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**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 5TH DAY OF JULY, 2022

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S.DIXIT

AND

THE HON'BLE MR JUSTICE P.KRISHNA BHAT

WRIT APPEAL NO. 100250 OF 2021 (L-RES)

BETWEEN:

THE MANAGEMENT OF
M/S GRASIM INDUSTRIES LTD
UNIT HARIHAR PLOYFIBERS
KUMARAPATTANAM 581 123
RANEBENNUR TALUK
HAVERI DIST.

... APPELLANT

(BY SRI. PRAMOD N.KATHAVI, SENIOR ADVOCATE, FOR
SRI. GANGADHAR S HOSAKERI & SMT. RACHANA
BHARADHWAJ R., & SRI H.K.NAGABHUSHAN, ADVOCATES)

AND:

1. THE GENERAL SECRETRY
HARIHAR POLYFIBERS,
EMPLOYEES UNION
KUMARAPATTANAM 581 123
RANIBENNUR TALUK
HAVERI DIST.

2. DEPUTY LABOUR COMMISSIONER
BELGAVI DIVISION
BELGAVI

3. ADDITIONAL LABOUR COMMISSIONER
(INDUSTRIAL RELATIONS) AND
APPELATE AUTHORITY UNDER THE
INDUSTRIAL EMPLOYMENT
(STANDING ORDERS ACT)
1946, DAIRY CIRCLE
BANNERGHATTA ROAD
BENGALURU 560029.

…RESPONDENTS

(BY SRI. S.L.MATTI, ADVOCATE FOR C/R1
SRI. G.K.HIREGOUDAR, GOVT. ADVOCATE FOR R2 & R3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING THIS HONBLE COURT TO ALLOW THIS WRIT APPEAL; SET ASIDE THE ORDER DATED 17.09.2021 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO.106307 OF 2018 DISMISSING THE WRIT PETITION FILED BY THE APPELLANTS., IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESRVED ON 14.06.2022, COMING ON FOR PRONOUNCEMENT, THIS DAY, **KRISHNA S.DIXIT, J**, DELIVERED THE FOLLOWING.

J U D G M E N T

This intra-Court appeal by the Management of an industry calls in question the correctness of the Judgment dated 17.09.2021 rendered by a learned Single Judge of this Court whereby its Writ Petition No. 106307/2018, wherein a challenge to the certification of the subject Standing Order that enhanced the retirement age from 58 to *60 years*. The Employees' Union being the Respondent has entered Caveat through its learned counsel who very effectively resisted the appeal by making submission in justification of the impugned judgment and the reasons on which it has been constructed.

II. FOUNDATIONAL FACTS OF THE CASE:

(i) The Appellant M/S Grasim Industries Ltd is the *'Employer'* as defined u/s 2(d) and the members of Respondent Union are the *workmen* answering the definition of "workman" given u/s 2(i) of the Industrial Employment (Standing Orders) Act 1946

(hereinafter '*1946 Act*'), is not in dispute. Clause 29 of the Certified Standing Orders (hereinafter '*CSO*') obtaining in the Appellant industry had fixed 58 years as the age of retirement. This fixation was done half a century ago i.e., in 1971. It has the following text:

> "*A workmen shall retire from the services of the Company on completion of the age of 58 years, but he shall also retire earlier on Medical Grounds if he becomes medically unfit and is certified to be unfit by the Medical Officer appointed or nominated by the management that he is not able to work he is appointed to do.*"

(ii) The State Government amended Entry No. 15–A of Schedule I and thereby enhanced the age of retirement to 60 years by modifying the Model Standing Orders (hereinafter '*MSO*') vide the Karnataka Industrial Employment Standing Orders (Amendment) Rules 2017 (hereinafter '*2017 Amendment Rules*') that came to be gazetted on 28.03.2017. The vires of this Amendment was put

in challenge in a batch of Writ Petitions, which aspect is discussed infra.

(iii) In the meanwhile, the Resp. – Union vide representation dated 06.04.2017 had applied to the 2nd Resp.–Deputy Labour Commissioner (hereinafter '*DLC*') for the modification of CSO by introducing 60 years in the place of 58, as the age of retirement in tune with 2017 Amendment Rules. The Appellant–Management had filed its objections on 24.07.2017 *inter alia* seeking deferment of consideration of the claim on the ground that its Writ Petition challenging the vires of 2017 Amendment Rules was pending consideration.

