

The Samaj Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Aug-10-1990

Reported in : (1992)ILLJ606Ori

Judge : G.B. Patnaik and ;J.M. Mahapatra, JJ.

Acts : Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 - Sections 12 and 16

Appeal No. : O.J.C. No. 1001/1989

Appellant : The Samaj

Respondent : State of Orissa and ors.

Advocate for Def. : A. Patnaik and ;L. Pangani, Advs.

Advocate for Pet/Ap. : D.P. Mohanty, Adv.

Disposition : Petition dismissed

Judgement :

J.M. Mahapatra, J.

1. In this writ application, challenge is made to the award dated December 17, 1988 of the Industrial Tribunal. Orissa, Bhubancshwar by the petitioner, the management of 'The Samaj' establishment.

2. The facts of the case, most of which are undisputed, may be briefly stated thus. Opposite party No. 3 Banchhanidhi Das at the material time was working as an Assistant Editor in the establishment of the petitioner. By order dated July 1, 1982, he was retired on superannuation on completion of 58th year of age with effect from August 1, 1982, which was, however, extended to August 23, 1982, as his date of birth was later found to be August 24, 1924. Being asked to retire on superannuation, opposite party No. 3 made a grievance before the management that being an employee of the category of working journalists, he was governed by the conditions of service applicable to Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short 'the Act') and the recommendations of the Wage Board for Working Journalists under Section 10(3) of the said Act, and as such he was entitled to continue in employment till completion of his 60th year of age. The management, however, did not accept the contention of opposite party No. 3 on the ground that as per the provisions of the Standing Order of the establishment which was applicable to opposite party No. 3, the retirement on superannuation on completion of 58 years of age was justified. Thereafter a dispute was raised by opposite party No. 3 through the Utkal Journalists Association. The dispute was admitted to conciliation, and on failure of the conciliation, a conciliation failure report was submitted by the Conciliation Officer to the State Government. Thereafter, the State Government in due course considering the rival contentions of both the management and the workmen found that a dispute existed with regard to the age of retirement of the workman, and eventually it referred the dispute for adjudication to the Industrial Tribunal by notification July 23, 1987. The reference was to the following effect:

'Whether the action of the management of 'The Samaj' in retiring Sri Banchhanidhi Das, Assistant Editor from service at the age of 58 years is legal and/or justified? If not, to what relief he is entitled?'

3. The Industrial Tribunal, on hearing both parties, passed the award in favour of opposite party No. 3, holding that the action of the management of the Samaj in retiring opposite party No. 3 from service at the age of 58 years is neither legal nor justified. Accordingly it directed that in view of opposite party No. 3 having already

crossed the age of 60 years, there could not be an order of reinstatement, but opposite party No. 3 would only be entitled to receive his wages for the period of his employment from August 13, 1982 till he completed his 60th year of age in August 24, 1984. Besides he was also held entitled to all the terminal and retirement benefits admissible to him. Being thus aggrieved by the award of the Industrial Tribunal, the management has approached this Court in this application for quashing of the award dated December 17, 1988 which has been annexed as Annexure-8.

4. Mr. D.P. Mohanty, learned counsel appearing for the petitioner, has raised the following contentions:

(i) The finding of the Tribunal that paragraph 3.40 of the Wage Board recommendation which has been accepted by the Government of India is applicable to opposite party No. 3 and that the provision of the Standing Order of the Samaj with regard to the age of retirement does not apply to him, are bad in law. It is contended that by the notification of the Government of India dated October 27, 1967, although the Central Government has accepted the recommendation of the Board in exercise of the powers conferred by Section 12 of the Act, it has excluded Paragraphs 4.34 and 4.35 of the recommendation of the Wage Board; Paragraph 4.34, specifically dealing with the retirement of working journalists, having been excluded from the operation of the Act, Paragraph 3.40 dealing with age of retirement would not be applicable to the opposite party No. 3 in the eye of law. It is contended further that Paragraph 3.40 is merely recommendatory and not mandatory in nature.

(ii) The award of the Tribunal based on the dispute raised by the workman opposite party No. 3 cannot be said to be an Industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, as the dispute was raised by opposite party No. 3 in his individual capacity, and not espoused by the union.

Both these contentions require careful scrutiny.

5. The first point which is the main ground of challenge, appears to us to have been elaborately discussed by the learned Industrial Tribunal to come to its

conclusion that Paragraph 3.40 of the Recommendation of the Wage Board, which was accepted by the Government of India, by virtue of the powers conferred by Section 12 of the Act, is squarely applicable to all the Working Journalists and consequently to opposite party No. 3, irrespective of the fact that Paragraphs 4.34 and 4.35 of the recommendation have been omitted from Government Notification accepting the recommendations of the Wage Board. On a perusal of the relevant documents we find that the conclusion is unexceptionable for the following reasons:-

It is not disputed that for the purpose of enabling the Central Government to fix or revise the rates of wages in respect of working journalists a Wage Board was constituted under Section 9 of the Act by the Government of India in notification dated November 12, 1963, and that after submission of the report by the Wage Board, the Government of India in its notification dated October 27, 1967 annexed to opposite party No. 3's counter as Annexure-C/3, has accepted the recommendations of the Board contained in Chapter IV of the report except Paragraphs 4.34 and 4.35. The notification would thus go to show that Paragraph 3.40 which occurs under the heading 'Age of Retirement' has been accepted by the Government of India. In other words, by such acceptance this paragraph 3.40 is intended to be given effect to for the working journalists, working in different newspaper establishments of the country. For proper appreciation Paragraph 3.40 may be quoted hereunder:-

