The Management Of vs The Deputy Labour Commissioner on 6 September, 2022

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF SEPTEMBER, 2022

BEFORE

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THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 4114 OF 2021 (L-RES)

BETWEEN:

THE MANAGEMENT OF
M/S MERSEN INDIA PVT. LTD.,
NO.5, BOMMASANDRA INDUSTRIAL AREA
BOMMASANDRA, BENGALURU-560099
REP. BY MANAGING DIRECTOR

...PETITIONER

(BY SRI. C.K. SUBRAMANYA, ADVOCATE OF
BHOOPALAM LAW ASSOCIATES-PH)

AND:

1. THE DEPUTY LABOUR COMMISSIONER
AND THE CERTIFYING OFFICE UNDER THE
IE(SO) ACT, REGION 2
KARMIKA BHAVANA
BANNERUGHATTA ROAD
BENGALURU-560029

Digitally signed by
POORNIMA
SHIVANNA
Location: HIGH
COURT OF
KARNATAKA

2. THE ADDITIONAL LABOUR COMMISSIONER
(INDUSTRIAL RELATIONS)

AND THE APPELLATE AUTHORITY UNDER

THE INDUSTRIAL EMPLOYMENT

(STANDING ORDERS ACT), 1946
DAIRY CIRCLE, BANNERGHATTA ROAD
BENGALURU-560029

3. MERSEN INDIA PVT. LTD., WORKERS' UNION
ANEKAL TALUK, BOMMASANDRA INDUSTRIAL AREA
BOMMASANDRA, BENGALURU-560099
REP. BY THE VICE PRESIDENT

... RESPONDENTS

(BY SRI. BHOJE GOUDA T. KOLLER, AGA FOR R1 AND R2-PH;
SRI. H.K. NAGABHUSHAN, ADVOCATE FOR C/R3-PH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ORDER DATED 30.3.2019 PASSED BY THE FIRST RESPONDENT IN NO.DLCB2/SO(T)/CR-14/2018-19/231 AMENDING THE CERTIFIED STANDING ORDER OF THE COMPANY INCREASING THE AGE OF RETIREMENT FROM 58 YEARS TO 60 YEARS (ANNEXURE-F) AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP AND HAVING BEEN RESERVED FOR ORDERS ON 11.08.2022, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

i. Order dated 30.3.2019 passed by the First Respondent in No.DLCB2/SO(T)/CR-14/2018- 19/231 amending the Certified Standing order of the Company increasing the age of retirement from 58 years to 60 years (Annexure-F).

ii. Order dated 1.12.2020 passed by the Second Respondent in SOA/CR-05/2019-20 increasing the age of retirement from 58 years to 60 years (Annexure-J).

iii. Issue a writ of certiorari or any other appropriate writ or direction quashing the following orders:

a. Order dated30.3.2019 passed by the First Respondent in No.DLCA2/SO(T)/CR-14/2018-19/231 amending the Certified Standing order of the Company increasing the age of retirement from 58 years to 60 years (Annexure-F).

b. Order dated1.12.2020 passed by the Second Respondent in NO.SOA/CR-05/2019-20 increasing the age of retirement from 58 years to 60 years

(Annexure-J).

c. Grant any other relief(s) as may be deemed fit and proper by this Hon'ble Court, in the interest of justice and equity.

2. The petitioner is stated to be a Company engaged in the business of manufacture of Industrial Carbon and Carbon Brushes, which is allegedly classified as hazardous industry as defined under Section 2(cb) of the Factories Act, 1948. The said Section 2(cb) of the Factories Act is reproduced hereunder for easy reference:

> [(cb) "hazardous process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye- products, wastes or effluents thereof would--
>
> (i) cause material impairment to the health of the persons engaged in or connected therewith, or
>
> (ii) result in the pollution of the general environment:
>
> Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule;]

3. The service conditions of the workmen are stated to be governed by the Certified Standing Orders of the Company as also the Memorandum of Settlement entered into between the recognized Union and the employer from time to time.

4. The Standing Orders were last certified by the Certifying Officer on 18.03.2000 where the age of retirement was enhanced from 55 years to 58 years which is also confirmed by the Appellate Authority by order dated 14.11.2002 and by this Court in W.P.No.45985/2002 on 10.07.2007.

5. A Tripartite Wage Settlement came to be entered into with the respondent No.3 on 13.02.2017. It is contended that the said settlement is a package deal and as such, there cannot be any claim made contrary to the settlement arrived at in the year 2017.

6. Clause 36 of the Settlement Agreement, which deals with Package Deal is reproduced hereunder for easy reference:

> 36. Package Deal: This Settlement has been entered into as a Package Deal in full and final settlement of all the demands raised by the Union in the Charter of Demands dated 05.1.2016 and the issues raised during the course of discussions. All other Issues which have been raised in the Charter of Demands and which have not been specifically dealt in the settlement shall be treated as having been dropped and not

pressed by the Union. The Union and the workmen further agreed that they will not raise any fresh demand during the currency of this Settlement, which would impose additional financial liability on the Management directly or Indirectly as this Settlement is a Package Deal.

7. Clause 37 of the Settlement Agreement also being relevant is reproduced hereunder for easy reference:

> "37. All other existing terms and conditions, practices which have not been specifically altered or modified under this settlement shall continue to be in force".

8. The petitioner contends that despite the settlement, the respondent No.3-Union had submitted an amendment to the existing Standing Orders seeking for enhancement of the retirement age to 60 years and if need be upto 62 years on satisfaction of certain conditions.

9. It is stated that the said application was submitted in furtherance of the amendment to the Model Standing Orders issued by the Government of Karnataka vide notification dated 27.03.2017 whereunder the retirement age has been enhanced from 58 years to 60 years. On such an application being submitted, the petitioner's management had filed a detailed objection opposing the application.

10. The Original Authority had vide its order dated 30.03.2019 allowed the application, rejected the contention of the petitioner thereby allowing the amendment. Aggrieved by the said order, the petitioner had filed an appeal before the Appellate Authority i.e., respondent No.2 herein. Respondent No.2 has vide its order dated 01.12.2020 confirmed the order of the respondent No.1 and it is in that background, the petitioner is before this Court seeking for the aforesaid reliefs.

11. Sri.C.K.Subramanya, learned counsel for the petitioner would submit that:

> 11.1. Neither the Original Authority nor the Appellate Authority has considered the matter in the right perspective. The said authorities have, merely because the Model Standing Orders were amended by the Government of Karnataka, applied the amendment insofar as the Standing Orders already certified in respect of the petitioner-establishment which could not be so done.
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> 11.2. There is a Binding Memorandum Wage Settlement, which continues to be in force between the petitioner's management and the workmen including respondent No.3-Union and as such, during the subsistence of such Memorandum of Wage Settlement, there could not be any amendment to the Standing Orders, which would have an adverse impact on the Memorandum of Wage Settlement.
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> 11.3. Mere amendment of the Model Standing Orders would not make the said amendment automatically applicable to the industrial establishment of the petitioner, the same would be required to be certified upon an application being

made. The Certifying Officer would have to consider all aspects relevant thereto and pass a reasoned order.

11.4. In the present case, though an application to amend the Certified Standing Orders was made, the Certifying Authority as also the Appellate Authority have not considered the binding nature of the Memorandum of Wage Settlement as also the non-applicability of the amendment to the Model Standing Orders contrary to or in violation of settlement already arrived at.

11.5. In the present case, the petitioner being involved in manufacturing of hazardous material coming within the ambit and purview of Section 2(cb) of the Factories Act, this aspect has also not been considered by the Certifying Authority inasmuch as, such manufacturing activities could be harmful and hazardous for people over the age of 58 years and as such, the Certifying Authority ought not to have increased the age of retirement from 58 years to 60 years with a further option upto 62 years.

11.6. The Model Standing Orders are issued only as a guideline. It is not required that the said Model Standing Orders are applied in their entirety to an industrial establishment. The applicability or otherwise could be with such modification as may be required for that particular industry.

Thus, the Certifying Authority and the Appellate Authority have misconstrued themselves while

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making the amended Model Standing Orders applicable in its entirety without an agreement having reached between the management and workers more particularly since there is already a binding Memorandum of Wage Settlement which was in force.