(iv) The 2nd Respondent vide order dated 17.03.2018 certified the modification to Clause 29 of the CSO and thereby enhanced the age of retirement to 60 years consistent with the said Amendment. Appellant's statutory appeal against the same came

to be negatived by the 3rd Respondent–Additional Labor Commissioner vide order dated 08.08.2018. A further challenge to the same in the subject Writ Petition too having met the same fate, appellant is now grieving against the same, in this appeal.

III. Having heard the learned counsel appearing for the parties and having perused the Appeal Paper Book, this Court declines indulgence in the matter for the following reasons:

A. INDUSTRIAL ADJUDICATION TO TRANCEND PLEADINGS OF PARTIES; ADJUDICATORS TO ACT AS 'FACILITATIVE STAKEHOLDERS':

(i) Ours is a constitutionally ordained Welfare State. The Statute under which the *lis* at hands has arisen enacts a *'labour welfare policy'* consistent with the provisions of Part – III & Part - IV of the Constitution. It is now well settled that by virtue of Article 51, the International Conventions & Treaties, particularly those to which India is a party/signatory do become a part of our Native Law

subject to they not being repugnant, and therefore, they can be relied upon while construing the Statues woven with the very same subject matter and at times enforced too vide *APPAREL EXPORT PROMOTION COUNCIL VS. A.K.CHOPRA*[1]. There have been several such instruments of international law which are adverted to by the Apex Court in giving effect to the policy content of *labour welfare legislations*.

(ii) The adjudicatory process in the realm of labour law, as of necessity has to transcend the strict rules of pleadings and arguments at the Bar. To put it succinctly, labour disputes cannot be capsuled in their traditional bi-partite framework. In an industrial adjudication, labour & capital are the principal stakeholders and the adjudicatory agencies have to play the role of '*facilitative stakeholders'.* An approach in variance would make

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[1] (1999) 1 SCC 759

such legislations only a *black letter in print* such that the State policy enacted therein shall cease to be *living law of the people*.

(iii) What the Apex Court observed in *CROWN ALIMUNIUM WORKS vs. THEIR WORKMEN*[2] at paragraphs 9 & 10 is relevant:

> *"…The old principle of the absolute freedom of contract and the doctrine of laissez faire have yielded place to new principles of social welfare and common good. Labour naturally looks upon the constitution of wage structures as affording 'a bulwark against the dangers of a depression, safeguard against unfair methods of competition between employers and a guarantee of wages necessary for the minimum requirements of employees'…There can be no doubt that in fixing wage structures in different industries, industrial adjudication attempts, gradually and by stages though it may be, to attain the principal objective of a welfare state, to secure 'to all citizens justice, social and economic'.*
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> *…To the attainment of this ideal the Indian Constitution has given a place of pride and that is the basis of the new guiding principles of social welfare and common good to which we have just referred. Though social and economic justice is the ultimate ideal of industrial adjudication, its*

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[2] AIR 1958 SC 30

immediate objective in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and wholehearted co-operation in the task of production. It is obvious that co-operation between capital and labour would lead to more production and that naturally helps national economy and progress…In achieving this immediate objective, industrial adjudication takes into account several principles such as, for instance, the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay…"

(iv) What late Justice M. Rama Jois[3] writes in his magnum opus also illuminates the debate:

"Low salary, harsh treatment, insults and impositions of penalties are causes of unrest among employees. Satisfied with adequate wages, promoted honorably and consoled or cheered up by gentle words, the employees would never desert their King. [4]…The state in framing…provisions regulating recruitment to higher posts, including ***the retirement rules*** *and pensionary benefits and in implementing these provisions must bear these important aspects in mind..."*

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[3] Justice M Rama Jois, '*Services Under The State',* 23 – 24, (ILI 2007)

[4] ***Shukraneeti*** *sara* at 69 verses 418 and 419. (1882; G Oppert ed.)

The above observations have been made in the context of relationship of State and civil servants, is true. However, it is equally true of private employment as well, when it is regulated by legislations, unlike in the long past.

