

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29TH DAY OF MAY 2014

PRESENT

THE HON'BLE MR.JUSTICE N.K.PATIL

AND

THE HON'BLE MR.JUSTICE PRADEEP D.WAINGANKAR

W.A.NO.2395 OF 2012(L)

BETWEEN:-

M/S. KENNAMETAL INDIA LTD.,
8/9TH MILE, TUMKUR ROAD
BANGALORE-560073.
REPRESENTED BY
MR. KUNDAN KUMARLAL
DEPUTY GENERAL MANAGER
LEGAL AND COMPANY SECRETARY

... APPELLANT

(BY SRI: S.N. MURTHY, SENIOR COUNSEL, FOR
SRI: S.N. MURHTY ASSOCIATES, ADV)

AND:-

KENNAMETAL INDIA EMPLOYEES' ASSOCIATION
8/9TH MILE, TUMKUR ROAD
BANGALORE-560073.
REPRESENTED BY ITS PRESIDENT
MR. GANGABYRAIAH.

.. RESPONDENT

(BY SRI: K. SUBBA RAO, SENIOR COUNSEL, FOR
SRI: K.S. SUBRAMANYA, ADV., FOR R1, FOR
SRI: V. JAWAHAR BABU, ADVS)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.41583/2011 (L-RES) DATED 18/04/2012.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 25/03/2014 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **PRADEEP D. WAINGANKAR J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal by the appellant company is preferred against an order dated 18.4.2012 in W.P.No.41583/2011.

2. The appellant is a company registered under the Companies Act engaged in manufacture of cutting tools and other allied products. The respondent is an Employees' Association of the appellant company. The company has its own certified standing orders as required under Industrial Employment (Standing Orders) Act, 1946. As per Clause 22 of the Standing Order, the retirement age of the employee is 58 years. The respondent Association made an application to the Certifying Officer for amendment of Clause 22 of the

Certified Standing Order for enhancement of the age of retirement of the employees from 58 to 60 years. The company filed its objection for enhancement of the age in view of Clause 28 of the settlement entered between the appellant and the respondent on 01.07.2007. As per Clause 28 of the Memorandum of Settlement, it was agreed that during the period of the operation of the settlement, i.e., from 01.07.2007 to 30.06.2011, the Association would not raise any demand on the management involving directly or indirectly any financial burden on the management. The application was heard by the Certifying Officer, who in turn passed an order dated 30.11.2009 allowing the amendment to Clause 22 of the Standing Order so as to enhance the age of retirement from 58 years to 60 years holding that Clause 22 provides for increasing the age of retirement beyond 58 years though the discretion is vested in this regard with the Management. Against the said order, the appeal was filed by the appellant before the Appellate Authority which also came to be rejected by

an order 28.5.2010. Against both the orders passed by the Certifying Officer and the Appellate Authority, W.P.No.16922/2010 was filed before the Single Judge. The learned Single Judge accepting the contention of the appellant with regard to the existence of a settlement which prohibited the respondent from raising any demand involving financial liability during the period of operation of settlement, allowed the Writ Petition and quashed the order passed by the Certifying Officer and the Appellate Authority. The respondent filed Writ Appeal against the order of the learned Single Judge before the Division Bench, which came to be disposed of with an observation that the claim of the Association for the enhancement of the retirement age shall be considered afresh as if the application is made after 30.06.2011, the expiry of the period of operation of the settlement. The matter was taken up by the Certifying Authority denovo and the Certifying Officer after hearing both the parties again allowed the application. Against the said order, the appellant

preferred an appeal which came to be rejected by order 29.10.2011. Aggrieved by both the orders passed by the Certifying Officer and the Appellate Authority, the appellant preferred W.P.No.41858/2011 before the Single Judge. The learned Single Judge upon merits dismissed the Writ Petition by an order dated 18.4.2012 holding that the Certifying Officer has rightly ordered for enhancement of the age of retirement from 58 years to 60 years. Against the said order passed by the learned Single Judge, this Writ Appeal is preferred on the ground that the learned Single Judge has erred in coming to the conclusion that it was not open to the respondent to seek amendment of the age of retirement from 58 to 60 years merely because the period of settlement had expired. Further it is urged that the application seeking amendment made by the respondent is dated 29.7.2009 during the operation of period of settlement and therefore such an application could not have been entertained and instead the respondent should have been asked to make a fresh

application after the period of settlement expired. It is further urged that the Appellate Authority and also the learned Single Judge erred in rejecting the contention of the appellant that under the provisions of Industrial Disputes Act 1947, a settlement entered into under the provisions of the Act will be binding and operative till it is replaced by a subsequent settlement or award. The learned Single Judge failed to consider the parameters which are required to be considered for enhancement of the age of retirement as laid down by the Apex Court. It is also contended that the age of retirement at 58 years is the agreed age under the settlement. For all these reasons, the appellant has prayed to allow the appeal and to set aside the orders passed by the Certifying Officer, Appellate Authority and the learned Single Judge.