11.7. When originally the Industrial Employment (Standing Orders) Act, 1946, was enacted there was no provision in the Standing Orders as regards the retirement age or superannuation age of a worker. It was only in the year 1982 that the age of superannuation came to be provided as one of the matters under the Standing Orders and by the said amendment in the year 1982, the age for retirement or superannuation of the workmen was stated as "may be 58 years or such other age as may be agreed upon between the employer and workmen by any agreement".

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11.8. Thus, it is not mandatory for any establishment to apply and/or adopt the Model Standing Orders in its entirety, it is always open to negotiation between the management and the workmen on which basis the said terms could be agreed upon.

11.9. The Certifying Officer has no power to act contrary to the Binding Settlement Agreement which had been entered into. If the Certifying Officer were permitted to certify the Standing Orders

contrary to the Binding Agreements, there would be no purpose in arriving at a settlement.

11.10.He relies upon the decision of the Hon'ble Apex Court in the case of Guest Keen Williams Pvt.

Ltd., vs. P.J.Sterlling reported in AIR 1959 SC 1279 wherein certain guidelines have been prescribed by the Hon'ble Apex Court as

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regards fixing the age of retirement. By relying on the above decision, he submits that the points which are required to be taken into consideration are as under:-

a. What is the nature of work assigned to the employees in the course of their employment?

b. What is the nature of wage structure paid to them?

c. What are the retirement benefits and other amenities available to them?

d. What is the character of the climate where the employees work and what is the age of superannuation fixed in comparable industries in the same region?

e. What is generally the practice prevailing in the industry in the past in the mater of retiring its employees.

f. The inspection of the establishment by the Authorities in order to assess whether the work is of hazardous nature.

11.11.In the present case, none of the guidelines laid down by the Hon'ble Apex Court in Guest Keen Williams Pvt. Ltd. Case have been followed.

The Tripartite Settlement has been wrongly interpreted by the Certifying Authority and the Appellate Authority.

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11.12.It is required of the Certifying Authority when an application for modification is filed as also the Appellate Authority when an appeal is filed to visit the industry premises, consider the application and the objections filed to the application on the basis of ground realities and if required by recording evidence as regards the same.

11.13.The age fixed in the Model Standing Orders would not apply automatically nor would it be a uniform retirement age inasmuch as the retirement age would vary from industry to industry as also on the nature of the work in each industrial establishment.

11.14.He refers to the decision of this Court in W.P.No.12137/2014 dated 08.07.2015 [Wipro Infrastructure Engineering vs. Additional Labour Commissioner (Administration) and Appellate Authority,

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Bangalore and ors] wherein this Court had set aside the order of the Certifying Authority and the Appellate Authority increasing the retirement age from 58 years to 60 years on the ground that the authorities concerned had not inspected the factory in order to ascertain if the manufacturing activities and/or other activities being carried out are hazardous in nature or otherwise.

11.15.He relies upon the decision of the Division Bench of this Court in W.A.No.2482/2015 dated 7.11.2015 [Wipro Infrastructure Engineering vs. Additional Labour Commissioner (Administration) and Appellate Authority, Bangalore and ors] wherein the Division Bench held that if need be evidence could be led as regards the amendment to the Standing Orders.

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11.16.He relies upon the decision of this Court in W.P.No.115417/2019 dated 26.11.2019 [The Management of M/s.Grasim Industries Ltd., vs. The President/General Secretary, Aditya Birla Employees Union and ors] to contend that in similar matters, the orders passed by the Certifying Authority and the Appellate Authority had been stayed by this Court.

11.17.He relies upon the decision of the Hon'ble Apex Court in the case of Barauni Refinery Pragatisheel Shram Parishat vs. Indian Oil Corporation Ltd., reported in AIR 1990 SC 1801 more particularly Paras 6 to 10 which are reproduced hereunder for easy reference:

> 6. While hearing these two writ petitions the High Court formulated two points for consideration, namely,
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> (i) "Whether the Certifying Authority under the Standing Orders Act has the jurisdiction to entertain an application for amendment of a Standing Order which fixes the age of retirement of the workmen as 58 years which is in consonance with the model Standing Order and enhances the age of retirement to 60 years
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without first giving any finding whether it is practicable to give effect to the model Standing Order" and (ii) "Whether the settlement arrived at under Section 18(3) and Section 19(2) of the Industrial Disputes Act, 1947, between the petitioner and the workmen represented by their recognised majority union and which settlement was in force when impugned orders were made, had put any bar on the rights of the workmen to approach the authorities under the said Act for seeking modification of the Standing Orders with regard to the fixation of the age of superannuation of the workmen". The High Court answered the first question in the affirmative holding that it was open to

the Certifying Authority to entertain an application for modification of the clause fixing the date of superannuation, the provisions in the model Standing Orders, notwithstanding. On the second point the High Court came to the conclusion that the settlement arrived at in conciliation proceedings was binding on the workmen and as clause 19 of the settlement kept the service conditions which were not changed intact and clause 21 of the settlement did not permit raising of any demand throwing an additional financial burden on the IOCL, it was not permissible to modify the certified Standing Orders by an amendment as that would alter the service condition and increase the financial burden on the management. In this view that the High Court took it quashed the orders passed by the two authorities below and made the rule in CWP No. 1717 of 1987 absolute while dismissing CWP No. 3417 of 1987 with no order as to costs. It is against this order that the trade unions have approached this Court.

7. The Standing Orders Act was enacted to define with sufficient precision the conditions of employment for workers employed in industrial establishments and to make the same known to them. The object of the Act was to have uniform Standing Orders in respect of the matters enumerated in the schedule to the Act regardless of the time of their appointment. With this in view the Act was enacted to apply to all industrial establishments wherein 100 or more workmen were employed on any date of the preceding 12 months.

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Within six months from the date on which this enactment becomes applicable to an industrial establishment, the employer is obliged by Section 3 to submit to the Certifying Officer draft Standing Orders proposed by him for adoption in his industrial establishment. Sub-section (2) of Section 3 lays down that in such draft Standing Orders provision shall be made for every matter set out in the schedule which may be applicable to the industrial establishment and where model Standing Orders have been prescribed shall be, so far as practicable, in conformity with such model. Section 4 provides that the Standing Orders shall be certifiable if (a) provision is made therein for every matter set out in the schedule which is applicable to the industrial establishment and (b) the Standing Orders are otherwise in conformity with the provisions of the Act. It further casts a duty on the Certifying Officer or Appellate Authority to adjudicate upon the fairness and reasonableness of the provisions of any Standing Orders. On receipt of the draft Standing Orders, Section 5 requires the Certifying Officer to forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen desire to make to the draft Standing Orders. Thereafter the Certifying Officer must hear the concerned authorities and decide whether or not any modification of or addition to the draft submitted by the employers is necessary to render the draft Standing Orders certifiable under the Act. He is then expected to certify the draft Standing Orders with modifications, if any, and send authenticated copies thereof in the prescribed manner to the employer, to the trade union or other prescribed representatives of the workmen within 7 days. Section 6 provides for an appeal against the order of the Certifying Officer. The Appellate Authority has to communicate its decision to the Certifying Officer, to the employer and the trade union or other prescribed representative of the workmen within 7 days from the date of its order. Section 7 provides that the Standing Orders shall, unless an appeal is preferred, come

into operation on

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the expiry of 30 days from the date on which authenticated copies thereof are sent under Section 5(3) or where an appeal is preferred, on the expiry of 7 days from the date on which copies of the orders of the Appellate Authority are sent under Section 6(2). Standing Orders duly certified as above for the Barauni Refinery came into operation on December 5, 1964 as provided by Section 7. We then come to Section 10 which provides for modification of certified Standing Orders. Sub-section (1) thereof states that the Standing Orders finally certified shall not, except on agreement between the employer and the workmen or a trade union or other representative body of the workmen be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modification thereof came into operation. Sub-section (2) of Section 10 reads as under:

> "10.(2) Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workman may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application."

It was under this provision that clause 20 of the certified Standing Orders was sought to be modified.

