

A U.P. STATE ELECTRICITY BOARD AND ANOTHER

B THE LABOUR COURT (I) U.P., KANPUR AND OTHERS

October 6, 1983

C [D. A. DESAI, O. CHINNAPPA REDDY AND A. VARADARAJAN, JJ.]

Industrial Employment (Standing Orders) Act, 1946—Workmen employed by a company—No age of retirement fixed—Company nationalised—Workmen opted to serve—Service regulations framed and notified—Assurance by management that old service conditions would apply to company employees—Whether valid—Workmen, whether bound by new regulations.

D The respondent-workman entered service as a coolie in 1945 under the Kanpur Electricity Supply Corporation Limited. When the time the company had no rules as to the age of retirement for its employees and therefore his date of birth was not entered in the service card. When the Corporation was nationalised the new management, without asking him as to his date of birth, showed his age as 20 years 9 months. From the village records it was found that he was born on 24.6.1924. Meanwhile, the new management got the Standing Orders certified without making any provision for the age of retirement. When the Electricity Board constituted under the Electricity (Supply) Act, 1948, took over the management of the Administration in 1949 it was made clear that conditions of service of workmen would not be adversely affected. But on 31st January, 1979 the workman was retired from service on the ground that he had completed 58 years of age. The workman complained that he was retired in contravention of his conditions of service according to which there was no age of retirement.

E F The labour court held that even after framing the regulations under section 79C of the Electricity (Supply) Act, 1948, fixing the age of retirement at 58 and notifying them under section 13B of the Industrial Employment (Standing Orders) Act, 1946, the new management made it clear to the employee that old service conditions of the employees would continue to operate and that a similar assurance was given to the respondent in writing that the new regulations would not apply to him. In this view the respondent's retirement was held to be invalid.

G Allowing the appeal.

H HELD: The workman is bound by the regulations fixing the age of retirement at 58 and therefore his retirement on attaining the age of superannuation was correct. [287 C]

The Industrial Employment (Standing Orders) Act, 1946 is a special law in regard to matters enumerated in the schedule. The regulations made by the Electricity Board with respect to any of those matters are of no effect unless

they are either notified by the Government under section 13B or certified by the Certifying Officer under section 5 of the Standing Orders Act. In regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect of which no regulations had been made by the Board, the Standing Orders Act would continue to apply. Since, in the instant case, the regulations framed by the Board with regard to the age of retirement under section 79C have been notified by the Government under section 13B of the Standing Orders Act, the respondent is bound by those regulations and his retirement on attaining the age of 58 years was correct.

[286 F-H; 287 A-B]

U.P. State Electricity Board and others v. Hari Shanker Jain and others, [1979] 1 S.C.R. 355, applied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3549 (NL) of 1982.

Appeal by Special leave against the Award passed by the Labour Court (I) Kanpur dated 16th December, 1980 in Adjudication Case No. 8 of 1980.

S. Markandeya for the Appellants.

Hari Swarup, Manoj Swarup and Ms. Lalita Kohli for the Respondent.

The Judgment of the Court was delivered by

VARADARAJAN, J. This appeal by special leave is directed against the award of the Labour Court, Kanpur in Adjudication Case No. 8 of 1980 holding that the retirement of the second respondent Jag Dutt from 31.3.1979 is unjustifiable and directing his reinstatement with back wages with a right to work so long as he is physically fit.

The second respondent entered service as a coolie on 11.4.1945 under the then Kanpur Electricity Supply Corporation Limited. No date of birth was mentioned in his service card and there was no age of retirement for employees in that concern. That establishment was nationalised on 15.9.1947 and thereafter it became a department of the Government of Uttar Pradesh. The new management Kanpur Electricity Supply Administration filled up the second respondent's age as 20 years 9 months without asking him for any certificate regarding his date of birth. His date of birth is 24.6.1924 and an entry about his date of birth has been made in the Police Station, Chawani Basti at the instance of the Chowkidar of that village. The new management got its standing orders certified without making any provision

A for age of retirement. The State Government made it clear that the workmen to whom the Industrial Employment (Standing Orders) Act, 1946 applied would not be governed by the Civil Service (Classification, Control and Appeal) Rules. The Electricity Board constituted under the Electricity (Supply) Act, 1948

B took over the workmen of the erstwhile Kanpur Electricity Supply Administration from 1.4.1949 making it clear that their service conditions will not be adversely affected. That position regarding the service conditions of the employees was reiterated in Government Order No. 3679-E/71-21-PB dated 1.4.1971 and the Electricity Department's Chief Engineer's letter dated 2.3.1972. The

C initial condition was that the second respondent should work so long as he was physically fit to work without any age of retirement. However, the Kanpur Electricity Supply Administration retired the second respondent from 31.3.1979 on the ground that he has completed 58 years. This retirement is invalid for two reasons, namely that his date of birth is 24.6.1924 and that there is no age of retirement so far as employees like the second respondent who had joined service under the Kanpur Electricity Supply Corporation Limited are concerned. The new management had allowed 19 named workmen to retire when they were 60 to 75 years old. The second respondent has thus been retired not only before he completed 58 years, his date of birth being 24.6.1924 but also in contravention of his conditions of service, according to which there is no age of retirement. This was the second respondent's case before the Labour Court.

F The defence of the appellant-management was that though when the Electricity Board was constituted and the management of the Kanpur Electricity Supply Administration was taken over in 1948 no age of retirement was prescribed for the employees the Electricity Board framed regulations under s.79C of the Electricity (Supply) Act, 1948 subsequently prescribing the age of retirement as 58 years and 60 years and the second respondent was retired on 31.3.1979 under those regulations. It is open in law for the Electricity Board to frame regulations prescribing the age of retirement of its employees even where initially there was no age of retirement, as has been held by the Allahabad High Court and this Court. The second respondent's retirement is valid and cannot be set aside.

