IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4630 OF 2025

Indo Count Industries Ltd.
D-1, MIDC, Industrial Area,
Gokul Shirgaon, Kolhapur – 416 234 ....Petitioner

V/S

Shankar Mahadev Takmare
Age 58 years, Occ. Nil,
having address at Baba Nagar,
B-14, Uchgaon, Tal. Karveer
District Kolhapur ....Respondent

WITH
WRIT PETITION NO.4631 OF 2025

Indo Count Industries Ltd.
D-1, MIDC, Industrial Area,
Gokul Shirgaon, Kolhapur – 416 234 ....Petitioner

V/S

Sanjay Pandurang Ghorpade
Age 58 years,
having address at Narhari Galli,
Gadmudshingi, Tal. Karveer
District Kolhapur ....Respondent

Mr. Avinash Jalisatgi with Mr. T.R. Yadav and Ms. Divya Wadekar *for Petitioners in both Petitions.*

Mr. Dilip B. Shinde with Mr. Mohan C. Kumbhar *for Respondent in both Petitions.*

CORAM: SANDEEP V. MARNE, J.
RESERVED ON : 23 APRIL 2025.
PRONOUNCED ON : 30 APRIL 2025.

J U D G M E N T :

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petitions are taken up for hearing and final disposal.

2. The Petitioner-employer has filed these Petitions challenging the judgments and orders dated 20 February 2025 passed by the learned Member, Industrial Court No.1, Kolhapur, dismissing its Revision Applications and confirming the orders dated 3 April 2024 and 19 June 2024 passed by the Labour Court, Kolhapur. By orders dated 19 June 2024, the Labour Court has allowed Applications at Exhibit U-2 filed by the Respondent-employees and has temporarily restrained the Petitioner-employer from superannuating the Respondents until they attain the age of 60 years. The Petition is thus filed challenging the interim orders passed by the Labour Court, as confirmed by the Industrial Court.

3. Briefly stated, facts of the case are that Petitioner-employer is engaged in manufacturing of cotton yarn (Spinning Mill) in its factory at Kolhapur. There are about 805 employees employed in the said factory. Shahu Soot Kapad Kamgar Sangh has been registered as representative and approved Union for Karveer Taluka. Respondent-Shankar Mahadeo Takmare was appointed with the Petitioner-employer on 1 January 1994 as Helper and later on promoted as Assistant Fitter. Respondent-Sanjay Pandurang Ghorpade joined the employment on 25 August 1991 as a Reliever. According to the Petitioner-employer, the age of retirement of employees employed in the Spinning Mill is 58 years. According to the Petitioner, an

agreement was executed on 15 April 2006 between the Petitioner-Management and the employees under which the age of retirement was agreed as 58 years. That Respondent-employees accepted all the benefits under the agreement and were fully aware that they were due to retire on attaining the age of 58 years. Respondent-Shankar Mahadeo Takmare was to retire on attaining the age of 58 years on 20 June 2024 whereas Respondent-Sanjay Pandurang Ghorpade was to retire on attaining the age of 58 years on 5 April 2024. Accordingly, letters were issued by both the Respondents informing them about their retirements. Both the Respondents however approached Labour Court by filing Complaint (ULP) Nos. 19 of 2024 and 9 of 2024 seeking restraint order against the Petitioner-employer from retiring them before attaining age of 58 years. The Complaints were resisted by Petitioner-employer by filing Written Statements. Respondent-employees filed Applications at Exhibit U-2 seeking interim relief under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTP & PULP Act**). By orders dated 3 April 2024 and 19 June 2024 the Labour Court allowed the Applications at Exhibit U-2 and has restrained the Petitioner-employer from superannuating the Respondents till they attain the age of 60 years during pendency of the Complaints.

4. Petitioner-employer filed Revision Application (ULP) Nos.18 of 2024 and 25 of 2024 and before Industrial Court, Kolhapur challenging the interim orders passed by the Labour Court on 3 April 2024 and 19 June 2024. By judgments and orders dated 20 February 2025, the Industrial Court has dismissed both the Revision Applications. Petitioner-employer has filed the present Petitions challenging the orders passed by the Industrial Court.