8. Since the High Court has answered the first point in the affirmative i.e. in favour of the workmen, we do not consider it necessary to deal with that aspect of the matter and would confine ourselves to the second aspect which concerns the binding character of the settlement. Section 2(p) of the Industrial Disputes Act, 1947 defines a settlement as a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of

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conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the officer authorised in this behalf by the appropriate government and the Conciliation Officer. Section 4 provides for the appointment of Conciliation Officers by the appropriate government. Section 12(1) says that where any industrial dispute exists or is apprehended the Conciliation Officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner. Sub-section (2) of Section 12 casts a duty on the Conciliation Officer to investigate the dispute and all matters connected therewith with a view to inducing the parties to arrive at a fair and amicable settlement of the dispute. If such a settlement is

arrived at in the course of conciliation proceedings, sub-section (3) requires the Conciliation Officer to send a report thereof to the appropriate government together with the memorandum of settlement signed by the parties to the dispute. Section 18(1) says that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of the conciliation proceedings shall be binding on the parties to the agreement. Sub-section (3) of Section 18 next provides as under:

> "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 (3-A) of Section 10-A or award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on--
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> (a) all parties to the industrial dispute;
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> (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 cause;

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(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 were employed in the establishment or part of the establishment as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

It may be seen on a plain reading of sub-sections (1) and (3) of Section 18 that settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings and (ii) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all parties to the industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. Therefore, a settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but

also on others. That is why a settlement arrived at in the course of

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conciliation proceedings is put on par with an award made by an adjudicatory authority. The High Court was, therefore, right in coming to the conclusion that the settlement dated August 4, 1983 was binding on all the workmen of the Barauni Refinery including the members of Petroleum and Chemical Mazdoor Union.

9. The settlement does not make any specific mention about the age of retirement. Clause 19 of the settlement, however, provides that such terms and conditions of service as are not changed under this settlement shall remain unchanged and operative for the period of the settlement. The age of retirement prescribed by clause 20 of the certified Standing Orders was undoubtedly a condition of service which was kept intact by clause 19 of the settlement. The provisions of the Standing Orders Act to which we have adverted earlier clearly show that the purpose of the certified Standing Orders is to define with sufficient precision the conditions of employment of workman and to acquaint them with the same. The charter of demands contained several matters touching the conditions of service including the one concerning the upward revision of the age of retirement. After deliberation certain conditions were altered while in respect of others no change was considered necessary. In the case of the latter clause 19 was introduced making it clear that the conditions of service which have not been changed shall remain unchanged, i.e. they will continue as they are. That means that the demand in respect of revision of the age of retirement was not acceded to.

10. By clause 21 of the settlement extracted earlier the Union agreed that during the period of the operation of the settlement they shall not raise any demand which would throw an additional financial burden on the management, other than bonus. Of course the proviso to that clause exempted matters covered under Section 9-A of the Industrial Disputes Act from the application of the said clause. However, Section 9-A is not attracted in the present case. The High Court was, therefore, right in observing: "when the settlement had been arrived at between the

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workmen and the company and which is still in force, the parties are to remain bound by the terms of the said settlement. It is only after the settlement is terminated that the parties can raise any dispute for fresh adjudication." The argument that the upward revision of the age of superannuation will not entail any financial burden cannot be accepted. The High Court rightly points out : "workmen who remain in service for a longer period have to be paid a larger amount by way of salary, bonus and gratuity than workmen who may newly join in place of retiring men". The High Court was, therefore, right in concluding that the upward revision of the age of superannuation would throw an additional financial burden on the management in violation of clause 21 of the settlement. Therefore, during the operation of the settlement it was not open to the workmen to demand a change in clause 20 of the certified Standing Orders because any upward revision of the age of superannuation would come in conflict with clauses 19 and 21 of the settlement. We are, therefore, of the opinion that the conclusion reached by the High Court is unassailable.

11.18.The decision of Division Bench of this Court in W.A.No.200010/2022 dated 13.07.2022 [Rajashree Cements General Workers and Staff Union vs. The Management of M/s.Altratech Cement Ltd.] wherein the Hon'ble Division Bench of this Court has confirmed the order of the learned Single Judge stating that when an agreement was in force, no change in the Standing Orders could be

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made contrary to the agreement arrived at between the Management and the Workmen.

11.19.He relies upon the decision of the Hon'ble Supreme Court in the case of Guest Keen Williams Private Limited VS. P.J.Sterling reported in 1959 (XVI) FJR 415 more particularly last unnumbered para in Page Nos.428 and 429 thereof, which are reproduced hereunder for easy reference:

> "We would, however, like to add that this conclusion should not be taken as a decision on the general question of fixing the age of superannuation in the case of industrial employees. In fixing the age of superannuation industrial tribunals have to take into account several relevant factors. What is the nature of the work assigned to the employees in the course of their employment? What, is the nature of the wage structure paid to them? What are the retirement benefits and other amenities available to them? What is the character of the climate where the employees work and what is the age of superannuation fixed in comparable industries in the same region? What is generally the practice prevailing in the industry in the past in the matter of retiring its employees? These and other relevant facts have to be weighed by the tribunal in every case when it is called upon to fix an age of superannuation in an industrial dispute. In the present case, as we have already observed, the age of 55 has been fixed by both the tribunals for future entrants; and this is substantially based on the standing order which we have already considered. In regard to the prior employees it is not seriously disputed that the retirement age can and may be fixed at 60. It is under these circumstances that we have come to the
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> conclusion that the age of superannuation for prior employees should be fixed at 60".

11.20.He refers to the decision of the Hon'ble Bombay High Court in the case of Tulsiram K.Gothad vs. Superintendent, Mahatma Gandhi Memorial Hospital, Mumbai & anr., reported in (2002) 1 CLR 396 [W.P.No.2461/1999 dated 23.02.2001], more particularly Para 8 thereof which is reproduced hereunder for easy reference:

> 8. The Model Standing Order Clause No. 27 is ex facie very clear and it can be analysed as under :-
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> (a) the age for retirement or superannuation of the workmen may be 60 years; or

(b) such other age as may be agreed upon between the employer and the workmen by any agreement, settlement or award which may be binding on the employer and the workmen under any law for the time being in force.

I have already held that the appointment order issued by the respondent management appointing the petitioner as a plumber and the petitioner having accepted the same and having worked for such a long period, it cannot be said that it was not an agreement between the respondent employer and the petitioner. The retirement age as reflected in Clause (a) above is 60 years or as would be agreed between the parties. It does not mandatorily say that the retirement age would be 60 only. The clause in fact contemplates an agreement between the two parties. It could be 58 years or it could be 60 years or even more. The

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Petitioner was issued an appointment order wherein he was informed that he would be governed by the rules and regulations framed and amended from time to time by the respondents. The said appointment order amounts to an agreement, as contemplated by the present standing order. I fail to understand if it is not an agreement what else it could be. Shri Bukhari is, therefore, right in his submissions that the respondents have not contested the claim that the Model Standing Orders do not prevail over the service regulations in the case of inconsistency. He has, therefore, rightly submitted that the appointment order being an agreement as contemplated under the said Standing Order No. 27, the age of retirement having been agreed specifically is within the four corners of the said standing order. I am not able to agree with Shri Deshpande when he has submitted that the agreement, settlement or award as mentioned in the said standing order has to be such only when there is a specific clause in respect of the age of retirement or with the union or with the large number of workmen and that an appointment order is not contemplated as an agreement within the said standing orders. There is nothing in the standing order to read that an appointment order individually issued to an employee cannot be an agreement. I, therefore, hold that the appointment order issued to the petitioner and every such appointment order issued to every such employee does constitute an agreement within the meaning of clause 27 of the standing order and both the parties are bound by such an agreement unless, it is in any way contrary to the law or inconsistent with any provisions of law. In the present appointment order I do not find anything which is inconsistent or contrary to the law. The appointment order is clear enough to inform the employee that he would be bound by the service regulations present and as amended from time to time. There is second aspect of this matter. Even the service regulations which are framed by the Board of Management and which are governing the service conditions of the employees have statutory flavour and have binding force, so long as there are not contrary to any provisions of law, including the Model Standing Orders. At the same time, we cannot forget that they are not the service rules privately framed by any employer and kept in his cupboard. The respondent management is a responsible organisation formed under the declaration of trust deed. In its organisation, there have been very highly placed

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dignitories consisting of representatives of the mill owners, employees, the E.S.I.C. Corporation and also the State Government. The trust deed elaborately provided for all the rules and regulations and the procedure. The Board of Management is not allowed to amend the rules and regulations unilaterally. It has to pass a resolution and approach the Government for its approval. Such rules and regulations or amendments therein can be enforced only after the State Government grants approval. In these circumstances, it cannot be said that the rules and regulations have no binding effect or have no statutory force. I have already observed that the rules and regulations of the respondent have statutory flavour. It cannot be said that the management has followed the rules and regulations and therefore, it has committed an unfair labour practice. The decision of the management is not arbitrary or whimsical. The management followed unilaterally the rules and regulations which are not contrary to any law and which are not shown to be arbitrary or unreasonable. We, further, cannot lose sight of a fact that about 304 employees of the respondent had made a representation to the Industrial Court that the age of retirement was 58 years and 60 years for Class I, II and III and Class IV employees respectively. It was complained by large number of employees that the union was acting not in favour of the employees but only for the benefit of a few and mala fide. There is a third dimension to the matter. Standing Order No. 32 reads as under :-

> "32. Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment."

