UNITED PROVINCES ELECTRIC SUPPLY CO. LTD., ALLAHABAD

v.

T. N. CHATTERJEE

March 13, 1972

[S. M. SIKRI, C.J., A. N. GROVER, A. N. RAY, D. G. PALEKAR AND M. H. BEG, JJ.]

Industrial Employment (Standing Orders) Act, 1946, *s.* 4 *and Schedule items* 8, 9 *and* 11*C and U.P. Industrial Employment (Standing Orders) Rules*, 1946—*Model Standing Orders, para* 13—*Applicability of Standing Order re : age of retirement to employees in service before the certifying of Standing Orders—Framing of Standing Order regarding retirement before amendment of Schedule—Certifying Officer, if could certify the standing order as fair or reasonable before amendment of s.* 4—*High Court deciding question and remanding—When operates as res judicata.*

In accordance with the provisions of the Industrial Employment (Standing Orders) Act, 1946, and the U.P. Industrial Employment (Standing Orders) Rules, 1946, the appellant submitted draft standing orders defining the conditions of employment of its employees and they were certified by the Certifying Officer in 1951. Clause 32 of the Standing Orders provided that an employee who has served 30 years or who has reached the age of 55 years will be retired, but, exemption from this may be granted by the company in special case. In 1959, notices were served on the respondent-workmen that they were retired by reason of their having attained the age of superannuation as per cl. 32. The workmen contended that the clause was not binding or enforceable as far as they were concerned, because, they had entered the service of the appellant prior to the certification of the Standing Orders and there was no condition that they would be liable to retirement after attaining any prescribed age or any fixed period of service, and that they were entitled to continue in service as long as they were physically fit. The industrial dispute was referred to the Industrial Tribunal and the Tribunal held in favour of the appellant. The respondents filed a writ petition in the High Court. They also applied in 1960, under s. 10(2) of the Industrial Employment (Standing Orders) Act, 1946, for amendment and modification of cl. 32 claiming fixation of retirement age at 60. The Certifying Officer modified the clause and fixed the age of retirement at 58, but the appellate authority refixed it at 55.

The High Court, in the writ petition, on the basis of the decision of this Court in *Guest Keen Williams Pvt. Ltd.*, [1960] 1 S.C.R. 348 held that Cl. 32 was not applicable to the employees and directed the Tribunal to rehear the case. The Tribunal thereafter held that the respondent-workmen were wrongfully and unjustifiably retired.

In appeal to this Court,

HELD : (1) It was not intended by the Legislature that different sets of conditions should apply to employees depending on whether a workman was employed before the Standing Orders were certified or after, as that would defeat the object of the legislation. The object and

A scheme of the Act is that the employers must define precisely the conditions of employment of all the employees and have them certified by the Certifying Officer. The right given to be workmen to express their views, to raise objections, to appeal to the appellate authority and to ask for modification of the Standing Orders under s. 10 of the Act, show that every possible safeguard has been provided in the interests of the workmen. Moreover, the individual items in the Schedule to the Act show that there cannot be different conditions for different employees B depending upon the point of time when they came to be employed, for that would result in a great deal of heart burning between the employees *inter se*. [762 F-H; 763 A-D]

Salem Erode Electricity Distribution Co. Ltd. v. *Its Workers;* [1966] 2 S.C.R. 498, and *Agra Electric Supply Co. Ltd.*, v. *Sri Alladin & Ors.* [1970] 1 S.C.R. 808, followed.

C (2) The decision in *Guest Keen Williams Pvt. Ltd.* that the Industrial Tribunal had to consider not only the propriety, reasonableness and fairness of a Standing Order but that it had also to deal with the question as to whether a particular Standing Order could be made applicable to employees who had already been employed without any limit as to age of retirement was delivered under the unamended s. 4 of the Act, under which the Certifying Officer or the appellate authority could not D go into the reasonableness or fairness of the Standing Orders. But after the amendment of the section in 1956, the Certifying Officer and the appellate authority are bound to examine the question of fairness of the standing orders, and therefore, there can be no justification now for not giving effect to the principle of uniformity of conditions of service which is clearly contemplated by the provisions of the Act. [763 D-F]

(3) But cl. 32 of th Standing Orders as certified in 1951 was not E valid and could not be binding on the respondents, because, there was then no item in the Schedule to the Act covering cases of superannuation or retirement, with respect to which Standing Orders could be made. [766 E-F, G-H]

