2023 INSC 194

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 13398 OF 2015**

Chairman-cum-M.D. ITI Limited ...Appellant

versus

K. Muniswamy & Ors. ...Respondents

**J U D G M E N T**

**ABHAY S. OKA, J.**

**FACTUAL ASPECTS**

**1.** This Civil Appeal raises a very narrow controversy. The issue concerns the interpretation of clause 17(7)(iii) of the Certified Standing Orders (for short, 'the Standing Orders') under the Industrial Employment (Standing Orders) Act, 1946 in respect of the appellant – company. The appellant – company is a Public Sector Undertaking (PSU) of the Government of India. On 11th June 1998, by a circular, an amendment was made to Rule 35 of the ITI Conduct, Discipline and Appeal Rules, 1975 (for short, 'the said Rules'). Amended clause 2(d) of Rule

35 of the said Rules provided that an employee completing the age of 58 years, will continue in service till the completion of the age of 60 years, subject to medical fitness at the end of each year. On 22nd August 2001, the Department of Public Enterprises issued an Office Memorandum (O.M.) directing that the Hon'ble Minister-in-charge of the concerned administrative Ministry would have the authority to approve the rollback of the retirement age for all PSUs, on the basis of the decision of the Board of Directors of the concerned PSU. The Board of Directors of the appellant – company proposed to roll back the age of retirement from 60 to 58 years. The said proposal was approved by the concerned Ministry on 20th November 2001.

**2.** A writ petition was filed by the respondents before the High Court of Karnataka for challenging the rollback. The writ petition was partly allowed by the learned Single Judge by setting aside the circular dated 27th March 2002 by which the effect was given to the decision of rollback by carrying out necessary amendments to the said Rules and in particular, to Rule 35. The learned Single Judge directed the appellant to take

note of various factors as indicated in the judgment while considering the issue of the reduction in the retirement age from 60 to 58 years. Pending the decision of the appellant, a direction was issued to the appellant to continue its employees till the age of 60 years. However, it was clarified that those who have already attained the age of 58 years, will not get any relief. Both parties filed writ appeals for challenging the judgment of the learned Single Judge. By the impugned judgment, a Division Bench of the High Court held that the learned Single Judge was not right in setting aside the decision to roll back the age of retirement. However, it was held that the rollback cannot have the effect of affecting the existing rights of employees and the company recognised in terms of clause 17(7)(iii) of the Standing Orders.

**SUBMISSIONS**

**3.** The submission of the learned counsel appearing for the appellant is that clause (17)(7)(iii) does not confer any right on any of the employees. His submission is that the said clause gives discretion to the appellant–employer to consider the case of any employee to permit him to serve up to the age of 60 years, subject to medical fitness at the end of each year. This

clause does not confer any right on any employee to be considered for continuation till the age of 60 years. His submission is that the said clause enables the appellant to continue the employment of certain employees, if after considering the exigencies of work, the appellant was desirous of continuing with their employment. The learned counsel also invited our attention to material placed on record indicating reasons for effecting rollback from 60 to 58 years. The learned counsel, therefore, submitted that the direction issued in paragraph 28 of the judgment, needs to be set aside.

**4.** The learned counsel appearing for the respondents and/or intervenors urged that all that paragraph 28 of the impugned judgment directs is that the effect should be given to clause 17(7)(iii) and therefore, there is no reason for this Court to interfere with the said direction.

**OUR VIEW**

**5.** On 11th June 1998, the appellant amended Rule 35 of the said Rules by which, the age of retirement of the employees was extended to 60 years. Considering the losses suffered by the appellant, in the year 2001, the appellant engaged services

of M/s. Price Waterhouse Coopers to make recommendations regarding restructuring the company. Based on the figures of manpower cost incurred by the appellant, the said consultant recommended that the age of retirement should be reduced to 58 years, which will achieve the objective of reduction of manpower cost. In fact, the recommendation of the consultant was also to reduce the age of retirement to 55 years by March, 2003. According to the case of the appellant, in December 2001, the issue of rollback of the age of retirement was discussed with the recognised Unions and office bearers of the Officers' Association. The Division Bench of the High Court in the impugned judgment has held that the decision of the appellant to roll back the age of retirement from 60 to 58 years cannot be faulted. This part of the impugned judgment has not been assailed by the respondents. Therefore, what remains for consideration is only the interpretation of clause 17(7)(iii) of the Standing Orders. For ready reference, we are quoting sub-clause (7) of clause 17 of the Standing Orders, which reads thus:

> **"17.Service-Termination of-by the Company:**
>
> **1.....**

> **2.....**
> **3.....**
> **4.....**
> **5.....**
> **6.....**
> **7. (i)** The age of Superannuation shall be 58 years but the Company, however, may require an employee to retire at any time after he attains the age of 55 years on three months' notice without assigning any reasons;
>
> **(ii)** The employee may also at any time after attaining the age of 55 years voluntarily retire after giving three months' notice to the Company.
>
> **(iii) The employee who attains the age of 58 years may be continued in service upto the age of 60 years subject to medical fitness at the end of each year**."
>
> (emphasis added)

**6.** First part of sub-clause (7) lays down that the age of superannuation shall be 58 years. However, it gives an option to the appellant to retire an employee after he or she attains the age of 55 years on three months' notice without giving any reasons. It also gives an option to employees to take voluntary retirement on completion of the age of 55 years. The word 'may' has been used in sub-clause (7)(iii) of clause 17. It is only an enabling provision that enables the appellant to

continue an employee in service who has attained the age of 58 years, up to the age of 60 years, provided he or she is medically fit. This clause does not entitle any employee to seek continuation after completion of 58 years of age as a matter of right. The aforesaid clause does not create any right in any of the employees to seek their continuation after 58 years. However, discretionary power has been conferred on the appellant to continue an employee who has attained 58 years of age, till completion of the age of 60 years.

**7.** Paragraph 28 of the impugned judgment reads thus:

> "Therefore, while holding that the roll back from 60 to 58 years cannot be interfered with by this Court in exercise of judicial review power, **we make it clear that the roll back cannot have the effect of affecting the existing rights recognised in the employees and the company in terms of clause 17(7) of the Standing Orders.** Point No.3 is answered accordingly."
>
> (emphasis added)

**8.** On a plain reading of clause 17(7)(iii), it does not create any right in favour of any employee. The use of the word 'may' indicates that it gives discretion to the appellant to continue

some of the employees after completing the age of 58 years, till they complete 60 years of age.

**9.** Therefore, we hold that clause 17(7)(iii) of the Standing Orders only enables the appellant – company to continue any employee in service till he or she attains the age of 60 years subject to medical fitness at the end of each year. We also make it clear that the aforesaid clause does not confer any right on the employees to seek extension till the completion of 60 years. To this extent, paragraph 28 of the impugned judgment stands modified.

**10.** The appeal is partly allowed on the above terms with no order as to costs. Pending applications, if any, stand disposed of.

.....J.
(Abhay S. Oka)

.....J.
(Rajesh Bindal)

New Delhi;
March 2, 2023.