AVERY INDIA LIMITED

v.

THE SECOND INDUSTRIAL TRIBUNAL, WEST BENGAL

May 5, 1972

[P. JAGANMOHAN REDDY AND K. K. MATHEW, JJ.]

Labour Law—Standing Orders fixing age of retirement of workmen at 55 years—Workmen employed before introduction of standing orders whether covered by age of retirement so fixed—Industrial Employment (Standing Orders) Act 20 of 1946.

The second respondent was employed by the appellant company in the year 1946 in its Service Department. At the time there was no rule prescribing the age of retirement of the workmen of the company. In November 1951 the appellant introduced standing orders under the provisions of the Industrial Employment (Standing Orders) Act 20 of 1946, by which the age of superannuation of the workmen was fixed at 55. On November 27, 1961 the appellant issued a notice to the second respondent informing him that he was due to retire on August 31, 1962 as he would be attaining the age of 55 on that date. On August 11, 1962 the Union of the employees of the appellant submitted a charter of demands one of which was that the age of retirement of the workmen should be raised from 55 to 58 years. The second respondent asked the appellant to postpone a final decision as to his retirement because of the industrial dispute raised by the Union. The appellant however retired the second respondent on September 1, 1962. In January 1963 the Government of West Bengal referred the dispute between the appellant and its workmen to the Industrial Tribunal. The Tribunal by its award dated April 27, 1964 held that the retirement of the second respondent at the age of 55 was unjustified as the second respondent was not bound by the provisions of the standing orders fixing the age of retirement at 55 as he was employed before the said orders were passed. The Tribunal also held "that the age of retirement of all categories of workmen should be raised from 55 to 58 and that standing orders would stand modified accordingly" The appellant company filed a writ petition in the High Court challenging the validity of the award in so far as it directed the reinstatement of the second respondent. A single Judge of the High Court following the decision of this Court in *Guest Keen Williams* held that the provision as regards the age of retirement in the standing orders would not bind the second respondent. He further held that as the second respondent had already attained the age of 58 years there was no question of his reinstatement but that he should be paid the salary for the period between the date when he was made to retire and the date when he actually attained the age of 58. The Division Bench upheld the order of the single Judge. The company appealed to this Court.

Allowing the appeal,

HELD : (i) The view of the High Court that the provision in the standing orders regarding retirement age could not bind the workmen who were employed in the establishment prior to the coming into force of the standing orders could not stand in the light of the decisions of this Court. [671 G]

Agra Electric Supply Co. Ltd. v. *Shri Alladin*, [1970] 1 S.C.R. 308, *Salem Erode Electricity Distribution Company Ltd.* v. *Salem Erode Electricity Distribution Co. Ltd. Employees' Union*, [1966] 2 S.C.R. 498 and

A United *Provinces Electric Supply Co. Ltd. Allahabad* v. *T.N. Chatterjee*, C.A. No. 1734 of 1967 decided on 13-3-1972, referred to.

(ii) It was clear from the award that the Tribunal did not order the reinstatement of the second respondent on the ground that he was entitled to the benefit of the enhanced retirement age conferred on all categories of workmen in the establishment by the award. The only ground on B which the Tribunal ordered the reinstatement was that the second respondent was employed in the concern prior to the coming into force of the standing orders and therefore, the provision in the standing orders fixing the age of retirement at 55 years did not bind him in the light of the decision of this Court in *Guest Keen Williams*. The second respondent did not support the award in respect of his reinstatement in the counter-affidavit filed by him in the High Court in answer to the writ petition of the appellant on the ground that he was entitled to the benefit of the retire- C ment age as fixed by the award and, for that reason, the directions for his reinstatement was in any event justified. He could not be allowed to raise this new plea in this Court. [673 H-674C]

Guest, Keen Williams Private Ltd. v. *P.J. Sterling*, [1960] 1 S.C.R. 348, referred to.

D CIVIL APPELLATE JURISDICTION.: Civil Appeal No. 1462 of 1968.

Appeal from the judgment and order dated November 28, 1967 of the Calcutta High Court in appeal from Original Order No. 201 of 1966.

M.C. Setalvad, G. L. Mukhoty and *D. N. Gupta*, for the ap- E pellant.

P. K. Chatterjee, for respondents Nos. 2 and 3.

The Judgment of the Court was delivered by

Mathew, J. The appellant, a company incorporated under the Companies Act, filed a writ petition before the High Court F of Calcutta praying for the issue of a writ or an order in the nature of *certiorari* quashing the award passed by the Second Industrial Tribunal, West Bengal, Calcutta, directing the reinstatement of Ganapati Sontra, the second respondent, in the service of the appellant. A learned judge of that Court dismissed the writ petition. The appellant filed an appeal before a Divi- G sion Bench of that Court. The appeal was also dismissed. This appeal is preferred against the order of the Division Bench by certificate granted by the High Court under Article 133(1)(c) of the Constitution.