B. INCREASED LIFE EXPECTANCY AND THE GLOBAL TREND OF ENHANCING RETIREMENT AGE,CAN WE REMAIN OBLIVIOUS?:

(i) The following paragraph from a Paper titled '*The Association of Retirement Age with Mortality*'[5] profitably contextualizes the discussion:

> *"Retirement is one of the most important transitional processes in later life. It has huge impacts on individuals' financial resources, daily activities, family relations, and social network…research has pointed to a trend toward increased retirement age. Therefore, it is timely and critical to develop a better understanding of whether and how retirement age impacts retirees' health and longevity. Understanding the association of retirement age with longevity has important implications for post-retirement survival and may*

[5] Wu C, Odden MC, Fisher GG, Stawski RS. '*Association of retirement age with mortality: a population-based longitudinal study among older adults in the USA*' *J Epidemiol Community Health* (2016)

> *elucidate criteria for evaluating the current policies that aim to encourage older workers to retire later and to remain in the workforce…*"

Indisputably, there has been exponential advancement in the field of medical science. Improved health care facilities do avail across income groups. This has not only increased the expectancy of life of people, but their agility levels, as well. The U.N General Assembly in Resolution 46/91[6] observed:

> "*…Aware that in all countries, individuals are reaching an advanced age in greater numbers and in better health than ever before, aware of the scientific research disproving many stereotypes about inevitable and irreversible declines with age. Convinced that in a world characterized by an increasing number and proportion of older persons, opportunities must be provided for willing and capable older persons to participate in and contribute to the ongoing activities of society…*"

(ii) Owing to huge facilities for literacy & communication, largely because of globalization and the like, the overall awareness of masses has

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[6] U.N General Assembly Resolution 46/91 dated 16 December 1991

improved considerably and people generally have become more health conscious than before. Obviously, their standard of living has improved. The ill effects of ageing process have been decelerated. The graph of both the life expectancy & general fitness level of the people has strikingly moved up. This is truer of India today. What the Law Commission of India in its 232nd Report[7], at paragraph 1 observed, is significantly relevant for consideration:

> *"…There is a general trend to provide for enhanced age of retirement of Chairpersons and Members of various Tribunals constituted by the Government in the country and also of the employees in various spheres e.g. Universities and government undertakings etc. vis-à-vis the normal age of retirement of judges and government servants. It is noticed that the longevity or life expectancy of our citizens is now nearly comparable to that in the developed countries and, therefore, fresh proposals on the subject generally envisage enhanced age of retirement but in the absence of clear-cut guidelines for prescribing retirement age of Chairpersons or Members of various Tribunals in the*

[7] 232nd Law Commission Report, August 22nd (2009)

> *country, different Ministries of the Government adopt different yard sticks…"*

There is an undeniable relationship between the life expectancy of employees and the ideal age of their superannuation. This translates into an organic nexus between '*retirement age*' and '*participation in the labor force'*. The nuanced aspect of this is examined in the following paragraph of a Research Paper titled '*The Retirement Effects of old-age pension and Early Retirement Schemes in OECD Countries*[8]*:*

> *"…In principle, there is no straightforward relationship between the effective retirement age and the labor force participation of older workers. For instance, even if participation is higher in a country than another, the effective retirement age may still be lower if labor market participants withdraw earlier. However, there is actually a very strong cross-country relationship between both variables: countries with lower participation rates of older workers tend to have lower effective retirement ages. Therefore, increasing the effective retirement age and*

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[8] Romain Duval, Department of Economics, OECD , *'The Retirement Effects of old-age pension and Early Retirement Schemes in OECD Countries' (2003)*

raising the labor force participation of older workers appear to go hand in hand in practice..."

(iii) There is yet another relevant aspect that matters while considering the health of older adults, i.e., the correlation of health & social factors. To elucidate upon the same, the concluding paragraphs from a paper titled '*Health of the Elderly in India: Challenges of Access and Affordability*'[9] have been pertinently reproduced as under*:*

"…The growth of the elderly population in the coming decades will bring with it unprecedented burdens of morbidity and mortality across the country. As we have outlined, key challenges to access to health for the Indian elderly include social barriers shaped by gender and other axes of social inequality (religion, caste, socioeconomic status, stigma). Physical barriers include reduced mobility, declining social engagement, and the limited reach of the health system. Health affordability constraints include limitations in income, employment, and assets, as well as the