3. We have heard the arguments addressed by Sri. S.N. Murthy, Senior Counsel for Sri. N. Murthy Assts, for the appellant and Sri. K. Subba Rao, Senior

Counsel for Sri. .S. Subrmanya, Adv., for respondent No.1 and Sri. Jawahar Babu, Adv., for the impleading applicant. Perused the records and the decisions cited at the bar.

4. The learned counsel appearing for the appellant would submit that it is not open for the Union to raise the issue of age of retirement while the settlement entered between the parties is in operation and as such the Authority ought not to have interfered so far as the age of retirement of employees is concerned. He further argued that the Certifying Authority and the Appellate Authority have not taken into consideration the parameters to increase the retirement age as laid down by the Apex Court in various decisions and thereby the impugned order passed by the Certifying Officer, the Appellate Authority and Single Judge have led to miscarriage of justice.

5. Per contra, the learned counsel appearing of the respondent Association has vehemently argued that

fixing the age of retirement at '60' years would be fair and proper having regard to the fact that the life expectancy has greatly increased in recent years due to healthier conditions, better food and improved medical facilities. He further submitted that the recent trend of the Apex Court and various High Courts is to increase the age of Superannuation. He would further submit that the superannuation age fixed at '60' years from '58' years by the authority reflect the social changes that have taken place in the country and also the judicial trend in that regard. Further, the learned counsel would contend that the needs of workmen are greater between the age of 50 to 60 years as they require to perform the marriages of their children, they have to look after the education of their children and taking into consideration all these factors, the Certifying Authority has rightly ordered to enhance the age of retirement as '60' years and that no prejudice or hardship has been caused to the appellant company by enhancing the age

of '58' years to '60' years and for all these reasons, the learned counsel sought for dismissal of the appeal.

6. Having heard the arguments and upon closer scrutiny of the material on record, it is manifest that the application made by the Respondent Association dated 29.07.2009 for amendment of Clause 22 of the Certified Standing Order which speaks about the age of retirement, so as to enhance the age of retirement from 58 years to 60 years, came to be allowed, by the Certifying Authority, but finally, the Order has been rightly set aside in W.P.No.16922/2010 (L-RES) by Order dated 19.11.2010, holding that the application cannot be made during the operation of Memorandum of Settlement period from 01.07.2007 to 30.06.2011, in view of Clause 28 of the Memorandum of Settlement, which reads as under:-

“Clause 28 – Other demands and grievances, the Workmen and the KLEA hereby agree:

- a) *To drop all other demands made by KLEA vide its Charter of Demands dated 22.12.2006 which are not covered by this settlement.*
- b) *Not to raise or pursue during the operation of this Settlement any demands involving directly or indirectly any financial burden/commitment on the part of the Management and/or affecting the terms and conditions of employment.”*

It goes without saying that the increase in retirement age from 58 years to 60 years would definitely involve financial burden on the management. The settlement was in force for a period of 5 years running from 01.07.2007 to 30.06.2011. The application was made for amendment of Clause 22 of the Standing Order on 29.07.2009 ie., during the operation of Memorandum of Settlement which is in violation of Clause 28 of the Memorandum of Settlement. Be that as it may, rightly the application has been rejected by the learned Single

Judge in Writ Petition. Having done so, the learned Single Judge directed the Certifying Authority to consider the very same application afresh, as if the same has been made after the expiry of Settlement period.