The second respondent was employed by the appellant in the H year 1946 as a clerk in its Service Department. At the time, there was no rule prescribing the age of retirement of the workmen of the company. In November, 1951, the appellant introduced standing orders under the provisions of the Industrial

Employment Standing Orders) Act, 1946 (Central Act 20 of 1946 was amended by the Act 36 of 1956. The Standing Orders fixed at 55. On September 17, 1956, the Central Act 20 of 1946 was amended by the Act 36 of 1956. The Standing orders in the appellant company were modified on May 30, 1961, but the provision regarding the age of superannuation remained unchanged. On November 27, 1961, the appellant issued a notice to the second respondent informing him that he was due to retire on August 31, 1962 as he would be attaining the age of 55 on that date.

On August 11, 1962, respondent No. 3, the Union of the employees of the appellant, submitted a charter of demands. One of the demands was to raise the age of retirement of the workmen in the establishment from 55 to 60. On August 18, 1962, respondent No. 3 wrote to the appellant to keep the retirement of second respondent in abeyance till a decision is arrived at on the charter of demands. On August 30, 1962, the second respondent wrote to the appellant to postpone taking a final decision on the matter as a dispute had already been raised about the retirement age of the workmen in the establishment. By his letter dated August 31, 1962, the Secretary of the appellant company replied that as long as the retirement age as provided in the standing orders was not altered, he had to be guided by the same but that, if at a later date, the retirement age was altered, the same will be adhered to. The second respondent was made to retire on September 1, 1962.

The Government of West Bengal, by its order dated January 29, 1963, made a reference to the first respondent of the industrial dispute between the appellant and its workmen represented by the third respondent. The second question referred, which alone is material for our purpose was :

> Is the superannuation of Shri Ganapati Santra justified ? What relief, if any, is he entitled to ? What should be the age of retirement of the workmen in the factory ?

The appellant contended before the Tribunal on the basis of the standing orders that the age of retirement was 55 years and that the action of the appellant in retiring the second respondent at the age of 55 was proper. The Union, on the other hand, contended that, as the second respondent was appointed in 1946 when there was no age fixed for superannuation, he was not bound by the provision as regards the age of superannuation in the standing orders of 1952 or the modified standing orders of 1961.

The Industrial Tribunal, by its award dated April 27, 1964, held that the retirement of the second respondent at the age of 55

A was unjustified as the second respondent was not bound by the provision in the standing orders of 1952 or of 1961 fixing the age of retirement at 55 as he was employed in the concern in 1946, and directed reinstatement of the second respondant. The Tribunal also held "that the age of retirement of all categories of B workmen should be raised fi m 55 to 58 and that standing orders would stand modified accordingly."

The appellant company challenged the validity of the award in so far as it directed the reinstatement of the 2nd respondent, in the writ petition and contended that the view of the Tribunal that the 2nd respondent was not bound by the provision of the C standing orders relating to age of retirement was erroneous as the standing orders would bind all the workmen in the establishment whether they were employed before or after the framing and certification of the standing orders. A single judge of the High Court, following the decision of this Court in *Guest Keen Williams Private Ltd.* v. *P. J. Sterling and others*(1) held that the provision D as regards the age of retirement in the standing orders would not bind the 2nd respondent as he was employed prior to the coming into force of the standing orders and dismissed the writ petition. He further held that as the second respondent had already attained the age of 58 years, there was no question of his reinstatement but that the appellant should pay the 2nd respondent the salary for the period between the date when he was actually made to retire and E the date when he attained the age of 58. It was this order that was challenged by the appellant in the appeal before the division bench. The Division Bench agreed with the view of the learned single judge and dismissed the appeal.