'3.40. The Board is fully conscious of the fact that the proposal regarding the age of retirement is likely to be challenged on the ground that it does not strictly fall within the purview of the Board. The evidence recorded by the Board indicates that there is no uniform practice in respect of age of retirement. This disparity has given rise to some dissatisfaction amongst the employees. Besides, as the wage scales have been formulated for a period ranging from 8 to 18 years, there is apprehension in the minds of the employees that in order to avoid paying the maximum pay of the scale, newspaper establishments may take the advantage of disparate practice and retire the employees earlier. This is likely to cause great hardship to those employees who have served for a number of years. For these reasons the representatives of the employers and employees were unanimously of

the opinion that there should be uniformity in respect of age of retirement in the industry and that the age of retirement should be 58 years. However, a working journalist shall be continued in service upto the age of 60 years on production of fitness certificate from the District Medical Officer. In order to give full and uniform effect to the proposed wage scales the Board decided to include this provision in its proposals. It may, however, be mentioned that if need be the Government may incorporate this provision in the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act by undertaking the necessary amendment.'

The aforesaid provision contained in the Paragraph with regard to retirement clearly indicates that a working journalist would be continued in service upto the age of 60 years being considered fit, and such fitness being certified by the District Medical Officer. There is, therefore, no reason as to how it can be assailed that Paragraph 3.40 was not intended to be covered by the Wage Board recommendation or as to how it can be said that the Government of India did not accept the question of age of retirement based on the recommendation of the Wage Board. No doubt Paragraph 4.34 occurring under the heading 'Miscellaneous' says that the age of retirement of a working journalist shall be 58 years; but however, a working journalist shall be continued in service upto the age of 60 years on production of fitness certificate from the District Medical Officer. The exclusion of paragraph 4.34 would not therefore even by implication mean that it has not been intended to be given effect to by the Government. We also find that in accordance with the provisions contained in Section 16 of the Act, the provisions of the Act has overriding effect on the provisions of any other law, award, agreement or contract of service which are inconsistent therewith. In this view of the matter, the provisions contained in the Standing Order of the petitioner's establishment as to age of retirement would be deemed to be superseded by the recommendation of the Wage Board which has been accepted by the Government of India by virtue of Section 12 of the Act.

5A. From the foregoing discussions, we are unable to agree with the learned counsel appearing for the petitioner that the age of retirement was not within the purview of the Act, nor are we impressed with the argument that Paragraph 3.40 would not govern the age of retirement of the Working Journalists in view of the

exclusion of Paragraph 4.34 in the notification while accepting the Wage Board recommendation. We also do not agree with the contention raised on behalf of the petitioner that Para 3.40 is only recommendatory and not mandatory. In conclusion we hold that the learned Tribunal has committed no error of law in accepting the provision contained in Wage Board recommendation and which has been duly accepted by the Government of India, to come to the conclusion that opposite party No. 3 was entitled to continue in service till 60 years of age.

6. Coming to the next point, we find that it is now too late in the day to raise such a contention before us in a certiorari proceeding. The award filed in this case and marked as Annexure-8 would show that the learned Tribunal had framed three issues, the first one being on the question of maintainability. The question of maintainability was based on the contention raised by the first party before the Tribunal that the State Government had erred in law in making a reference to the Tribunal, after having refused to make a reference on an earlier occasion. The learned Tribunal has negatived the contention, and has found, relying on the authorities of the Supreme Court, that the State Government was legally competent to make a reference even though it has refused to make a reference on an earlier occasion. A perusal of the award docs not indicate that on behalf of the management, the contention as now raised before us that the dispute raised by opposite party No. 3 cannot be said to be an Industrial dispute not being espoused by the Union, was ever raised before the learned Tribunal, who had occasion to go into the facts of the case. It is not a matter which can be decided without reference to facts as to whether the reference was made on the espousal of the union, namely, Utkal Journalists Association, or by individual approach of the workman-opposite party No. 3. However, the documents filed by the petitioner, namely, Annexures 1 to 8, would prima facie go to show that the dispute was initially raised by the union, namely, Utkal Journalists Association. There is no document on record to support the contention of the petitioner that the reference which was adjudicated upon by the learned Tribunal was not based on the espousal of the union. Be that as it may, as indicated earlier, since this is a question which cannot be appropriately determined without reference to facts, we do not propose to go into the matter, particularly, when the contention was not raised before the learned Tribunal who could have adjudicated upon the question by calling upon the parties

to lead evidence on the point.

7. In the result, we do not find any merits in any of the grounds of attack raised on behalf of the petitioner. In the light of the foregoing discussions, we are, therefore, not inclined to interfere with the award dated December 17, 1988 of the Industrial Tribunal, Orissa, Bhubaneswar. The writ petition is accordingly dismissed. We, however, make no order as to costs.

G.P. Patnaik, J.

8. I agree.

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