023

Index :Yes/No
Speaking order :Yes/No
Neutral citation :Yes/No
mps

To

1. The Chief Operating Officer,
SAIL Refractory Company Ltd.,
Steel Authority of India,
Salem-636 005.
2. The Assistant General Manager(P&A),
SAIL Refractory Company Ltd.,
Steel Authority of India, Salem-636 005.



WEB COPY



W.P.No.25114 of 2017

V.BHAVANI SUBBAROYAN, J,

mps

W.P.No.25114 of 2017
and W.M.P.Nos.26554
and 26555 of 2017

20.11.2023