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W.P.No.10062 of 2006 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2023

PRONOUNCED ON : 26.02.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

**W.P.Nos.10062, 10063 of 2006 &
W.P.Nos.2370 of 2012 and W.P.No.16062 of 2016**

W.P.No.10062 & 10063 of 2006

The Management of
Andrew Yule & Company Ltd.,
Electrical Division
5/346 Old Mahabalipuram Road,
Perungudi, Chennai - 96

. . . Petitioner in W.P.Nos.10062 & 10063 of 2006

Vs

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

2.The Workmen Rep., by
General Secretary,
Andrew Yule Staff & Workers' Union
28, Pillaiyar Koil Theru, Rajaji Nagar,
Thiruvanmiyur, Chennai - 41.

. . . Respondents in W.P.Nos.10062 & 10063 of 2006

COMMON PRAYER:Writ Petition filed under Article 226 of the
Constitution of India praying for a Writ of Certiorari to call for records



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of the first respondent in I.D.Nos.50 & 57 of 2002 and quash its award dated 24.02.2006 and pass such further order.

W.P.Nos.2370 of 2012 & 16062 of 2016

A.M.Srinivasan ... Petitioner in W.P.No.2370 of 2012

D.Karunakaran ... Petitioner in W.P.No.16062 of 2016

Vs.

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

2.The Management of
Andrew Yule & Company Ltd.,
Electrical Division
5/346 Old Mahabalipuram Road,
Perungudi, Chennai – 96

... Respondents in W.P.Nos.2370 of 2012 & 16062 of 2016

PRAYER in W.P.No.2370 of 2012:Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for records relating to the impugned award dated 15.11.2008 made in I.D.Nos.279 of 2003 from the first respondent and issue a Writ in the nature of certiorari quashing the award passed by the first respondent with costs.

PRAYER in W.P.No.16062 of 2016:Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for records relating to the impugned award dated 26.08.2015 made in I.D.No.172 of 2009, from the first respondent and quash the award dated 26.08.2015, made in I.D.No.172 of 2009 by the first respondent and consequently directing the second respondent to pay the



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petitioner all his attendant benefits as if the petitioner was in continuity of service till the petitioner attained the age of 60 years with costs.

For Petitioner : Mr.P.Raghunathan for
M/s.T.S.Gopalan & Co in
W.P.No.10062 & 10063 of 2006 and

respondent in W.P.No.2370 of 2012 &
W.P.No.16062 of 2016

For Respondents : Mr.V.Ajoy Khose for
Mr.P.K.Mohan Vel for R2 in
W.P.Nos.10062 & 10063 of 2006 and

Petitioners in W.P.No.2370 of 2012 &
in W.P.No.16062 of 2016

R1 – Labour Court in all W.Ps.

COMMON ORDER

These Writ Petitions in W.P.Nos.10062 & 10063 of 2006 have been filed by the Management/Andrew Yule Company, (hereinafter referred to as 'Company') challenging the order passed by the first respondent in I.D.Nos.50 & 57 of 2002, ordering reinstatement of the employees/workman with all service benefits until they attain the age of 60 years considering it to be the age of superannuation. W.P.No.2370 of 2012 and W.P.No.16062 of 2016 has been filed by the employees, challenging the order passed by the first respondent in I.D.No.279 of 2003 and I.D.No.172 of 2009, in



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dismissing the claim of the employees seeking reinstatement and other attendant benefits.

2. Since the *lis* raised in these Writ Petitions are one and the same, they were heard together and disposed of by this common judgment.

3. Heard, Mr.P.Raghunathan, learned counsel appearing for the petitioners in W.P.Nos.10062 & 10063 of 2006 and for second respondents in W.P.No.2370 of 2012 & W.P.No.16062 of 2016. Mr.V.Ajoy Khose, learned counsel for Mr.P.K.Mohan Vel, learned counsel appearing for the petitioners in W.P.No.2370 of 2012 & W.P.No.16062 of 2016 and for second respondents in W.P.Nos.10062 & 10063 of 2006.

4. Mr.P.Raghunathan, learned counsel appearing for the Management/Andrew Yule Company, would submit that the management is a Government of India undertaking, engaged in manufacture of transformers, which are supplied to the State Electricity Board and the conditions of employment of the workmen are governed by the Certified Standing orders and as per Clause-14 of the certified Standing Orders, the age of retirement of its workman is 58 years. He would submit that the



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Management/Andrew Yule Company, originally took over the present company from the Management of Transformers and Switch Gears India Private Limited, which had Certified Standing Orders. Even in the said Standing Orders the retirement age was 58 years. He would submit that in an Office Memorandum dated 19.05.1998, the Government of India conveyed its decision to enhance the age of retirement for the below board level employees, of Central Public Sector Enterprises to 60 years and based on the memorandum without amending the Certified Standing Orders, the management at its discretion was granting extension of service to employees, who had attained the age of 58 years to continue in service until they attain the age of 60 years.

