M.P. Vidyut Karamchari Sangh vs M.P. Electricity Board on 18 March, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2974, 2004 AIR SCW 1810, 2004 LAB. I. C. 1703, (2004) 3 JT 423 (SC), (2004) 18 ALLINDCAS 732 (SC), 2004 (2) SLT 1023, 2004 (18) ALLINDCAS 732, 2004 (2) SERVLJ 414 SC, 2004 (3) SCALE 383, 2004 (3) ACE 478, 2004 (9) SCC 755, (2004) 2 SERVLJ 414, (2004) 5 ALL WC 4600, (2004) 3 JCR 41 (SC), (2004) 101 FACLR 670, (2005) 2 JAB LJ 117, (2004) 3 SCALE 383, (2004) 2 JLJR 203, (2004) 16 INDLD 164, (2004) 2 LABLJ 470, (2004) 2 LAB LN 814, (2004) 2 PAT LJR 227, (2004) 2 SCT 277, (2004) 4 SUPREME 119, (2005) 1 BLJ 376, (2004) 2 CURLR 11, 2004 SCC (L&S) 754, (2004) 105 FJR 223

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Bench: Chief Justice, S.B. Sinha, S.H. Kapadia

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           CASE NO.:
Appeal (civil)  2510 of 2002

PETITIONER:
M.P. Vidyut Karamchari Sangh

RESPONDENT:
M.P. Electricity Board

DATE OF JUDGMENT: 18/03/2004

BENCH:
CJI, S.B. Sinha & S.H. Kapadia.

JUDGMENT:
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J U D G M E N T S.B. SINHA, J :

Introduction :

Whether an agreement despite expiry would prevail over a regulation made under Section 79(c) of the Electricity (Supply) Act, 1948 (for short 'the Act') as regard the age of superannuation of an employee of the Respondent-Board is the primal question involved in this appeal which arises out of a judgment and order dated 11.9.2001 passed by the High Court of Judicature of Madhya Pradesh at Jabalpur in L.P.A. No. 34 of 2001.

FACTUAL BACKGROUND:

The appellant is a registered Union of the employees of the Madhya Pradesh State Electricity Board (for short 'the Board'). The erstwhile Electricity Board framed regulations in the year 1952 under Section 79(c) of the Act known as General Service Conditions of Board Servants. In the year 1957, the respondent-Board came into existence on re-organisation of the State.

The State of Madhya Pradesh enacted the Madhya Pradesh Industrial Relations Act, 1960 (for short 'the 1960 Act') with a view to regulate the relations of employers and employees in certain matters, to make provisions for settlement of industrial disputes and to provide for matters connected therewith. In the year 1961, the State of Madhya Pradesh also enacted Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (for short 'the 1961 Act') to provide for rules defining with sufficient precision of certain matters relating to the conditions of employment of employees in the State of Madhya pradesh. The Schedule appended to the 1961 Act provided for the standard standing orders and item No. XV thereof relates to 'age of retirement'.

On or about 19.10.1963, the Board purported to have adopted fundamental rules, supplementary rules and other service conditions as in force in Madhya Pradesh Civil Services (Temporary Service) Rules, Civil Services (Classification, Control and Appeal) Rules. The said rules, however, had no application as regard work-charged employees. On or about 16.9.1976 by a notification issued under Section 79(c) of the Act, the Board adopted Madhya Pradesh Shasakiya Sevak (Adhivarshiki Ayu) Sanshodhan Adhiniyam, 1972 relating to the retirement age of government employees under FR 56(3) prescribing 58 years as the age of superannuation. It is not in dispute that the parties hereto entered into an agreement on or about 10.6.1996 whereby and whereunder the age of superannuation of the employees was made at par with the employees of the Central Government as other fringe benefits were to be the same as might be accepted by the Central Government while enforcing the Report of the Fifth Pay Commission. The Central Government while accepting the recommendations of the Fifth Pay Commission fixed 60 years as the age of superannuation of its employees. In the said agreement, it was stipulated :

"(S) It has been further agreed that the following fringe benefits shall be regulated as per Vth Pay Commission Report after its adoption by Central Government.