Under this standing order what is expected is any order which would operate in derogation of any law in the time being in force or to the prejudice of any right under the contractor service. According to this standing order the respondents have acted on the basis of the appointment order which is a contract of service or which is an agreement between the parties. It is, therefore, clear that anything which is contrary to the appointment order would be hit by the aforesaid Standing Order No. 32. It is a contract of service that the petitioner would retire at the age of

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58 years. The contention of the petitioner, therefore, would straightway attract the aforesaid provisions of standing order which would be prejudicial to the right of the management to retire the petitioner at the agreed age of 58 years. I, therefore, do not find any merits in the petition and the same is dismissed and rule is discharged with no orders as to costs. Shri Deshpande has complained that the petitioner was not paid his gratuity. Shri Bukhari has fairly stated that he would instruct the respondents to pay the gratuity payable to the petitioner in accordance with law within one week.

11.21.He relies upon the judgment of the Hon'ble Division Bench of the Bombay High Court in the case of Tulsiram K.Gothad vs. Superintendent, Mahatma Gandhi Memorial Hospital & anr., reported in (2007) III CLR 718 more particularly Para 4 which is reproduced hereunder for easy reference:

4.So far as the Model standing order no.32 is concerned, it is not necessary for us to consider that provision, because in view of the provisions of Model standing order no.27 the position is clear that the age of retirement mentioned in that provision will apply only if there is no other age of retirement mentioned in the agreement between the parties. Perusal of the judgment of the learned Single Judge in the case "Engineering Workers' Association Vs. J.D.Jamdar, Member Industrial Court & others" shows that the learned Single Judge has, in support of the view that she has taken, relied on the judgment of the learned Single Judge in the case "The Indian Tobacco Company Ltd. Vs. The Industrial Court & others". Perusal of that judgment shows that the learned Single Judge in that

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case was considering the provisions of Model Standing Order no.4-A and not Model standing order no.27. In our opinion, this case turns on the language employed in the Model Standing Order no.27, and therefore, the judgment of the learned Single Judge in the case "The Indian Tobacco Company Ltd. Vs. The Industrial Court & others" as also the judgment of the Supreme Court in the case between "Western India Match Company Ltd. And Workmen, 1973 II L.L.J. 59" are not relevant. We may mention here that in so far as the Model Standing order no.32 is concerned, our attention was invited by the learned Counsel appearing for respondent no.1 to the judgment of the Division Bench in the case "Pune Municipal Corporation & others vs. Dhananjay Prabhakar Gokhale, 2006 II CLR 105"

referred to above, where construction different from the one placed by the learned Single Judge in the case "The Indian Tobacco Company Ltd. Vs. The Industrial Court & others" on Model Standing order no.32 has been accepted by the Division Bench. However, as observed above, in view of the clear language employed by the Model Standing order no.27, it is not necessary for us to consider Model Standing order no.32.

11.22.He relies upon the decision of Hon'ble Apex Court in the case of Jeewanlal (1929) Ltd., vs. The Workmen and another reported in (1972) 1 LLJ 472 (SC) more particularly Para 19 thereof which is reproduced hereunder for easy reference:

19. The above decisions clearly show that the present-

day tendency is to fix the age of superannuation generally at 60 unless the Tribunal feels that the work of the operatives is particularly arduous or hazardous where workmen may lose efficiency earlier. The

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photographs which are on record show that in at least some sections of the factory workmen have to work at machines which resemble some in use heavy engineering industries. On the materials we do

not find it possible to come to any definite conclusion on the point We may also note that whereas in engineering concerns in West Bengal the age of retirement generally fixed for operatives, is 58 years there is a divergence of opinion as regards operatives in Bombay & Delhi. Much will therefore depend on the actual assessment of the nature of the work of the operatives to find out whether it is really so arduous or hazardous as to lead the certifying Officer or the court in appeal to the conclusion that the proper age of superannuation should not be raised beyond 58 years. It is rather unfortunate that the Industrial Court ignored the prayer of both parties to make a personal inspection of the factory of the appellants to come to his conclusion. Such persona] inspection would have been more valuable then oral evidence by the parties before the Certifying Officer. In this case the Certifying Officer Went by his own previous impression without caring to inspect the factory and the Industrial court ignored the joint prayer in that behalf. We therefore feel that the matter should be re-investigated and the Certifying Officer should inspect the conditions in the factory to come to a conclusion whether the age of superannuation should be left at 58 years or whether it should be raised to 60 years.

11.23.He relies upon the decision of the Hon'ble Apex Court (From Karnataka High Court) in the case of Cyril Lasrado (Dead) By LRs. & ors. vs. Juliana Maria Lasrado & anr., reported in ILR 2004 KAR 4822 more particularly Paras 11 and 12 thereof which are reproduced hereunder for easy reference:

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> 11. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.
>
> 12. Even in respect of administrative orders Lord Denning M.R. IN BREEN V. AMALGAMATED ENGINEERING UNION (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". IN ALEXANDER MACHINERY (DUDLEY) LTD. V. CRABTREE (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out.

The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

11.24.The decision of the Division Bench of this Court in W.A.Nos.2304-2309/2018 (Karnataka Employers Association and Others Vs. The State of Karnataka and Others) dated 1.10.2020 more particularly Paras 8, 9 and 10 thereof, which are reproduced hereunder for easy reference:

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> 8. The detailed narration of the facts and contentions would not call for reiteration, but, to highlight the following inferences:
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> 1) The Model Standing Orders amended by Notification dated 27.03.2017 do not apply to these appellants as they have Certified Standing Orders.
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> 2) As and when the Certified Standing Orders are amended to enhance the age of superannuation from 58 years to 60 years, the appellants would then have a cause of action to assail the same, if so advised, in accordance with law.

But in the absence of impugned Notification dated 27.03.2017 being applicable to them, these petitioners approached this Court without there being any cause of action to do so and when these petitioners were not in any way aggrieved by the said Notification as it was not applicable to them aggrieved by the said Notification as it was not applicable to them.

9. Now, leaned counsel for the appellants submits that the penultimate para of the impugned order of the learned Single Judge would be adverse to these petitioners and therefore the writ appeals may be dismissed as not pressed. The penultimate para of the learned Single Judge reads as under:

> "115. Secondly, the said contention requires to be rejected in the light of the law laid down by the Apex Court wherein the Hon'ble Apex Court has held that mere technical infringement not resulting in any substantial prejudice would be of no discussions long after the time stipulated for filing of objections was over. The fact that the discussions have been held with the stake holders is apparent from
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> Annexure-C placed on record by the petitioners. From a bare reading of the provision it is apparent that only a consultation is prescribed and no adjudicatory process is mandated. In view of the above, the writ petitions require to be rejected and in view of the conditional interim order granted, it is clarified that the employees who have retired during the pendency of the petitions, such of those employees shall been titled for their monetary benefits including back wages for the period during which they have been kept out of employment on account of superannuation during the pendency of the writ petitions. "consequence. In the light of law laid down by the

Hon'ble Apex Court, it was mandatory on the part of the petitioners to demonstrate substantial prejudice caused to them or at least that they have been prejudicially affected by the omission on the part of the State to consult the stakeholders. Additionally, it also requires to be rejected, because the delay has not only not caused any prejudice to the petitioners but on the other hand has enabled the similarly placed parties to participate and file their objections and participate in the discussions long after the time stipulated for filing of objections was over. The fact that the discussions have been held with the stake holders is apparent from Annexure-C placed on record by the petitioners. From a bare reading of the provision it is apparent that only a consultation is prescribed and no adjudicatory process is mandated. In view of the above, the writ petitions require to be rejected and in view of the conditional interim order granted, it is clarified that the employees who have retired during the pendency of the petitions, such of those employees shall

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been titled for their monetary benefits including back wages for the period during which they have been kept out of employment on account of superannuation during the pendency of the writ petitions."