5. He would further submit that by Circular dated 09.05.2000, the Government of India felt that the age of retirement should be rolled back in the case of sick /unviable public sector units and in such cases, the Board of the concerned Company should review its decision on raising the age of the retirement and make suitable recommendations to the concerned departments for getting approval of the Government. He would submit that by letter dated 18.04.2001, the Management made a proposal to the Government of India for retaining the age of retirement at 58 years and by



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letter dated 25.05.2001, the Government of India accorded the approval to the proposal of the Management to retain the age of retirement as 58 years.

Based on that the Management/Andrew Yule Company on 30.05.2001, issued a notice advising the employees that the age of retirement will be 58 years and the same shall be given effect from 31.05.2001. He would submit that pursuant to the said notice one R.Karuppiah and one M.C.Jayarajan, second respondents in W.P.No.10062 of 2006, was working as a Watch & ward and workman, retired after attaining the age of 58 years. He would further submit that the second respondent raised an industrial dispute challenging the age of retirement and the same was adjudicated before the first respondent in I.D.No.50 of 2002. As a result the first respondent held that the two employees, namely R.Karuppiah and M.C.Jayarajan, would be entitled for wages and other attendant benefits till they had attained the age of 60.

6. The learned counsel for the management would submit that the second respondent/R.Pasupahty, in W.P.No.10063 of 2006, was an employee of the management and he retired from service on 31.12.2001 on attaining the age of 58. He would submit that the workmen after retiring from services raised an industrial dispute before the first respondent in



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I.D.No.57 of 2002 claiming the age of retirement to be 60 years, and the conduct of the petitioner in reducing the age of retirement from 60 years to 58 years was in violation of Section 9A of the Industrial Disputes, Act and the first respondent held that the employee, R.Pasupathy would be entitled for wages and other attendant benefits till he attain the age of 60 years.

7. He would submit that the first respondent ought to have noticed that the most important factual position, prior to May 1998 and after May 2001, where that all the workmen were retired from service on attaining the age of 58 years in accordance with Clause-14 of the Certified Standing Orders. He would contend that the period between May 1998 and May 2001 in allowing the workmen to retire on completion of 60 years of age was only a temporary phenomenon and the same would not become a service condition. He would submit that there is a condition of service in respect of age of superannuation, so there is no requirement to comply with Section 9A of the Industrial Disputes, Act. He would submit that the employees who are liable to be retired on attaining the age of 58 years in future would also resist their retirement in view of the impugned Award. Aggrieved over the orders passed by the first respondent in I.D.Nos.50 & 57 of 2002, the Management have filed two Writ Petitions. Therefore, he would seek to



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allow the Writ Petitions in W.P.Nos.10062 & 10063 of 2006 and to dismiss the claim of the employees in W.P.No.2370 of 2012 & W.P.No.16062 of 2016.

8. Countering his arguments, Mr.V.Ajoy Khose, learned counsel appearing for the employees would submit that the second respondents in W.P.No.10062 of 2002, one R.Karuppiah was employed as a watchman and M.C.Jayarajan, was employed as Gas cutter-cum-welder and thereafter as Assembly Fitter (Grade VI) under the management/Andrew Yule Company on 01.07.1989 and 01.06.1964 respectively. He would submit that the second respondent in W.P.No.10063 of 2006, was employed as an V.C.Operator under the petitioner Management from 18.03.1963 continuously and his monthly wages was Rs.7655.17/-. He would contend that the age of retirement in the Management/Andrew Yule Company is 60 years and that the Management has wrongly retired the employees from services at the age of 58 years. He would submit that the Management had issued a Circular No.13 of 2001, dated 30.05.2001, in reducing the age of retirement from 60 years to 58 with effect from 31.05.2001 and this action of the Management is illegal.



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9. He would submit that challenging the age of the retirement, the employees has raised an Industrial Disputes in I.D.Nos.50 & 57 of 2002 before the first respondent seeking reinstatement with continuity of service and backwages from 01.01.2002 and the same were allowed by the first respondent holding that the backing of age of the retirement of below board level employees is from 60 to 58, has affected the service conditions of the Trade Union employees, so the employees are entitled for wages and other attendants. Therefore he would submit that the order passed by the first respondent is reasonable and does not warrant any interference of this Court and seeks to dismiss these Writ Petitions in W.P.Nos.10062 & 10063 of 2006.

10. He would further submit that the employee in W.P.No.2370 of 2012 had worked as Winder Grade V and the employee in W.P.No.16062 of 2016, worked as a Selection Grade employee under the Management/Andrew Yule Company from 22.04.1963 and 01.10.1972 respectively. He would contend that the age of retirement in the Management industry was 60 years and that the Management had wrongfully retired the employees on attaining the age of 58 years. He would submit that the Management relied on a Circular No.13/2001, dated



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30.05.2001 wherein the Management had unilaterally reduced the age of retirement from 60 years to 58 years. He would further submit that the circular issued by the Management is null and void and violative of Section 9A of the Industrial Disputes Act.

