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HARMOHINDER SINGH  
v.  
KHARGA CANTEEN, AMBALA CANTT.

JULY 9, 2001

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[D.P. MOHAPATRA AND RUMA PAL, JJ.]

*Labour Laws:*

C

*Industrial Disputes Act, 1947—Sections 9A, 25-F and 25-J—Temporary employee—Amendment of Standing Orders subsequent to appointment stipulating 15 years as maximum permissible service—Termination of employee as per the amendment—Validity of—Held, amendment to Standing Orders is binding on the employee—Hence, termination of service is valid.*

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**Appellant was appointed as a temporary employee of respondent-canteen in June 1974 and he was governed by the Standing Orders of the respondent. In 1988, the Standing Orders were amended stipulating 15 years as the maximum permissible service for a temporary employee. Accordingly, the services of the appellant were terminated in June 1989 on completion of 15 years of service and the appellant raised an industrial dispute. On reference**

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**by State Government, Labour Court rejected the claim of the respondent and held that the amended Standing Orders were binding on the appellant and the termination of the appellant's service after a period of 15 years was valid. The appellant filed a Writ Petition before High Court, which was dismissed.**

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**In appeal to this Court, the appellant contended that his appointment under the Standing Orders was permanent and not temporary; and that the amendment in the Standing Orders was violative of Sections 9A, 25-F and 25-J of the Industrial Disputes Act, 1947.**

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**The respondent contended that the amended Standing Orders were intimated and accepted by the appellant; that the services were terminated in accordance with the Standing Orders; and that no provision of the Act had been violated in the termination of the services of the appellant.**

**Dismissing the appeal, the Court**

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**HELD : 1.1. The conditions of service under the Fourth Schedule of the**

Industrial Disputes Act, 1947, for change of which notice is to be given under Section 9A of the act, does not include the subject matter of the amendment in the Standing Orders of the respondent, namely, the fixation of period of service or the date of retirement. There is nothing on record to show that prior to the introduction of the amendment in the Standing Orders of the respondent, the workmen of the canteen continued as a matter of right till they reached the age of superannuation, which are applicable to Government servants. The introduction of a maximum period of service cannot be said to be in operate to the detriment of the employee who was otherwise entitled to serve only for six months and was liable to be dismissed merely upon service of a month's notice. Though the stipulation of maximum permissible service had been held to be unconstitutional in *Uptron India Ltd.* the same principle would not apply to the appellant who was not serving in or under the Government or any government controlled institution. It was not necessary, therefore, to give any notice to the appellant under Section 9A of the Act before introducing the amendment in the Standing Orders by the respondent.

[801-C-E]

*Uptron India Ltd. v. Shammi Bhan*, [1998] 6 SCC 538, distinguished.

*Salem-Erode Electricity Distribution Co. (p) Ltd. v. Their Employees' Union*, AIR (1966) SC 808; *Agra Electric Supply Company Ltd. v. Alladin & Ors.*, (1969) 2 LLJ 540; *Dunlop India Ltd. v. Their Workmen*, (1972) 2 LLJ 1; *Balbir Singh v. Kurukshetra Central Coop. Bank Ltd. & Anr.*, (1990) 1 LLJ 443 and *Wormen v. Hindustan Lever Ltd.*, (1973) 1 LLJ 427, referred to.

1.2. Section 25-F of the Act would not apply to the amendment in the Standing Orders as the definition of retrenchment in Section 2 (oo) (bb) of the Act expressly excludes termination of contracts of service of a fixed term. The principles of natural justice are not applicable where the termination takes place on the expiry of the contract. [801-G-H; 802-A-B]

*Uptron India Ltd. v. Shammi Bhan*, [1998] 6 SCC 538, relied on.

1.3. Section 25-J of Act provides that the provisions of Chapter V-A of the Act would have overriding effect irrespective of any other law including Standing Order made under the Industrial Employment (Standing Orders) Rules 1956. There is no provision in Chapter V-A of the Act which pertains to the period of service of an employee. Consequently section 25-A has no application. [802-C-D]

A From the Judgment dated 5.3.1999 of the Punjab and Haryana High Court in Civil Writ Petition of 2952 of 1999.

Balbir Saini and Praveen Jain for the Appellant.