5. Mr. Jalisatgi, the learned counsel appearing for the Petitioner-employer would submit that the Labour Court has grossly erred in granting interim relief in favour of the Respondent-employees by directing their continuance in service till attaining age of 60 years. He would submit that under the Settlement Agreement dated 15 April 2006, all the employees of the Petitioner-employer specifically agreed that age of retirement would be 58 years. That Respondents accepted all the benefits flowing through the Agreement dated 15 April 2006 and cannot selectively question applicability of covenant relating to age of retirement of 58 years. He would submit that the Respondents-employees were fully aware about the factum of their retirement on attaining the age of 58 years. He has invited my attention to few documents in which Respondents themselves declared their retirement on attaining the age of 58 years. He would also rely on consent letters given by the Respondent-employees in September 2023 while accepting wage rise in which again they accepted age of superannuation at 58 years.

6. Mr. Jalisatgi would further submit that the main reason recorded by the Labour Court for grant of interim relief was expiry of tenure of agreement dated 15 April 2006 by 31 December 2010. That the said reason has been found to be erroneous by the Industrial Court. This would mean that the Agreement dated 15 April 2006 continues to govern the age of retirement of the employees of the Petitioner. That the Labour Court has erred in holding that the Agreement dated 15 April 2006 was not registered, certified or settled by the Commissioner of Labour. That there is no provision for such registration certification or settlement. He would further submit that the Industrial Court has grossly erred in misinterpreting provisions

of Model Standing Order (**MSO**) 25A under the Maharashtra Industrial Relations Act, 1946 (**MIR Act**). That under MSO 25A it is lawful for the employer and employee to agree for different age of retirement than the one prescribed in the MSO. In support of his contentions, Mr. Jalisatgi would rely upon following judgments:

i) ***Balmer Lawrie and Co. Ltd. Bombay and another vs. Engineering Workers Association, Thane and another,*** 2011 (4) Mh.L.J. 776,

ii) ***Tulsiram K. Gothod vs. Superintendent, Mahatma Gandhi Memorial Hospital and another,*** 2001 (13) Mh.L.J. 662,

iii) ***Tulsiram K. Gothod vs. Superintendent, Mahatma Gandhi Memorial Hospital and anr,*** 2007 SCC OnLine 1522.

7. Mr. Jalisatgi would pray for setting aside the orders passed by the Labour and Industrial Courts.

8. The Petitions are opposed by Mr. Shinde, the learned counsel appearing for the Respondents. He would submit that Respondents are not parties to the Agreement shown to have been executed on 15 April 2006. That the said Agreement is not executed as per the provisions of MIR Act and is otherwise invalid. He would rely upon provisions of Section 35 of the MIR Act in support of his contention that the Agreement of 2006 was required to be registered with the Labour Commissioner. That provisions of MSO 25A prescribing the age of retirement of 60 years would prevail over any private Agreement executed by the employer. He would invite my attention to the Agreement executed by the Petitioner-employer with the Union on

6 February 2025, under which Petitioner-employer finally agreed to raise the age of retirement as 60 years. That since Petitioner-employer has agreed to make age of retirement as 60 years in the Settlement Agreement executed on 6 February 2025, this Court need not interfere in the impugned interim order granted by the Labour Court as confirmed by the Revisional Court. He would submit that since only interim order is challenged in the present Petitions, this Court would be loathe to interfere in the same particularly considering the fact that concurrent findings are recorded by the Labour and Industrial Courts. He would submit that all other colleagues of the Respondents are now allowed to retire at the age of 60 years and it would be otherwise too iniquitous to interfere in the impugned interim order and retire the Respondents before they attaining the age of 60 years. He would therefore pray for dismissal of the Petitions.

