Workmen Of Kettlewell Bullen & Co. Ltd. vs The Kettlewell Bullen & Co. Ltd. on 12 February, 1969

Equivalent citations: 1969(1)UJ208(SC)

JUDGMENT

Shelat, J.

1. By an order dated June 17, 1964 the Government of West Bengal referred an industrial dispute between the respondent company and its workmen represented by Keltlewell Bullen Employees Union to the Second Industrial Tribunal, West Bengal for adjudication under Section 10 of the Industrial Disputes Act, 1947.

The dispute referred to was; "Age of retirement of the workmen who are governed by the rules, relating to age of retirement introduced by the company in 1947 and 1951".

2. It appears that the rules of 1947 and 1951. were mentioned in the reference as there was previously a dispute between the company and its workmen whether there were rules of 1947 in respect of the age of retirement, if so, whether the company had applied them and whether in any event they were operative on workmen employed by the company prior to 1947. The company's stand was that there were rules of 1947 which were modified in 1951 and applied to all its employees irrespective of their being in its-employment prior to or after, those rules came into operation. Accordingly, the company compulsorily retired an employee, one Tarapada Singha on his attaining the age of 55 years. An industrial dispute having been, raised, the matter ultimately came to this Court when it was held that there were rules of 1947 which were modified in 1951 but that they could not apply to those employees of the company who were in service prior to their coming into force, (see Workmen v. Kettlewell Bullen & Co. Ltd.(1) It was in this background as to, what, should be the age of retirement of those employees to whom the said rules of 1947 and 1951 applied, that the present dispute was raised and the said reference appears to have been made. The Tribunal, however, was not concerned as to who amongst the existing employees were or were not governed by those rules. It was concerned only with the question as to what should, be the age of retirement for those who were governed by those rule's.

3. The case of the workmen was that looking to the recent trend in West Bengal the age of retirement fixed at 55 years under the said rules should be raised to 60 years; the company on the other hand insisted that there was no justification for raising it from 55 to 60 years. Before the Tribunal, it seems, the company took the stand that if the age of retirement were to be raised it should in any event not be more than 58 years. The Tribunal held after considering the facts of the case and the

examples of other concerns in the region that the age of retirement fixed at 55 years under the said rules should be raised to 58 years. Not satisfied with the award the workmen filed this appeal after obtaining special leave from this Court.

4. It is now-a-days fairly well recognised that life expectation has considerably increased in recent years and the rate of mortality has fallen considerably on account of better living conditions, improved medical facilities and above all the extension of educational amenities. The result is that physical efficiency of workmen generally speaking is not deteriorated till about 60 years. Consequently, there has in the last decade been a general trend to raise the age of retiremant. This is so also in the case of employees in Government service and in the service of quasi-Government concerns. In raising the age of retirement, apart from the fact that the efficiency of workmen does, not get impaired till about 60 years, consideration is also paid to the fact that his needs are likely to be larger between the age of 50 and 60 years as it is during that span of life that he has to educate his children, marry his daughters and thus incur additional financial burden over and above the burden of maintenance of his family.

5. As a result of a number of industrial adjudication on this question certain well recognised principles have by now emerged, in determining the age of retirement there can obviously be no hard and fast rule applicable universally to all concerns in all regions. Industrial tribunals, when confronted with fixing the age of retirement, have to take into account various factors such as the nature of work, the existing wage-structure, the retiral benefits and other available amenities, the climate of the locality where the workmen is employed, the age of retirement in comparable industries and the practice prevailing in the industry, (cf. Guest, Keen. Williams Pvt. Ltd. v. Sterling & Ors. (2). Industrial adjucation also recognises the fact that where an employer adopts a fair and reasonable pension scheme such a scheme would play an important part in determining the age of superannuation at a comparatively earlier stage. If a superannuated employee can legitimately look-forward to the prospect of earning a pension, the hardship resulting from earlier compulsory retirement is considerably mitigated. Therefore, cases where there is a reasonable and a fair scheme of pension would not be comparable or even relevant in dealing with the age of retirement in concerns where there is no such scheme, (cf. Imperial Chemical Industries (India) Pvt. Ltd. v. The workmen (3). In a recent decision in The Management of Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. Their workmen (4) this Court fixed the age of retirement at 58 years instead of at 60 years determined by the Tribunal on a consideration that whereas the company had a fair and reasonable scheme of pension, the other concerns in the region which the Tribunal had thought comparable did not have such a scheme. It is thus fairly clear that while assessing the age of retirement in a particular concern the needs of workmen, the trend in the particular region, the practice prevailing in the industry, the retiral benefits available to him and other relevant factors have to be taken into account. It is also not altogether irrelevant for the tribunal also to consider the impact which raising the retirement age would have on the question of industrial employment in the area, for, where opportunities of employment are limited the increase in the age of retirement would tend to delay to the extent of such increase the chances of prospective employees in a younger age group accentuating thereby in the younger section of the community the feeling of frustration which already exists.