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9. Age of retirement."

The said agreement was registered in terms of Section 33 of the 1960 Act. The Board Thereafter issued a notification dated 22.5.1998 adopting the notification issued by the Central Government dated 13.5.1998 as a result whereof the age of retirement of the officers and employees of the

respondent Board was enhanced to 60 years. The said order came into force with effect from 13.5.1998. By reason of the impugned notification dated 26.12.2000, the Board reduced the age of superannuation of its employees, except class IV employees, to 58 years. Questioning the said notification, the appellant herein filed a writ petition before the High Court of Judicature of Madhya Pradesh at Jabalpur which was marked as Writ Petition No. 7255 of 2000. The said writ petition was dismissed by a learned Single Judge of the High Court whereagainst the appellant herein preferred a Letters Patent Appeal marked as Letters Patent Appeal No. 34 of 2001. By reason of the impugned judgment dated 11.9.2001, the Division Bench dismissed the said appeal.

HIGH COURT JUDGMENT:

The Division Bench of the High Court in its judgment held:

(i) As notification was not published under Section 2(2) of the 1961 Act by the State Government in the official gazette, the Act would apply to the parties to the lis. However, as the said notification has been published on 26.12.2000, it became a part of the Board's regulations and as such the conditions of service of the employees of the Board would be governed thereby.

(ii) Rule 14-A was brought into animation in the year 1973 but it was brought into existence the amendment after a period of 8 years in the year 1981. The intention is writ large that proviso carves out an exception to enable the employer granting freedom, independence and liberty to enter into an agreement/settlement to confer more benefit to an employee which is in tune with the Industrial Law.

(iii) As the Board is empowered to make regulation in exercise of its power under Section 79(c) of the Act, it is also entitled to issue administrative instructions in absence of the regulation holding the field. As after 1984 the Board could not have passed any administrative order without amending the regulation and having regard to the fact that the relevant notifications were not published in the official gazettee, they would be non est in law. As by reason of the notification dated 14.7.2000, the Board had adopted the regulations made in the year 1963, subsequent amendments which had taken place in the regulations and supplementary rules increasing the age of superannuation to 60 years will have no effect. The submissions of the appellant to the effect that the settlement/ agreement should be construed with reference to a letter dated 22.10.1999 issued by the Secretary of the Board to the Federation being unpragmatic cannot be accepted.

SUBMISSIONS:

Dr. Rajeev Dhawan, learned senior counsel appearing on behalf of the appellant would submit that the High Court went wrong in passing the impugned judgment insofar as it failed to take into consideration that the regulations made under the Electricity (Supply) Act being a general law and the terms and conditions laid down

under the Certified Standing Order being a special law, the latter shall prevail over the former. Strong reliance in this behalf has been placed on The U.P. State Electricity Board and Another Vs. Hari Shankar Jain and Others [(1978) 4 SCC 16].

The learned counsel would contend that a manifest error has been committed by the Division Bench of the High Court insofar as it despite having held that a notification issued by the State of Madhya Pradesh was necessary to exclude the application of the Standing Order in terms of Section 2(2) of the 1961 Act, relying on or on the basis of the notification issued by the respondent Board although the same was issued by the Board only and not by the State Government under Section 2(2) of the 1961 Act.

Dr. Dhawan would submit that the regulations framed by the Board in in the year 1976 applying the fundamental and supplementary rules could not have excluded the application of the Standing Order as the same had been published in the official Gazette by the Board in the year 2000 only and that too by the Board and not by the State Government.

Section 79(c) of the Act, Dr. Dhawan would contend, is merely implemental in nature and do not have the character of substantive law and in that view of the matter the settlement arrived at by the parties in terms of Sections 31 and 33 of the Industrial Relations Act would prevail thereover. Despite expiry of the said settlement, Dr. Dhawan would urge, the agreement would continue to operate unless the same is terminated by a notice and in that view of the matter no notification altering the terms and conditions of service could be validly issued in derogation of the terms of the said agreement having regard to the provisions contained in Rule 14A of the Rules.