The only question which should normally arise in this appeal F is whether the view of the High Court, that the provision in the standing orders regarding the age of retirement of the workmen of the appellant company would not govern the 2nd respondent who was employed prior to the coming into force of the standing orders, can be sustained. The view of the High Court that the provision in the standing orders regarding retirement age cannot G bind the workmen who were employed in the establishment prior to the coming into force of the standing orders cannot stand in the light of the decisions of this Court in *Agra Electric Supply Co. Ltd.* v. *Shri Alladin and others*(2), *Salem Erode Electricity Disribution Company Ltd.* v. *Salem Erode Electricity Distribution Co. Ltd. Employees' Union*(3) and *the United Provinces Electric* H *Supply Co. Ltd., Allahabad* v. *T. N. Chatterjee and others*(4)

(1) [1960] 1 S.C.R. 348. (2) [1970] 1 S.C.R. 308.
(3) [1966] 2 S.C.R. 498.
(4) Civil Appeal No. 1734 of 1967, decided on 13-3-1972

But counsel for the second respondent contended that even if the High Court had applied the correct law as enunciated by this Court in the above mentioned cases, that would not have enabled the High Court to quash that part of the award which directed the reinstatement of the 2nd respondent, for, it would have been open to the 2nd respondent to support the award on the ground that since the retirement age of all the workmen in the employment of the appellant had been raised to 58 years by the award, the 2nd respondent could not have been made to retire by the appellant before he attained the age of 58. In other words, counsel argued that even if the High Court applied the correct law as laid down in the rulings cited above, it could not have quashed that part of the award, for, the age of superannuation of all the workmen in the employment of the appellant was raised to 58 by the award and that although the 2nd respondent was not a workman when he was a party to the dispute under s. 18(3) of the Industrial Disputes Act, 1947, hereinafter called the "Act". Counsel submitted that the 3rd respondent, the Union, was a party to the dispute which means that all the workmen in the establishment were parties to the dispute as regards the age of retirement, and the award, in so far as it raised the age of retirement to 58, would bind all persons who were employed in the establishment to which the dispute related on the date of the dispute.

Section 18(3) of the Act provides :

"18(3)—A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A of an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on—

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper case;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who are employed in the establishment, or part of the establishment as the case may be, to which the dispute relates

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on the date of the dispute and all persons who subsequently become employed in that establishment or part."

On the other hand, it was contended on behalf of the appellant, that the only question referred to the Tribunal so far as the 2nd respondent was concerned, was whether his superannuation at the
B age of 55 was justified and the only case put forward by the Union before the Tribunal was whether the provision in the standing orders fixing the age of retirement as 55 would bind him as he was employed before the standing orders came into force in the concern. And as that was the only question raised and considered by the Tribunal and the High Court, it is not open to this Court,
C in this appeal, to enlarge the scope of the controversy and go into the question whether the 2nd respondent could sustain the award on any other ground not decided in his favour by the Tribunal or the High Court. It was further contended on behalf of the appellant that since no date was specified in the award for its coming into operation, it came into operation when it became en-
D forceable as provided in section 17A(1) by virtue of section 17A(4) of the Act and since the 2nd respondent had retired on September 1, 1962, long before the award became operative, even though the award raised the retiremnt age of all the workmen in the concern to 58, the 2nd respondent cannot get the benefit of the enhanced age of retirement. In other words, the argument was that the award had no retrospective operation and since the
E award conferred the benefit of the enhanced age of retirement only on the workers in the establishment on the date the award came into operation and since the 2nd respondent was made to retire in accordance with the retirement age as specified in the standing orders of the company and had ceased to be a workman on the date when the award became operative, the award did not
F confer upon the 2nd respondent any benefit in respect of his age of retirement.

We do not think it necessary to decide the interesting question that in view of the fact that the award became operative only in 1964 whether the 2nd respondent, who was made to retire in 1962 in accordance with the provision in the standing orders then in
G force, was entitled to get the benefit of the retirement age fixed by the award, on the ground that the award was binding on him and the appellant by virtue of section 18(3) of the Act.

It is clear from the award that the Tribunal did not order the reinstatement of the 2nd respondent on the ground that he was
H entitled to the benefit of the enhanced retirement age conferred on all categories of workers in the establishment by the award. (The only ground on which the Tribunal ordered the reinstatement was that the 2nd respondent was employed in the concern

prior to the coming into force of the standing orders and, therefore, the provision in the standing orders fixing the age of retirement at 55 was not binding on him in the light of the decision of this Court in *Guest Keen Williams Private Ltd.* v. *P. J. Sterling and others*(1). The 2nd respondent did not support the award in respect of his reinstatement in the counter-affidavit filed by him in the High Court in answer to the writ petition of the appellant on the ground that he was entitled to the benefit of the retirement age as fixed by the award and, for that reason, the direction for his reinstatement was in any event justified. He will be allowing the 2nd respondent to take a new plea in this Court if we are to say that the order of reinstatement was justified on some ground other than the one on which the award was based.)

As we find that the decision of the High Court was wrong, we set aside that decision and allow the appeal. We make no order as to costs.

G.C. *Appeal allowed.*

(1) [1960] 1 S.C.R. 348.