9. Rival contentions of the parties now fall for my consideration.

10. Respondent-employees have filed Complaints of unfair labour practices seeking restraint order against the Petitioner-employer from retiring them before attaining the age of 60 years. In those Complaints, interim stay has been granted in favour of the Respondents by the Labour Court by restraining the Petitioner from retiring the Respondents before attaining the age of 60 years. The sheet-anchor of the Petitioner in support of its contention of age of retirement of employees is 58 years is the Agreement dated 15 April 2006. It is a bulky Agreement dealing with terms and conditions of services of various categories of employees. It comprehensively deals with various aspects relating to salaries,

allowances, leave, attendance, gate pass, industrial relation, regularization, retirement, disciplinary measures etc. The Agreement was signed by the 23 employees in a representative capacity. Under clause 6 of the Agreement, the same was to remain in effect from 1 January 2006 to 31 December 2010. Under Annexure-C to the said Agreement under the heading 'Works Personal Manual', the age of retirement was fixed at 58 years.

11. The Labour Court has however refused to take cognizance of Agreement dated 15 April 2006 holding that the tenure thereof had come to an end on 31 December 2010 and that terms and conditions thereof relating to retirement became inoperative. The Industrial Court has however not agreed with the said finding recorded by the Labour Court and has held that the Agreement dated 15 April 2006 would continue to apply till execution of the new Agreement. The Industrial Court has thus reversed finding of the Labour Court about applicability of the Agreement dated 15 April 2006 beyond 31 December 2010. Thus, the Industrial Court has accepted the position that the Agreement dated 15 April 2006 would continue to remain valid.

12. However, the Industrial Court has held that under MSO 25A under the MIR Act, the age of retirement is 60 years and that an Agreement executed in breach of MSO 25A would be *non-est*. In short, the Industrial Court has held that age of retirement fixed under Agreement contrary to the provisions of MSO 25A would be invalid.

13. The State Government has notified Model Standing Orders in exercise of power under Section 35(5) of the MIR Act applicable *inter alia* in respect of cotton textile industry. MSO 25A provides thus:

> "25A. The date of compulsory retirement of an operative shall be the date on which he attains the age of 60 years or such other age as may be agreed upon between the employer and the employees by any agreement; settlement or award which may be binding on the employer and the employees under any law for the time being in force."

14. Thus, the age of compulsory retirement prescribed under MSO 25A is 60 years or such other age as may be agreed upon between the employer and the employees by any agreement, settlement or award. Thus, it is lawful for employer and employee to agree by way of an agreement, settlement or award to prescribe different age of retirement than 60 years provided for under MSO 25A. The entitlement of employer and employee to agree upon age of retirement different than the one prescribed under MSO 25A is no more *res integra*. In ***Tulsiram K. Gothad*** (supra) Co-ordinate Bench of this Court has held in paragraph 8 as under:

> "8. The model standing order Clause No. 27 is *ex facie* very clear and it can be analysed as under:
>
> (a) the age for retirement or superannuation of the workmen *may be* 60 years; or
>
> (b) such other age as may be agreed upon between the employer and the workmen by any agreement settlement or award which may be binding on the employer and the workmen under any law for the time being in force
>
> I have already held that the appointment order issued by the respondent management appointing the petitioner as a plumber and the petitioner having accepted the same and having worked for such a long period, it cannot be said that it was not an agreement between the respondent employer and the petitioner. The retirement age as reflected in Clause (a) above is 60 years or as would be agreed between the parties. It does not mandatorily say that the retirement age would be 60 only. **The clause in fact contemplates an agreement between the two parties.** It could be 58 years or it could be 60 years or even more. The petitioner was issued an appointment order wherein he was informed that he would be governed by the rules and regulations framed and amended from time to time by the respondents. **The said appointment order amounts to an agreement, as contemplated by the present standing order, I fail to understand if it is not an agreement what else it could be.** Shri Bukhari is, therefore, right in his submissions that the respondents have not contested the claim that the model standing orders do not prevail over the service regulations in the case of inconsistency. He has, therefore, rightly submitted that the appointment order being an agreement as contemplated

