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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14452 OF 2024

National Textile Corp.Ltd. And Ors.

.. Petitioners

Versus

Bipin Devraj Panda

.. Respondent

-
- Mr. Aniruddha Garge a/w Ms. Manali Garge, Advocates for Petitioners.
 - Ms. Nivedita Deshpande, Advocate for Respondent.

.....
CORAM : MILIND N. JADHAV, J.

DATE : JULY 02, 2025.

P.C.:

1. The present Writ Petition assails the judgment dated 10.08.2022 passed by the Industrial Court, Mumbai. While determining Complaint (ULP) No.243 of 2015 in favour of Respondent – workman, by virtue of the impugned judgment complaint is allowed thereby directing Petitioner company to pay full back-wages to Respondent – workman till the end of 63 years of age alongwith continuity in service and all other benefits as well.

2. Case of Respondent – workman before Industrial Court was that he was forced to retire at the age of 60 years by the Petitioner Company when he was entitled to work up to attaining 63 years of age. This is the controversy leading to passing of the impugned judgment in favour of Respondent – workman.

3. Briefly stated the relevant facts for consideration are as under:

3.1. Petitioner No.1 is an undertaking in the Cotton Textile Industry in the local area of Greater Mumbai. It is nomenclatured as National Textile Corp. Ltd. (for short 'NTCL'). Petitioner No.2 is General Manager of Petitioner No.1. Petitioner No.3 is nomenclatured as NTCL (WP) Unit, Marketing Division which is a retail shop of Petitioner No.4 - Jupiter Textile Mill, a unit of Petitioner No.1.

3.2. Petitioner No.1 and Respondent will be referred to as Company and workman for brevity.

3.3. Admittedly, workman was permanent employee of Petitioner - Company. He joined Jupiter Mill on 03.05.1974 on the post of 'Cut-Looker' in the Folding Department of the Mill and was employed since then. In the year 2003 – 2004, Jupiter Mill merged with NTCL and thereafter workman was transferred back and forth to the retail shop / showroom of NTCL/ Respondent No. 4 and the Mill.

3.4. On 01.01.2007, workman was promoted to the post of 'Semi-Clerk' in the Market Division of the showroom. Admittedly, his past service record is clean and unblemished.

3.5. On 08.06.2015, he received a letter from Petitioner - Company informing him that he has completed the age of

superannuation / retirement (60 years) and therefore his service would be terminated as per Clause 11A of the Model Standing Orders w.e.f from 06.07.2015. His date of birth is 07.07.1955.

3.6. He replied to the said retirement memo on 10.06.2015 but Petitioner - Company did not take any action thereon.

3.7. Being aggrieved, on 16.06.2015 workman filed Complaint (ULP) No. 243 of 2015 in the Industrial Court, Mumbai seeking direction to Petitioner - Company to withdraw the retirement memo dated 08.06.2015 and ensure his continuity in service for a further period of 3 years until completion of 63 years of age. Petitioner - Company responded and resisted the said complaint.

3.8. Initially, by order dated 04.07.2015 ad-interim relief was granted in favour of the workman however, by order dated 16.10.2015 ad-interim relief was vacated and the Industrial Court framed following three questions/ issues for determination:

- (1) Whether the appropriate Government is the Central Government in relation to the dispute between the present Complainant and Respondents?
- (2) Whether the jurisdiction to entertain the present dispute is to the Central Government Industrial Tribunal and not to the State Industrial Tribunal?
- (3) Does the Complainants prove that the Respondents have engaged in unfair labour practice under Item 5, 9 and 10 of Schedule IV of MRTU & PULP act, 1971?

3.9. Being aggrieved by the said order workman filed Writ Petition No.1515 of 2016 in this Court which was disposed off by order dated 23.09.2016 upholding the interim order dated 16.10.2015 and holding that if the workman ultimately succeeded in his Complaint he can be compensated by way of awarding wages for the period between 60 and 63 years.

3.10. Complaint (ULP) No.243 of 2015 was ultimately decided by the impugned judgment dated 10.08.2022, holding that Petitioner - Company engaged in unfair labour practices and quashed and set aside the retirement memo dated 08.06.2015 and directed Petitioner - Company to pay full back-wages to the workman till the end of 63 years as also grant other benefits by continuing his service till the end of 63 years of his age.

