N.S. Giri vs The Corporation Of City Of Mangalore & ... on 14 May, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1958, 1999 (4) SCC 697, 1999 AIR SCW 1643, 1999 LAB. I. C. 1982, 1999 (3) SERVLJ 300 SC, 1999 (4) KANT LD 608, 1999 (3) LRI 567, 1999 (3) SCALE 610, 1999 LAB LR 841, (1999) 3 SERVLJ 300, 1999 (2) UJ (SC) 983, 1999 (7) SRJ 33, (1999) 6 JT 538 (SC), (1999) 95 FJR 30, (1999) 3 LAB LN 388, (1999) 3 ESC 2080, (1999) 82 FACLR 938, (1999) SCT 118, (1999) 2 SERVLR 630, (1999) 5 SUPREME 418, (1999) 3 SCALE 610, (1999) 3 ANDH LT 60, (1999) 2 ANDHWR 195, (1999) 2 CURLJ(CCR) 254, (1999) 2 CURLR 700, (1999) 2 LABLJ 690, 1999 SCC (L&S) 906

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Bench: Sujataq V.Manohar, R.C.Lahoti

PETITIONER:
N.S. GIRI

Vs.

RESPONDENT:
THE CORPORATION OF CITY OF MANGALORE & ORS.

DATE OF JUDGMENT: 14/05/1999

BENCH:
Sujataq V.Manohar, D.P.Manohar, R.C.Lahoti.

JUDGMENT:

R.C. LAHOTI, J.

The facts relevant for the purpose of deciding this appeal are undisputed and are briefly set out hereafter. N.S. Giri, the appellant joined the services of erstwhile Mangalore Municipality as a Health Assistant in the year 1950. He was promoted as Sanitary Inspector in the year 1962 and as a Selection Grade Sanitary Inspector with effect from 1.6.1967. The post has been re-designated as Assistant Health Officer. The Mangalore City Municipality was constituted under the then Madras District Municipalities Act, 1920 (renamed in the year 1969 as The Tamil Nadu District Municipalities Act, 1920). In the year 1968, an industrial dispute between the workmen and the

management of Mangalore City Municipality was referred to a sole arbitrator under Section 10A of Industrial Disputes Act, 1947. The dispute referred to was : whether the age of superannuation of 55 years of the employees of Mangalore City Municipality including those whose services were extended or of those who were re- employed after the age of 50 years should be fixed at 58 years. The arbitrator gave an award on 11.1.1969 (published in the Mysore Gazette dated 13.2.1969) enhancing the age of retirement of the workmen belonging to the `superior service' from 55 years to completion of 58 years of age including those whose services were extended or who were re-employed after the age of 55 years. The admitted case of both the parties as noted in the award itself has been that the workmen (including the appellant) whose dispute was before the arbitrator were classified as superior servants and under the statutory service rules as then applicable the age of superannuation was 55 years. However, the arbitrator had thought it fair to fix the age of superannuation at 58 years. Consistently with such opinion formed by the arbitrator the award was given.

On 31.12.1980 the appellant received a communication from the Karnataka Municipal Corporation, informing the appellant that he was to retire with effect from 31.12.1980 (afternoon) in view of his having attained the age of superannuation, i.e., 55 years. On 17.1.1981, the appellant filed a writ petition which was allowed by the learned Single Judge quashing the order of retirement forming an opinion that the award was binding between the parties. The Municipal Corporation preferred an appeal before the Division Bench of Karnataka High Court which has been allowed reversing the judgment of the learned Single Judge. The Division Bench has formed an opinion that the award to the extent to which it was inconsistent with the statutory provisions governing the service conditions of the appellant, including the age of retirement could not be given effect to. The aggrieved appellant has filed this appeal by special leave. As noted by the Division Bench in its judgment it has been the admitted case of the parties also before the High Court that Mangalore City Municipality was constituted under the provisions of the then Madras District Municipalities Act under which rules were framed which provided for the retirement of persons in superior service such as the appellant, at the age of 55 years. The Karnataka Municipality Act, 1964 came into force w.e.f. 1st April, 1965. The Mangalore City Municipality was deemed to have been constituted under the Karnataka Act. Then came into force the Karnataka Municipal Corporation Act, 1976. In exercise of powers conferred by Section 3 thereof, Mangalore City was declared a Corporation and all the employees of the erstwhile Municipality were deemed to be in service of the Municipal Corporation. Rule 48 of the Karnataka Municipalities (Conditions of Service of Officers and Servants) Rules, 1972 which governed the employees such as the appellant, also prescribed for the age of superannuation being 55 years. In spite of the formation of the Corporation, by virtue of clause (k) of sub-section (3) of Section 503 of the Karnataka Municipal Corporation Act, 1976 the employees of Karnataka Municipality continued to be governed by the same service rules by which they were being governed before and thus their service conditions remained the same.