under the said standintg order No. 27, the age of retirement having been agreed specifically is within the four corners of the said standing order. I am not able to agree with Shri Deshpande when he has submitted that the agreement, settlement or award as mentioned in the said standing order has to be such only when there is a specific clause in respect of the age of retirement or with the union or with the large number of workmen and that an appointment order is not contemplated as an agreement within the said standing orders. **There is nothing in the standing order to read that an appointment order individually issued to an employee cannot be an agreement. I, therefore, hold that the appointment order issued to the petitioner and every such appointment order issued to every such employee does constitute an agreement within the meaning of clause 27 of the standing order and both the parties are bound by such an agreement unless, it is in any way contrary to the law or inconsistent with any provisions of law.** In the present appointment order I do not find anything which is inconsistent or contrary to the law. The appointment order is clear enough to inform the employee that he would be bound by the service regulations present and as amended from time to time. There is second aspect of this matter. Even the service regulations which are framed by the board of management and which are governing the service conditions of the employees have statutory flavour and have binding force, so long as they are not contrary to any provisions of law, including the model standing orders. At the same time, we cannot forget that they are not the service rules privately framed by any employer and kept in his cupboard. The respondent management is a responsible organisation formed under the declaration of trust deed. In its organisation, there have been very highly placed dignitaries consisting of representatives of the mill owners, employees, the E.S.I. Corporation and also the State Government. The trust deed elaborately provided for all the rules and regulations and the procedure. The board of management is not allowed to amend the rules and regulations unilaterally. It has to pass a resolution and approach the Government for its approval. Such rules and regulations or amendments therein can be enforced only after the State Government grants approval. In these circumstances, it cannot be said that the rules and regulations have no binding effect or have no statutory force. I have already observed that the rules and the regulations of the respondent have statutory flavour. It cannot be said that the management has followed the rules and regulations and therefore, it has committed an unfair labour practice. The decision of the management is not arbitrary or whimsical. The management followed unilaterally the rules and regulations which are not contrary to any law and which are not shown to be arbitrary or unreasonable. We, further, cannot lose sight of a fact that about 304 employees of the respondent had made a representation to the Industrial Court that the age of retirement was 58 years and 60 years for class I, II and III and Class IV employees respectively. It was complained by large number of employees that the union was acting not in favour of the employees but only for the benefit of a few and *mala fide*. There is a third dimension to the matter. Standing Order No. 32 reads as under:—

> "32. Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment."

> Under this standing order what is expected is any order which would operate in derogation of any law in the time being in force or to the prejudice of any right under the contract of service. According to this standing order the respondents have acted on the basis of the appointment order which is a contract of service or which is an agreement between the parties. **It is, therefore, clear that anything which is contrary to the appointment order would be hit by the aforesaid standing order No. 32. It is a contract of service that the petitioner would retire at the age of 58 years.** The contention of the petitioner, therefore, would straightway attract the aforesaid provisions of standing order which would be prejudicial to the right of the management to retire the petitioner at the agreed age of 58 years…..
>
> *(emphasis added)*

15. Thus, in ***Tulsiram K. Gothad*** (supra) this Court has held that even a term in the appointment order prescribing the age of retirement as 58 years would constitute an agreement within the meaning of clause 27 of the MSO formulated under the provisions of Industrial Employment (Standing Orders) Act, 1946. The provisions of MSO 27 under the Industrial Employment (Standing Orders) Act, 1946 is *pari materia* with MSO 25 under the MIR Act. Thus in ***Tulsiram K. Gothad*** (supra) Co-ordinate Bench of this Court has upheld the right of employer to prescribe the age of retirement of 58 years by way of a term in the appointment letter, which is held to constitute an agreement.