Item 8 and 9 of the Schedule deal with the termination of employment and notice thereof, and suspension or dismissal for misconduct. The language of item 8 shows that it does not cover the case of superannuation, F which does not depend on any notice and which covers an event which is automatic and which must be given effect to without any volition on the part of the employer or workmen. If *termination* is to be read in a wide sense as meaning 'employment coming to an end' there was no necessity to have item 3, because, dismissal would then be covered by termination. From paragraph 13 of the Model Standing Orders contained in the Schedule to the Rules it is apparent that item 8 is confined to termination G of employment *by notice in writing* and does not refer to superannuation or retirement. It was only in 1959 that item 11(C) was introduced in the Schedule enabling the framing of Standing Orders in relation to the age of retirement and superannuation. [765 F-H; 766 A-C]

Saroj Kumar v. *Orissa State Electricity Board*, A.I.R. 1970 Orissa, 126, approved.

H *Management of the 'Hindu'* v. *Secretary Hindu Office & National Press Employees Union*, A.I.R. 1961 Mad. 107, disapproved.

(4) No assistance can be derived by the use of the word 'retirement' in para, 16 of the Model Standing Orders, because, it may well refer to

retirement under the terms of the contract of employment entered into between the employer and the employees. [765 A-B, E] A

(5) Since, before the amendment of s. 4 the Certifying Officer and the appellate authority were debarred from adjudicating upon the fairness or reasonableness of the Standing Orders, the Certifying Officer at that time, could not certify any Standing Order on the ground that it was reasonable or fair. Therefore, in 1951, when the Standing Orders were certified, cl. 32 could not have been framed because there was no item in the Schedule relating to superannuation and the Certifying Officer could not certify it on the ground it was fair and reasonable because he had no power to do so. [766 D-F] B

(6) The Certifying Officer, however, when he modified cl. 32 and fixed the retirement age at 58 (after s. 4 was amended) could have validly certified such clause as modified by him. This Court could also give an appropriate direction with regard to fixing the age of superannuation. In the circumstances of this case the age of superannuation should be 58 years. Therefore, the concerned workman should be deemed to have continued in service of the appellant till they had attained the age of 58 years. [767 A-C, G-H] C

(7) The order of the High Court in the writ petition did not finally terminate the proceedings at all. The proceedings were terminated only by the award of the Industrial Tribunal after remand. Therefore, the order of the High Court following *Guest Keen William's* case did not debar a fresh consideration of the question by virtue of the rule or principle of *res judicata*. [768 A-B, E-F] D

Satyadhyan Ghosal v. *Smt. Deorajan Devi*, [1960] 3 S.C.R. 590, followed. E

Management of N. Railway Co-operative Society v. *Industrial Tribunal*, [1967] 2 S.C.R. 476, explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1734 of 1967. F

Appeal by Special Leave from the Award dated the May 19, 1967 of the Industrial Tribunal (I) at Allahabad in Adjudication Case No. 15 of 1960.

S. V. Gupte, D. N. Mukherjee and *Gautam Banerjee*, for the appellant. G

G. C. Bhattacharya and *M. V. Goswami*, for respondents Nos. 1 and 3 to 8.

O. P. Rana, for respondent No. 9.

The Judgment of the Court was delivered by H

Grover, J. This is an appeal by special leave from an award of the Industrial Tribunal, Allahabad, dated May 19, 1967.

A The material facts may be stated. The appellant, which is a limited liability company and which later on went into voluntary liquidation, was carrying on the business or undertaking of generation, distribution and supply of electricity. One of such undertakings was the Electric Supply Undertaking at Allahabad in the State of Uttar Pradesh. Its affairs and business were being B looked after and managed by Martin Burn & Co. Ltd., Calcutta. Some of the appellant's workmen in Allahabad and its surrounding area were members of Bijli Mazdoor Sangh—a trade union registered under the Indian Trade Union Act, 1926. The U.P. State Electricity Board compulsorily acquired and took over the assets of the appellant's aforesaid undertaking or business with C effect from 16/17th September 1964.

In accordance with the provisions of the Industrial Employment (Standing Orders) Act 1946, hereinafter called the 'Act' and the U.P. Industrial Employment (Standing Orders) Rules 1946 the appellant submitted draft Standing Orders defining the conditions of employment of its employees. On July 14, 1951 these D Orders were certified by the Certifying Officer. Clause 32 of the Standing Orders was in the following terms :—

> "32. RETIREMENT—An employee who has served 30 years or who has reached the age of 55 will be retired, but exemption to this may be granted by the Company in special cases".

