IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1210 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAJNAGAR TEXTILE MILLS

Versus

TANAYKUMAR RAYCHOUDHARY

Appearance:

Shri D.G. Shukla, advocate with Shri S.I. Nanavati, Senior advocate for the petitioner.

MR SUBRAMANIAM IYER for the Respondent.

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 25/02/99

ORAL JUDGEMENT :

Heard the learned counsel for the petitioner and the learned counsel for the respondent, who has appeared on Caveat. As both the parties have been heard at this stage, the petition is being disposed of finally.

2. Rule. Service of the rule is waived by Shri

Subramaniam Iyer for respondent.

3. The petitioner, a textile mill, is a unit of National Textile Corporation (Gujarat) Ltd. The respondent was its employee in the Weaver Section. The respondent was employed at the Mills of the petitioner company in 1965. The petitioner, employer has recorded the respondent's date of birth as 1933, at the time of joining service. Under the agreement governing the age of superannuation, Annexure 'B', every employee of the technical and supervisory staff is to retire on completion of the age of 60 years. He is to be served with a notice of retirement three months prior to his completing the age of 60 years. However, the agreement also envisaged extension of service upto the completion of 62 years, provided the employee of the technical and supervisory staff is putting regular attendance in work and that he is otherwise found medically fit. The criteria of regular attendance in work shall be his being present for 240 days in last 12 months.

4. By Notice dated 2nd June 1992, the respondent workman was informed that he has completed the age of superannuation and he is to retire. The workman resisted that he has not completed the age of 60 years and has raised a dispute about his premature retirement by the aforesaid notice. The workman contended that he was born in 1933 and he will complete the age of 60 years only in 1993. The notice dated 2nd June 1992 prematurely retiring him from service abruptly by the management before attaining the age of 60 was challenged as invalid. The petitioner company contended that though as per the record of the company, the date of birth of employee is 2.2.1933, but the service record of the respondent with the previous employer and the Provident Fund Account opened with the previous employer showed that in 1965 he has disclosed his age to be 34 years in the nomination form under the provisions of Employees Provident Fund and Misc. Provisions Act 1952. As per the declaration his date of birth in the said EPF Account was also recorded as 1931. Thus, having already completed the age of 60 years before issuance of notice as he has already worked with the company beyond the age of superannuation an order retiring with immediate effect was served treating him to be the person born in 1931 and having already attained the age of superannuation of 60 years, though as per the service record of the company, he has not completed the age of 60 years. On this dispute being referred to the Labour Court, the Labour Court found the date of birth of the respondent, workman to be of 1.1.1933 and the order dated 2.6.1993 retiring the

respondent with immediate effect to be invalid. However, the Labour Court further directed that since he has already completed the age of superannuation he is entitled to relief of declaration that he continued in service upto the age of completion of 62 years of age. That order was challenged by the employer in appeal before the Industrial Court, Ahmedabad, which confirmed the order of the Labour Court.

5. The petitioner has urged that no dispute as to the age of superannuation prevalent in the establishment of the petitioner was referred to the Labour Court for adjudication. The Labour Court could not have gone into that question without a reference being made to it. Grant of relief of considering the respondent to continue in service beyond completion of 60 years of age with effect from the date of birth found by the Labour Court was beyond the scope of reference. It also pointed out that grant of extension was a managerial function depending on facts necessary for extending the service beyond the age of 60 years maximum for a period of two years and was not a matter of course without fulfilment of the conditions.

6. Both the contentions did not find favour with the Labour Court as well as the Industrial Court. Hence this petition. The same contentions have been reiterated before this Court. Learned counsel appearing for the workman has urged that he has produced evidence to the effect that most of the technical staff of the company has been retired at the age of 62 years and that benefit has been extended to him. In that view of the circumstances, no interference is called for in the award of the Labour Court as confirmed by the Industrial Court.