16. The Division Bench of this Court has upheld the judgment of the learned Single Judge in ***Tulsiram K. Gothad*** (supra) by dismissing the appeal preferred by the employee. The Division Bench has held in paragraphs 6 and 10 as under :

> "**6.** Perusal of the above Model Standing Order itself shows that it prescribes 60 years as age of retirement if some other age of retirement is not agreed upon between the employer and the workmen by any agreement or settlement or award which may be binding on both the parties. **Thus, the age of retirement is prescribed by the Model Standing Order no. 27 as 60 years only if there is no contrary provision to be found in an agreement between the parties. It is**

> **thus clear that the moment it is shown that there is an agreement between the parties which is binding on both the parties prescribing different age of retirement then the Model Standing Order no. 27 will not operate because of the language in which the Model standing order has been couched.** …….
>
> **10.** It was contended, as observed above, on behalf of the appellant that the contract of employment between the appellant and the respondent no. 1 which prescribed the age of retirement as 58 years for class III employees is void because it is contrary to the provisions of Section 23 of the Indian Contract Act and reliance is placed on the judgment "*Central Inland Water Transport Corporation Ltd.* v. *Brojo Nath Ganguli*, (1986) 2 CLR 322." In our opinion, the submission is devoid of any merit. Prescribing age of retirement as 58 years for a class of employees can by no stretch of imagination be said to be opposed to any public policy. In any case, the Model Standing Order no. 27 which according to the appellant is law on the point itself allows a different age of retirement being agreed upon between the parties. In our opinion, therefore, the submission has no substance."
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> *(emphasis added)*

17. Thus, the Division Bench of this Court in ***Tulsiram K. Gothad*** (supra) has rejected the argument of prescription of age of retirement as 58 years being opposed to public policy while upholding the judgment of the learned Single Judge.

18. In ***Balmer Lawrie and Co. Ltd. Bombay & Anr.*** (supra) the argument before Division Bench of this Court was that MSO 27 under Industrial Employment (Standing Order) Act, 1946 permitted execution of agreement prescribing only higher age of retirement than 60 years and that it was impermissible to agree on age of retirement of less than 60 years. The Division Bench rejected the argument by holding in paragraph 12 as under :

> "12. Learned counsel for the respondent further submitted that the present respondents were not parties before the aforesaid' Division Bench and this Court may take contrary view or may refer the matter to Larger Bench for reconsidering the said view. We cannot accept the said submission canvassed by the learned counsel for the respondent Union, as being a co-ordinate Bench this Court is bound by the view taken by the earlier Division Bench. Apart from the aforesaid aspect, it is required to be noted that the present respondent Union itself has raised various demands in the

past, which included a specific demand regarding raising the retirement age in connection with the workmen serving in the Container Division and the said demand was withdrawn while settling the dispute at the time when the Management accepted other demands. As per the Model Standing Order 27, the age of retirement is fixed at 60 years or any other age which may be agreed between employer and the workmen. It is not possible to accept the submission of the learned counsel for the respondents that the agreement can only be arrived at only for the purpose of extending the age beyond 60 years and not for reducing the age from 60 to 58 years or that such agreement will have no effect in the eyes of law. Reading of the Model Standing Order 27, it is clear that the age of retirement would be 60 years, but the same shall be subject to specific agreement between employer and workmen in a given case. It is not the case of respondent Union that in the appointment order, no specific age was mentioned i.e. 58 years and when it is not in dispute that by virtue of settlement under the Industrial Disputes Act, the age of retirement serving in the Container Division was fixed at 58 years. In our view, such agreement cannot be said to be contrary to the Model Standing Order 32, in view of the clear provision in the Model Standing Order 27. When Model Standing Order 27 itself provides for an agreement by which particular age can be fixed, it is not possible to give restrictive meaning to Standing Order 27 as contended by the learned counsel for the respondent. In our view, considering the provisions prescribed in the said Model Standing Order, it is clear that in absence of agreement or settlement between Management and workmen, the retirement age shall be 60 years. However, the same shall be subject to any agreement or Award or custom which shall prevail in the field. We agree with the submission of Ms. Buch that in case of conflict between Model Standing Orders and any other agreement, the former shall prevail over any agreement between the parties. However, in the instant case, Model Standing Order 27, itself provides for an agreement between the employer and workmen. In a given case, if by an agreement some better rights are given to the workmen, then such better service conditions or rights provided by the agreement or by any law or contract or custom, the same shall prevail over the Standing Order. But, by reading Model Standing Order 32, it cannot be said that even though Standing Order No. 27 itself provides for an agreement, such agreement can be arrived at only for the purpose of increase in the age and not for reducing the age from 60 years. As stated earlier, in the absence of agreement between the parties, as per Model Standing Order 27, the age of retirement is to be considered as 60 years. In any case, since this Court is bound by the Judgment of the earlier Division Bench in the case of Tulsiram K. Gathod (supra), the submission of the learned counsel for the respondent cannot be accepted, as this Court being a Co-ordinate Bench cannot take different view interpretating the same Model Standing Order 27."