E

The workmen through the Bijli Mazdoor Sangh preferred an appeal under s. 6 of the Act from the order of the Certifying Officer to the State Industrial Tribunal which was the appellate authority under the Act. That appeal, however, was dismissed. The Agra Electric Supply Co. Ltd., Agra and Benaras Electric F Light & Power Co. Ltd., Varanasi, which is the appellant in the connected appeal (C.A. 164/68) also got certified Standing Orders in similar terms. These electric undertakings were also under the management of Martin Burn & Co. Ltd. On July 16, 1959 notices were served on seven workmen with effect from September 1, 1959 on the ground that they had attained the age of superannuation or completed 30 years of service and they G were retired by reason of their having attained the age of superannuation. Out of these workmen one of them Haider Ali died during the pendency of proceedings. The other six employees have been impleaded as respondents Nos. 1 to 6 in the present appeal.

H According to the appellant these respondents accepted all the accumulations due to them in respect of Provident Fund contributions made by the appellant in respect of them and by themselves and were also paid gratuities credited to them in their res-

pective Provident Fund accounts for their services prior to their becoming members of the Provident Fund. A

By an order dated February 22, 1960 made under s. 4-K of the U.P. Industrial Disputes Act 1946 the Government of U.P. referred to the Industrial Tribunal (I) at Allahabad for adjudication an industrial dispute alleged to exist between the appellant and its workmen on the following issues : B

> "Whether the employers have wrongfully and/or unjustifiably retired their workmen, mentioned in the Annexure, with effect from 1st August, 1959 ? If so, to what relief are the workmen entitled ?" C

Respondents 1 to 6 and Haider Ali (since deceased) were the workmen mentioned in the Annexure. The case of the workmen before the Industrial Tribunal was that they had entered service of the appellant prior to the certification of the Standing Orders. At the time of their appointment there was no condition that they would be liable to retirement after attaining any prescribed age or after putting in any fixed period of service. A practice was in vogue that the workmen would continue in service till he was physically fit. Accordingly clause 32 of the certified Standing Orders was neither binding nor enforceable. The Industrial Tribunal made an award on May 2, 1960 finding, *inter-alia*, (a) the employers were within their rights in retiring the workmen concerned. (b) The act of the employers in compulsorily retiring the concerned workmen from service could not be characterised as wrongful, illegal or unjustified and (c) the workmen were entitled to no relief. D E

On June 14, 1960 the Bijli Mazdoor Sangh moved an application under s. 10(2) of the Act for amendment and modification of clause 32 claiming fixation of retirement age at 60 years. On September 20, 1960 the Union also filed a writ petition in the Allahabad High Court for quashing the award. On April 22, 1961 the Certifying Officer modified clause 32 and fixed the age of retirement at 58 years. On September 10, 1961 the appellate authority refixed the age of retirement at 55 years. Similarly appeals were filed by the Agra Electric Co. and the Banaras Electric Light and Power Co. Ltd. in which similar orders were made. On July 12, 1966 the High Court recorded an order quashing the award. It was held that Standing Order 32 was not applicable to the employees who had entered service before the certification of the Standing Orders. The Industrial Tribunal was directed to rehear the case and after giving an opportunity to the parties of being heard give an award in accordance with law. Finally the award against which the appeal has been brought F G H

A was given on May 19, 1967. It was held in the award that all the seven workmen had been wrongfully and unjustifiably retired and that they should be deemed to have continued in service till September 16, 1964 from which date they would be taken to have been retrenched. The appellant having been taken over by the U.P. State Electricity Board, it was directed that the employers B should pay full wages from the period August 1, 1959 to September 16, 1964 and retrenchment compensation within s. 25-F read with s. 25-FF and s. 25-J of the Industrial Disputes Act, 1947.