7. There is no substance in the submission made by the learned counsel for the appellant that the Respondent Association ought to have filed another fresh application after the expiry of period of settlement. The very same application was again considered by the Certifying Authority on merits and came to be allowed enhancing the age of retirement from 58 years to 60 years by a considered order keeping in mind the observation made by the Apex Court in AIR 1959 Supreme Court 1279 (Guest Keen, Williams Pr. Ltd., Calcutta Vs. P.J.Sterling and Others), AIR 1980 SUPREME COURT 2181 (The Life Insurance Corporation of India Vs. D.J.Bahadur and Others), 1970 I LLJ 336, (Burmah-Shell O.S. & D.Cos), SC 1967

I LLK P 191 (Hindustan Antibiotics Ltd., Vs. Their Workmen) and 1964 II LLJ 644 (Talang (GM) Vs. Shaw Wallace and Company Limited and the various parameters such as, nature of the work assigned to the employees in their course of employment, the nature of wage structure paid to them, the retirement benefit and other amenities available to them, the age of superannuation fixed in comparable industries in the same region, the general practice prevailing in the industry in the past in the matter of retiring its employees etc., The Appellant Authority ratified the decision of the Certifying Authority. The Writ Petition preferred also met with the same result. The learned Single Judge while dismissing the Writ Petition, in Para 8 and 9 of the judgment, observed as under:-

“8. Secondly, it is contended that the certifying officer committed an illegality in not considering the relevant factors for enhancement of age of retirement. There is no substance in this contention. A perusal of the impugned order passed by the certifying

officer specifies that by following the law declared by the Apex Court, this court, the age of retirement in similarly situated industry, the general trade, the model standing orders and other circumstances the certifying officer held that the age is to be enhanced from 58 to 60 years. The certifying officer also noticed that as per the certified standing orders, discretion is vested with the petitioner company to enhance the retirement age from 58 to 60 years. By considering the entire objections filed by the petitioner and also the entire material on record, the certifying officer rightly concluded that the age of retirement is to be enhanced. In the circumstances, I find no justifiable ground to interfere with the impugned order. Accordingly, the writ petition is liable to be dismissed.

9. It is brought to my notice that subsequent to the order of certifying officer on 26.08.2011 some of the employees have retired from service. The order of certifying officer will come into effect on expiry of 30 days from the date of order. Therefore, the petitioners to extend the monetary benefit to such of the

employees who have retired from service on the expiry of 30 days from the date of order of certifying officer.”

8. We have also gone through other documents so as to ascertain the financial viability of the Appellant. It has been running under profit. From the perusal of the aforesaid decisions of the Apex Court, the trend is in favour of enhancement of age of superannuation from 58 years to 60 years since from 1960. Now, we are in 2014. Definitely, the life expectancy has greatly increased in recent years due to healthier living conditions, better food and improved medical facility. It is equally true that the needs of workmen are greater between 50 years and 60 years. They have to look after education and marriages of their children. The retirement age of the Government servant is also increased from 58 years to 60 years. The Appellant Company has not made out any circumstances, much less, special circumstances justifying the fixation of the retirement as 58 years even in the year 2014. It is

needless to say that in general, the efficiency of a workman is not impaired till the age of 60 years. It must be remembered that this Court does not interfere with the order passed by the Certifying Authority which has been ratified by the Appellate Authority and the learned Single Judge in Writ Petition unless it suffers from grave errors. Thus, having regard to the facts and circumstances of the case, we do not find any error committed by the Certifying Authority, Appellate Authority and the learned Single Judge while enhancing the age of retirement as 60 years, which is fair and proper.

9. At this stage, it is pertinent to reproduce Clause 22 of the Memorandum of Settlement, which reads as under:-

“22 – Retirement:

Employees shall retire from the services or the Company on completing the age of 58 years, but the Company may in its discretion

*extend the services of a particular employees,
beyond the aforesaid limit subject to his being
found medically fit by the Medical Officer and
upon such terms and conditions as the
Company may in this behalf prescribe.*

10. The grievance of the Respondent Union is that this discretion vested in the Company to extend the services of a particular employee beyond the age of 58 years, appears to us an uncontrolled discretion. We do not think it is proper to give a discretion to the company to raise the age of retirement or not to do so. The vesting of such uncontrolled discretion might lead to manipulation and victimization. We would therefore hold that the retirement age of the employees of the Appellant Company should be raised to 60 years, while confirming the order passed by the learned Single Judge in Writ Petition. The appeal is devoid of merits. Hence we proceed to pass the following Order:-

Appeal is **dismissed**.

In view of dismissal of appeal on merits, I.A.No.1/12 for impleading and I.A.No.2/13 for amendment do not survive for consideration and accordingly they are disposed of as having become infructuous.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*mn/-