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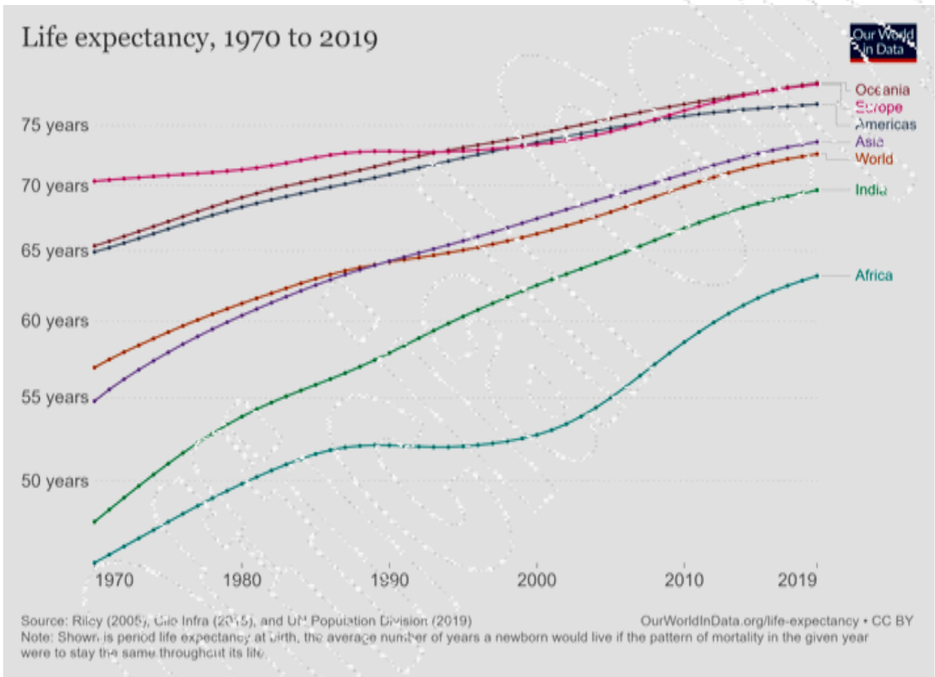
[9] S. Dey, D. Nambiar, J. K. Lakshmi, K. Sheikh, K. S. Reddy, National Research Council (US) Panel on Policy Research and Data Needs to Meet the Challenge of Aging in Asia, *'Health of the Elderly in India: Challenges of Access and Affordability'* National Academies Press (US), 2012.

limitations of financial protection offered for health expenditures in the Indian health system…"

What is stated above is self explanatory and therefore, needs no elaboration.

(iv) On a comparative note, it would also be fruitful to observe the life expectancy and the age of superannuation in several civilized jurisdictions:



As already mentioned above, the increase in life expectancy has been met with a corresponding

increase in the general age of *'pensionable retirement';* the following table summarizes the expectancy of life and the age of retirement as prevalent in other jurisdictions:[10]

SL. NO.	NAME OF THE COUNTRY	EXPECTANCY OF LIFE	AGE OF RETIREMENT
1.	Australia	83.79	66
2.	Canada	82.81	65
3.	Bangladesh	70.09	65
4.	European Union	80.04	67
5.	China	74.08	60
6.	Israel	80.07	70
7.	New Zealand	79.09	65
8.	Japan	84.91	65
9.	Malaysia	76.50	60
10.	Pakistan	67.63	65
11.	Russia	72.84	61.5
12.	South Africa	64.63	60
13.	South Korea	83.35	62
14.	Singapore	80.06	55
15.	Switzerland	84.11	65
16.	Turkey	78.22	60
17.	U.K	81.64	65
18.	U.S	79.05	67

C. SERVICE CONDITIONS NO LONGER PEROGATIVE OF EMPLOYER; AS TO WHAT HON'BLE SUPREME COURT AND THIS COURT HAVE SAID ABOUT THE

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[10] Social Security Programs Throughout the World: *Asia and the Pacific*, 2018 (March 2019); Social Security Programs Throughout the World: *The Americas*, 2019 (March 2020); Social Security Programs Throughout the World: *Africa*, 2019 (September 2019); Social Security Programs Throughout the World: *Europe*, 2018 (September 2018).

