

Before M. R. Agnihotri, J.

MADAN LAL KOHLI,—Petitioner.

versus

THE HARYANA STATE MINOR IRRIGATION TUBEWELL CORPORATION LTD. (M.I.T.C.), CHANDIGARH AND ANOTHER,—Respondents.

Civil Writ Petition No. 16690 of 1989.

1st February, 1991.

Indian Employment Standing Orders,—Certified Standing Orders of Haryana State M.I.T. Corporation, dated 3rd September, 1986—Cl. 16-A—Age of superannuation—Cl. 16-A—Interpretation of—Clause providing for age of superannuation at 58 years in case of Regular Workmen and 60 years in case of regular workmen of the status of Class IV of the Government and temporary workcharged and regular workcharged workmen—Regular workcharged workmen in Class III have a right to be retired at the age of 60 years—Regular workmen and regular workcharged workmen—Distinction—Corporation not entitled to treat a regular workcharged workmen in Class III service as regular workman and to retire him at the age of 58 years—Order retiring such workcharged workmen is illegal—Such workmen have right to retire on attaining the age of 60 years.

Held, that there is no warrant for reading Clause 16-A of the Certified Standing Orders of Haryana State M.I.T. Corporation by taking out the last category of regular workcharged workmen from the second set of employees who are to retire on attaining the age of 60 years and to induct it into the first category of regular workmen for retiring them on attaining the age of superannuation at 58 years. The mere fact that the petitioner and other persons similarly situated happen to be Class III employees is no ground to deprive them of their right to continue in service upto the age of 60 years, when they are admittedly regular workcharged workmen and not Class III employees on regular basis. Two district clauses have to be read separately and separate age of superannuation has to be attributed to them treating them as mutually exclusive clauses. Hence it has to be held, that the petitioner and other workmen belonging to the category of regular workcharged workmen shall retire from service on attaining the age of superannuation, that is, 60 years and shall not be retired on attaining the age of 58 years.

(Paras 5 & 8)

Writ Petition under Articles 226/227 of the Constitution of India praying that the following reliefs may kindly be granted to the petitioner:—

- (i) *that the records of the case be called for and after perusal of the same, a writ of certiorari to quash the order, dated*

3rd November, 1989 Annexure P-2 passed by the Sub-Divisional Officer Electric Shop, Sub-Division, M.I.T.C. Karnal proposing to retire the petitioner from service at the age of 58 years, and the order, dated 20th November, 1989 passed by Respondent No. 2 Annexure 'P/5' conveying the decision of the Managing Director, M.I.T.C., Respondent No. 1 to retire the petitioner from service on 31st December, 1989 be issued :

- (ii) that a writ of prohibition to restrain the respondents from giving effect to the above-mentioned orders be issued ;
- (iii) that a writ of mandamus to respondent to allow the petitioner to continue in service till he attains the age of 60 years be issued ;
- (iv) a suitable writ, order or direction with this Hon'ble Court may deem fit and proper under the circumstances of the case be issued ;
- (v) filing of certified copies of Annexures—'P/1' to P/5 be dispensed with ;
- (vi) services of advance notices upon the respondents may also be dispensed with ;
- (vii) costs of this writ petition may kindly be awarded to the petitioner ;

AND

It is further prayed that the pending hearing of the writ petition, the operation of the impugned orders may kindly be stayed.

U. S. Sahni, Advocate, for the Petitioner.

S. C. Mohunta, Advocate General, with A. S. Chaudhary, Advocate, for the Respondent.

JUDGMENT

M. R. Agnihotri, J.

(1) The short point involved in this petition under Articles 226 and 227 of the Constitution of India is regarding the age of superannuation of the petitioner on the attainment of which the petitioner and persons similarly situated shall retire from the service of the Haryana State Minor Irrigation Tubewell Corporation Ltd., Chandigarh.

(2) The petitioner joined service on 2nd August, 1958 as Charge-man on work-charged basis in the Irrigation Branch of the Public Works Department in the composite State of Punjab. In the year

**Madan Lal Kohli v. The Haryana State Minor Irrigation Tubewell Corporation Ltd. (M.I.T.C.), Chandigarh and another
(M. R. Agnihotri, J.)**

1970, the Haryana State Minor Irrigation Tubewell Corporation Ltd. (hereinafter referred to as 'the Corporation') was constituted, and the petitioner joined the Corporation in April, 1970. The service conditions of the petitioner and other employees who are on the rolls of the Corporation are governed by the certified standing orders which have been made applicable to the Corporation,—*vide* letter, dated 3rd September, 1986, issued by Certifying Officer and Deputy Labour Commissioner, Haryana, Clause 3 of the aforesaid Standing Orders classifies "workmen" of the Corporation in various categories as under :—

CLASSIFICATION OF WORKMEN

The workmen shall be classified as under :—

- (a) Permanent/Regular Workmen.
- (b) Probationer.
- (c) Regular Workcharged Workmen.
- (d) Temporary/Workcharged Workmen.
- (e) Casual Workmen.
- (f) Apprentices.