19. In my view, the law appears to be fairly well settled that it is lawful for the employer and employee to agree upon age of retirement of less than 60 years under the MSO. The age of retirement prescribed under MSO would apply only in the absence of agreement,

settlement or award. The Labour Court has thus erred in recording a finding that the age of retirement prescribed in Agreement dated 15 April 2006 is contrary to provisions of MSO 25A under MIR Act.

20. It is otherwise inconceivable that Respondent-employees can enjoy all the benefits flowing out of Agreement dated 15 April 2006 but can selectively question the age of retirement prescribed therein, that too at the fag end of their services. Mr. Jalisatgi has invited my attention to some of the documents, in which Respondent-employees themselves declared their ages of retirement as 58 years. To illustrate, the recognized Union was clearly given an intimation vide letter dated 15 July 2015 that age of retirement was 58 years as agreed in the Agreement. Respondent-Shankar Mahadeo Takmare apparently applied for loan and sought verification of details of his employment from the Petitioner. The verification form was signed by the General Manager (Personnel) on 28 December 2007 declaring the age of his retirement that 58 years. Petitioner-employer has relied on loan application form of Respondent-Shankar Mahadeo Takmare, in which he declared his date of his retirement as 20 June 2024. It appears that in September 2023, there was an Agreement for wage rise and Respondent-employees submitted 'understanding' dated 4 September 2023 in which they agreed that the age of the retirement would be in accordance with previous practice and the Agreement. There is thus overwhelming *prima facie* evidence indicating that the Respondents were always aware of their age of retirement as 58 years.

21. Reliance by Respondent-employees on Memorandum of Settlement dated 6 February 2025 is completely misplaced. The said Settlement is arrived at between the Petitioner-employer and the

Union on 6 February 2025 and the same has come into effect from 1 January 2025. Under the said Settlement Petitioner-employer and Union have agreed that the age of retirement of employees would be 60 years. However, both the Respondents had attained the age of retirement of 58 years much prior to the execution of the said Memorandum of Settlement dated 6 February 2025. Respondent-Shankar Mahadeo Takmare attained the age of retirement of 58 years on 20 June 2024 whereas Respondent-Sanjay Pandurang Ghorpade attained the age of retirement of 58 years on 5 April 2024. In that view of the matter, subsequently executed Memorandum of Settlement dated 6 February 2025 cannot govern the age of retirement of the Respondent-employees.

22. The contentions raised on behalf of the Respondents that they are not signatories to the Agreement dated 15 April 2006 is completely misconceived. It is not necessary that all 800 odd employees must sign the Memorandum of Settlement. The same is signed by 23 representatives on behalf of all the 800 odd employees. It is not the case that the Respondents have refused to accept any benefits flowing through the said Agreement dated 15 April 2006. Therefore, mere absence of signature of the Respondent-employees on the said Agreement would not be a reason to believe that the same does not bind the Respondents. In any case, neither Labour Court or Industrial Court have held that the Agreement is not binding on account of absence of signatures of the Respondents thereon.