While deciding the writ petition the High Court relied on three decisions of this Court for holding that where there is no age of superannuation prescribed for the employees of a concern C a provision in the Standing Orders certified subsequent to the date of employment regarding compulsory retirement will not be applicable to them. The first decision is in *Guest Keen, Williams Private Ltd.* v. *P. J. Sterling & Others*(1). In that case after the enforcement of the Act the industrial concern submitted its draft Standing Orders for certification to the Certifying Officer. D That Officer certified the Standing Orders after giving the trade union of workmen an opportunity to be heard and after considering their objections. The Standing Orders relating to retirement provided that the workmen shall retire from the service of the company on reaching the age of 55 years. The company gave notice to forty-seven of its workmen who were over the age of 55 years retiring them and a dispute was raised about their retirement E which was referred to the Tribunal for adjudication. It was ultimately held by the Labour Appellate Tribunal that those workmen who were in employment prior to the date of certification of the Standing Orders would not be governed by it and their retirement was illegal. This Court examined the scheme of the Act including the relevant provisions. Notice was taken, in particu- F lar, of the fact that when the Standing Orders were submitted to the Certifying Officer all that he could do was to satisfy himself that they made provision for other matters set out in the schedule to the Act and that they were otherwise in conformity with its provisions. Under s. 4, as it was originally enacted the Certifying Officer could not adjudicate upon the fairness or reasonable- G ness of the provisions of the Standing Orders. This section was subsequently amended in 1956 and the effect of the amendment was that the Certifying Officer was enabled to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders. It was pointed out by the court that the scope for enquiry before the Certifying Officer prior to the amendment of s. 4 was extremely limited. The only way in which the employees H could claim modification of the Standing Orders prior to the amendment of s. 4 was by raising an industrial dispute in that

(1) [1960] 1 S.C.R. 348.

behalf. Subsequent to the amendment the employees could raise the same dispute before the Certifying Officer and in a proper case they could apply for its modification under s. 10(2) of the Act. It was observed that the Standing Orders certified under the Act became part of the terms of the employment by operation of s. 7 but if an industrial dispute arose in respect of such Orders and it was referred to the Tribunal by the appropriate Government the Tribunal had the jurisdiction to deal with it on the merits. It was, therefore, held that the Tribunal had to consider not only the propriety, reasonableness and fairness of the rule but it had also to deal with the question as to whether the said rule could and should be made applicable to employees who had already been employed without any limit as to age of retirement. The decision in this case was followed in *Workmen of Kettlewell Bullen & Co. Ltd.* v. *Kettlewell Bullen & Co. Ltd.*(1). The next case in which a similar question arose in *Salem Erode Electricity Distribution Co. Ltd.* v. *Salem Erode Electricity Distribution Co. Ltd. Employees Union*(2). It was claimed by the company which was the employer there that the urgent need for increased production and supply of electrical energy could be met if the existing rules embodied in two of its certified Standing Orders relating to holidays and leave were suitably amended. The amendments proposed sought to introduce different rules relating to holidays and leave for employees who were appointed before a specified date and those who joined service after that date. Both the Certifying Officer and the appellate authority disallowed the amendments. The company appealed to this Court and the scheme of the Act was examined once again. It was emphasised that after the amendment of s. 4 of the Act made in 1956 jurisdiction had been conferred on the Certifying Officer as well as the appellate authority to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders. Thus the jurisdiction had been widened. Moreover under s. 10(2) as originally enacted it was only the employer who could make an application to the Certifying Officer to have the Standing Orders modified. By the amendment made in 1956 even workmen were enabled to exercise that right. Addressing itself to the question whether it was permissible for an industrial establishment to have two sets of Standing Orders to govern the relevant terms and conditions of its employees it was laid down after an examination of the scheme of the relevant provisions of the Act in the light of the matters specified in the Schedule that there was no scope for having separate Standing Orders in respect of any one of them, It was said :—

A B C D E F G H

> ". . . . . the conclusion appears to be irresistible that the object of the Act is to certify Standing Orders in

(1) [1964] 2 L.L.J. 146. (2) [1966] 2 S.C.R. 498.

A respect of all the matters covered by the schedule and having regard to these matters Standing Orders so certified would be uniform and would apply to all workmen alike who are employed in any industrial establishment".

B It was considered that *Guest Keen Williams Pvt. Ltd.*(1) could afford no assistance because that matter came to this Court from an industrial dispute which was the subject matter of industrial adjudication and all that this Court did was to fixe the age of superannuation for workmen who had been employed prior to the date of the certification of the relevant Standing Orders. That course C was adopted in the special and unusual circumstances of that case.