6. Before the Tribunal both the parties led evidence to show the trend in respect of the age of retirement in West Bengal, But, whereas the company produced cases of managing agency concerns where generally of the age retirement was 55 years, the workmen produced cases of manufacturing concerns where the age of retirement was 60 years. It is true that the work of a clerk whether he is employed in a manufacturing concern or a mercantile concern would be similar but it cannot be said to be the same. Besides, some of these cases were cases where the age of retirement was fixed as a result of settlement or agreement. There are, however, reported decisions of this Court which clearly indicate the trend in West Bengal. Thus, in Workmen v. Balmer Lawrie & Co. (5), a company situate in West Bengal, this Court fixed 58 years as the age of retirement. Similarly, in Workmen v. Jessop & Co. Ltd. (6) and the Associated Power Company Ltd. v. Its workmen (7) both concerns situate in Calcutta, this Court following the decision in Guest, Keen, William Pvt Ltd. v. Sterling (supra) fixed the age of retirement at 58 years. These decisions show that unlike Bombay and Delhi (cf. The Dunlop Rubber Co. (India) Ltd. v. Workmen (8), Imperial Chemical Industries (India) Pvt. Ltd. v. The Workmen (supra) and Talang & Ors, v. Shaw Wallace & Co. (9) where the trend is to fix the age of retirement at 60 years, the trend in West Bengal is to fix the age of retirement at 58 years,

7. Apart from the evidence as to the trend in the region, there, was evidence before the Tribunal that the company has framed a scheme of pension in 1961 for the benefit of workmen who are compulsorily retired, The scheme provides that pension for such workmen would be calculated at 1% of the basic salary payable monthly for each year of service. Accordingly, for 35 years' service the pension would be 7/20th of the average monthly basic salary, for 30 years of service it would be 3/10th and for 25 years of service it would be 1/4th of the average monthly basic salary. The scheme also provides that to compensate those employees with substantial service prior to the inauguration of the provident fund in 1937; such employees on retirement would be granted a special addition to their pension equal to 5% of the basic salary as above-stated for every completed 5 years of service. The total pension payable however would in all cases be subject to a maximum of Rs. 100 per month. The scheme also contains a provision for payment of 1/2 pension for a period of 5 years to the widow and/or dependent minor children of a workmen who has completed 25 years of service but who has died while still in the employ of the company. It is true that the scheme gives a discretion to the company to cancel it. But it provides at the same lime that it would be cancelled if exigencies of service and conditions prevailing at the time require. As and when it is cancelled the workmen would, therefore, be at liberty to raise an industrial dispute either on the ground that there is no justification for cancellation or if cancelled there should be an increase in the age of retirement. As it is, the workmen have the benefit of that scheme. The company also has a provident Fund Scheme under the provisions of Sections 5 and 6 of the Employees' Provident Fund Act, 1952. It may also be observed that the Tribunal has not found that the wage-structure in the company or the said pension scheme is not fair and reasonable.

8. Considering the circumstances of the case and the fact this Court has in several decisions from West Bengal fixed the age of retirement at 58 years, it cannot be said that the Tribunal was m error in fixing it at 58 years. It is the well settled practice of this Court not to interfere with decisions of industrial tribunal on facts unless some important principle or some vital fact has been ignored.

In our view no such case has been made out with the result that we cannot find any legitimate, reason for interfering with the decision of the tribunal.

The appeal therefore fails and is dismissed. There will be no order as to costs.