"(a) 'Permanent/Regular Workman' means a workman who has been engaged on regular basis against a regular post and includes only persons engaged against a regular post and regularised as such in accordance with sub-clause (b) below.

(b) A 'Probationer' is workman who is provisionally employed to fill a vacancy in regular post and has not been regularised by an order in writing in accordance with these Standing Orders. Ordinarily the period of probation shall be six months but it may be extended from time to time at the discretion of the Manager/Management if it is considered necessary to further adjudge the work of the workmen concerned.

If a regular workman is employed as a probationer in a new post or a vacancy and his work during probation is not found satisfactory, he may at any time during probationary

period originally fixed or subsequently extended be reverted to his old substantive post. In case, however, the workman is regularised in the new post, he shall lose his lien on his old post.

- (c) 'Regular Workcharged Workman' is a workman who is appointed against a regular workcharged post determined by the Corporation and includes a probationer workcharged having been regularised in the manner, as in clause (b) above. The wages of such workmen are chargeable to works.
- (d) A 'Temporary/Workcharged Workman' is a workman who has been appointed for a limited or specific period of time on the work of an essentially temporary nature or employed in connection with a temporary increase in work and includes a workcharged employee.
- (e) A 'Casual Workman' is a workman who is employed for any work of a casual nature and includes a workman employed on muster roll or daily basis.
- (f) An 'Apprentice' is a learner who is engaged for training in a job trade of craft for a specified period to be expressed in the contract of apprenticeship irrespective of his being paid a stipend or not for training period and irrespective of the understanding or not of his subsequent absorption in the establishment."

Clause 16-A of the Standing Orders provides for retirement of workmen on attaining the age of superannuation in the following terms: —

"16-A : RETIREMENT : The workman attaining the age of superannuation i.e. 58 years in the case of regular workmen and 60 years in the case of regular workmen of the status of Class IV of the Government and temporary workcharged and regular workcharged workmen, shall retire. The appointing authority, however, retains an absolute right to retire any workman except of the status of Class IV in the Government service on or after he has attained the age of 55 years if his work is not found to be thoroughly satisfactory. A corresponding right is also available to such a workman to retire on or after he has attained the age of 55 years."

**Madan Lal Kohli v. The Haryana State Minor Irrigation Tubewell Corporation Ltd., (M.I.T.C.), Chandigarh and another
(M. R. Agnihotri, J.)**

(3) Admittedly, the petitioner was a regular workcharged workman and, as such, he could expect to continue in service uptill the age of 60 years, but on 3rd November, 1989, he was intimated by the Corporation that he was "going to be retired from service on 13th December, 1989 (A.N.) from this Sub-Division, as per certified model Standing Order,—vide M. D. letter No. 29757—837/ Admn. V/WE-113, dated 6th October, 1986 at the age of 58 years". Aggrieved against the same, the petitioner represented to the Corporation for being allowed to continue in service till he attained the age of 60 years, that is, 31st December, 1991. This representation was examined by the Superintending Engineer, Workshop Circle of the Corporation, and after thorough consideration a recommendation was made to the Chief Engineer that the representation was a genuine one and deserved to be accepted as it was in accordance with the provisions of the certified Standing Orders. A request was made to confirm this position so that the retirement age for regular workcharged workmen was on the attainment of 60 years. However, the Managing Director of the Corporation on 20th November, 1989, decided that the petitioner was to be retired at the age of superannuation, that is, 58 years. Aggrieved against the same, the petitioner has approached this Court claiming that he being a regular workcharged workman had a right to continue in service upto the age of 60 years.

(4) In the written statement, the Corporation has pleaded that the intention of Clause 16-A of the Standing Orders was to retire a Class IV employee at the age of 60 years and a Class III employee at the age of 58 years, and that as the petitioner was a Class III employee, he was to be retired on attaining the age of 58 years.