Mr. P.P. Rao, learned senior counsel appearing on behalf of the respondent, on the other hand, would submit that the decision of this Court in Hari Shankar Jain (supra) cannot be said to have laid down good law inasmuch as therein it had not been considered that the Electricity (Supply) Act, 1948 is a law relatable to Entry 38 of List III of Constitution of India; and the 1960 Act and the 1961 Act having been made in terms of Entries 22, 23 and 24 of List III, Article 254 (2) of the Constitution of India would not have any application and in that view of the matter the agreement dated 10.6.1960 cannot override the statutory power conferred upon the Board under Section 79 (c) of the Act in terms whereof the Board can make regulations laying down duties of its officers and other employees and fixing their salaries, allowances and other conditions of service.

For enforcing the 1963 Regulations, Mr. Rao would urge, there was no statutory requirement to notify the same in the gazette as prior to 15.3.1984, there did not exist any such statutory requirement. It was urged that as the Board by a notification dated 19.10.1963 adopted fundamental rules for its employees except those in work-charged establishments and further adopted M.P. Act No.9 of 1976 by a notification dated 16.9.1976, in terms whereof the age of retirement was

prescribed at 58 years for all classes of employees except Class IV employees in terms of FR 56 and 60 years for Class IV employees. In any event, Mr. Rao would submit, as the agreement/ settlement expired on 31.3.1999, the impugned notification dated 26.12.2000 cannot be faulted as the agreement by itself did not specify any age of retirement and, thus, the employer had a right to reduce the age of retirement which became necessary due to financial conditions of the Board.

Mr. Rao would argue that the decisions of this Court interpreting Section 19(2) of the Industrial Disputes Act, 1947 cannot be applied to the industrial settlements governed by the 1960 Act inasmuch in terms of Section 99 thereof an agreement shall cease to have effect on the date specified therein and the said act does not contain any provisions like Section 19(2) of the Industrial Disputes Act, 1947 in terms whereof an agreement is to continue to be binding on the parties until the expiry of two months from the date of service of notice terminating the said agreement.

STATUTORY PROVISIONS:

> The relevant entries of List III of Seventh Schedule of the Constitution of India read thus:
>
> "22. Trade unions; industrial and labour disputes.
>
> 23. Social security and social insurance;
>
> employment and unemployment.
>
> 24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
>
> 38. Electricity."

Sections 33 and 99 of the 1960 Act are as under:

> "33. Agreements (1) If in regard to a change proposed under sub-section (1) or (2) of section 31, an agreement is arrived at, a memorandum of such agreement shall be forwarded to the Registrar.
>
> (2) On receipt of the memorandum of agreement signed by the parties under sub-section (1), the Registrar shall register the agreement if it is arrived at
>
> (a) within seven days from the service of a notice under sub-section (1) or sub-

section (2) of section 31, or with such further period as may be agreed upon by the parties; or

(b) ***

(c) within two months from the completion of conciliation proceedings:

> Provided that the Registrar shall not register an agreement which on enquiry he is satisfied is in contravention of the provisions of this Act or was the result of mistake, misrepresentation, fraud, undue influence, coercion or threat.
>
> (3) An appeal shall lie to the Industrial Court against an order of the Registrar refusing to register an agreement under sub-section (2). The provisions of section 22 shall apply to such appeal. (4) An agreement registered under this section shall come into operation on the date specified therein or if no date is so specified on its being recorded by the Registrar."
>
> "99. Agreements etc., when to case to have effect:- (1) A registered agreement or a settlement or award shall cease to have effect on the date specified therein or if no such date is specified therein on the expiry of the period of two months from the date on which notice in writing to terminate such agreement, settlement or award, as the case may be, is given in the prescribed manner by any of the parties thereto to the other parties:
>
> Provided that no such notice shall be given till the expiry of six months after the agreement, settlement or award comes into operation.
>
> (2) Nothing in this section shall prevent the terms of a registered agreement or a settlement or an award in terms of an agreement being changed or modified by mutual consent of the parties affected thereby and the registered agreement, settlement or award shall be deemed to be changed or modified accordingly.
>
> (3) *** (4) The party giving notice under sub-section [1] shall send a copy of it to the Register and the Labour Officer of the local area concerned.
>
> (5) If a registered agreement or a settlement or an award is terminated under sub-section [1] or if the terms of a registered agreement or a settlement or an award are changed or modified by mutual consent, notice of such termination, change or modification shall be given by the parties concerned to the Registrar and the Labour Officer.

The Registrar shall enter the notice of such termination, change or modification in a register kept for the purpose."

Section 79 (c) of the Electricity (Supply) Act, 1948 reads as under:

> "79. Power to make regulations The Board may by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters:-

(c) the duties of officers and other employees of the Board, and their salaries, allowances and other conditions of service;"

Sub-Section (2) of Section 2 of the 1961 Act reads thus:

"2(2) Nothing in this Act shall apply to the employees in an undertaking to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the official Gazette apply."

The relevant part of Rule 14A of the 1973 Rules reads as under:

"14-A: Retirement: (1) An employee shall retire from the service of the employer on the date he attains the age of 58 years. He may, however, be retained inservice by the employer after the date of attaining the age of 58 years if his services are necessary in the interest of the undertaking but he shall not be retained in service after the age of 60 years:

Provided that nothing in this clause shall adversely affect the operation of the terms of any contract, agreement, settlement, or award on this subject, if the age of retirement is not less than 58 years."

Issues :

(i) Whether the regulations made under Section 79 (c) of the Act would prevail over the Standing Order framed under the 1961 Act.

(ii) Whether regulation dated 19.10.1963 issued by the Board adopting fundamental and supplementary rules for its employees except those in work-charged establishment and published in gazette on 26.12.2000 the application of the 1961 Act by reason of Section 2(2) thereof stand excluded.

(iii) Whether the respondent Board acted illegally and without jurisdiction in issuing the notification dated 26.12.2000 reducing the age of Class III employees to 58 years.

FINDINGS:

It is trite that India being a Union of State both the Parliament and the State Legislature can frame laws having regard to their respective legislative competence enumerated in the three Lists contained in the Seventh Schedule of the Constitution of India.

> Before analyzing the relevant provisions of the State Acts vis-`-vis 'the Act', we may have an overview of the constitutional scheme. Articles 245 and 246 of the Constitution of India read with the Seventh Schedule and Legislative Lists contained therein prescribe the extent of legislative competence of Parliament and State Legislatures. Parliament has exclusive power to make laws with respect of any of the matters enumerated in List I in the Seventh Schedule. Similarly, State Legislatures have exclusive power to make laws in respect of any of the matters enumerated in List II.

Parliament and State Legislatures both have legislative power to make laws with respect to any matter enumerated in List III, the Concurrent List.

The various entries in the three Lists are fields of legislation. They are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures. Since legislative subjects cannot always be divided into water tight compartments; some overlappings between List I, II and III of the Seventh Schedule is inevitable.

Notwithstanding the fact that great care with which the various entries in the three lists have been framed; on some rare occasions it may be found that one or the other field is not covered by these entries. The makers of our Constitution have, in such a case, taken care by conferring power to legislate on such residuary subjects upon the Union Parliament including taxation by reason of Article 248 of the Constitution.

Doctrine of pith and substance, however, is taken recourse to when examining the constitutionality of an Act with respect to competing legislative competence of the Parliament and the State Legislature qua the subject matter. Incidental entrenchment however is permissible.

