(2001) 10 CAL CK 0033

Calcutta High Court

Case No: F.M.A. No. 1419 of 2000

Indian Aluminium Company Ltd.		APPELLANT
	Vs	
Third Industrial Tribunal and Others		RESPONDENT

Date of Decision: Oct. 12, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226, 227, 32
- Industrial Disputes Act, 1947 - Section 2, 2A

Citation: (2003) 1 LLJ 912

Hon'ble Judges: Tarun Chatterjee, J; Hrishikesh Banerji, J

Bench: Division Bench

Advocate: Maloy Kumar Basu and Gopal Dutta, for the Appellant;Jayanta Kr. Biswas and Santosh Kr. Das, for the Respondent

Final Decision: Dismissed

Judgement

Hrishikesh Banerji, J.

This appeal is directed against the order dated September 5, 1997 passed by a learned single Judge of this Court dismissing the Writ Petition filed by the appellant herein challenging the award dated April 7, 1982 passed by the Third Industrial Tribunal, West Bengal.

2. The following industrial dispute was referred to the Tribunal for adjudication:

Whether the termination of service of Sudhir Chandra Paul w.e.f. January 1, 1980 by the Management was justified?

3. The Tribunal answered the question in the negative holding that the Company''s act of retiring the workman, Sudhir Chandra Paul w.e.f. January 1, 1980 was illegal as the said, workman was entitled to continue in service till the attaining of the age of 60 years on December 31, 1981.

4. The respondent No. 2 was working in the Head Office of the appellant Company viz. Indian Aluminium Co. Ltd. He joined the Company on June 21, 1948. By a notice dated October 29, 1979 he was informed that he would be completing the age of 58 years on December 31, 1979 and would be retiring from the service of the appellant/Company on January 1, 1980. This superannuation notice, however, was challenged by the respondent No. 2 on the ground that the Company should have allowed him to work till he attained the age of 60 years i.e. till December 31, 1981.

5. In his letter of appointment, the respondent No. 2 states, there is nothing to indicate that he would be retiring on completion of 58 years of age and he was never told of any such condition of retirement on completion of 58 years of age. It is the case of the workman that when he joined the service in the Company in 1948 there was no rule governing his date of retirement and he was expecting that he would be allowed to continue in service at least up to the age of 60 years.

6. The Company, however, in its Written Statement states that no case of industrial dispute could be made out because the Union of which the workman was once the Vice-President did not espouse his cause. The Union, it is stated on behalf of the Company, knew that the age of retirement was 58 years and as such did not think it was a fit case for espousal. It is further contended on behalf of the Company that Section 2A of the Industrial Disputes Act, 1947 (''the 1947 Act'' for short) mentioned in the order of reference has no manner of application as the workman retired automatically when he completed the age of 58 years inasmuch as in terms of the circular dated July 29, 1963 issued by the then Managing Director of the Company, Mr. A. Zullig, the retirement age of the workmen was raised from 55 years to 58 years. This was mentioned in Termination Gratuity for Non-Supervisory Employees Rules and with the enactment of the Payment of Gratuity Act, 1972 the age of retirement fixed by the Parliament was 58 years. In such circumstances, it is stated by the Company, the workman never had any case to proceed with, challenging the age of superannuation in terms of the Managing Director''s letter dated July 29, 1963.

7. It is the Company''s case that the Company had retired its employees from service at the age of 55 years prior to July, 1963 and enforced the circular issued on July 29, 1963 raising the age of superannuation to 58 years meticulously.

8. Mr. Basu, appearing for the appellant contends that the Government inspite of various representations of the workman that the fair age of retirement should be 60 years, did not refer the issue on the age of retirement to the Tribunal, probably for the reason that such an issue cannot be referred u/s 2A of the 1947 Act which enables the Government to refer even an individual dispute relating to retirement or termination of an individual employee and is therefore a deemed industrial dispute by virtue of Section 2A of the 1947 Act.

9. It is contended by Mr. Basu that the Tribunal went beyond the terms of reference in determining the age of retirement of the respondent No. 2 to have been 60 years.