7. Having given my anxious consideration, I am of the opinion that the contentions of the petitioner merit acceptance. It is undoubtedly true that the Labour Court or Industrial Court gets jurisdiction to adjudicate upon a dispute on a reference being made to it in such a dispute. Term of reference determines the ambit and scope of inquiry which the Labour Court can undertake. One need not be pendentic about the scope of inquiry to unnecessarily to narrow it down; and it includes the inquiry into the ancillary issues of the relief that can be granted. However, a question which is not ancillary to the dispute referred to it, the Tribunal or the Labour Court will have no jurisdiction to entertain and decide it. Viewed from this aspect, if one looks at the reference made to the Labour Court, it referred to the validity of order dated 2.6.1992 retiring the respondent

from the company's service on his attaining the age of superannuation. This would entail inquiry into the question whether the employee has attained the age of superannuation. There has been no dispute between the parties that the age of superannuation is 60 years, subject to extension of two years. That is also the term of agreement, Annexure 'B'. In these circumstances, the scope of inquiry could not have been whether the age of superannuation under the terms of agreement is 60 years or 62 years. That inquiry the Labour Court could not have entertained as to the prescribed age of superannuation under the Rules to find that age of superannuation is ordinarily 62 years.

8. However, in case, it is found that order dated 2.6.1992 is not sustainable, the question certainly would arise before the Labour Court as to what relief, if any that should be granted to the employee because reinstatement was not possible, he having attained the age of 60 years, much prior to that date. This may require as to what emoluments the employee would have been entitled to had his services were not terminated prematurely. Enquiring into this question may include whether he could have been granted extension upto the age of 62 years under the Rules in ordinary course. That question would entail inquiry as to whether as on the date of completion of 60 years the incumbent fulfils the criteria for grant of extension and whether under the agreement he could have been granted extension successively for one year to the maximum extent of two years. That would have further entailed inquiry on the question whether on completion of age of 60 years he fulfils the conditions for grant of extension under the agreement to the extent it was possible in the circumstances of the case.

9. From the perusal of the two orders under challenge I find that the Tribunal as well as the Labour Court embarked upon the inquiry as to what is the age of superannuation prescribed under the agreement; whether 60 or 62 years, which was not the subject matter of the dispute and giving finding of 62 years as ordinary age of retirement, has granted relief. That was beyond the scope of reference.

10. Whether the employee could be granted an extension was an issue to which the employer has never addressed itself nor he was required by the employees. Reason is obvious. Until the date of impugned order of retirement, as per service record of employee, he has not attained the age of 60 years and the contingency of

exercise of discretion had not arisen for thee petitioner company. Both were labouring under the same belief that the employee is continuing because he has not attained the age of 60 years. The challenge to order was also on the ground that employee has not attained the age of 60 years so as to invoke term as to superannuation. It was not the contention of employee even in the alternative that even if his date of birth is found to be of year 1931, he is entitled to extension of 2 years and he having fulfilled the condition his continuance must be deemed to be on extension as per terms of service.

11. No inquiry whatever has been conducted, nor an opportunity in that behalf was given to any of the parties to lead evidence whether on completion of 60 years of age the workman fulfilled the condition so that discretion for extension of service beyond the age of superannuation, i.e. 60 years could have been exercised in favour of the workman. Had this opportunity given the employer could have placed his case before the court as to why the extension could not have been granted to thee employees. It has been stated by the learned counsel for the petitioner that in fact the establishment itself has been closed in October 1992 and the question of extension would be out of place to any employee thereafter. Had an opportunity given to the petitioner they would have placed this fact on record. The fact that establishment in question became sick and closed in October 1992, is not disputed by the learned counsel for the respondent workman.

12. In these circumstances the order to the extent it grants relief to the respondent for continuing him in service beyond completion of age of 60 years from the date, which is found to be the correct date of birth of the workman for computing emoluments payable upto the completion of age of 62 years, cannot be sustained.

13. The petition accordingly succeeds. The award under challenge is modified to the extent that the respondent shall be entitled to be treated in service until he completes the age of superannuation of 60 years with effect from 1.1.1933, the date of birth found to be correct date of birth by the Labour Court and accordingly he shall be entitled for arrear of emoluments upto that age only, but not thereafter.

14. The Special Civil Application is allowed accordingly. Rule is made absolute to the aforesaid extent. No order as to costs.

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