10. It is clear that since the Certified Standing Orders of these appellants have not been modified so as to incorporate the enhanced age of superannuation; the direction issued above would not have been issued by the learned Single Judge to these petitioners/appellants herein. However, there was also an interim order of stay of the same granted in these appeals by Coordinate Benches of this Court.

11.25.Sri.C.K.Subramanya, learned counsel for the petitioner submits that in the order passed by the Certifying Authority dated 30.03.2019 at Annexure-F except for making note of the submission of both sides, the Certifying Authority has not applied its mind but has blindly accepted the application for amendment of the certifying industrial orders. There is complete non-application of mind by the Certifying Authority and as such, there being no reasons attributed for the amendment, the amendment is required to be quashed.

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11.26.As regards the judgment of the Appellate Authority, he submits that even the Appellate Authority has only recorded the submission of both the parties and rejected the appeal. Even the Appellate Authority has not bothered to give reasons for its order and as such, the Appellate Authority has not discharged its obligation in a proper and required manner as that required of a quasi-judicial authority. There being no reasons which are attributed in the said order and the order being a non-speaking one is required to be quashed.

11.27.He relies upon the decision of this Court in W.P.No.12137/2014 dated 08.07.2015 [Wipro Infrastructure Engineering vs. Additional Labour Commissioner (Administration) and Appellate

Authority, Bangalore and ors. more particularly Para 21

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thereof, which is reproduced hereunder for easy reference:

> 21. In the statement of objections filed by the petitioner there is no comparative picture of the prevailing wages, wage structure, pensionary benefits, etc. The petitioner has not shown that the financial benefits given to the employees in the petitioner's undertaking are higher than those of the undertakings which have raised the age of retirement of their employees to 60 years.
>
> 11.28.He submits that the said order of the learned Single Judge has been approved by the Division of this Court in WA No.2482/2015 dated 7.11.2015 [Wipro Infrastructure Engineering vs. Additional Labour Commissioner (Administration) and Appellate Authority, Bangalore and ors.

more particularly Paras 9 and 10 thereof, which are reproduced hereunder for easy reference:

> 9. We had asked Mr.Anantharamu to cite any authority in support of his contention that there could be amendment of the Standing Order regarding enhancement of the age of retirement retrospectively.
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> 10. He fairly conceded that there is no such authority on this aspect.

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11.29.Based on all the above, he submits that the Writ Petition is required to be allowed and the impugned orders are required to be quashed.

12. Per contra, Sri.H.K.Nagabhushana, learned counsel for respondent No.3 - Union would submit that:

> 12.1. As soon as there is an amendment made to the Model Standing Orders, the Model Standing Orders being a beneficial enactment, the benefit that arises on account of such amendment, ought to be made automatically applicable to all the workmen and it is for this reason that the Certifying Authority has accepted the application and increased the retirement age to 60 years in terms of the amendment which has been made to the Model Standing Orders.
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> 12.2. The employer's association and various employers had challenged the amendment made to the Model Standing Orders in W.P.Nos.14576-14577/2017, which came to

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be dismissed by this Court vide order dated 29.06.2018 [Karnataka Employers' Association and others vs. The State of Karnataka and others]. This Court while doing so has come to a conclusion that the age of retirement has been constantly increasing and as per a survey, which has been conducted among the 133 countries who are members of the International Labour Organization, only in 18 nations, the age of retirement is below 60 years and in several countries, the age of retirement is 65 years. This being so on account of the increased life expectancy, he submits that the said decision would equally apply to the present case. He relies upon Paras 21, 26, 29, 36,74, 105 and 108 thereof of the said judgment, which are reproduced hereunder for easy reference:

> 21. The prayer by the petitioners to strike-down the notification amending the entries in the schedule is resisted by contending that the writ petition itself is not maintainable and is liable to be dismissed in
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> limine. It is pleaded that, for the first time in the year 1982, the age of retirement came to be introduced by inserting Clause 15-A in the Karnataka Industrial Employment Rules, 1961 fixing the age of retirement at 58 years. That the amendment enhancing the age of superannuation has been introduced after the passage of nearly 35 years and by no stretch of imagination can it be described as a hurried move. That the amendment would directly benefit nearly 21 lakhs workers employed in 4,032 factories and 6,900 shops and commercial establishments in the State of Karnataka. That the amendment introduced is after taking into consideration the socio-economic considerations, the workers face at the advance stage of their life and nearing retirement, they are many a time called upon to incur expenditure in the discharge of the parental duty to finance higher educations or weddings of their off-springs.
>
> 26. That amongst the 133 countries who are members of the International Labour Organisation, only 18 Nations have an age of retirement below 60 years. That in several developed countries the age of retirement is 65 years. That this is on account of the increase in life expectancy, which has dramatically altered on account of improved health of the populace. That the working population are required to be provided with a socio-economic security at the advanced age between 58 and 60. That the workman of this age group bring in their invaluable experience and knowledge acquired in the various fields which can be usefully passed on to the succeeding generation.
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> 29. It is contended that the amendment to the Model Standing Orders would take immediate effect and apply to industrial establishments which do not hold certified standing orders, thereby, resulting in automatic implementation of the notification. That with regard to industrial establishments holding certified standing orders, it is open either to the management or to the employees union to make an application to certifying officer under the provisions of Section 10 of the "Act 20 of 1946" for the purpose of enhancing the age of superannuation or retirement.
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> 36. That the Hon'ble Apex Court in similar circumstances while considering the similar issue of

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age of date of retirement above 50 years in the case of British Paints(India) Limited Vs. Its Workmen, reported in AIR 1966 SC 732 has pleased to observe as follows:-

> Considering that there has been a general improvement in the standard of health in this country and also considering that longevity have increased, fixation of age of retirement at 60 years appears to us to be quite reasonable in the present circumstances. Age of retirement at 55 years was fixed in the last century in Government service and had become the pattern for fixing the age of retirement everywhere. But, time in our opinion has now come considering the improvement in the standards of health and increase in longevity in this country during the last fifty years that the age of retirement should be fixed at a higher level and we consider that generally speaking, in the present circumstances, fixing the age of retirement at 60years would be fair and proper, unless there are special circumstances justifying fixation of a lower age of retirement.
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> 74. Sri.Subba Rao, learned Senior counsel would take the Court through the provisions of Section 4 of the Act and contend that the act enables the certifying authority to fix the age of retirement lower than the age specified under the Model Standing Order. Section 4 of the Act reads as under:
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> "4, Conditions for certification of standing orders. - Standing orders shall be certifiable under this Act, if,-
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> (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and
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> (b) the standing orders are otherwise in conformity with the provisions of this Act; and it (shall be the function) of the Certifying Officer or Appellate Authority to adjudicate upon the fairness or reasonableness of the provisions of any standing order."

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105. That apart, as demonstrably argued by the respondents, several industrial establishments have on their volition and certain other establishments on the demand of the workmen have enhanced the age of superannuation from 58 to 60 years. Further, the contention put forth on behalf of the respondents that the fact of fairness and reasonableness of a provision in the Model Standing orders involve adjudication of the facts and such adjudication is solely vested in the Certifying Officer has not been negated by the petitioners. On the contrary, the contentions stand vindicated on a plain reading of Section 4 of the Act.