As in a federal Constitution division of legislative powers between the Central and Provincial Legislatures exists, controversies arise as regards encroachment of one legislative power by the other particularly in cases where both the Union as well as the State Legislation have the competence to enact laws. Article 254 provides that if any provision of a law made by the Legislature of a State is repugnant to any provision made by the Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List then subject to provisions of clause (2), the law made by the Parliament shall prevail to the extent of the repugnancy required.

In terms of clause 2 of Article 254 of the Constitution of India where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provisions repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to the matters, then the law so made by the Legislature of such State shall, if it has been reserved for consideration of the President and has received its assent, prevail in that State. It is not in dispute that the 1961 Act has received the assent of the President of India and, thus, would prevail over any parliamentary law governing the same field.

It is no doubt true that the entire field relating to 'Electricity' is covered under Entry 38 of List III pursuant whereto the Indian Electricity Act and Electricity (Supply) Act, 1948 were enacted but thereby the State's legislative competence to exercise its legislative power under Entries 22, 23 and 24 was not taken away. Section 79 (c) of the Electricity (Supply) Act provides for an incidental power upon the Board. The same would, therefore, not prevail over the specific legislative competence granted to the State to regulate the conditions of service between an industrial undertaking and its employees nor thereby the State Government would be denuded of its legislative power relating to regulation of the industrial relations.

Furthermore, both the Parliament and the State within their own respective legislative competence may make legislations covering more than one entries in the three Lists contained in the Seventh Schedule of the Constitution of India. Article 254 of the Constitution of India would be attracted only when legislations covering the same ground both by Centre and by the Province operate in the field; both of them being competent to enact.

[See Deep Chand vs. State of Uttar Pradesh and Others. [AIR 1959 SC 648] and M. Karunanidhi Vs. Union of India, [AIR 1979 SC 898] and The State of West Bengal Vs. Kesoram Industries Ltd. And Ors., [2004 (1) SCALE 425].

Recourse to the said principles, however, would be resorted to only when there exists direct conflict between two provisions and not otherwise. Once it is held that the law made by the Parliament and the State Legislature occupy the same field, the subsequent legislation made by the State which had received the assent of the President of India indisputably would prevail over the parliamentary Act when there exists direct conflict between two enactments. Both the laws would ordinarily be allowed to have their play in their own respective fields. However, in the event, there does not exist any conflict, the Parliamentary Act or the State Act shall prevail over the other depending upon the fact as to whether the assent of the President has been obtained therefor or not. (See. Bharat Hydro Power Corp. Ltd. & Ors. Vs. State of Assam and Anr., 2004(1) SCALE 211).

Keeping in view of the fact that the State Government has the exclusive power to enact a law regulating industrial relations and resolution of labour disputes, as has been held by this Court in Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others [(1987) 4 SCC 691], the same shall prevail over the regulations framed by the Board in exercise of its power under Section 79 (c).

This brings us to the question as regard the effect of the 1961 Act. In terms of Section 2, the 1961 Act, applies to every undertaking wherein the number of employees on any day during the twelve months preceding or on the day the said Act came into force or any day thereafter was or is more than twenty and such other class or classes of undertakings as the State Government may, from time to time, by notification, specify in this behalf. The undertaking of the Board indisputably was in existence in 1961. Per se, therefore, the provisions of the 1961 Act shall apply to the undertakings of the Board. Sub-Section (2) of Section 2 of the 1961 Act makes an exception to the applicability of the Act stating that nothing therein shall apply to the employees of an undertaking to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules,

Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations or any other rules or regulations that may be notified in this behalf the State Government in the official gazette apply. For excluding the operation of the 1961 Act, it is imperative that an appropriate notification in terms of Section 2(2) of the 1961 Act is issued.

The Board adopted Fundamental and Supplementary Rules which per se were not applicable to the employees of their undertaking. They were adopted by the Board. The provisions of Fundamental and Supplementary Rules to the extent it was made applicable, having regard to the provisions contained in Section 79 (c) would, thus, be deemed to be the regulations governing the terms and conditions of the employees of the Board. The requisite notification under Section 2(2) of the 1966 Act was, thus, required to be issued by the State Government.