10. The Company disclosed the list of employees of the Head Office who retired at the age of 55 years prior to July, 1963 (Annexure ''B'' to the Written Statement) and at the age of 58 years after July, 1963 (Annexure ''C'' to the Written Statement). Annexure ''C'' contains the names of the following employees who joined before the respondent No. 2 and retired on completing the age of 58 years; Mr. P.C. Chakraborty, Mr. S. Sengupta, Mr. S.S. Nayek, Mr. Khagesh Das, Mr. R. Das, Mr. P. Nayek, Mr. R. N. and Mr. S.C. Das.

11. Mr. Basu cited the decision in the case of Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel, is support of his contention that the Writ Court should look into evidence to ascertain whether the finding of fact made by the Tribunal is based on ''no evidence'' or not. In the said case it has been held that there is a difference between a finding based on sufficiency or adequacy of evidence and a finding based on ''no evidence''. It is observed there that where a finding of fact recorded by the Tribunal is based on ''no evidence'' such a finding would suffer from the error of law apparent from the fact of record.

12. Mr. Basu relies on the following findings of fact of the Tribunal to urge his point that the Tribunal''s findings are based on ''no evidence'' before it:

A. Mr. Zullig did not take into confidence the Head Office employees before issuing the Circular regarding age of retirement.

B. The employees had neither any opportunity of discussing the matter with Mr. Zullig nor of moving the higher authority against the Circular.

C. The retirement age of 58 years in the Head Office was not accepted by the workman as the condition of his service.

D. Allurement and special benefits might have been conferred on the employees whose letters of retirement were disclosed and exhibited before the Tribunal

13. We are unable to accept Mr. Basu''s contention that none of the above facts is based on any evidence on record. Excepting the fact regarding allurement mentioned in Clause ''D'' above all the findings of the Tribunal on the facts stated in Clauses ''A'', ''B'' and ''C'' above are supported by cogent evidence. The fact that the Company failed to produce any document to show that Mr. Zullig took the Head Office employees in confidence before issuing the Circular, is itself the evidence of the fact that the Circular was issued without any consultation with the employees in the Head Office. So, it cannot be said that the above finding of the Tribunal that Mr. Zullig did not take the Head Office employees into confidence is based on ''no evidence''. Similarly, with regard to the Tribunal''s finding that no opportunity was given to the employees of discussing the matter with Mr. Zullig and that there was no chance given to the employees to take an appeal from the order of Mr. Zullig to

the higher authority, are also findings of fact arrived at by the Tribunal based on the Company''s failure to adduce any evidence to show that any such opportunity was given to the employees before the Circular was issued. This finding of the Tribunal being also based on a finding of fact, it cannot be said to be a finding based on ''no evidence''.

14. The finding of the Tribunal that the workmen in the Head Office did not accept the retirement age of 58 years as their condition of service is also evident from the fact that there was no stipulation in the contract of employment of any of the employees that the retirement age of the employees would be 58 years in the Head Office and it is alleged in his deposition by the workman that some of the employees in the Head Office retired attaining the age of 60 years and even beyond that age up to 64 years.

15. This fact also cannot be said to be based on ''no evidence'' but is based on the fact that there was no stipulation of retirement at the age of 58 years in the contract of employment.

16. Accordingly, we hold that the decision in Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel, , cited by Mr. Basu is not applicable to the present case and it cannot be said that the order of the Tribunal based on the above evidence is perverse.

17. The decision referred in Shama Prashant Raje Vs. Ganpatrao and Others, cited by Mr. Basu is not applicable to the facts of the present case first, because in the said decision the Tribunal''s order which was under challenge before the Apex Court was an order of the Rent Controller and not of an Industrial Tribunal and secondly, because it cannot be said that the Industrial Tribunal in the present case did not consider the relevant material on record and considered any inadmissible material or committed any manifest error in construing the material before it.

18. Mr. Basu submits that the contention of the workman that the retirement notice issued to him was premature cannot be said to be incidental to the main question before the Tribunal viz., whether the termination was justified or not. In support of his contention Mr. Basu refers to the decision in the case of Workmen of British India Corporation Ltd. v. British India Corporation Ltd., reported in 1965-II-LLJ-433 (SC) where employers of the British India Corporation Ltd. (Cawnpore Woollen Mills, branch of the respondent, Cawnpore) were required to increase the wages of their workmen and clerks, it was held by the Supreme Court that the question of amalgamation of Dearness Allowance with basic wages was not an incidental matter arising out of the reference to increase wages. The facts of the present case are clearly distinguishable inasmuch as it would be evident from the conciliation proceedings which preceded the reference that the termination was inseparably linked with the question whether the workman should be treated to have retired on attaining the age of 58 years as contended by the employer, or he should have been

allowed to continue till the completion of the age of 60 years as urged by the employee.

