



W.P. No.30255 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2025

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.30255 of 2023
and W.M.P. No.29855 of 2023

E.I.H. Associated Hotels Thozhilalargal Sangam
(Corrected name of the Union is E.I.H. Hotels and
E.I.H. Associated Hotels Thozhilalargal Sangam)
Regn. No.2890/CNI/09/10/2001,
Represented by its General Secretary,
No.1/24, GST Road, Meenambakkam,
Chennai – 600 027.
Chengalpattu District. .. Petitioner

Vs.

E.I.H. Associated Hotels Limited,
No.1/24, GST Road,
Meenambakkam, Chennai – 600 027.
Chengalpattu District. .. Respondent.

PRAYER: The Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus after calling for the concerned records from the Labour Court, Kancheepuram in S.O.A. No.1 of 2023 dated 11.10.2023, to quash the order of the Labour Court, Kanchipuram dated 11.10.2023 in S.O.A. No.1 of 2023 insofar as amending Clause 37(b) of the Standing Orders of the respondent.

For petitioner : Mr. Balan Haridas

For Respondent : Mr. K. Ramesh



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ORDER

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The Writ petition has been filed to call for the records from the Labour Court, Kanchipuram in S.O.A. No.1 of 2023 dated 11.10.2023 and to quash the same insofar as amending Clause 37(b) of the Standing Orders of the respondent.

2. The learned counsel appearing for the petitioner would submit that the petitioner Union is registered under the Trade Unions Act. All the permanent employees working in E.I.H. Associated Hotels -The Trident Hotel, Chennai are the members of the petitioner Union. At the time of starting the hotel during March 1988, there was no Union and the Certified Standing Orders was issued on 09.03.1989. At that point of time, the name of the hotel was Oberoi Associated Hotels Limited and the said name was changed as EIH Associated Hotels Limited and in the Certified Standing Order, the Authority under the Industrial Employment Standing Orders Act had modified the name of the Hotel by an order dated 15.10.2004. As per Clause 37(a) of the Standing Orders, the arbitrary power was given to the respondent Management to terminate the service of the workman at any time and the same is contrary to the Model Standing Orders and contrary to the provisions of the Industrial Disputes Act, 1947. As per Clause 37(b) of the Standing Orders, the age of retirement is 58 years and for female employees

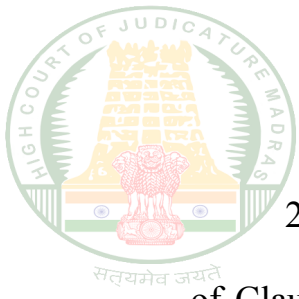


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working in the guest area, the retirement age is 40 years and for the female employees working in other areas / department, the retirement age is 45 years.

Further, as per the said provision, if any employee completes 30 years of service, he can be retired even if he does not attain 58 years of age and a person can be retired if he is found medically unfit. Therefore, the petitioner Union filed an application under Section 10(2) of the Industrial Employment (Standing Orders) Act on 29.08.2022 seeking modification of entire Clause 37(a) and (b) of the Standing Orders.

2.1. As per the modification Clause 37(b), every workman shall retire on attaining the age of 58 years, provided that the management may in their discretion extend the period of service of any workman on reaching the said age of superannuation for such longer period as may be considered necessary. The said amendment was sought for as the respondent to misuse the same and the said provision was contrary to the Model Standing Order. The respondent filed objections dated 15.11.2022. Thereafter, the said Standing Orders were certified by the Authority. As per Clause 37(a), the termination of employment of workmen is subject to the provisions as suggested by the petitioner Union. Aggrieved by the said order, the respondent filed an application in S.O.A. No.1 of 2023 before the Labour Court, Kanchipuram.



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2.2. The Labour Court, accepted Clause 37(a) and modified in respect of Clause 37(b). Without any prayer, the Court itself modified the order as every workman shall be retired on attaining the age of 58 years or on completion of 30 years of service, whichever is earlier, which shall be the age of superannuation, provided the Management may in their discretion, extend the period of service of any workman on reaching the said age of superannuation for such longer period as may be considered necessary. The said amendment was not at all sought for by any of the parties and the Authorities under the Act accepted the modification for retirement age of 58 years irrespective of the gender and thereafter, the discretion is with the Management to extend the service of the workman after attaining the age of superannuation. The Labour Court erred in holding that the employees will not be affected by the modification of the Standing Orders in respect of the age of 58 years or 30 years of service as age of retirement. The Model Standing Orders prescribed the age of retirement as 58 years and only on that basis, the Certifying Authority modified the Standing Order of the respondent in which the age of the retirement is 58 years or 30 years of service. By partly allowing the appeal, the order of the Certifying Authority has been nullified and the original position is restored in an illegal manner and without any valid reason. The reasoning of the Labour Court, Kanchipuram is that if any employee works for 30 years and if he is permitted to continue further, his



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efficiency will reduce is without any basis. In fact, this was not the contention of the respondent as well. The Model Standing Orders prescribes the age of retirement as 58 years, which is accepted in all nature of industries and such an age fixed is accepted nationwide. While so, the Labour Court without any valid reasons, had fixed the 30 years of service as age of retirement. Therefore, the order passed by the Labour Court is liable to be quashed in so far as amending Clause 37(b) of the Standing Orders is concerned.