In the next decision *Agra Electric Supply Co. Ltd.* v. *Sri Alladin & Ors.*(2) one of the main questions was whether three workmen who had been employed long before 1951 when the company's Standing Orders were certified could be retired under D Standing Order which prescribed the age of superannuation as 55 years. This Court took a view which seemingly runs counter to *Guest Keen Williams Pvt. Ltd.*(1). It was held that the Standing Orders when certified would be binding on the employers as well as all the workmen who were in employment at the time the Standing Orders came into force and those employed E thereafter as uniform conditions of service. The process of reasoning which prevailed was (1) the Act is a beneficient piece of legislation, its object being to require employers in industrial establishments to define with sufficient precision the conditions of employment of workmen employed therein and to make them known to such workmen. (2) Before the passing of the Act there F was nothing in law to prevent an employer having different contracts of employment with workmen which led to confusion and made possible discriminatory treatment. This was also clearly incompatible with the principles of collective bargaining. (3) Section 3 of the Act was enacted to do away with such diversity and bargaining with each individual workman. (4) Section 4 indicates that particulars of workmen in the employment on the G date of the submission of the draft Standing Orders or certification and not of those only who could be employed in future after certification were to be given. (5) Sections 4 and 5 show that draft orders are certifiable if they provide for all matters set out in the schedule and are otherwise in conformity with the Act and if they are adjudicated as fair and reasonable by the Certifying H Officer or the appellate authority. The Certifying Officer has also to forward a copy of the draft Standing Orders to the Union

(1) [1960] 1 S.C.R. 348. (2) [1970] 1 S.C.R. 808.

or to the workmen in the prescribed manner and has to decide whether or not any modification or addition should be made after hearing the Union or the workmen concerned. Sections 6, 7, 9 and 10 contain provisions for appeal by aggrieved persons as also for sending of authenticated copies by the Certifying Officer to the parties where no appeal is filed and further the employer has to post the Standing Orders as finally certified in the manner prescribed. The employer or the workmen can even apply for modification after expiry of six months from the date on which the Standing Orders or the last tmodification thereof comes into operation. (7) The schedule sets out the matters which the Standing Orders must provide for.

For the reasons given above this Court held that the Act was meant to enable Standing Orders to be made to bind not only those who were employed subsequent to their certification but also those who were already in employment. If any other result were to follow there would be different conditions of employment for different classes of workmen which would render the conditions of their service as indefinite and diversified as before the enactment of the Act. Support was derived from the decision in *Salem Erode Electricity Distribution case*(1) in which departure was made from the view previously taken in the case of *Guest Keen Williams Pvt. Ltd.*(2)

It has been urged before us on behalf of the respondents that the decision in *Guest Keen Williams Pvt. Ltd.*(2) still holds the field and the point which was decided there and which arises in the present case did not come up for consideration in *Salem Erode Electricity Distribution Co. Ltd.*(1). In our opinion the principle applied in the latter case is fully supported by the scheme of the Act and was rightly extended and applied in *Agra Electric Supply Co. Ltd.*(3). We concur with the view expressed therein that it was not intended by the legislature that different sets of conditions should apply to employees depending on whether a workman was employed before the Standing Orders were certified or after, which would defeat the very object of the legislation. In the preamble it is stated in categorical terms "whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them". Not only the object but the scheme of the Act is such that the employers must define precisely the conditions of employment of all the employees and have the same certified by the Certifying Officer against whose orders an appeal lies to the appellate authority. The right given to workmen to express their

(1) [1966] 2 S.C.R. 498. (2) [1960] 1 S.C.R. 348.
(3) [1970] 1 S.C.R. 808.

A view and to raise objections is of great significance. They can even ask for modification of the Standing Orders in accordance with s. 10 of the Act. Every possible safeguard has been provided for keeping the workmen informed about their conditions of service so that they can take whatever steps they desire or are advised to take in their interest before the Certifying Officer or B the appellate authority. It is also very difficult to conceive taking each individual item in the schedule how there can be different conditions for different employees depending upon the point of time when they came to be employed; for instance item 3 relates to shift working. It is possible to suggest that for the same kind of work employees who were in employment before the C Standing Orders were certified would have different hours of shift from the other employees who were employed subsequently. In the very nature of things a great deal of irritation and annoyance between employees *inter se* would result if any such discrimination is made in any of the items in the schedule. It has been rightly pointed out in *Agra Electric Supply Co. Ltd.* that this would only lead to industrial unrest and not industrial peace, D the latter being the principal object of legislation.