H The Labour Court found that the second respondent joined service as a cooly under the Kanpur Electricity Supply Corporation Limited on 11.5.1945 and he became the State Government's employee on 16.9.1947 when that establishment was taken over by

Kanpur Electricity Supply Administration and the employees of that Administration became the employees of the State Electricity Board when it took over that Undertaking after that Board was constituted on 1.4.1959. It was not disputed that by the Regulations framed under s. 79C of the Electricity (Supply) Act, 1948, age of retirement fixed at 58 or 60 years and that those Regulations were notified on 28.5.1972 under s. 138B of the Industrial Employment (Standing Orders) Act, 1946. But the Labour Court found that even after the publication of those Regulations the new management made it clear to the employees by Government's Order No. 3679-E/71-23-PB dated 1.7.1979 that even after absorption of the employees their old conditions of service would continue in the same way and that a similar assurance had been given to the second respondent by the documents marked as Ex.B-9 to B-15 that the Regulations would not apply to him and he could work so long as he was physically fit without any age of retirement. In this view the Labour Court held that the second respondent's retirement from 31.3.1979 in spite of the fact that he is physically fit is invalid in law and it accordingly allowed the second respondent's claim as mentioned above.

The Labour Court has not recorded any finding regarding the second respondent's actual date of birth. In this Court no argument was advanced by the learned counsel on either side on that question. The only point argued before this Court by Mr. S. Markendeya, learned counsel for the appellants and Mr. Hari Swarup, learned Senior Counsel appearing for the second respondent was as to the binding nature of the Regulations framed by the Electricity Board under s.79C of the Electricity (Supply) Act, 1948 fixing age of retirement as 58 years in regard to workmen like the second respondent who were originally employees of the Kanpur Electricity Supply Corporation Limited. By Order dated 3.10.1978 of the General Manager of the U.P. State Electricity Board in the department of Kanpur Electricity Supply Administration eleven employees including the second respondent were retired on attaining the age of superannuation with effect from 31.3.1979 on the basis that according to the Board's records they were completing 58 years on that date. There is no dispute that the Board has framed Regulations under s.79C of the Electricity (Supply) Act, 1948 fixing the age of retirement of employees like the second respondent at 58 years and that the Regulations have been notified under s.13B of the Industrial Employment (Standing Orders) Act, 1946. Mr. Hari Swarup admitted before us that the Regulations have statutory force. The Member Secretary of

A the U.P. State Electricity Board had informed the government employees whose Services had been lent to the Board on deputation that their salary, allowances and other conditions of service shall be governed by Regulations made by the Board under s.79C of the Electricity (Supply) Act, 1948 from time to time. It is not disputed that the second respondent had thereafter exercised his option to serve in the B U.P. State Electricity Board. The second respondent is, therefore, bound by the Regulation by which the age of retirement has been fixed in regard to employees like him at 58 years. A similar question arose before a Division Bench of the Allahabad High Court in *Bhai Lal and another v. Superintending Engineer, Allahabad*⁽¹⁾ where it has been held as follows :

C "Once the regulations framed under s.79(c) of the Electricity (Supply) Act, 1948 have been notified by the State Government under s.13-B of the Industrial Employment (Standing Orders) Act, the standing orders framed by the erstwhile licensee to the extent they concerned the subject dealt with by the regulations became ineffective and inoperative and that in respect of such matter, the right of the parties would be governed only by the regulation so notified. In the circumstances even if it be a fact that the standing orders framed by the erstwhile licensee contained a clause specifying an age higher than 58 years, as age of superannuation for its employees, the employee would none-the-less, as provided in the notified regulation, be superannuated at the age of 58 years."

F A similar question arose before this Court in *U.P. State Electricity Board and others v. Hari Shanker Jain and others*⁽²⁾ to which two of us were parties. There it has been held that the Industrial Employment (Standing Orders) Act, 1946 is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of G no effect unless such regulations are either notified by the Government under s.13B or certified by the Certifying Officer under s: 5 of the Industrial Employment (Standing Orders) Act, 1946. In regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect of which no regulations H have been made by the Board, the Industrial Employment (Standing

(1) 1979 Labour and Industrial Cases 110.

(2) [1979] 1 S.C.R. 355.

Orders) Act shall continue to apply. In that case the regulation made by the Board with regard to the age of superannuation had been duly notified by the Government and it has been held that the regulation had effect notwithstanding the fact that it was a matter which could be the subject matter of standing orders the Industrial Employment (Standing Orders) Act, 1946 and that the respondents in that appeal had been properly retired when they attained the age of 58 years. In view of the admitted fact that the regulations framed by the Board under s.79C of the Electricity (Supply) Act, 1948 have been notified by the Government under s. 13B of the Industrial Employment (Standing Orders) Act, 1946 we hold that the second respondent is bound by those regulations in which the age of retirement has been admittedly fixed at 58 years and that he has no reason to complain against his retirement on that basis with effect from 31.3.1979. The appeal is accordingly allowed and the order of the appellant retiring the second respondent with effect from 31.3.1979 is upheld. It is, however, made clear that the second respondent shall not be liable to refund any amount paid to him under orders of the Court pending these proceedings and that he is entitled to draw the sum of Rs. 2,000 which has been directed to be deposited towards his costs in this appeal.

P.B.R.

Appeal allowed.