2.3. The learned counsel appearing for the petitioner, in support of his contention, has relied upon the following judgments:-

1.Rohtak and Hissar District Electric Supply Co. Ltd., and another vs. State of Uttar Pradesh and other reported in AIR 1966 SC 1471.

2.Devaki M. and others vs. B.P.L. Group of Companies reported in 2010 SCC Online Ker 4975.

3.Nagaland Senior Govt. Employees Welfare Association and others vs. State of Nagaland and others reported in 2010 (7) SCC 643.

4.Mang. Of M/d Gem Properties Pvt Ltd., vs. Tumkur Jilla Engineering and General Workers Union and another reported in 2017 SCC Online Kar 17.



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5.The Mang. Of Hindalco Industries Ltd., vs. Indal Employees Union and others in W.P. No.119764 of 2020.

6.TTK Healthcare Ltd., vs. Bangalore East Industrial Workers Union and others in W.P. No.23489 of 2021.

3. The learned counsel appearing for the respondent would submit that the petitioner / Trade Union filed an application for carrying out the amendment of Clause 37 (a) and (b) of the Standing Orders. The said application was numbered by the Additional Commissioner of Labour, Chennai. The respondent Management had strongly objected to the proposal made by the Trade Union for amendment of retirement Clause as it has become a settled legal position that the Management can have its own policy of retirement. However, without considering the contentions of the respondent Management and without going into the justifiable and reasonableness on the age of retirement as certified in the Certified Standing Orders in the year 1989 and was continuing for over a period of more than 33 years from the date of certification, the Additional Commissioner of Labour, Chennai was pleased to allow the petitioner / Trade Union's claim for modification vide her Order dated 08.02.2023. The Labour Court had rather modified the order of the Certifying Officer and had not set aside the order of the Certifying Officer as prayed by the respondent in its prayer in the Memorandum of Appeal and as

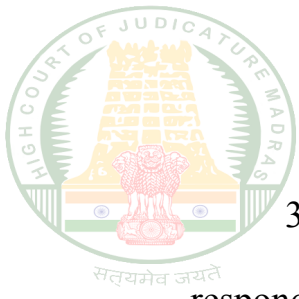


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the Labour Court has modified the order of the certifying Authority, the Writ petition is not maintainable.

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3.2. The Rules of retirement were framed by the company even before the appointment of the employees and the employees were having knowledge about the rules and after accepting the appointment order, where the rules prescribed, the Trade Union cannot turn back and say that the rules of retirement of the company are arbitrary and unreasonable. In Hotel industries, the efficiency of the employees get reduced with the advancement of their age as many of them are to perform most of the hours of duty in the standing position. Therefore, the retirement age should be 58 years or completion of 30 years of service, whichever is earlier. Therefore, the Labour Court has modified the order of the Certifying Authority. The Certifying Authority allowed the modification of the order that every workman shall retire on attaining the age of 58 years, which shall be the age of superannuation, provided the Management may in their discretion, extend the period of service of any workman on reaching the age of superannuation for such longer period as may be considered necessary. Therefore, the said order was modified by the Appellate Authority and the order passed by the Labour Court is in order and the Writ petition is liable to be dismissed.



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3.3. In support of his contention, the learned counsel appearing for the respondent has relied upon the following judgments:

1.State Bank of Bikaner & Jaipur and others vs.Jag Mohan Lal reported in AIR 1989 SC 75.

2.Union of India & others vs. A.K.Behl, AVSM, PHS & others reported in AIR 2015 SC 2929.

3.Child in Need Institute vs. Fourth Industrial Tribunal and others reported in (2018) 4 LLJ 285.

4.K. Chelliah vs. The Industrial Finance Corporation of India and another reported in (1980) 2 MLJ 206.

5.Bharat Petroleum Corporation Limited vs. Maharashtra General Kamgar Union and others reported in 1999 SCC Page 361.

4. Heard both sides and perused the materials available on record.

5. In this case, it is an admitted fact that the Certifying Standing Orders was issued on 09.03.1989 in the name of Oberoi Associated Hotels Limited and thereafter the name was changed as EIH Associated Hotels Limited and in the Certified Standing Order, the Authority under the Industrial Employment Standing Orders Act had modified the name of the Hotel by an order dated 15.10.2004. The old Standing Orders under Clause 37 reads as follows:-



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“37. Termination of Service (Simple discharge or discharge, Simplicitor & Retirement.