It must be remembered that in *Guest Keen Williams Pvt. Ltd.* the Certifying Officer could not go into the reasonableness or fairness of the Standing Orders according to s. 4 of the Act as it stood at the material time. The law was changed only in 1956. E Perhaps that was one of the main reasons which prompted the court in taking the view it did. But after the amendment of the law in 1956 the Certifying Officer and the appellate authority are duty bound to examine the question of fairness of the Standing Orders and there can be no justification now not to give effect to the principle of uniformity of conditions of service which is clearly contemplated by the provisions of the Act.

F

The next question for determination is whether clause 32 of the Standing Orders relating to age of retirement could be certified in July 1951. On behalf of the respondents it has been pointed out that there is no item in the schedule which covers the case of retirement or superannuation. Items 8 and 9 are in G these terms :—

> "8. Termination of employment and the notice thereof to be given by employer and workmen,
>
> 9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct."

H The model Standing Orders framed by the Central Government and by the Government of the State of Uttar Pradesh did not contain any clause relating to retirement or superannuation. It was for the first time that on November 17, 1959 item 11-C

relating to superannuation and retirement was introduced by the State of U.P. in exercise of the rule-making powers conferred by s. 15 of the Act. In other States the item relating to age of retirement or superannuation was introduced either by legislation or by the exercise of rule making power. In the State of Bombay s. 19 of the Industrial Employment (Standing Orders) (Bombay Amendment) Act 1957 provided for insertion of item 10-A in the Schedule which was "age for retirement or superannuation". According to counsel for the respondents there was no item until the introduction of item 11-C in November 1959 in the schedule under which any Standing Orders could be framed and got certified relating to the age of retirement and superannuation. It has been maintained that items 8 and 9 cannot possibly include retirement and superannuation and therefore till item 11-C was added in the schedule so far as the State of U.P. was concerned in November 1959 no Standing Orders could be legally or validly framed and certified providing for age of retirement and superannuation. In *Saroj Kumar Ghosh* v. *Orissa State Electricity Board*(1) the Orissa High Court considered this question a some length and expressed the view that where a Standing Order has been certified by the Certifying Officer containing a clause relating to superannuation not covered by the schedule of the Act nor by the model Standing Orders such certification cannot be valid under s. 4 of the Act. The clause 'termination of employment' in item 8 of the schedule cannot be equated with the word "superannuation". According to the Orissa High Court, superannuation is an event which comes more or less in an automatic process. An age is fixed on the reaching of which the holder of office has no option but to go out of office. There is no volition involved in that act. The employer and the employee have notice of the matter long before the event is to occur and the event is such that it cannot be arrested by either one of them if the rule is to be followed. On the other hand termination is a positive act by which one party even against the desire of the other can bring about the end of employment. The judgment of the learned single judge in *Management of the "HINDU", Madras* v. *Secretary Hindu Office & National Press Employees Union and another*(2) was dissented from. In that case the expression "termination of employment" in item 8 was considered to be wide enough to include retirement of an employee at the age of superannuation. The learned Madras Judge sought support from para 16 of the model Standing Orders which is as follows :—

> "Every permanent workman shall be entitled to a service certificate at the time of his dismissal discharge or retirement from service".

(1) A.I.R. 1970 Orissa 126.

(2) A.I.R. 1961 Mad. 107.

A In the model Standing Orders there was no clause providing for superannuation or retirement on attaining a certain age.

In our judgment much assistance or help cannot be derived from para 16 of the model Standing Orders as contained in schedule I to the Industrial Employment (Standing Orders) Central B Rules 1946. Retirement which is mentioned there may be under the terms of contract of employment entered into between the employer and the employees. Section 2(oo) of the Industrial Disputes Act 1947 throws a certain amount of light on the matter. It is reproduced below :—

C "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age D of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;"