3.11. Hence Petitioner - Company being aggrieved filed the present Writ Petition to challenge the impugned judgment dated 10.08.2022, allowing the Complaint (UPL) No.243 of 2015.

4. Mr. Garge, learned Advocate appearing for Petitioner - Company would submit that the impugned judgment suffers from miscarriage of justice, in as much as the issue of maintainability of complaint and jurisdiction of Industrial Court to hear the said Complaint (ULP) No. 243 of 2015 ought to have been decided separately and only thereafter relief claimed by the workman could

have been decided later.

4.1. He would submit that admittedly workman was employed in the Marketing Division showroom of the Company in Jupiter Mill which was a shop premises and it fell under the purview of the Bombay Shops & Establishment Act, 1948 and was not covered by the provisions of the Maharashtra Industrial Relations Act, 1946 (previously known as Bombay Industrial Relations Act, 1946).

4.2. He would submit that once it was an admitted position that workman worked in the shop premises of the Petitioner – Company, then he had to be retired on attaining the age of superannuation i.e. 60 years. He would submit that all employees working in the Marketing Division showroom of the Petitioner - Company are made to compulsorily retire at the age of 60 years and there was no unfair labour practice committed in this case.

4.3. He has taken me through the merger and take over of Respondent No.4 - Jupiter Mill by Respondent No.1 - NTCL and would submit that thereafter the workman was transferred to the Marketing Division showroom (shop premises) and in that view of the matter the Model Standing Order would not apply to the workman.

4.4. Hence, he would submit that the impugned order is bad in law and deserves to be quashed and set aside.

5. **PER CONTRA**, Ms. Deshpande, learned Advocate appearing for Respondent – workman would submit that admittedly the workman was transferred back and forth from Jupiter Mill to the Marketing Division of the Petitioner – Company wherein he held the post of a ‘Semi- Clerk’. Hence in that view of the matter, Model Standing Order finally settled by the Industrial Court under Section 36 of the Maharashtra Industrial Relations Act, 1946 which amounted to an Agreement / Settlement / Award as contemplated by Item 9 of Schedule IV of the Act applied to the workman.

5.1. She would submit that as per Clause 11A of the Model Standing Order for Clerks, it *inter alia*, provided that the Clerks shall retire from service on attaining the age of 60 years, but the employee shall be retained in service if he continues to be efficient and has never been assessed or challenged by the employer - Company. She would submit that before issuing the retirement memo the workman was never given an opportunity of hearing in view of applicability of Clause 11A of the Standing Order, despite he being efficient, physically and mentally fit, thus leading to unfair labour practice.

5.2. She would submit that the impugned judgment is a well reasoned judgment addressing maintainability, jurisdiction and merits of the dispute raised and unfair labour practice committed which has been upheld. She would therefore persuade the Court to dismiss the

Writ Petition with costs.

6. I have heard Mr. Garge, learned Advocate appearing for Petitioners and Ms. Deshpande, learned Advocate appearing for Respondent and have perused the record of the case. Submissions made by both the Advocates have received due consideration of the Court.

7. At the outset it is seen that there is no dispute with respect to applicability of Standing Orders in the facts of the present case. The order dated 16.10.2015, *prima facie* decided this issue and the same is also upheld by this Court in its order dated 23.09.2016. It is seen that Section 35 of the Maharashtra Industrial Relations Act, 1946 came into force with effect from 01.02.1991, governing conditions of service of employees including that of Clerks.

8. Originally, as per the Standing Orders, they did not contain any provisions of retirement of an employee, thereby the workmen were entitled to work till death, if they were physically and mentally fit. Schedule – I of the Maharashtra Industrial Relations Act, 1946 was amended in the year 1956 by addition of Clause 13 specifying the age of retirement / superannuation. After this amendment the Mill Owners Association applied to the Commissioner of Labour under Section 38 (2) of Maharashtra Industrial Relations Act, 1946 for insertion of Standing Order dealing with the age of retirement or superannuation.

The Mill Owners proposed 55 years as age of retirement of an employee which was opposed by the Unions on the premise that employees should be continued in employment till they would be fit to carry out the work.