R.N. Trivedi, Additional Solicitor General, Ms. Binu Tamta, Shail Kumar  
B Dwivedi and C. Radhakrishna for the Respondent.

The Judgment of the Court was delivered by

**RUMA PAL, J.** Leave granted.

C The basic question which arises in this appeal is whether an employee's service can be terminated in accordance with the Standing Orders introduced subsequent to his entering into service. The employee in question is the appellant. The employer is the respondent canteen which, according to the respondent, is a non-profit social welfare institution meant for defence personnel both serving and retired. The appellant was appointed as a salesman by the respondent canteen on 1st June, 1974 and subsequently as a cashier on 9th August, 1975. The letter of appointment and the Standing Orders, *inter alia*, provided that the service of the appellant could be terminated by one month's notice by either party. The Standing Orders also provided that the "services of all canteen employees will be on temporary basis extendable on six monthly basis".

E In 1988 para 3A was introduced in the Standing Orders of the respondent. It provided.

"(a) Maximum age limit for an employee is 60 years.

F (b) Maximum permissible service for an employee is 15 years.

(c) The service of an employee will be automatically relinquished based on completion of age limit or maximum permissible service whichever occurs first.

G (d) One month pay and allowance will be given to the individual once his services are relinquished."

As the appellant had joined service in June, 1974 notice was issued to him on 15th May, 1989 to the effect that his service would be "relinquished" (sic) with effect from 30th June, 1989 as he would complete 15 years of service  
H with the canteen. In addition, the appellant was granted one month's additional

pay and allowance on the last day of his service. The appellant initially asked for extension of the service period beyond 30th June, 1989. This was refused by the respondent. The appellant then filed a suit and obtained an order of injunction, as a result of which the appellant served in the canteen till September, 1989. The interim order was subsequently vacated. The appellant withdrew the suit and raised an industrial dispute. The State government referred the following dispute to the Labour Court:-

“Whether the termination of services of Shri Harmohinder Singh is valid and justified. If not, to what relief is he entitled ?”

The Labour Court rejected the claim of the appellant and held that Para 3A of the Standing Orders of the respondent was binding on the appellant and the termination of the appellant's service after the contractual period was valid. The appellant filed a writ application challenging the award before the High Court of Punjab & Haryana. The High Court dismissed the writ petition *inter-alia* on the ground that the writ application was not maintainable against the respondent-canteen.

Challenging the decision of the High Court the appellant has contended that it was contrary to the decision of this Court in *Uptron India Ltd. v. Shammi Bhan*, [1998] 6 SCC 538. According to the appellant para 3A of the Standing Orders was violative of Sections 9A, 25J and 25F of the Industrial Disputes Act, 1947 (referred to briefly as the Act). The appellant urged that his appointment as cashier was not temporary but permanent. Since there was no prescribed tenure when the appellant was appointed, the appellant was entitled to continue in service at least as long as other government servants. The appellant also drew our attention to the decision of the Punjab and Haryana High Court in *Balbir Singh v. Kurukshetra Central Coop. Bank Ltd. and Anr.*, (1990) 1 LLJ 443.

The respondent on the other hand contended that the appellant had accepted the Standing Orders including para 3A. It was further contended that no provision of the Industrial Disputes Act, 1947 had been violated and the appellant's services had been duly terminated in terms of the Standing Orders.

We are of the view that the decision of the High Court impugned before us is correct. The respondent had raised an issue before the Labour Court that the reference was bad as the Union of India had not been impleaded as a party. To this objection the appellant filed an affidavit before the Labour

A Court contending:

“The canteen is not carrying the business under the authority of any Government/Ministry of Defence. It has its independent identity, more so not exist any relationship between the employees and the State which does not exercise any control to select, appoint, suspend or dismiss any employee. The employees are not governed by any service rules of the State/Ministry of Defence. The State/Ministry of Defence has no control over the management and working of the canteen.”

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It was not open to the appellant to take a different stand before the High Court—more so when the question whether an institution is a “State” or “other authority” within the meaning of Article 12 of the Constitution is essentially a question of fact.

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Because the appellant had contended before the Labour Court that the respondent had no connection whatsoever with the Government, neither the Government nor any department of the Government was made a party to the reference. But in order to sustain a contrary claim before the High Court under Article 226, the appellant could not, as he has done, proceed only against the Canteen.