It is not in dispute that the State Government has not issued any notification in terms of Section 2(2) of the 1961 Act and in that view of the matter the provisions thereof shall apply to the employees of the State. The 1961 Act is a special law whereas the regulations framed by the Board under Section 79 (c) are general provisions. The maxim 'generalia specialibus non derogant' would, thus, be applicable in this case. [See D.R. Yadav and Another Vs. R.K. Singh and Another, (2003) 7 SCC 110 and Indian Handicrafts Emporium and Others Vs. Union of India and Others, [(2003) 7 SCC 589].

The question need not detain us long in view of a 3-Judge Bench decision of this Court in Hari Shankar Jain (supra). This Court therein in no uncertain terms held that the provisions of the Standing Order Act are special laws in regard to the matters enumerated in the Schedule and, thus, the regulations made by the Electricity Board with respect to any of those matters are of no effect unless the regulations are either notified by the Government or certified by the certifying officer, holding :

> "18 In regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect of which no regulations have been made by the Board, the Industrial Employment (Standing Orders) Act shall continue to apply. In the present case the regulation made by the Board with regard to age of superannuation having been duly notified by the Government, the regulation shall have effect notwithstanding the fact that it is a matter which could be the subject matter of Standing Orders under the Industrial Employment (Standing Orders) Act..."

[See also U.P. State Electricity Board and Another Vs. Labour Court (I), U.P., Kanpur and Another (1984) 1 SCC 147]. We do not find any infirmity in the said decisions of this Court and respectfully agree with the ratio laid down therein.

This leads us to the question as to the applicability of the Rule 14A vis-a-vis the agreement/ settlement entered into by and between the parties dated 10.6.1996. In terms of Rule 14A of the 1973 Rules the age of superannuation was fixed at 58 years. The proviso appended to Rule 14A of the 1973 Rules, however, postulates that nothing therein shall adversely affect the operation of the term of

any agreement on the subject if the age of retirement is not less than 58 years. We have noticed that Clause (S) (9) of the settlement refers to the age of retirement which was registered in terms of Section 33 of the 1960 Act. The said agreement, keeping in view of the proviso appended to Rule 14A and having been issued in compliance of the requirements of the Act will operate in the field. In terms of the said agreement the age of retirement was to be the same as that of the employees of the Central Government on acceptance of the recommendations of the Fifth Pay Commission. The Central Government in exercise of its power conferred by the proviso to Article 309 of the Constitution and Clause (5) of Article 148 made rules known as Fundamental (Amendment) Rules, 1998 in terms whereof Clause (a) was amended in the following terms:

> "(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:
>
> Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of preceding month on attaining the age of sixty years."

Having regard to the said agreement, indisputably the Board also enhanced the age of retirement of its employees by a notification dated 22.5.1998 which reads thus:

> "Sub: Enhancement in age of retirement.
>
> In exercise of the powers conferred under clause (c) of section 79 of the Electricity (Supply) Act, 1948, the M.P. Electricity Board is pleased to adopt the orders as contained in Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), notification No. 25012/2/97-Estt.(A) dated 13.8.1998 (copy enclosed) for application to the Board' officers/ employee with effect from 13.5.1998."

It is, however, not in dispute that the agreement dated 10.6.1996 expired on 31.3.1999 as would appear from the following:

> "(W) The wage structure and fringe benefits shall be effective for a period of 5 years upto 31.3.99 and no demand whatsoever shall be made or considered in respect of the items already agreed to."

Section 99 of the 1960 Act, as referred to hereinbefore, postulates that a registered agreement or a settlement or award shall cease to have effect on the date specified therein and only in the event no date is specified on the expiry of two months from the date on which notice in writing to terminate such agreement, settlement or award, as the case may be, is given in the prescribed manner by any of the parties thereof to the other parties. By reason of the said provision, therefore, the settlement comes to end automatically on the date specified therefor and only in the event no date of expiry thereof is specified, a notice contemplated thereby is required to be issued. The provisions of the

1960 Act shall apply to the undertakings of the electricity, generation and distribution in terms of notification 31.12.1960 issued by the State.