19. Mr. Basu has also referred to the following decisions in support of his contention that the Tribunal went beyond the terms of reference in fixing the age of retirement of the respondent/workman.

1. Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others, .

2. Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc., .

3. Firestone Tyre and Rubber Company of India (P) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees'' Union, .

4. Municipal Committee Tauru Vs. Harpal Singh and Another, .

5. Gouri Shankar Chatterjee and Ors. v. Texmaco Ltd. & Ors,, reported in 2001 (2) SCC 257 : 2001-I-LLJ-553.

20. In 1981-II-LLJ-218 (SC) (supra) where the issue before the Tribunal was reinstatement of some employees, the Tribunal took into consideration the alleged unfair 2 labour practice of the Management reinstating some of the employees. The Supreme Court held that such consideration of unfair labour practice was beyond the scope of reference and set aside the Tribunal''s award holding that it3 had acted outside its jurisdiction in arriving at the finding of unfair labour practice and discrimination.

21. The next decision cited by Mr. Basu is the case of Delhi Cloth and General Mills Co. Ltd. v. Workmen and Ors. (supra). In the said case the Supreme Court observed, while considering the award of the Tribunal in connection with the framing of Gratuity Scheme wherein the Tribunal had fixed the age of superannuation, that in the absence of any reference relating to the fixation of the age of superannuation, the Tribunal was not competent to fix such age. The fixation of the age of superannuation, it was held by the Supreme Court, was not incidental to the framing of Gratuity Scheme.

22. Mr. Basu next contends that a Division Bench of the Rajasthan High Court in the case of Jaipur Spinning and Weaving Mills Ltd. v. Jaipur Spinning and Weaving Mills Ltd. Mazdoor Union and Anr., reported in 1959-II-LLJ-656, following two judgments of this Court in the cases of Hukumchand Jute Mills Ltd. v. Labour Appellate Tribunal, reported in 1959-I-LU-595 (Cal) and Workers of Bengal Electric Lamp Works Ltd. v. Bengal Electric Lamp Works Ltd., reported in 1958-I-LLJ-571 (Cal), interpreted the word ''incidental'' to mean a subordinate or subsidiary matter related to some other main principal matter requiring casual attention when considering the main thing.

23. In Municipal Committee Tauru Vs. Harpal Singh and Another, cited by Mr. Basu, it was held by the Apex Court that substantial justice must be done both to the employer and to the employees. In the instant case we find that in answering the

reference, the Tribunal committed no error calling for interference in the Writ Court and we do not find anything on record to suggest that the employer was denied substantial justice as sought to be contended by Mr. Basu.

24. In our view, the decisions cited above by Mr. Basu are not applicable to the facts of the present case inasmuch as we find for the reasons stated hereinbelow, that in the case at hand, determination of the age upto which the workman should have been allowed to work in the Company in the absence of any contract of employment regarding the age of superannuation is very much a question incidental to the question whether the termination of the workman''s services on his completing the age of 58 years was justified or not.

25. u/s 2(oo) of the 1947 Act:

""Retrenchment" means the termination by the employer of the service of a workman for any reason otherwise than as a punishment inflicted by way of disciplinary action, but does not include a. .....

a. .....

b. retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and the workmen concerned contains a stipulation in that behalf;

c. ....."