108. Nextly, with regard to the feasibility and appropriateness of enhancing the age of superannuationfrom58 years to 60 years is answered by the Larger Bench of the Hon'ble Apex Court in the British Paints case. The Hon'ble Apex Court was pleased to observe at Para Nos.4, 5 and 7 asunder:

> "4. Then there is the question as to future workmen and whether their age of retirement should also be fixed at the same level as in the case of existing workmen. We are of opinion that generally speaking there should not be any difference in the age of retirement of existing workmen and others to be employed in future in a case like the present unless there are special circumstances justifying such difference. In this connection our attention is drawn to the case of Guest, Keen, Williams (P) Ltd.,(1960) 1 SCR 348; 1959-2 LJ 405; (AIR 1959 SC 1279), where the age of retirement of future workmen was 55 years. In that case however, the age of retirement of future workmen was fixed at 55years by the Standing Order and the question whether that age of retirement should be changed was not before this Court for consideration. All that this Court had to consider in that case was whether the age of retirement of existing employees, before the Standing Order fixing the age of retirement
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> at 55years was introduced, should be 60 years or not. In the present company so far there is no age of retirement and unless there are valid and cogent reasons for making a differences in the age of retirement of existing workmen and those employed in future, the future workmen should also have the benefit of the same, age of superannuation.
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> 5. Considering that there has been a general improvement in the standard of health in this country and also considering that longevity has increased, fixation of age of retirement at 60 years appears to us to be quite reasonable in the present circumstances. Age of retirement at 55 years was fixed in the last century in government service and had become the pattern for fixing the age of retirement everywhere. But time in our opinion has now come considering the improvement in the standard of health and increase in longevity in this country during the last fifty years that the age of retirement should be fixed at a higher level, and we consider that generally speaking in the present circumstances fixing the age of retirement at 60years would be fair and proper, unless there are special circumstances justifying fixation of a lower age of retirement.
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> 7. As to the factory workmen, it is urged that their age of retirement should be fixed at a lower level as work in the factory is more arduous than the work of clerical and subordinate staff, and in this connection reliance is placed on the decision of this Court in Jessop and Co. Ltd. (1964) 1 Lab LJ 451(SC), where one age was fixed for clerical and subordinate staff and a slightly lower age was fixed for the factory

workmen. Here again we are of opinion that generally speaking, there is no reason for making a difference in the age of retirement as between clerical and

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subordinate staff on the one hand and factory workmen on the other, unless such difference can be justified on cogent and valid grounds. It is only where work in the factory is of a particular arduous nature that there may be reason for fixing a lower age of retirement for factory workmen as compared to clerical and sub-ordinate staff. This appears to have been so in the case of Jessop and Co. Ltd. (1964) 1 Lab LJ 451 (SC), for that was a heavy engineering concern, where presumably work in the factory was much more arduous as compared to the work of clerical and subordinate staff. There might, therefore, have been then some justification for fixing a lower age of retirement for factory workmen in the case of those factories where the work is of a particularly arduous nature. But the present company is a paints manufacturing company and there is in our opinion no reason to suppose that the work in the factory in the present case is particularly arduous as compared to the work of clerical and subordinate staff. We therefore, think that even in the case of future factory-workmen in the present concern there is no special reason why the age of retirement should be fixed at a lower level. It is of course always possible for an employer to terminate the services of a workman if he becomes physically or mentally incapable of working before the age of retirement.

This power being there, there is no reason to suppose that there will be inefficiency in work on account of fixing the age of retirement at 60 years on the other hand with the age of retirement at 60 years there will be added advantage that more experienced workmen will be available to the management and that would be a cause for greater efficiency. On the whole, therefore, we are of opinion that the age of retirement in the case of factory workmen also in the present company should be fixed at the age of 60

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years. We, therefore, modify the award of the tribunal and fix the age of retirement for the clerical and subordinate staff as well as for the factory workmen, whether existing or future, at the age of 60years."

The observations of the larger Bench emphatically answers issues raised by the petitioners.

12.3. He relies upon the decision of this Court in W.P.Nos.45822-25/2012 dated 12.07.2019 [Management of Federal Mogul Goetze India Pvt. Ltd., vs. Additional Labour Commissioner and others], more particularly, Paras 21, 22 and 24 thereof, which are reproduced hereunder for easy reference:

21. In case of establishments which are not governed by Act, 1946, the age of retirement is decided by service conditions such as settlement/appointment letters, employment agreements. However, if the retirement age is not determined, in such an establishment the worker can claim that since the age of retirement is not decided by law as well as by service conditions, he can work till the time he is physically fit and able to do work. However, by and large, Courts have held that age of retirement should be 60 yrs. In G.M.TALANGE cited supra decided on 24.03.1964, Apex Court in making its decision in the above matter, relied upon the report of the Norms Committee in which the following opinion was expressed:

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"After taking into consideration the views of the earlier Committees and Commissions including those of the Second Pay Commission, the report of which has been released recently,, we feel that the retirement age for workmen in all industries should be fixed at 60. Accordingly, the norms for retirement age is fixed at 60".

22. The Apex Court held that, "it is important to notice that the correctness of the Tribunal's findings that in all the concerns in the Bombay Region, trend set had been to fix the retirement age at 60 years, was not challenged before this Court". Therefore, coming to the decision that the age of retirement of workman should be assigned at not less than 60, the Supreme Court relied on reports of the Norms Committee which formed its decision taking into consideration earlier Committees and Commissions. The above Judgment was upheld in TEJ BAHADUR RAM vs STATE OF UTTAR PRADESH AND ANR. arising in SLP (C) No.18692/2005.

24. The International Labour Conference (for short 'ILC') has passed a recommendation which recognizes violence and harassment in the world of work as 'Human rights violence or abuse'. A new Convention and accompanying recommendations were adopted by ILC on the final day of Centenary of International Labour Conference in Geneva. The conference is organized by the International Labour Organisation to set its broad bye-laws including conventions and recommendations. Under the convention, violence and harassment in the world of work can be recognized as constituting, "Human rights violence or abuse". Harassment and violence are also, "a threat to equal opportunities, is unacceptable and incompatible with decent work", it says violence and harassment have been defined as behaviour, practice or threats "that aim at, resulting or are likely or likely to result in physical, psychological, sexual or economic harm". Member

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States have been reminded that they have a responsibility to promote, "general environment of 'zero' tolerance".

12.4. He relies upon the decision of the Division Bench of this Court in W.A.No.2771/2019 dated 25.02.2021 [Management of Gederal Mogul Mogul Goetze India Pvt. Ltd., vs. Additional Labour Commissioner and others], more particularly Paras 16, 22 and 23 thereof, which are reproduced hereunder for easy reference:

> 16. In so far as the present case is concerned, the Courts have always held in favour of upward revision of the age of retirement and have fixed it at sixty (60) years, even in cases where there was no age of retirement fixed or agreed between the parties. In Guest Keen Williams P. Ltd., (supra), the Hon`ble Apex Court held as under:
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> "23. .....In our opinion, it is necessary to fix the age of superannuation even with regard to the prior employees, and we feel no difficulty in holding that it would not be unfair or unreasonable to direct that these employees should retire on attaining the age of 60."

22. Learned Senior counsel contended that the decision in Barauni Refinery applied an all fours to the facts of the present case and therefore there

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was no question of modification of the standing orders, as that would have resulted in an additional financial burden. In Barauni Refinery, there was a set of standing orders relating to the age of retirement which was coupled with an agreement which insulated the standing orders from being modified under Section 10 of the Act of 1946, during the currency of the agreement. However, in the present case, there was no standing order relating to the age of retirement in the establishment of the appellant. The contention of the learned Senior Counsel, Sri. S.S. Naganand, that, mentioning the age of retirement in the order of appointment is sufficient compliance, cannot be accepted, since the model standing order 15-A which admits of "such other age as may be agreed upon between the employer and the workman by any agreement, settlement or award" (underlining by Court) is only for the purpose of fixing the number and not for the purpose of dispensing with the requirement of incorporating the age of retirement in the standing order. The contention of the learned Senior Counsel for the appellant would have appealed to us, if the age of retirement consequent to the settlement agreement was incorporated in the standing orders, as that would have been subject to the satisfaction of the Certifying Officer about its reasonableness or fairness. Therefore, as a first step, soon after the settlement agreement, the appellant ought to have amended its standing order to bring it in line with the agreement entered into with its workmen. It would have then fitted into the situation as it prevailed in Barauni Refinery. Thus, even otherwise, the settlement agreement is not sacrosanct and inviolable. The settlement can be ignored in exceptional circumstances if it is demonstrably unjust, unfair and if it militates against the spirit and basic postulate of the agreement reached as a result of conciliation. Hence the first question is answered in the negative.

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23. While dealing with the next question, it is necessary to note that by the Amendment Act 36 of 1956, the Certifying Officer under the Act of 1946 is empowered to adjudicate upon the fairness or reasonableness of the provisions of any standing order. It is not in dispute that the standing order of the appellant did not contain any stipulation regarding the age of retirement of its workmen. However, the appellant claimed that the age of retirement was contained in the orders of appointment. Thus, even if this contention of the appellant is accepted, then too it cannot prohibit the Certifying Officer from satisfying whether it was just and fair. The Certifying Officer has taken into account the overall standard age of retirement in the industry as well as the age of retirement all over the world and has directed the appellant to modify the standing orders fixing the age of retirement at sixty (60)years, subject however to the condition that the workmen are found to be medically fit by the medical officer and upon such terms and conditions as the Company may in this behalf prescribe.