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Even on the merits the appellant’s arguments on the validity of para 3A are without substance. That Standing Orders bind the workmen of a canteen had not been disputed. It has also not been argued that merely because Standing Orders are amended after a workman joins service it *ipso facto* means that the workman is not bound by the amendment. See *Salem-Erode Electricity Distribution Co. (P) Ltd. v. Their employees’ Union*, AIR (1966) SC 808; *Agra Electric Supply Company Ltd. v. Alladin and Ors.*, (1969) 2 LLJ 540; *Dunlop India Ltd. v. Their workmen*, (1972) 2 LLJ 1. What was contended by the appellant was that the amendment had to be in accordance with the provisions of the Act. There can be no dispute to this proposition.

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Section 9A of the Act relied upon by the appellant only provides that an employer proposing to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the 4th Schedule to the Act cannot affect such change without giving to the workmen notice in the prescribed manner. The provisions of the Section are no doubt mandatory. But the preconditions to their applicability are

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(i) there must be change in the conditions of service.

- (ii) the change must be such that it adversely affects the workmen; See *Workmen v. Hindustan Lever Ltd.*, (1973) 1 LLJ 427 and
- (iii) The change must be in respect of any matter provided in the Fourth Schedule to the Act.

In other words, not all changes are required to be notified. The Fourth Schedule provides for eleven conditions of service for change of which notice is to be given. Apart from the express conditions, there may be conditions which by a process of interpretation can be included within one or other of the eleven listed.

The conditions of service for change of which notice is to be given under the 4th Schedule does not in terms include the subject matter of Para 3A, namely, the fixation of a period of service or date of retirement. No argument has been advanced as to which of the eleven items could, even by a process of interpretation, include para 3A. There is nothing on record to show that prior to the introduction of Para 3A, the workmen of the Canteen continued as a matter of right till they reached the age of superannuation applicable to government servants. On the contrary the Standing Orders expressly provide that the services of canteen workers were temporary and for a period of six months. It cannot be said that the introduction of a maximum period of service would operate to the detriment of the employee who was otherwise entitled to serve only for six months and was liable to be dismissed merely upon service of a months's notice. Although the latter stipulation has been held to be unconstitutional as far as government employees are concerned in *Upton Ltd. v. Shammi Bhan*, [1998] 6 SCC 538, the principle would not apply to the appellant who, on his own showing before the Labour Court, was not serving in or under the Government or any governmental or government controlled institution. It was not necessary, therefore, to give any notice to the workmen under Section 9A of the Act before introducing para 3A in the Standing Orders. Besides, the respondent's averment that the amended Standing Orders were duly intimated to all its employees who had also signed the same has not been controverted by the appellant.

The argument on the basis of Section 25F is equally misconceived. This section deals with conditions precedent to retrenchment of workmen. It would not apply to para 3A because of the definition of retrenchment in Section 2(oo)(bb) which expressly excludes "termination of the service of a workman as a result of the non-renewal of the contract of employment between the

- A employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained thereon". Contracts of service for a fixed term as, therefore, excluded. This Court in *Uptron's case* (supra) has also held that the principles of natural justice are not applicable where the termination takes place on the expiry of the contract. The decision of a Learned Single Judge of the Punjab and Haryana High Court in *Balbir Singh v. Kurukshetra Central Cooperative Bank Ltd.*, (1990) 1 LLJ 1990, to the extent that it holds to the contrary is erroneous.

- C As far as Section 25J is concerned it provides that the provisions of Chapter V-A of the Industrial Disputes Act, 1947 would have overriding effect irrespective of any other law including Standing Orders made under the Industrial Employment (Standing Orders) Rules 1956. Chapter V-A deals with Lay offs and Retrenchment. The introduction of a retirement age is neither. There is no substantive provision in Chapter V-A of the Act which pertains to the period of service of an employee. Consequently, Section 25J has no application at all to the present case.

- D We have already held that paragraph 3A of the Standing Orders of the respondent was binding on the appellant and it is nobody's case that the terminations was not in terms thereof.

We accordingly dismiss this appeal without any order as to costs.

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B.S.

Appeal dismissed.