AGE OF SUPERANNUATION IN THE REALM OF INDUSTRY:

(i) Prescribing conditions of service generally belongs to the domain of employer and therefore, in *laissez-faire* era it was the employer who was fixing the age of retirement, with least State intervention. However, in a Welfare State there has been a progressive legislative regulation of employers' prerogatives. The service conditions in industrial establishments are regulated under the provisions of 1946 Act. It is admitted by the appellant that Clause 29 of the CSO prescribed 58 years as the age of retirement way back in the year 1971 and it continued even post 2017 Amendment Rules. It is pertinent to note that, during the said period, the Industrial Employment (Standing Orders) Central Rules 1946 had also not prescribed any age of retirement. The age of superannuation in any employment is prescribed mainly keeping in view the contemporary life expectancy of the working

classes and their agility levels in general. What was true of the bygone era becomes untrue of the present, because of march of time. *As per the Report titled "SRS Based Life Table 2013-17" published* on 13.03.2020 *by the Registrar General & Census Commissioner, Government of India, the average life expectancy has increased from 49.7 during 1970-75 to 69.0 in 2013-17; this registers an increment of 19.3 years for the* block period.

(ii) The Apex Court in ***BRITISH PAINTS vs. ITS WORKMEN*** [11] observed as under:

> *"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 has become the pattern for deciding the age of retirement everywhere. But time in our opinion has come considering the improvement in the*

[11] AIR 1966 SC 732

> *standard of health and increased 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 the age of retirement at 60 years would be fair and proper unless there are special circumstances justifying fixation of a lower age of retirement…"*

What is significant to note is that the above observations were made more than half a century ago. Even during that period, the age of 60 years was recommended for standardizing superannuation, when life expectancy was as low as 45.14 years as against today's 70.19 years (2021-22). This registers an increment of 25.05 years. Therefore what was factored on the basis of life expectancy decades ago, needs to be re-factored to match with the reality.

(iii) What a Co-ordinate Bench of this Court in M/S *YUKEN (INDIA) vs. THE BANGALORE EAST*

INDUSTRIAL WORKERS UNION[12] at paragraph 3 observed, supports the case of Employee – Union:

> *"…The Certifying Officer while certifying the standing orders is required to adjudicate upon the fairness or reasonableness of the provisions thereof…The standing orders of the management were certified way back in the year 1979 and more than two decades have passed since then. In these circumstances, request of the workmen for the modification and its consideration by the Certifying Officer cannot be said to be improper…if the Certifying Officer finds that the amendment sought is fair or reasonable, he could allow the same…On a consideration of these factors, the Certifying Officer in his wisdom came to the conclusion…This was affirmed by the appellate authority and also by the learned Single Judge. There is no reason for us to take a different view. Similarly, the appellate authority having regard to factors like improvement in the standards of living and health care and increase in life span and considering the fact that the age of retirement had been fixed at 55 years in the year 1979 upheld the order of the Certifying Officer enhancing the same to 58 years. The appellate authority also looked into the certified standing orders of other companies in the region to uphold the enhancement in the age of retirement. We do not think that as on today the age of 58 years to retire is that unfair and unreasonable so as to warrant our interference…"*

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[12] ILR 2005 KAR 445

(iv) Another Co-ordinate Bench of this Court in *MANAGEMENT OF FEDERAL MOGUL GOETZE INDIA PVT LTD vs. ADDITIONAL LABOUR COMMISSIONER*[13] at paragraph 24 observed as under:

> *"...Wikipedia website discloses that the age of retirement all over the world is not less than 60 years. This court cannot turn a blind eye to the improved health of the workmen, the automation of equipment in the industries which has made the work more easier, which all underscore the need to revise the age of retirement at sixty (60) years, we cannot also ignore the fact that even in the Government and all its undertakings the age of retirement is revised at sixty (60) years. The Supreme Court of India way back in the year 1959 held in GUEST, KEEN, WILLIAMS PVT LTD (supra) the age of retirement of workmen could be fixed at sixty (60) years and this trend has continued over the years…"*

D. A SKELETAL IDEA OF THE INDUSTRIAL EMPLOYMENT AND (STANDING ORDER) ACT 1946 AND CENTRAL & STATE RULES; EMPLOYERS CHALLENGE TO THE STATE RULES:

(i) The 1946 Act, obviously is a Pre–Independence legislation. It was enacted in the following year of

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[13] Writ Appeal No. 2771/2019 (L – RES) decided on 25.02.2021

the Second World War which had cast its shadow *inter alia* on the lifeline of working classes. It is *an Act to require employers in industrial establishments formally to define conditions of employment under them.* Its preamble reads as under:

> *"Experience has shown that 'standing orders' defining the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc., go a long way towards minimizing friction between the management and workers in industrial undertakings. Discussions on the subject at the tripartite Indian Labour Conferences revealed a consensus of opinion in favor of legislation. The Bill accordingly seeks to provide for the framing of 'Standing Orders' in all industrial establishments employing one hundred and more workers…"*

(ii) The Industrial Employment and (Standing Orders) Central Rules 1946 (hereinafter '1946 Central Rules') have been promulgated by the Central Government. The State Government has also promulgated the Karnataka Industrial Employment (Standing Orders) Rules, 1961 (hereinafter "1961

State Rules"). The 1946 Act and the Central & State Rules have been amended a couple of times to keep pace with the changing realities in the industrial sphere. The provisions of Section 15 enable the appropriate government to set out MSOs, regulating the ideal conditions of service that need to be adopted by the industrial establishments. However, there is scope for having the modified service conditions in the form of CSOs in variance with MSOs. Both the Central & State Rules at their genesis had not prescribed any age band for retirement. However, ordinarily, the range of 55 – 58 years was treated as the ideal age for superannuation in the public employment. The same was broadly adopted in the private sectors as well, cannot be disputed. The Appellant – Industry admittedly had fixed *58 years* as the age of retirement in the year 1971 when the life expectancy was a frugal 45.14 years.

(iii) The 1961 State Rules were amended w.e.f. 18.03.1982 adding clause 15-A to Schedule I and thereby fixing *58 years* as the age of retirement for the first time. This was when the life expectancy was 54.69 years (1982). The Karnataka Government brought another amendment vide Notification dated 27.02.2017 enhancing the age of superannuation to *'60 years'*. The same reads as under:

> "*…The age of retirement or superannuation of the workman may be 60 years or such other age as may be agreed upon between the employer and the workman by any agreement, settlement or award which may be binding on the employer and the workman under any law for the time being in force…"*

This change by way of amendment to the Rules has been brought with prior publication and after giving opportunity to the stakeholders to file their objections. In amending the Rules the Government has kept in view *inter alia* the marked increase in expectancy of life of

people to 69.16 years in 2017 as against 54.69 in 1981 when fixed 58 years was fixed as the age of retirement.

(iv) As to challenge to 2017 Amendment to 1961 State Rules: Appellant and other industrial houses had filed W.P.Nos. 14576 – 14577/2017 laying a challenge to the 2017 Amendment to 1961 State Rules which prescribed 60 years as the age of retirement. A learned Single Judge vide Judgment dated 29.06.2018 dismissed the challenge and thereby sustained the amendment. Matter was carried forward in W.A Nos. 2304 – 2309/2018 and a Co-ordinate Bench vide Judgment dated 01.10.2020 permitted withdrawal of the appeals with a cost of Rs.25,000/- payable by each of the industrial establishments. However, liberty was reserved to question certified standing orders that were incorporated pursuant to 2017 Amendment inasmuch as re-fixation of 60 years by the said Amendment automatically did not apply to the

establishments that had the CSOs fixing 58 years. A perusal of the Judgments in the Writ Petitions and the Writ Appeals shows that the grounds urged therein were substantially similar to those put forth before us for the invalidation of impugned CSO that has re-fixed 60 years as the age of retirement. True it is that, the appeals were permitted to be withdrawn reserving liberty to the appellant to assail the subject CSO whereby the age of retirement has been re-fixed at 60 years. However, such a liberty would not much come to the aid of the Appellant, and reasons for this are not far to seek: the withdrawal of appeal puts the judgment impugned therein to finality and therefore, the findings therein cannot be re-opened. However, there is some scope for their contextualization, cannot be disputed. We hasten to add that the contention of parties are considered on their intrinsic merits, afresh.