12.5. That was the issue in W.A.No.100250/2021 dated 05.07.2022 [The Management of M/s.Grasim Industries Ltd., vs. The General Secretary, Harihar Polyfibers Employees Union and others], more particularly, Para H(i) and (ii) thereof, which are reproduced hereunder for easy reference:

> H. AS TO CONTENTION OF HAZARDOUS INDUSTRYAND DESIRABILITY OF EARLY RETIREMENT, i.e., 58YEARS:
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>
> (i) Learned Senior Counsel Mr. Kathawi passionately submitted that appellants'

manufacturing unit involves considerable amount of risk to the workmen "owing to exposure to Hot work, confined to space working, working at height, chemical exposure etc in case of accidental release of fumes & gases and acid spills." He argues that the nature of job which the workmen have to attend to, causes both physical & mental strain and therefore, it is not prudent to continue the workmen in service once they attain 58 years so that the risk to their life & limb is avoided. We do not agree with the logic of this argument and the reasons are at anarm's length: Firstly, the industry of the Appellant is not registered as involving 'hazardous processes' under the provisions of the Factories Act, 1948 and the Rules promulgated thereunder, as rightly pointed out by Mr. S.L Matti the learned counsel appearing for the Employee Union. Secondly, every industry of the kind arguably involves some job near furnace, some near wheels, some near belts and some near spikes; that per se, does not make the 'industrial process hazardous' to all classes of workmen.

(ii) The Appellant has not disclosed as to how the manufacturing process in its establishment was hazardous or arduous and that workmen beyond the age of 58 years are not suitable to continue in employment. In fact, appellant had signified his willingness before the authorities to favorably consider employees request for enhancement of retirement age, which aspect we discuss separately

later. Whatever potential hazard that lies in every industrial activity can be taken care of by the advanced technology and safety measures; the appellant in the synopsis to the Writ Appeals has specifically admitted that he has installed "the state of the art safety system" and that there is "safe environment" in the unit. Appellant has not produced any expert medical opinion to substantiate the contention that there would be

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considerable deterioration in the fitness & agility of the employees in the age group of 58 - 60 years. No statistical data supportive of the contention was produced before the authorities or the learned Single Judge or even here before us. The Co- ordinate Bench in FEDERAL MOGUL, supra referred to several decisions on being challenged in SLP of the Apex Court wherein challenge to fixation of 60years as the age of retirement was repelled and observed at paragraph 16: "...the Courts have always held in favour of upward revision of the age of retirement and have fixed it at sixty (60) years, even in case where there was no age of retirement fixed or agreed between the parties... " The Bench at paragraph 19 further observed: "This Court too has followed the above and have consistently held that the age of superannuation of workmen in industrial establishments could be fixed at sixty(60) years..." It is pertinent to state that these observations were made after repelling the contention of 'hazardous industry' and that this decision has got the seal of Apex Court as already mentioned above.

12.6. On the basis of the above, he submits that there is no hazardous activity which has been carried out by the petitioner's Company. The necessary registrations have not been obtained by the petitioner's Company for carrying out any hazardous activities. Thus, it is the General Law, which would be applicable and as such, even persons aged about 60 years can discharge their functions without any hindrance.

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This aspect has been taken into consideration by the Certifying Authority and the Appellate Authority and as such, the orders passed by the Certifying Authority and the Appellate Authority need not be interfered with and the petition be dismissed.

13. Sri.Bhoje Gouda T.Koller, learned AGA for respondents No.1 and 2 would submit that the Certifying Authority and the Appellate Authority has considered all the aspects in a proper perspective and has passed a reasoned order accepting the amendment to the Certified Standing Orders and as such, this Court ought not to intercede in the matter.

14. Heard Sri.C.K.Subramanya, learned counsel for the petitioner, Sri.Sri.Bhoje Gouda T.Koller, learned AGA for respondents No.1 and 2 and Sri.H.K.Nagabhushan, learned counsel for respondent No.3 and perused the papers.

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15. The points that would arise for consideration by this Court are:

> 1. Whether any amendment to the Model Standing Orders would automatically make the same applicable to the Certified Standing Orders, certified for Industrial Establishments?
>
> 2. What are the aspects that are required to be considered by the Certifying Authority while approving an amendment to the Certified Standing Orders?
>
> 3. For an establishment to claim itself to be hazardous, would there be a requirement for registration under the Factories Act, 1948 as an hazardous industry?
>
> 4. Whether the order passed by the Certifying Authority and the Appellate Authority suffers any legal infirmities requiring interference at the hands of this Court?
>
> 5. What order?

16. I answer the above points as under:-

17. Answer to Point No.1: Whether any amendment to the Model Standing Orders would automatically make the same applicable to the Certified Standing Orders, certified for Industrial Establishments?

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17.1. I have in an earlier judgment in the case of MANAGEMENT OF ULTRATECH CEMENT LTD., VS. RAJASHREE CEMENT GENERAL WORKERS & STAFF UNION & OTHERS [W.P.NO.204077/2018 DATED 16.03.2021] already held that any amendment to the Model Standing Orders scheduled to the Rules would not be automatically applicable. In the event of either the employer or the trade union or the workman wanting to make any change or modification in the Standing Orders applicable, necessary application has to be made in terms of Section 10 of the Industrial Employment (Standing Orders) Act, 1946 (for short, 'IESO Act') and it is up to the Certifying Officer to, after considering all relevant aspects, allow the amendment and certify the same.

18. Answer to Point No.2: What are the aspects that are required to be considered by the Certifying Authority while approving an amendment to the Certified Standing Orders?

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18.1. Section 3 of the IESO Act reads as under:-

> 3. Submission of draft standing orders.--

> (1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.
>
> (2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.
>
> (3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.
>
> (4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

18.2. A perusal of above provision would indicate that within 6 months from the date on which the Act becomes applicable to an industrial establishment, an employer should prepare the Standing Orders proposed by him for adoption in its Industrial Establishments.

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18.3. The said Standing Orders are to refer to every matter set out in Schedule to the Rules, the Standing Orders to be discussed with the trade unions existing in the industrial establishments or representative of workmen before adoption.

18.4. If there is no disagreement or dispute as regards the said clauses, the same would become applicable to the industrial establishment as if it is certified on being sent to the certifying officer by registered post acknowledgement due. However, if there is a dispute or disagreement, then the Standing Orders drafted by the employer will have to be submitted to the Certifying Officer for necessary adjudication.

18.5. Thus, even when the first Standing orders are drafted, it is only if there is an agreement between the employer and trade union or

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representative of the workmen, that the drafted Standing Orders would be applicable immediately.

18.6. If there is any dispute as regards any of the contents, the same would have to be adjudicated by the Certifying Officer.

18.7. Section 4 of IESO Act reads as under:-

> 4. Conditions for certification of standing orders.--Standing orders shall be certifiable under this Act if--
>
> (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and
>
> (b) the standing orders are otherwise in conformity with the provisions of this Act;

and it 1[shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

18.8. In terms of Section 4 of IESO Act, the Standing Orders would be certifiable only if provisions are made thereunder for all matters set out in the Schedule, which is applicable to that particular industrial establishment and the Standing

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orders are otherwise in conformity with the provisions of the Act. It is also made a function of the Certifying Officer or the Appellate Authority to adjudicate upon the fairness or reasonableness of the provisions of any Standing Orders. This being for the reason that the schedule only provides a broad basis itemized list as regards what is required to be included, it is on that basis that the detailed draft of the Standing Orders would have to be appreciated and adjudicated by the Certifying Officer. One of the important aspects to be taken into consideration is fairness and reasonableness of the provisions made in the said Standing Orders.