26. Mr. Biswas, appearing for the respondent/workman submits that the contention made on behalf of the appellant/Company that the Tribunal went beyond the terms of reference, is without any merit. He refers to the decision in the case of The Jaipur Udyog Ltd. Vs. The Cement Work Karmachari Sangh, Sahu Nagar, in support of his contention that the scope of reference has to be gathered from the circumstances preceding the Government''s Order making the reference. In the case at hand superannuation notice dated October 29, 1979 was issued by the General Manager informing the workman that he would be completing the age of 58 years on December 31, 1979 and would be retiring from the service of the company on January 1, 1980 in accordance with the prevalent policy of the Company when the notice was issued. By his letter dated November 5, 1979, the workman requested the General Manager not to retire him forcibly at the age of 58 years and to allow him to continue in service till he would reach the age of 60 years which according to him was the fair retiring age. In this letter he also pointed out that at the time of his appointment by virtue of the letter dated June 25, 1948 there was no stipulation in the contract of employment that -he would retire on completion of the age of 58 years. It was further stated in his said letter dated November 5, 1979 that during the tenure of his service he found many others in the Company continuing in employment till they attained the age of 60 years and even more up to 64 years and in such circumstances he appealed for withdrawing the letter of his termination of

service and to allow him to continue in service for a further period of 2 years.

27. The respondent No. 2 made three applications dated November 15, 1979, January 2, 1980 and February 9, 1980 addressed to the Conciliation Officer praying for his intervention so that he might continue in service till he completed the age of 60 years. He asserted in all his letters that there was no stipulation regarding the age of superannuation in the contract of employment with the workers. In its reply dated February 6, 1980 the company communicated to the Conciliation Officer that the letter dated October 29, 1979 was wrongly construed as a notice of termination of service. As a matter of fact, the same was an advance intimation by the company to the workman to inform him that he would be retiring w.e.f. January 1, 1980 on attaining the age of superannuation on December 31, 1979.

28. Thus it appears that it is the contention on behalf of the respondent-workman that there was no fixed retirement age and according to the workman the retirement notice issued to him was premature, while the company''s contention was that the retirement age was fixed and the respondent/workman had not been retired prematurely. This is obviously an incidental question for the purpose of adjudication of the main question as to whether the termination was justified or not.

29. In this connection Mr. Biswas has referred to the decision in the case of Workmen v. Card Board Box Manufacturing Company, reported in 1970 LIC 154 (Calcutta High Court). In the said case the company discharged an employee at the age of 57 years and 2 1/2 months, though the age of superannuation as per the company''s standing orders was 55 years. Since the person was already an employee when the standing orders came into force, the question before the Tribunal was whether the order of discharge was justifiable. Considering that the retiring age of Government employees had gone up to 58 years from 55 years and considering a Supreme Court decision the Tribunal held that the said discharged employee ought to have been retired at 58 years. The employer challenged the said order on the ground that the Tribunal was not called upon to come to a decision on the age of retirement of the employee. But it was held by the Court that the Tribunal was competent to decide the age of retirement of the employee and that the decision fixing the age of retirement at 58 years could not be interfered with in exercise of the power of superintendence under Article 227 of the Constitution of India.

30. It is argued by Mr. Biswas that the Tribunal in the case at hand has neither determined nor declared the retirement age for all the members of the staff of the appellant/Company. The Tribunal has granted relief to the respondent/workman holding that in the absence of any stipulation in the contract of employment between the employer and the workman regarding the retirement of the workman on completion of the age of 58 years, the appellant-Company''s action to retire the respondent/workman w.e.f. January 1, 1980 was not justified and accordingly, such termination was unjustified.

31. It is further contended by Mr. Biswas that on consideration of the facts and circumstances the Tribunal thought it just and appropriate to award monetary benefits to the respondent/workman treating him to have been in service till he reached the age of 60 years. Referring to the decision in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, , Mr. Biswas submits that the Industrial Tribunals can grant such reliefs in the circumstances as stated above if they think the same to be just and appropriate. It has been observed by the Apex Court in the above case that the Courts and Tribunals created by the Industrial Disputes Act, are not shackled by the procedure or laws of Civil Courts and their awards are not subjected to any appeals or revisions. The following observations of the Supreme Court in the said case are applicable to the facts of the present case:

"Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and remake the contracts settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that the disputes concerning them are adjudicated in the forums created by the Act and not in a Civil Court. This is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the Courts in interpreting the enactments and the disputes arising under them."

32. In such circumstances it is rightly contended by Mr. Biswas that the appellant''s contention that the Tribunal went beyond the terms of reference is without any merit.