Section 19 of the Industrial Disputes Act, 1947, however, has been couched in a different language in terms whereof a settlement will be binding as is agreed upon by the parties and shall continue to be binding despite expiry thereof until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

The decisions of this Court in South Indian Bank Ltd. Vs. A.R. Chacko [1964 (5) SCR 625], Life Insurance Corporation and Others Vs. D.J. Bahadur [(1981) 1 SCC 315] and Karnataka State Road Transport Corporation vs. Vs. KSRTC Staff and Workers' Federation and Another [(1999) 2 SCC 687] which have been rendered having regard to the phraseology used in Sub-Section (2) of Section 2 of the 1961 Act will thus have no application to the fact of the present case.

The proviso appended to Rule 14A of the 1973 Rules would, thus, operate provided there exists a valid agreement. Furthermore, the terms and conditions laid down in the certified order may have the force of law but they by themselves do not constitute statutory provisions. [See Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, [(1995) 5 SCC 75].

Rule 14A of the 1973 Rules prescribes the age of superannuation to 58 years. It can be enhanced upto the age of 60 years if the services of the person are necessary in the interest of the undertaking but he shall not be retained in service after the age of 60 years unless in terms of the proviso, there exists any agreement/settlement or award to the contrary. The enhanced age of superannuation of members of the appellant Association was, therefore, subject to any law that may operate in the field. The respondent Board, as noticed hereinbefore, issued the notification dated 22.5.1998 whereby and whereunder it had given a seal of approval to the aforementioned agreement, which was to continue to operate in view of the agreement, until the same is replaced by another valid notification. The Board has issued such a notification on 26.12.2000 in exercise of its statutory power under Section 79(c) of 'the Act'.

It is one thing to say that when there exists a conflict between a regulation made under Section 79(c) of the Act and a certified standing order or a rule made under the 1961 Act, the latter shall prevail; but it is another thing to say that in absence of any statutory provision governing the age of retirement, the statutory regulations framed by the respondent Board shall have no application. It is not in dispute that the impugned notification dated 26.12.2000 had been issued by the Board in exercise of its power under Section 79(c) of Electricity Supply Act. Section 15 of the Act empowers the Board to appoint a Secretary and such other officers as may be required to enable the Board to carry out its functions. Section 79(c) empowers the Board to make regulations inter alia as regard the duties of officers and other employees of the Board, and their salaries, allowances and other conditions of service. The Board, therefore, was empowered to make regulations which are not inconsistent with the provisions of the Act and the Rules providing for the duties of officers, their salaries, allowances and other conditions of service.

The power of the Board, therefore, to lay down the conditions of service of its employees either in terms of regulation or otherwise would be subject only to any valid law to the contrary operating in the field. Agreement within the meaning of proviso appended to Rule 14A is not a law and, thus, the regulations made by the Board shall prevail thereover.

The Board has power to make regulations which having regard to the provisions of General Clauses Act would mean that they can make such regulations from time to time.

Alterations in the age of retirement by the employer is a matter of executive policy and for sufficient and cogent reasons, the same is permissible. [See K. Nagaraj and Others Vs. State of Andhra Pradesh and Another [(1985) 1 SCC 523], Osmania University Vs. V.S. Muthurangam and Others [(1997) 10 SCC 741], N. Lakshmana Rao and Others Vs. State of Karnataka and Others [(1976) 2 SCC 502] and Chandra Singh vs. State of Rajasthan [(2003) 6 SCC 545].

We, therefore, are of the opinion that the High Court has rightly dismissed the writ petition filed by the appellant.

For the reasons aforementioned, we are of the opinion that there is no merit in this appeal, which is accordingly dismissed. No costs.