E. AS TO WHETHER SETTLEMENT BETWEEN UNION & MANAGEMENT PRE-EMPTS ENHANCEMENT OF RETIREMENT AGE UNDER STATE RULES:

(i) Mr. Pramod Khatawi, learned Senior Advocate appearing for the Appellant passionately contended that there has been a Settlement arrived at by & between the parties under the provisions of Section 12(3) of the Industrial Disputes Act, 1947 whereby *inter alia* the age of retirement has been mutually fixed at *58 years*, and this could not have been meddled with by the Statutory Authorities at the instance of the Employee – Union, *pacta sunt servanda* being the operational maxim. He also submits that the enhancement of retirement age would cause enormous financial cost to his client. In matters involving financial burden, the authorities should loathe to interfere. Learned counsel appearing for the employees – Union with equal passion countered this submission, contending that the very same contention was

taken up by the appellant in its challenge to the vires of 2017 State Rules and the same came to be repelled by the learned Single Judge and that the Writ Appeal filed against the same came to be dismissed as withdrawn with exemplary costs. He also pointed out that, without material particulars as to the financial status of the Appellant – Industry, such a submission is not invocable.

(ii) As already discussed above, the fixation of *58 years* as the age of superannuation by the Appellant – Industry was way back in the year 1971. Now that the substratum on which this age was fixed itself having undergone enormous change, the employees cannot be forced to cling on to the Settlement of the kind. A contra argument, if accepted would mete out unjust treatment to the workmen. In this enhancement of retirement age from 55 to 60 years, increase is very marginal i.e., 3.45%. Neither before the statutory authorities nor

before the learned Single Judge nor before us any authentic material has been produced to show that the arguable additional financial burden which the industry has to shoulder is unbearable. The Statement of assets and liabilities, income tax returns for the period between 2017 and 2022 could have been produced; so also rough calculation sheet as to the possible additional expenditure or the like. It is not the case that the appellant has been or would be incurring losses. Similarly, no material worth mentioning is laid before us to impress that the employees would become non-productive once they attain the age of 58 years, for the kind of work they have been doing, all through.

(iii) It is not the case of Appellant that to the vacancies that would eventually occur on retirement of the employees at the age of 58 years, would not be filled with others. The common sense tells us that

in an *industrial empire* of the kind, the vacancies that accrue because of death, disability, resignation, removal or retirement of employees ordinarily are not left unfilled. There is nothing on record for assuming otherwise. We are conscious of the fact that because of elongation of service on account of enhanced age of retirement, the employer may have to shell out some additional amounts which he may otherwise save by recruiting fresh candidates; however, this is one of the inevitables in the realm of service & industry. This assumption again is on the premise that the *'principle of progressive pay scales/wage rates'* does obtained in the establishment.

(iv) In a Welfare State, animated by Socialistic Values (Preamble to our Constitution post 42nd Amendment) *'worker oriented industrial jurisprudence'* stands for those norms, principles & ideals whereby the purveyor of labour is accorded

participative rights in each & every '*production process'* in relation to his predominant input for the creation, growth & survival of the industry. It is blood & sweat of labour that produce goods & services. That is how wealth of the nation is generated; of course the investment of capital by the employer being a constitutive factor of the industry also cannot be discounted. The arguable additional expenditure if any is a matter of management of industrial finance. It is not the case of Appellant that this idea is unviable. Therefore, an employer cannot chant mantra of economics to silence the grieving voice of workers for according a marginally higher age of superannuation.

(v) A similar case was adjudicated by a Co-ordinate Bench of this Court in *FEDERAL MOGUL*, *supra.* The Bench had framed the following two questions at paragraph 21:

> "(*i) Whether the settlement agreement arrived between the appellant and its workmen could prelude respondent No.2 from entertaining a request for modification of the standing orders?*
>
> *(ii) Whether there was any justification for respondent No.2 to revise the age of retirement from 58 to 60 years*?"

It answered the first question in the negative and second in the affirmative, observing that any settlement arrived at between the employer and the employees is not inviolable even if its terms are not just & reasonable. It said: "*…Thus, even otherwise, the settlement agreement is not sacrosanct and inviolable. The settlement can be ignored in exceptional circumstances if it demonstrably unjust, unfair and if it militates against the spirit and basic postulates of the agreement reached as a result of conciliation…".* It also specifically repelled the contention of '*additional financial burden*' as constructing a Great Wall of China against workmen's demand for

enhanced age of retirement from 58 to 60 years, notwithstanding a settlement between the parties. It also went to the extent of saying that the Certifying Officer can also examine whether the CSO is just & reasonable. We hasten to add that, the challenge to this decision in SLP No. 6794 – 6796/2021 came to be negatived by the Apex Court while order dated 13.05.2021.