23. Reliance by Mr. Shinde on provisions of Section 35 of the MIR Act is also completely misplaced. What is required to be approved by the Commissioner of Labour is the draft Standing Orders under provisions of Section 35. Section 35 of the MIR Act provides thus:

> **"35. Settlement of Standing Orders by Commissioner of Labour.-**
> (1) Within six weeks from the date of the application of this Act to an industry, every employer therein shall submit for approval to the Commissioner of Labour in the prescribed manner draft standing orders regulating the relations between him and his employees with regard to the industrial matters mentioned in Schedule 1:
>
> Provided that where an undertaking in an industry is started after the application of this Act to such industry, the draft standing orders shall be submitted within six months of the starting of the undertaking.
>
> (2) On receipt of the draft standing orders the Commissioner of Labour shall, after consulting in the prescribed manner the representatives of employees and employers and such other interests concerned in the industry and making such inquiry as he deems fit, settle the said standing orders.
>
> (3) The Commissioner of Labour shall forward a copy of the standing orders so settled to the Registrar who shall within fifteen days of their receipt record them in the register kept for the purpose.
>
> (4) Standing orders so settled shall come into operation from the date of their record in the register under sub-section (3).
>
> (5) Until standing orders in respect of an undertaking come into operation under the provisions of sub-section (4), model standing orders, if any, notified in the Official Gazette by the State Government in respect of the industry shall apply to such undertaking."

24. Thus, if Standing Orders, different than the Model Standing Orders, are adopted by the employer, the same are required to be approved by the Commissioner of Labour under provisions of Section 35 of the MIR Act. Provisions of Section 35 of the MIR Act do not apply to Agreements executed between the employer and the employee/their Union.

25. The Labour and Industrial Courts have ought to have considered the fact that the Respondent-employees filed Complaints of unfair labour practice at the fag end of their service. To illustrate, Respondent-Shankar Mahadeo Takmare was to retire on 20 June 2024 and filed Complaint of unfair labour practice only after receipt of letter dated 3 June 2024 communicating him the date of his

retirement. One day before his retirement, the Labour Court granted stay order in his favour on 19 June 2024. This Court does not appreciate the approach on the part of the Labour Court in entertaining applications for interim relief which has the effect of continuation of the employees beyond date of retirement decided by the employer. In my view, no interim relief could have been granted where the employees move proceedings at the fag end of their service and seek a declaration that they are entitled to retire at a different age then the one prescribed by the employer. In such cases no interim relief directing continuation of the employment can be granted. In the event the employee succeeds in the proceedings initiated by him, Labour/Industrial Courts can always pass consequential orders for payment of wages. However, grant of interim order directing continuation of employment beyond the prescribed age of retirement is something which cannot be countenanced in law.

26. In ***Burn Standard Co. Ltd. v. Dinabandhu Majumdar,*** (1995) 4 SCC 172 the Hon'ble Apex Court has held that it is imprudent to grant interim stay in cases relating to change of date of birth, which has the effect of continuing the employees in service beyond the age of retirement. The Apex Court has held thus :

> 11. **Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment**, because of the well-settled legal position governing such correction of date of birth, which precisely stated, is the following:
>
> 12. When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements of the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordi-

narily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such a sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. **In any case in such cases interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions, a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief.**

(emphasis added)

27. The Apex Court as well as this Court has repeatedly frowned upon attempts made by employees in seeking continuation of employment after attaining the age of retirement by instituting proceedings at the fag end of the service. In my view therefore, no case was made out for grant of any interim relief in favour of the Respondent-employees by the Labour Court. The Labour Court has grossly erred in passing the impugned orders dated 3 April 2024 and 19 June 2024. The Revisional Court has erred in not correcting the

error committed by the Labour Court and by dismissing the Revisions filed by the Petitioner-employer. The orders passed by the Labour and Industrial Courts are thus unsustainable and are liable to be set aside.

28. Petitions succeed accordingly. Orders dated 3 April 2024 and 19 June 2024 passed by the Labour Court as well as orders dated 20 February 2025 passed by the Industrial Court are set aside. It is however clarified that the findings recorded in the present judgment are *prima facie* and the Labour Court shall proceed to decide the Complaints on their own merits without being influenced by those findings.

29. With the above directions, both the Writ Petitions are **allowed**. Rule is made absolute. There shall be no order as to costs.

SUDARSHAN RAJALINGAM KATKAM

(SANDEEP V. MARNE, J.)

Digitally signed by SUDARSHAN RAJALINGAM KATKAM
Date: 2025.04.30 20:06:39 +0530