It shows, firstly, that termination of service of a workman is distinct from retirement on reaching the age of superannuation; E secondly, retirement can take place on reaching the age of superannuation under the terms of the contract of employment entered into between the employer and the workman. Therefore, the word "retirement" in para 16 cannot be regarded as conclusive of the question whether termination of employment includes retirement and superannuation. In the schedule to the Act item F 8 covers termination of employment and the notice to be given either by the employer or the workman and item 9 relates to suspension or dismissal for misconduct etc. Item 8 by virtue of the language employed does not appear to cover the case of superannuation which does not depend on any notice and which covers an event which is automatic and which must be given effect to without any volition on the part of the employer or the workmen G as pointed out in the Orissa judgment. If termination is to be read in a wide sense as meaning employment coming to an end there was a necessity to have item 9 because dismissal would then be covered by termination. In the context in which the word "termination" is used in item 8 it cannot mean each and every form of termination or cessation of employment. From H para 13 of the Model Standing Orders contained in schedule I to the Industrial Employment (Standing Orders) Central Rules 1946, it is apparent that item 8 is confined to termination of employment by notice in writing and does not contain any mention

of superannuation or retirement. It was perhaps this difficulty which prompted the State of U.P. to introduce item 11-C in exercise of the rule making powers conferred by s. 15 of the Act and the Bombay legislature to make similar amendment by legislation. It would follow that unless an employer can include a clause relating to the age of retirement and superannuation and the Certifying Officer can certify it even though no such item appears in the schedule to the Act clause 32 as certified in 1951, in the present case, could not be regarded to be valid. The Madras High Court in the case of *Management of the 'Hindu', Madras*(1) made some observations to the effect that there was no bar to the Standing Orders making a provision for matters other than those specifically mentioned in the schedule so long as the Certifying Officer certifies them on the ground that they are fair and reasonable. The Orissa High Court, however, in *Sarojkumar Ghosh's*(2) case did not subscribe to this view. Learned counsel for the appellant, apart from relying on the Madras decision, has not addressed any arguments on the larger and wider question as to whether even in the absence of any item in the schedule Standing Orders can be framed on certain matters which may be regarded as fair and reasonable and which may be so certified by the Certifying Officer. It is, however, unnecessary to decide this point in the present case because clause 32 of the Standing Orders on which the appellant has relied was certified in July 1951 when according to the express language of s. 4 of the Act the Certifying Officer or the appellate authority was debarred from adjudicating upon the fairness or reasonableness of the provisions of any Standing Orders. It is difficult to understand how the Certifying Officer at that point of time and before the amendment of s. 4 in 1956 could have possibly certified any Standing Order which did not relate to any item in the schedule on the ground that it was fair or reasonable. Indeed the function of the Certifying Officer, before the amendment of 1956, was very limited as is clear from s. 3(2) of the Act which says :

> "Provision shall be made in such draft for every matter set out in the schedule which may be applicable to the industrial establishment and where model Standing Orders have been prescribed, shall be, so far is practicable, in conformity with such model".

We must, therefore, hold that clause 32 of the Standing Orders as certified in July 1951 was not valid and cannot be binding on the respondents. However, after item 11-C was introduced in the schedule so far as the State of U.P. was concerned an item was added providing for the age of retirement and superannuation. The Certifying Officer, when he modified clause 32 and

(1) AIR 1961 Mad. 107. (2) AIR 1970 Orrissa 126.

A fixed the retiring age at 58 on April 22, 1961 could have validly certified such clause as modified by him. The necessary consequence will be that the respondents could not have been retired on the ground of superannuation in July 1959 and they could be validly retired only on or after April 22, 1961 in accordance with clause 32 as modified by the Certifying Officer. In other B words, those out of the present respondent who had attained the age of 58 years on April 22, 1961, could be regarded as having been validly retired having reached the age of superannuation on that date under that clause.

In view of the previous decisions of this Court and in particu- C lar that of *Guest Keen Williams Pvt. Ltd.*(1) it has not been disputed that in the industrial dispute which was referred it was open to the Industrial Tribunal or the Labour Court to determine the age of retirement or superannuation notwithstanding that clause 32 of the Standing Orders as certified in 1961 had been legally and validly certified. Indeed in *Guest Keen Williams Pvt. Ltd.*(1) D it was not disputed that even this Court could give an appropriate direction which might be considered reasonable with regard to fixing the age of superannuation. As stated before, according to clause 32 of the Standing Orders, as certified in April 1961, the age of superannuation was fixed at 58. The appellant filed an appears that in the case of *Agra Electric Supply Co.*(2) also a appears that in the case of *Agra Electric Supply Co.*(2) also a E similar Standing Order had been certified and on appeal the age of retirement was reduced from 58 to 55 years by the appellate authority. This Court in that case held the Standing Order fixing the age at 55 years applicable not only to those employees who were employed subsequently but also to all workmen who were in employment at the time when the Standing Orders became F legally applicable. It does not appear in that case that any such argument was raised that the matter should be remitted either to the Industrial Tribunal or the Labour Court to fix the age of superannuation or that this Court itself might do so as was the course followed in the case of *Guest Keen Williams Pvt. Ltd.*(1) in which the age was fixed at 60 years with regard to those em- G ployees who had raised the dispute on the ground that the Standing Orders could not govern them as they had been employed before the Standing Orders became applicable. After considering the entire material and keeping in mind the fact that according to the appellate authority even the age of retirement at 55 was fair and reasonable we are of the view that the age of superannuation of the respondents, in the present case, should be 58 years. H In other words, it will be the same as was fixed by the Certifying Officer by modifying clause 32 on April 22, 1961.