11. He would submit that the employees in W.P.No.2370 of 2012 & W.P.No.16062 of 2016 had made the representations before the Management to reinstate them back in services through letter dated 30.12.2002, 24-06-2008 respectively. But the same did not evoke any response, the employees had raised industrial disputes in I.D.No.279 of 2003 and I.D.No.172 of 2009, before the first respondent claiming the relief of reinstatement in service with continuity of service, backwages from 01.10.2002 and other attendant benefits. He would submit that the first respondent had passed awards dated 15.11.2008 and 26.08.2015 in dismissing the claim of the employees. Aggrieved against the order of the first respondent, the employees have filed Writ Petitions seeking interference of this court to set aside the order of the first respondent and to allow the claim of the employees in W.P.No.2370 of 2012 and W.P.No.16062 of 2016 and to dismiss the Writ Petitions filed by the Management/Andrew Yule Company.



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12. I have heard the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

13. The *lis* that is to be resolved in these Writ Petitions is with regard to the age of superannuation of the employees of the company.

14. It is not disputed that the Certified Standing Order of the company, which was in vogue by prescribing the age of 58 years of retirement and this had been in vogue till May 1998. An official memorandum had been issued by the Government of India on 19.05.1998, raising the age of retirement of the employees in the Central Public Enterprises from 58 years to 60 years. The Management of the company by an Administrative Circular No.98/5, dated 29.05.1998, quoting the decision of the Government, dated 19.05.1998, increased the age of superannuation of its employees, who were to be appointed on or after 19.05.1998, and who were on the rolls of the company, as on the said date to 60 years. A proposal had been emanated from the company to the Government seeking reduction in the age of retirement of its employees from 60 years to 58



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years. By a communication dated 25.05.2001, the Deputy Secretary to Government of India, Heavy Industries and Public Enterprises had forwarded a communication to the company indicating that the Government had approved the request of the company on 18.04.2001 for rolling back the age of retirement below the board level employees from 60 years to 58 years.

15. It is to be noted that the said letter, in specific terms indicates that such revised age of superannuation to 58 years may be taken after fulfilling the requisite legal formalities. Pursuant to which on 30.05.2001, the company had issued notice No.13 of 2001, rolling back the age of retirement of its employees to 58 years. These facts are all not disputed by the respective parties.

16. The claim of the employees is that the revision of a lower age for superannuation would affect the conditions of service. When such change is sought to be brought up, then the company/employer is bound to follow Section 9A of the Industrial Disputes Act 1947. On the contrary, the learned counsel appearing for the company had contended that the Certified Standing Orders has only prescribed the age of 58 years, as the age for



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superannuation and this Certified Standing Orders have never been modified in the manner known to law and hence, the employees cannot take advantage of a circular issued by the company based upon the decision of the Government to contend that there is a variation of the Certified Standing Orders.

17. It is not disputed that when a condition of service is sought to be altered to the detrimental of the employee, the mandate of Section 9A of the Industrial Disputes Act 1947, would have to be followed. The Government of India had taken a policy decision to increase the age of superannuation from 58 years to 60 years. Thereafter, the company had also issued a circular increasing the age as stipulated by the Government. It had sought for a permission to roll back the age of 60 years to 58 years for superannuation, these are admitted by the company.

18. When that being so, such increase of age from 58 years to 60 years would have to necessarily be a deemed amendment to the Certified Standing Orders. It is also pertinent to note that the Government while issuing the permission to roll back, had indicated that such roll back shall be made after fulfilling the requisite legal formalities. This would presuppose



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that the Government while granting the approval was aware of the mandate of Section 9A of the I.D. Act. But however, without adhering to the advise given by the Government, the company had hastily issued a further notice on 30.05.2001. This would only draw me to a conclusion that the company had not followed the mandate of Section 9A of the ID Act.

19. In view of the above reasonings and findings, I am of the view that there is no infirmity or error in the award passed by the Tribunal in favour of the employees. At the same time, the award passed against the employees in my view would also have to be interfered with for the same reasons.

20. In fine, the Writ Petitions in

- i) W.P.Nos.10062 & 10063 of 2006 are dismissed;
- ii) W.P.Nos.2370 of 2012 and 16062 of 2016 are allowed.

However there shall be no order as to costs.

26.02.2024



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Index: Yes/No

Speaking order: Yes/No

Neutral citation: Yes/ No

To

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



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K.KUMARESH BABU,J.

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A Pre-delivery order made in

**W.P.Nos.10062, 10063 of 2006 &
W.P.Nos.2370 of 2012 and W.P.No.16062 of 2016**

26.02.2024