(5) After hearing the learned counsel for the petitioner and Mr. S. C. Mohanta, learned Advocate-General, Haryana, appearing on behalf of the Corporation, I am of the considered view that the contention of the petitioner is correct and the writ petition deserves to be allowed; inasmuch as the petitioner, who is a regular workcharged workman, shall retire from service of the Corporation on attaining the age of 60 years and not after attaining the age of 58 years, and the contrary view taken by the Corporation is wholly misconceived. A plain reading of Clause 16-A of the certified Standing Orders governing the conditions of service of the petitioner and other employees similarly situated shows that all regular workmen shall retire from service on attaining the age of superannuation, that is, 58 years, AND regular workmen in Class IV service as

well as *temporary workcharged* and *regular workcharged workmen* shall retire on attaining the age of 60 years. There is no warrant for reading this clause by taking out the last category of *regular workcharged workmen* from the second set of employees who are to retire on attaining the age of 60 years and to induct it into the first category of *regular workmen* for retiring them on attaining the age of superannuation at 58 years. The mere fact that the petitioner and other persons similarly situated happen to be Class III employees is no ground to deprive them of their right to continue in service upto the age of 60 years when they are admittedly *regular workcharged workmen* and not Class III employees on regular basis. Two distinct clauses have to be read separately and separate age of superannuation has to be attributed to them treating them as mutually exclusive clauses.

(6) Mr. S. C. Monhanta, learned Advocate-General, Haryana, sought to justify the retirement of the petitioner and other workmen similarly situated on the ground, that as the age of superannuation in the case of Class III employees of the State Government has been fixed at 58 years, the petitioner and persons similarly situated serving in the Corporation could not be placed in a more advantageous position.

(7) With respect, the plea taken by the learned Advocate-General is not applicable while interpreting Clause 16-A of the certified Standing Orders as firstly, the petitioner as an employee of the Corporation, is not a Government servant and he is not governed by the statutory rules framed under Article 309 of the Constitution, and secondly, as the petitioner is governed by Clause 16-A of the certified Standing Orders, he is covered in the category of "workman". In the case of various categories of workmen, there are numerous judicial pronouncements of the Hon'ble Supreme Court and other High Courts, where in the case of workmen of certain organisations, the age of superannuation has been upheld as 60 years, as against 58 years in the case of Government servants discharging the same duties and belonging to the same class. For authority, reference may be made to *Andhra Pradesh State Road Transport Corporation, Hyderabad v. Joseph Bernad and others*, (1) *Rattan Singh v. Union Territory Administration, Chandigarh*, and another, (2), *Shyamdev v. Union of India and others*, (3), *Dr. Surendra Kumar*¹¹

(1) 1982(1) S.L.R. 617.

(2) 1984(3) S.L.R. 817.

(3) 1983 Lab. I.C. 483.

Punjab National Bank v. Rajesh Kumar Jain and another
(A. L. Bahri, J.)

Shukla v. Union of India and others (4), and *Union of India and others v. L. Venkataraman etc.*, (5).

(8) Consequently, I allow this writ petition and hold that the petitioner and other workmen belonging to the category of *regular workcharged workmen* shall retire from service on attaining the age of superannuation that is, 60 years and shall not be retired on attaining the age of 58 years. Since the petitioner will be attaining the age of Superannuation on 31st December, 1991, and has been wrongly retired from service in pursuance of the impugned order dated 3rd November, 1989 (Annexure P-2), he shall be taken back in service forthwith, and he shall be entitled to all the arrears of salary and allowances, etc. to which he would have been entitled, had he not been retired from service in pursuance of the impugned order. As a consequence of the acceptance of this writ petition, the impugned communications dated 3rd November, 1989 (Annexure P-2) and 20th November, 1989 (Annexure P-5) shall stand quashed. However, there shall be no order as to costs.

R.N.R.

Before A. L. Bahri, J.

PUNJAB NATIONAL BANK,—Petitioner.

versus

RAJESH KUMAR JAIN AND ANOTHER,—Respondents.

Civil Revision No. 2048 of 1990.

11th February, 1991.

Code of Civil Procedure, 1908 (V of 1908)—O. 21, rl. 90—Objections of person not a party to suit or execution proceedings to set aside sale on ground of fraud dismissed by Court—Such order is appealable—No question of limitation would arise—Plea of fraud can be raised only when it comes to knowledge of person defrauded—To be determined on evidence—Plea of fraud cannot be dealt with summarily without affording opportunity of hearing.

(4) 1986 Lab. I.C. 1516.

(5) J.T. 1990 (2) S.C. 90.