(1) [1960] 1 S.C.R. 348. (2) [1970] 1 S.C.R. 808

Lastly we must deal with the contention raised on behalf of the respondents that the order of the Allahabad High Court made on July 12, 1966 quashing the award after following the decision of this Court in *Guest Keen Williams Pvt. Ltd.*(1) should be deemed to be final and should debar any fresh consideration or decision of that point by virtue of the rule or principle of *res-judicata*. It is noteworthy that the order of the Allahabad High Court was not final against which the matter could have been taken in appeal either to a division bench of the High Court or to this Court. Reliance has been placed on a decision of this Court in *Management of Northern Railway Cooperative Society Ltd.* v. *Industrial Tribunal Rajasthan, Jaipur and Another*(2), where reference had been made by the State Government to the Industrial Tribunal on the Railway Workers' Union having raised an industrial dispute against the Management of the Northern Railway Cooperative Society Ltd. The society filed a writ petition on the ground that the dispute having been raised by the Railway Workers' Union and not by the Society's own employees the reference to the Tribunal was not competent. The High Court dismissed the petition. Thereafter the Tribunal heard the matter and gave its decision in favour of the workman concerned. The society appealed to this Court by special leave. It was held that the order of the High Court was not interlocutory but was a final order in regard to the proceedings under Art. 226. The appropriate remedy for the appellant in that case was to appeal against the High Court's order and that not having been done the appellant's plea relating to the competency of the reference was barred by *res judicata* as the same had been raised before the High Court and had been rejected. The present case is clearly distinguishable inasmuch as the order made by the High Court was not final and a remand had been directed presumably under Art. 227 of the Constitution. That order in fact did not finally terminate any proceedings at all. The proceedings were terminated only by the award against which the present appeal has been brought by special leave. We are unable to see how the decision in the aforesaid case can afford any assistance to the respondents before us. Indeed the case which is more apposite in *Satyadhyan Ghosal & Ors.* v. *Smt. Deorajin Debi & Another*(3). There an order of remand had been made by the High Court while exercising powers under s. 115 of the Code of Civil Procedure. It was observed, after referring to the various decisions of the Privy Council, that the order of remand was interlocutory and did not purport to dispose of the case. A party is not bound to appeal against every interlocutory order which is a step in the procedure that leads up to a final decision or award.

(1) [1960] 1 S.C.R. 348.

(2) [1967] 2 S.C.R. 476.

(3) (1960) 3 S.C.R 590.

A The following observations from this case may be reproduced with advantage :—

> "Interlocutory judgments which have the force of a decree must be distinguished from other interlocutory judgments which are a step towards the decision of the dispute between parties by way of a decree or a final
B order"

We are unable, therefore, to accede to the contention that the rule of *res-judicata* could be invoked by the respondent in the present case.

C In the result the appeal is allowed and the order of the Industrial Tribunal is hereby set aside. According to our decision the workmen concerned could not have been retired on the ground of superannuation in accordance with clause 32 of the Standing Orders till it was certified after necessary modification on April 22, 1961. Even otherwise it has been held by us that the proper age of retirement in the case of those employees who joined ser-
D vice prior to April 22, 1961 should be 58 years. The award, therefore, will be that the concerned workmen should be deemed to have continued in service of the appellant till they had attained the age of 58 years. It is declared that they shall be entitled to be paid full wages and all other dues to which they are entitled under the terms of their employment till they attained the age of
E 58 years. As regards any payments received by the workmen pursuant to the award or after the notice of termination those shall also be adjusted accordingly and the appellant undertakes not to claim refund of any amounts which have already been received by them in excess of the amounts due. No order as to costs.

F

V.P.S. *Appeal allowed.*