(a) Service of a workman other than a probationary can be terminated at any time by giving a month's notice or paying a month's salary in lieu thereof and likewise, a permanent workman can also terminate his contract of service at any time by giving a month's notice or surrendering a months' wages in lieu of notice.

(b) An employee in the Hotel shall retire on attaining the age of 58 years while female employees working in the guest are on attaining the age of 40 and other areas / departments on attaining the age of 45 or on completion of 30 years of service, whichever is earlier or earlier if he / she is found medically unfit”.

6. The petitioner Trade Union filed an application under Section 10(2) of the Industrial Employment Standing Orders on 29.08.2022 seeking modification of entire Clause 37(a) and (b) of the Standing Orders. The request of modification is that:

Termination of Employment of workmen (1) subject to the provisions contained in certified Standing order Clause 28, no employer shall dispense with the service of any workman with not less than one year of continuous service except for a reasonable clause and without giving such workman atleast one month's notice or wages in lieu of such notice.

(2) In cases of retrenchment as defined in Section 2(oo) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the provisions of the said Act shall apply.

Provided that no such notice shall be necessary in the case of badly and apprentices.

(3) No order of termination of service of a workman shall be made unless the workman is informed in writing of the reasons for the termination of his services and is given an opportunity to show cause against such termination. A copy of the said order shall be communicated to the workman.

(4) Where the employment of any workman is terminated by or on behalf of the industrial establishment, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment was terminated or the same shall be made available to his by the drawer of the wages, in case he does not turn up for receiving the wages.



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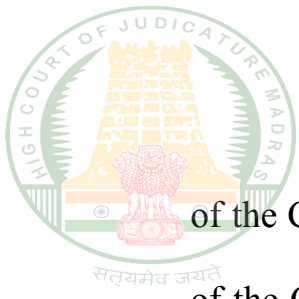


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Clause 37(b) – Retirement – Every workman shall retire on attaining the age of 58 (Fifty eight) years which shall be the age of superannuation, provided that the management may in their discretion extend the period or service of any workman on reaching the said age of superannuation for such longer period as may be considered necessary”.

7. The objections raised by the respondent for the above said modification is that the Standing Orders applicable to the establishment were certified by the learned Statutory Authority under the Industrial Employment (Standing Orders) Act and the relevant rules and has been in force for ever since, without any protest or demur, the allegation made by the Union after a lapse of several years is that the Standing Orders were certified when there was no union is without any basis, the Standing orders have been certified by the Authority after complying due process law, the allegation that Clause 37(a) gives arbitrary power to the Management, who terminates the service of workman at any time is totally wrong, the said Clause in the Certified Standing Orders stood in force ever since the Standing Orders were certified and there is no any instance of any acts of arbitrariness restored to by the Management such baseless allegation, apart from a figment of imagination on the part of the Union has been made with an ulterior motive of fabricating a false case against the Management.

8. According to the respondent, the Union has alleged that Clause 37(b)



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of the Certified Standing Orders is highly illegal and in violation of Article 14 of the Constitution of India. As per the judgment of Hon'ble Supreme Court, such a Clause pertaining to age of retirement is neither arbitrary nor unjustified and is not violative of Article 14 and 16 of the Constitution. Therefore, the removal of above said Clause 37(a) and (b) will be totally illegal and unjustified. Therefore, the petition is liable to be dismissed.

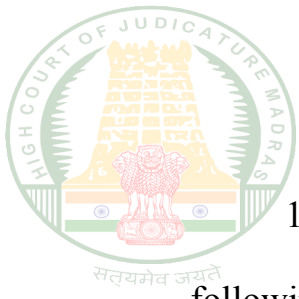
9. Based on the above said submissions made by both sides, the Certifying Authority has passed a detailed order accepting the amendment made in the Certified Standing Orders. The Management filed an appeal challenging the above said order before the Labour Court, Kanchipuram in Standing Order Appeal in S.O.A. 1 of 2023. The Labour Court, accepted the modification in the Certified Standing Order with respect to Clause 37(a) and modified the order with respect to Clause 37(b) that every workman shall be retired on attaining the age of 58 years or on completion of 30 years of service, whichever is earlier, which shall be the age of superannuation, provided that the Management may in their discretion may extend the service of any workman on reaching such age of superannuation, for such longer period as may be considered necessary. Aggrieved by the said order, the employees of the Union of Hotel have preferred this Writ petition.