9. Ultimately the Industrial Court by order date 19.09.1958 added Standing Order 20(A) in respect of retirement of operative worker and Standing Order 11A for Clerks. However, we are concerned with interpretation and application of Standing Order 11A to the case of the workman who was employed as Clerk in the Mill showroom premises. Standing Order 11A for Clerks state that an employee should retire from services on attaining the age of 60 years, but a male employee shall be retained in service if he continues to be efficient up to the age of 63 years.

10. It is seen that this Standing Order is interpreted and upheld by the Division Bench of this Court affirmatively in the case of ***Tata Mills Vs. Mulli Lal Yadav***¹ and thereafter in the case of ***Maharashtra State Textile Corporation Vs. Vasudev Joshi***². Therefore, it is settled legal position that extension upto 63 years of age for an efficient employee is the right of the clerk and no discretion lies with the Management to retire him at the age of 60 unless the Management proves that he is inefficient and to the contrary.

1 1990 CLR 120.

2 1989 -I, CLR 589.

11. In the present case, it is seen that admittedly the workman worked as a 'Cut- Looker' in the Holding Department of Petitioner No. 4 – Jupiter Mill from the year 1974 onwards, however after merger and take over when the Mill was functioning under NTCL – Petitioner No.1, on 12.10.2001 workman was transferred to Petitioner No.3 showroom at Chinchpokli due to exigency of work. Thereafter on 10.11.2003 he was transferred back to work in the Mill and later again by order dated 17.12.2003 he was transferred to work in the Petitioner No.3 showroom.

12. It is seen that thereafter on 01.03.2007 by Office order he was upgraded which stated that he will be paid Mill grade wages and all other terms and conditions of his service shall remain unchanged. That apart the Company never issued any order, letter or notice to the workman that he will be governed by the NTCL service conditions or that Standing Order applicable to the employee of the Company shall not be applicable to him or that he will be governed by the provisions of the Bombay Shops & Establishment Act, 1948 and not Maharashtra Industrial Relations Act, 1946.

13. Once this is the position and the Company failed to prove that the workman was inefficient to continue after attaining 60 years of age by following principles of natural justice, it cannot lie in the mouth of the company to use its discretion to retire the workman at

the age of 60 years.

14. It is further seen that the Company has indulged in discrimination in the present case. Colleagues of the workman S.B. Dalvi, S.R.Kolhe, Shri. Bahadur, Ankush Borude were all granted extension upto the age of 63 years by the Company. Infact Ankush Borude worked shoulder to shoulder with the the present workman as a 'Semi-Clerk' in the same showroom of the Company.

15. When the Company was asked by the workman to produce the extension orders of employees who were granted extension upto 63 years of age as per service conditions. It was replied by the Company that the desired information regarding extension granted to other co-workers was personal information and not connected with the present Complaint. Thus the Industrial Court drew an adverse inference against the Petitioner - Company which deserves to be upheld.

16. Further when it was Petitioner - Company's case that it was covered by Bombay Shops & Establishment Act, 1948, then when it was called upon to produce the License and Registration Certificate of the shop premises / showroom of the Company in which the workman was working, the Company failed to produce the same. In paragraph Nos.32 and 33 of the impugned judgment the Industrial Court has returned cogent and reasoned findings on the right and issue of age of

retirement of the workman to be continued in service up to 63 years of age, which in view of the above facts and circumstances as also applicability of the service conditions under Model Standing Orders deserves to be upheld.

17. In view of the aforesaid observations and findings which *prima facie* emanate from the record, the impugned judgment dated 10.08.2022 is a well reasoned and cogent judgment and does not call for any interference whatsoever by this Court. The judgment dated 10.08.2022 is upheld. Resultantly, the Writ Petition fails.

18. Petitioners are directed to pay full backwages to the Respondent - workman as per the judgement dated 10.08.2022 alongwith continuity in service and all other applicable benefits in accordance with law till the end of 63 years of his age alongwith costs of Rs.10,000/- towards the litigation costs to the workman.

19. Petitioners shall compute the aforesaid payment of full backwages as directed in this order within a period of 2 weeks from today. In the meanwhile within 1 week the Respondent - workman shall furnish the details of his bank account and all such necessary details to the Petitioners for receipt of full back-wages alongwith costs granted to him by this order to enable Petitioner No.1 to pay and deposit the same in the bank account of the Respondent – workman as directed by this order.

20. With the above directions, Writ Petition is dismissed.
21. Writ Petition is disposed in the above terms.

[MILIND N. JADHAV, J.]

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