The short question arising for decision in this appeal is whether an award made under Section 10A of the Industrial Disputes Act, 1947 can be given effect to if it be inconsistent with the statutory provisions governing the service conditions of the employees.

In The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad & Ors. Vs. The Textile Labour Association, Ahmedabad 1961 (3) SCR 1, the Constitution Bench has held :-

> "It is open to an industrial court in an appropriate case to impose new obligations on the parties before it or modify contracts in the interest of industrial peace or give awards which may have the effect of extending Agreement or making new one, but this power is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the legislature or by the Supreme Court."

In The Management of Marina Hotel Vs. The Workmen 1962 (3) SCR 1, the award of the Industrial Tribunal holding entitlement to 15 days casual-cum-sickness leave *was held to be illegal being contrary to the provisions of Section 22 of Delhi Shops and Establishments Act, 1954 which contained a peremptory direction of the Legislature for leave not exceeding 12 days only being allowed. The decision in M/s Dalmia Cement (Bharat) Ltd. Vs. Their Workers represented by the Dalmia Cement Workers Union, Dalmiapuram AIR 1960 SC 413 which is to the same effect, was followed. So is the view taken by this Court in M/s Dalmia Cement (Bharat) Ltd., New Delhi Vs. Their Workmen and Anr. AIR 1967 SC 209.

In Hindustan Times Ltd., New Delhi Vs. Their Workmen AIR 1963 SC 1332 also the Industrial Tribunal fixing the period of sick leave at 15 days and permitting accumulation contrary to the provisions of the Delhi Shops and Establishments Act, 1954 was held to have acted illegally.

The Constitution Bench in State Bank of India & Ors. Vs. Their Workmen 1959 (II) LLJ 205 and three-Judges Bench in Workmen of Hercules Insurance Co.Ltd. Vs. Hercules Insurance Co. Ltd., Calcutta 1961 (I) LLJ 249 have held that any reference by way of industrial dispute seeking award of bonus beyond the limits prescribed by law was incompetent.

It is thus clear that an award under the Industrial Disputes Act cannot be inconsistent with the law laid down by the Legislature or by the Supreme Court and if it does so, it is illegal and cannot be enforced.

The learned counsel for the appellant heavily relied on the three-Judges Bench decision in The Life Insurance Corporation of India Vs. D.J. Bahadur and Ors. AIR 1980 SC 2181. Vide para 80, the majority view has been set out as under :-

> "In my opinion, it is difficult to resist the conclusion that the Industrial Disputes Act is a special law and must prevail over the Corporation Act a general law, for the purpose of protecting the sanctity of transactions concluded under the former enactment. It is true that as laid down in Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee, (1964) 5 SCR 528 : (AIR 1964 SC 847) and reiterated in Sukhdev Singh V. Bhagat Ram, (1975) 3 SCR 619: (AIR 1975 SC 1331), the Regulations framed under the Corporation Act have the force of law. But that is of

> little moment if no reference is permissible to the Regulations when considering the validity and operation of the "settlement" contract. Accordingly, Regulation 58, a product of the Corporation Act, cannot supersede the contract respecting bonus between the parties resulting from the settlement of 1974."

The abovesaid decision does support the proposition canvassed by the learned counsel for the appellant that an industrial settlement would operate even by overriding a statutory provision to the contrary. However, suffice it to observe that the Constitution Bench decision in The New Maneck Chowk Spinning and Weaving Co.Ltd., Ahmedabad & Ors. (supra) and also the decision of this Court in Hindustan Times Ltd. (supra) which is four Judges' Bench decision, were not placed before the learned Judges deciding the LIC of India's case. A decision by the Constitution Bench and a decision by a Bench of more strength cannot be overlooked to treat a later decision by a Bench of lesser strength as of binding authority; more so, when the attention of the Judges deciding the latter case was not invited to the earlier decisions available. Respectfully following the earlier two decisions referred to hereinabove, we are of the opinion that the award dated 11.1.1969 under Section 10A of the ID Act appointing the age of retirement at 58, contrary to the provisions of the statutory rules appointing the age of retirement at 55, cannot be upheld and given effect to by issuing a writ for its implementation. In any case, the award stood superseded by the subsequent statutory rules of 1974 which too appointed the age of retirement at 55 and there is nothing wrong in the appellant having been asked to superannuate at the age of 55 consistently with the service rules as applicable on that day.

For the foregoing reasons, the appeal is held devoid of any merit. It is dismissed accordingly though without any order as to costs.