18.9. Section 5 of IESO Act reads as under:-

> 5. Certification of standing orders.--
>
> (1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice
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in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly. (3)

The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub- section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

18.10.The Certifying Officer, upon receipt of the draft, in terms of Section 3, from the employer is required to forward the same to the trade union or representative of the workmen. It is after hearing the employer and the representatives of the workmen or the trade union that the Certifying Officer would have to decide whether or not any modification of addition to the draft submitted by the employer is necessary. While doing so, reasons for the same would also have

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to be provided by the Certifying Officer. Thus, in essence the Certifying Officer could either modify the disputed clause leaving out the agreed clauses or add a particular clause to cater to the requirements of the employer and the workmen so as to make the same fair or reasonable or in the event of Certifying Officer coming to conclusion that one of the clauses is not fair or reasonable and the same cannot be modified, the Certifying Officer could delete the said clause. The Certifying Officer, therefore, discharges a very important role in finalizing the Standing Orders which are applicable and it is the bounden duty on the part of the Certifying Officer to hear all the parties concerned and thereafter adjudicate the issues by giving reasons.

18.11.In the event of any employer, workmen, trade union and other stake holders are aggrieved by

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any order passed by the Certifying Officer under Sub-Section (2) of Section 5 of IESO Act, an appeal can be filed to an Appellate Authority challenging the said order. The Appellate Authority shall send the copies of the appeal to other parties and after hearing all the parties, pass such order as it deems fit.

18.12.Section 6 of IESO Act, which relates thereto is reproduced hereunder for easy reference:

> 6. Appeals.--(1) Any employer, workmen, trade union or other prescribed representatives of the workmen aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may, within [thirty days] from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

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18.13.In the event of any modification of Certified Standing Orders being required, the same can be done only by following the requirements of Section 10 of IESO Act.

18.14.Section 10 of IESO Act is reproduced hereunder for easy reference:

> 10. Duration and modification of standing orders.--(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen 1[or a trade union or other representative body of the workmen], be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

[(2) Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of 3[***] the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application.] (3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

[(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

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18.15.A perusal of the above provision would indicate that final Certified Standing Orders cannot be disturbed for atleast a period of 6 months except on an agreement between the employer and the workmen.

18.16.In the event of an agreement being arrived at between the employer or the trade union or representative body of the workmen as regards the modification to be carried out, the said agreed clauses can be submitted to the Certifying Officer, who would then permit the modification and certify the Model Standing Orders. In the event of only one of the parties seeking for modification i.e., either the employer, the trade union or the representatives body of the workmen or workman seeking for a modification, then an application along with 5 copies of such modification sought for

would have to be filed.

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18.17.The Certifying Officer would issue necessary notices to all other stakeholders and thereafter upon hearing the parties and following the procedure as prescribed under Sections 4 and 5 of IESO Act extracted hereinabove could certify the modification, of course, there being an appellate remedy provided under Section 6 of IESO Act. Thus, the Certifying Authority or the Appellate Authority would have to consider all aspects relating to the modification either by addition, deletion or substitution by applying the principles of fairness and reasonableness as also considering that the said modifications are covered by the Act or the Rules and/or not violative of any of the provisions applicable thereto, as held in Guest Keen Williams's Case, Wipro Infrastructure Engineering's Case, Barauni Refinery's Case, Jeewanlal's Case supra.

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19. Answer to Point No.3: For an establishment to claim itself to be hazardous, would there be a requirement for registration under the Factories Act, 1948 as an hazardous industry?

19.1. Sub-Section (cb) of Section 2 of the Factories Act 1948 describes 'hazardous process' as under:-

> [(cb) "hazardous process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would--
>
> (i) cause material impairment to the health of the persons engaged in or connected therewith, or
>
> (ii) result in the pollution of the general environment:
>
> Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule;] 19.2. Chapter IVA contained Section 41A to 41H of the Factories Act, 1948 deals with 'Provisions relating to Hazardous Process', these provisions deal with the manner of setting up of a factory dealing with hazardous processes, thus making
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it the requirements of those provisions mandatory.

19.3. The hazardous process dealt by Factories Act, 1948 are more in the nature of the equipment and/or the material used. Ofcourse, there could be separate Standing Orders insofar as industrial

establishment dealing with hazardous process. However, in respect of any industrial establishment more so as regards the determination of age of retirement, it is not as much as the manufacturing process being hazardous but it is the process being incapable of being done by the workman of a particular age, which is required to be determined.

19.4. Thus, what is required to be determined is not whether the process of manufacture per se is hazardous but as to whether the process of manufacture is hazardous for a workman of a particular age group. Therefore, in my

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considered opinion obviously in the event of an industry being designated as hazardous under the Factories Act, the same would be considered to be hazardous. However, in respect of the aspect of determining of age of retirement, it would be required that the process of manufacture be determined as hazardous or not on the basis of age of the workman after visiting the industrial establishment and ascertaining the process of manufacturing.

20. Answer to Point No.4: Whether the order passed by the Certifying Authority and the Appellate Authority suffers any legal infirmities requiring interference at the hands of this Court?

20.1. In the present matter, the Certifying Authority has referred to certain decisions and has allowed the application for modification filed by the Trade Union under Section 10 of IESO Act.

Similar is the situation with the Appellate

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Authority when the employer went on appeal under Section 6 of IESO Act.

20.2. The principles as detailed hereinabove as regards the aspects that are required to be considered by the Certifying Authority or the Appellate Authority have been given a go by both by Certifying Authority and the Appellate Authority. Except for placing on record the contentions of both the parties neither the Certifying Authority nor the Appellate Authority have applied their independent mind to reach the conclusion as to why the modification has to be permitted or not.

20.3. Both the Certifying Authority and the Appellate Authority have mechanically allowed the application for modification. Infact, when there was a specific contention raised by the employer that the manufacturing process would be hazardous to a particular age group of

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workmen, it was required of the Certifying Authority to have inspected the premises and to ascertain if in fact it was hazardous or not.

20.4. Though all workmen would like the age of retirement to be increased, the increase in the age of retirement cannot be at the cost of life of such workman. If indeed the manufacturing process is hazardous for persons above a particular age group, then, it would be required for the Certifying Authority in discharge of its obligation and duties to have inspected the premises, ascertain whether the manufacturing process is hazardous to that particular age group or not. Suffice it to say that the Certifying Authority has to ascertain independently whether a person aged above 58 years and under 60 years could be a part of the manufacturing process without any harm being caused to such workman. That is what this

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Court has held in Wipro Infrastructure Engineering vs. Additional Labour Commissioner in W.P.No.12137/2014 dated 08.07.2015, which has been approved by the Division Bench in W.A.No.2482/2015 dated 07.11.2015. Whether there is an increase in the age of retirement to be made or not are all aspects which ought to have been considered by the Certifying Authority while passing the order.

20.5. Both the Certifying Authority and the Appellate Authority discharging the quasi judicial functions, it is required that for any decision rendered by the Certifying Authority and/or Appellate Authority, reasons are made known in the order passed by such authority. As aforesaid, when there is an important duty being discharged by the Certifying Authority and the Appellate Authority, which would have

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an impact not only on the functioning of the industrial establishment but also on all the workmen working therein, this aspect of the matter cannot be taken lightly by the Certifying Authority and the Appellate Authority.

20.6. The manner in which the Certifying Authority and the Appellate Authority have dealt with the matter in the present case leaves much to be desired. Both the authorities have given a goby to their duties and have mechanically acted which is deprecated.

20.7. In view of the above, both the orders passed by Certifying Authority and the Appellate Authority would be required to be set aside and the matter remitted back to the Certifying Authority for fresh consideration as per the principles enunciated hereinabove and the decision of the various Courts more so in Guest Keen Williams's Case, Wipro Infrastructure

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Engineering's Case, Barauni Refinery's Case, Jeewanlal's Case.

20.8. The certifying authority is directed to inspect the industrial establishment of the petitioner, ascertain if a workman between the age group of 58 years and 60 years can be involved in the

manufacturing process without any harm being caused to him/her after ascertaining the manufacturing process and the age and health requirements of the workmen. If it is permissible and possible for persons above 58 years and within 60 years to discharge such manufacturing functions, to approve the same, if not to reject the modification sought for.

21. Answer to Point No.6: What order?

21.1. In view of the above, I pass the following:

ORDER i. The Writ Petition is allowed.

ii. The order dated 30.03.2019 passed by the respondent No.1 at Annexure-F is hereby quashed.

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iii. The order dated 01.12.2020 passed by respondent No.2 at Annexure-J is hereby quashed.

iv. The matter is remitted to the respondent No.1 to comply with the observations made hereinabove within a period of 6 weeks of the receipt of a copy of this order.

Sd/-

JUDGE Prs*