33. Mr. Basu, appearing for the appellant/Company contends that as the award will have a country wide effect, the Tribunal is not competent to make an award at the instance of an individual workman. This contention of Mr. Basu is also of no avail inasmuch as in the case of an individual dispute the award passed by the Tribunal binds only the respondent/ workman and the appellant/Company and none else.

34. In this connection Mr. Biswas has referred to the decision in the case of Lipton Limited and Another Vs. Their Employees, . The said case proceeded in the Industrial Tribunal on the footing that the Lipton Ltd. had a uniform system of wages in India and if the wage structure of the Delhi employees was revised it would mean revising the wage structure of the employees in other Indian Offices as well. It was further suggested in the said case that if the wage structure was uniformly revised at all other places, the cost of the increase in wages taken along with the cost of other reliefs granted by the Tribunal would be much more than 5 or 6 lakhs. On the above fact the Supreme Court was of the view that this would not be a ground for setting

aside the award. It was held that the Industrial Tribunal at Delhi had jurisdiction to make an award in respect of employees of the Delhi Offices only and that it had no jurisdiction to make an all India award. Relying on this decision we accept the contention of Mr. Biswas that the award of the Tribunal in the present case cannot have any all : India effect.

35. Furthermore, the Tribunal has neither determined nor declared the retirement age for all the members of the staff of the appellant/Company obviously because it was beyond its scope while considering a dispute raised u/s 2A of the 1947 Act.

36. Referring to the decision in the case of Guest Keen Williams Pvt. Ltd. Calcutta v. P.J. Sterling and Ors. (supra), Mr. Basu submits that the Supreme Court in the said case held that in determining the age of superannuation of the employees, Industrial Tribunals have to take into account several relevant factors. In the present case the Tribunal was not called upon to fix the age of superannuation of the employees of the appellant/Company. The Tribunal, in our view, considered all the factors relevant for deciding whether in the absence of any contract of employment the concerned employee would be allowed to continue in service till he attains the age of 60 years. Therefore, the decision cited by Mr. Basu, is not applicable to the facts of the present case and the Tribunal, in our view, did not commit any error in arriving at its findings.

37. The decision cited by Mr. Basu in 2001-I-LLJ-553, in our view, is also not applicable to the facts of the present case as the dispute referred to the Tribunal in the said case was whether the demand of the Badli workmen for regularisation of their services in the permanent roll of the Company was justified.

38. Referring to the decision in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, , Mr. Biswas brings to the notice of this Court the following observations in the said decision:

"A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts legally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of appreciation of findings cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not error of fact, however, grave it may appeal to be."

39. Mr. Biswas, has also cited the Supreme Court decision in the case of Kaushalya Devi and Others Vs. Bachittar Singh and Others, and in the case of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and

Others, , in support of his contention that wrong appreciation or error in drawing wrong inference by the Tribunal are not errors apparent on the face of record for which writs of certiorari can be issued.

40. The Tribunal in its award observed that none of the persons named in Annexure ''C'' which contains the names of the persons who retired at the age of 58 years after July, 1963 having been examined by the Company, it could not be established that no allurement or special benefits had been conferred on them and that the circular of Mr. Zullig might not perhaps tell the whole story.

41. Non-examination of any of the retired persons being an admitted fact, the award of the Tribunal cannot be said to be perverse on this ground.

42. From the evidence on record we are satisfied that the Company has failed to produce any convincing document to show that before the respondent/workman was served with a notice of retirement on superannuation w. e.f. January 1, 1980 there was any stipulation in the contract of employment between the employer and the workman that the latter would retire on superannuation at the age of 58 years.

43. Such being the position we are of the view that the arguments of Mr. Basu that the award in favour of the respondent/workman is perverse, is not acceptable.

44. The learned single Judge, in our view, rightly held that the Tribunal passed the impugned award after taking into consideration all the relevant facts and circumstances relating to the dispute referred to it, and found no reason to hold the Tribunal''s findings perverse.

45. Accordingly the award passed, by the Tribunal as also order of the learned single Judge are affirmed and the appeal is dismissed.

46. Costs are assessed at 300 G.Ms.

Later:

After the judgment is delivered, learned counsel for the appellant pray for stay of operation of the judgment, such prayer for stay is refused.

Tarun Chatterjee, J.

47. I agree.