

2017 (0) AIJEL-HC 237791

GUJARAT HIGH COURT

Hon'ble Judges:G.R.Udhwani, J.

Umar Mohammed Aref Barkat Versus Express Limited

Special Civil Application No. 15934 of 2016 ;  
Special Civil Application No. 13338 of 2009 ; \*J.Date :- FEBRUARY 9, 2017

- CONSTITUTION OF INDIA Article - 226

**Service and Labour - Constitution of India - Art. 226 - termination of service - denial of full back wages - cross petitions - award of 50% back wages from the date of termination of workman - claim of 100% back wages - correction in date of retirement - validity of - held, once having found that the age of superannuation of the workman was wrongly fixed and once the same is corrected to 60 years, there can be no justifiable reason to deny full back wages and consequential benefits to the workman - it was not on account of the fault of workman that superannuation age was wrongly fixed - superannuation fixed by employer was eventually found to be in breach of provisions of Industrial Employment (Standing Orders) Act, 1946, which prescribes age of 60 years as the age of superannuation unless agreed otherwise; there being no such contra agreement - thus, denial of full back wages to workman with all consequential benefits is not sustainable - it is only the Management who can be held responsible for not allowing the worker to work owing to wrong fixation of age of superannuation and therefore the back wages cannot be denied to workman - application filed by workman allowed.**

**Imp.Para:** [ 6 ][ 7 ]

**Equivalent Citation(s):**

2017 (2) CLR 169 : 2017 (154) FLR 288

**JUDGMENT :-**

**G.R.Udhwani, J.**

1 SCA No. 15934 of 2016 has been instituted by the workman claiming 100% back wages as against the award of 50% back wages with effect from 15/12/2002 i.e. the date of termination of the workman to 14/12/2004. The contest in the Labour Court was for the said period on account of the retirement age which was 58 years and came to be

corrected as 60 years by the Labour Court by judgment and award which the employer has also questioned in SCA No.13338 of 2009. Thus, the cross petitions.

**2** The workman was appointed as a compositor by virtue of the order of appointment dated 13/07/1979. The superannuation fixed therein was 55 years as per clause 9 of the order. It appears that a dispute was raised; Reference (IT) No. 504 of 1986 was instituted for the purpose of enhancing the age of superannuation wherein the settlement was arrived at enhancing the age of superannuation from 55 years to 58 years. Benefit accordingly was given to the workman with effect from 15/04/1993. However, subsequently, the Union terminated the settlement by letter dated 27/06/1994 and filed a complaint before the Labour Commissioner which was eventually referred to the Labour Court for its decision and eventually the Labour Court enhanced the age of superannuation to 60 years.

**3** As indicated earlier, the Labour Court awarded the back wages only to an extent of 50% for the period of two years being the differential period between the age of superannuation of 58 and 60 years.

**4** Learned Senior Counsel, Mr. S.I. Nanavati, representing the employer has fairly drawn the attention of this Court to oral judgment dated 28/07/2014 passed in SCA No.10141 of 2001 considering the similar issue as are raised in SCA No. 13338 of 2009. The said petition related to the age of superannuation of working journalist; whereas the workman herein is nonworking journalist. The Court, however, concluded the case even for nonworking journalist in the following terms:

"12. Therefore, by virtue of the aforesaid provisions of Section 14, the Act of 1946 is made applicable and as per Section 2A of the Act of 1946, the Model Standing Orders would apply. Such Model Standing Order, by Clause No.27, provides for the age of retirement unless otherwise agreed between the employer and the workman. Under these circumstances, it can be said that the Model Standing Orders for the establishment operating in Gujarat State for the working and non-working journalists provides for 60 years as the age of retirement unless otherwise agreed by the workman with the employer. It is not the case of the petitioner that there was any agreement or award or certified Model Standing Order binding to the respondent Union or its members. In absence of any certified standing order, the Model Standing Order would apply and if applied, it would require the age of superannuation or retirement as 60 years."

4.1 It is stated that no Letters Patent Appeal is preferred by the company against the oral judgment dated 28/07/2014 passed in SCA No. 10141 of 2001 and the same is accepted.

**5** Considering the above referred facts, as also the decision in Indian Express Limited (supra), in the opinion of this Court, the issue stands covered by the said decision and therefore no infirmity can be found in the impugned judgment and award when it fixes the superannuation age of nonworking journalist at the age of 60 years. SCA No. 13338 of 2009 is therefore liable to be dismissed.

**6** So far as SCA No. 15934 of 2016 is concerned, the limited grievance is made in this petition that once having found that the age of superannuation of the workman was wrongly fixed and once the same is corrected to 60 years, there can be no justifiable reason to deny full back wages and consequential benefits to the workman. It was not on account of the fault of the workman that the superannuation age was wrongly fixed. The superannuation fixed by the employer was eventually found to be in breach of the provisions of the Industrial Employment (Standing Orders) Act, 1946, which prescribes age of 60 years as the age of superannuation unless agreed otherwise; there being no such contra agreement. In the opinion of this Court, the denial of full back wages to the workman with all consequential benefits is not sustainable.

**7** Learned Counsel for the employer contended that the workman had not worked for the period of two years and therefore would not be entitled to 100% back wages. This is not a case where the workman himself abstained from working. It is only the Management who can be held responsible for not allowing the worker to work owing to wrong fixation of the age of superannuation and therefore the back wages cannot be denied to the workman. Accordingly, SCA No. 15934 of 2016 must succeed.

**8** It is pointed out that the differential amount of Rs.1,43,457.86 Paise computed at the rate of 50% of the back wages has been deposited before this Court by the employer which was directed to be invested in the Nationalized Bank for a period of three years in the name of Registrar of this Court with periodical renewal till the decision in SCA No. 13338 of 2009. The accruing interest was also ordered to be paid to the workman till the final disposal of the said SCA No.13338 of 2009. Since SCA No. 15934 of 2016 is allowed, the above amount with accrued interest, if any, shall be paid to the workman by an account payee cheque drawn in his name after due verification, forthwith.

**9** So far as rest of the 50% back wages is concerned, which is now payable under the modified award along with consequential benefits shall be paid by the employer to the workman within a period of two months from the date of the receipt of the writ of this order.

**10** In the result, SCA No. 13338 of 2009 is dismissed and Rule is discharged; SCA No. 15934 of 2016 is allowed and Rule is made absolute to the aforesaid extent.

Spl. C.A. No. 15934 of 2016 allowed. Spl. C.A. No. 13338 of 2009 dismissed.