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10. The Labour Court in its order have referred various judgments and passed the order by modifying the said order. The main grievance of the Writ petitioner is that the Management itself has not suggested for partial modification and as per the Management, the existing provisions itself is sufficient and they totally objected for modification. However, the Labour Court, without any valid reasons, modified the order. The amendment application was filed by the Writ petitioner before the Certifying Authority and the Authority after hearing both sides passed the order by accepting the amendments. The Management filed an appeal as against the total amendment and the Appellate Authority itself modified the order without any prayer for such modification by either party. The Management has not filed any application for modification and the Writ petitioner has only filed the application for modification where the Authority after considering and affording reasons, passed the order and permitted amendment. While so, the interference of the Appellate Authority namely the Labour Court, Kanchipuram will create unrest between the Management and the employees. When there is no any prayer sought for by the Management for any such modification, the Labour Court itself modified the Standing Orders. Therefore, the order passed by the Labour Court is liable to be set aside.



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11. The learned counsel appearing for the petitioner has relied the following judgments:

1. *Rohtak and Hissar District Electric Supply Co. Ltd., and another vs. State of Uttar Pradesh and other reported in AIR 1966 SC 1471.* 2.

Devaki M. and others vs. B.P.L. Group of Companies reported in 2010 SCC Online Ker 4975.

3. *Nagaland Senior Govt. Employees Welfare Association and others vs. State of Nagaland and others reported in 2010 (7) SCC 643.* 4.

Mang. Of M/d Gem Properties Pvt Ltd., vs. Tumkur Jilla Engineering and General Workers Union and another reported in 2017 SCC Online Kar 17.

5. *The Mang. Of Hindalco Industries Ltd., vs. Indal Employees Union and others in W.P. No.119764 of 2020.*

6. *TTK Healthcare Ltd., vs. Bangalore East Industrial Workers Union and others in W.P. No.23489 of 2021.*

On a careful persual of those judgments, it is clear that Section 3(2) of the Act specifically requires that the Standing Orders shall be as far as practicable, in conformity with the model and the appropriate Authority may permit departure from the Model Standing Orders, if it is satisfied that insistence upon such conformity may be impracticable and further it is clear



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that fixation of maximum length of service as a criterion for retirement is valid, however, the said criterion, which would result in different age of superannuation of employees holding same post depending on their age of entry in service is violation of Article 14 and 16 of the Constitution of India.

12. The learned counsel appearing for the respondent has relied the following judgments:

1. State Bank of Bikaner & Jaipur and others vs. Jag Mohan Lal reported in AIR 1989 SC 75.

2. Union of India & others vs. A.K. Behl, AVSM, PHS & others reported in AIR 2015 SC 2929.

3. Child in Need Institute vs. Fourth Industrial Tribunal and others reported in (2018) 4 LLJ 285.

4. K. Chelliah vs. The Industrial Finance Corporation of India and another reported in (1980) 2 MLJ 206.

5. Bharat Petroleum Corporation Limited vs. Maharashtra General Kamgar Union and others reported in 1999 SCC Page 361.

On a careful perusal of the above judgments, it is clear that "there is nothing wrong if the legislature provides for retirement of the Government Workmen based on maximum length of service or on attaining a particular



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age, whichever is earlier, if the prescribed length of service or age is not irrational". In the case on hand, the original Standing Orders prescribed different ages for man and woman and fixed the maximum age as 58 and length of service as 30 years, whichever is earlier. The Union filed application to modify the said rule as 58 years as retirement age for all and the same was allowed by the Certifying Authority and the retirement age fixed as 58 years. However, the Appellate Authority modified the order of the Certifying Authority that 'every workman shall be retire on attaining the age of 58 years or on completion of 30 years of service, whichever is earlier'. The said modification has not been sought for by any of the parties and the Labour Court, without any specific prayer by either parties, modified the order of the Certifying Authority.

13. The Labour Court has to either allow or dismiss the appeal. Per contra, without any such prayer for modification in respect of Clause 37(b), passed the impugned order. There is no doubt that the Appellate Authority has power to modify the order passed by the Certifying Authority. However, it should be in consonance with the rules and based on the applications made by either party. Though the Labour Court has referred judgments in respect of the age of retirement, that amendment was not sought for by the Management and according to the Management, the earlier Clause itself is sufficient and the



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same has not been challenged for more than 38 years. Therefore, the order passed by the Labour Court is liable to be set aside.

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14. Accordingly, the Writ petition is *allowed*. *The appeal in S.O.A. No.1 of 2023 is dismissed. The order passed by the Certifying Authority is restored.* There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

25.08.2025

Index : Yes/No
Speaking order/non-speaking order
mjs

To
The Presiding Officer,
Labour Court, Kancheepuram.

P.DHANABAL, J.,

mjs



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