F. HUMANISING CONDITIONS OF SERVICE IS A CONSTITUTIONAL IMPERATIVE:

(i) The Appellant – Industry got certification of the subject Standing Order prescribing *58 years* as the age of retirement and since then more than half a century ago; The world today is not what it was in the decades long gone by. If the employees fit & agile even after attaining the age of *58 years* are made to quit the employment in a wholesale way because of unsustainable prescription of superannuation age, that would be unjust, &

unreasonable. Workmen continuing in the employment at that age & stage of life is more than needed for obvious reasons, the evening of life hardly having set in. They cannot park their otherwise productive years at a bay, financially unaffected. They cannot roam around in the labour market to sell their sweat. These are costly days and blood avails cheaper than bread. Chances of being gainfully employed post retirement are bleak, given the plausible assumption that there would be no takers for the '*retirees'*. In a sense they suffer 'social exclusion'. What they should do on superannuation thus would stare at them as a cruel question and that is humanely answered by the impugned orders, which would grace them with more fruitful years.

(ii) Our industrial houses are not the subsidiaries of the East India Company of the bygone century. '*Hire & fire*' policy has long ago been buried in the Law

Reports. Countenancing the contention of appellant for retaining the very same age of retirement that was fixed in a different fact matrix then obtaining, virtually amounts to disregarding the contemporary socio–economic realities of life. It is not that these Statutory authorities have accomplished the task blind-foldedly and without considering the relevant material. The impugned Orders of the statutory authorities accord with the life realities of the times. The learned Single Judge having considered this aspect of the matter has negatived the said contention at paragraph 41 of the impugned judgment.

(iii) The Apex Court in *M/S GARMENT CRAFT vs. PRAKASH CHAND GOYAL*[14] observed that the supervisory jurisdiction vested in the Writ Court vide article 227 (Article 226 being insignificantly

[14] 2022 4 SCC 181

mentioned in the W.P) is not meant for correcting the arguable flaws of law & facts, when the orders put in challenge are otherwise just & reasonable; the power under this Article is exercised sparingly in appropriate cases like when there is no evidence at all to justify a finding or that the finding is recorded so perverse that no reasonable person in the armchair of the authorities below would have arrived at on the basis of material borne out by record. That is not the case made out despite extensive arguments. The Certifying Authority has treated the matter in accordance with law; the Appellate Authority after considering all aspects of the matter agrees with the Certifying Authority; learned Single Judge also having examined the matter has rightly concurred with the views of said authorities. We are not a Court of Appeal in the traditional sense; our powers are coterminous with Original Court of Writ Jurisdiction. Therefore, we

cannot undertake a deeper examination of the matter by holding a roving inquiry. The arguable lacunae in the impugned orders if any, would not come to the aid of Appellant – Industry, they having brought out a just result in the given fact matrix consistent with the policy content of the 2017 Amendment Rules.

F. PROCEDURE FOR CERTIFICATION OF STANDING ORDERS:

(i) Mr. Khatawi with his usual vehemence argues that in matters pertaining to certification of Standing Orders, the Apex Court has laid down a mandatory procedure and that the same having not been followed by the Statutory Authorities, their orders are liable to be voided. In support of this submission, he repeatedly banked upon paragraph 24 of *GUEST, KEEN, WILLIAMS PVT LTD vs. P.J STERLING*[15] which reads as under:

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[15] AIR 1959 SC 1279

> *"…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…"*

The above decision lays down as to what ordinarily are the factors that matter in fixing the age of retirement, is true. It does not in so many words state as to who should substantiate these factors. It hardly needs to be stated that a decision is an authority for the proposition it lays down in a given fact matrix and not for all that which logically follows from what has been so laid down vide *QUINN vs. LEATHAM*[16].

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[16] 1901 A.C. 495

(ii) The case that was treated by the authorities below after notice to the Appellant did not attract strict rules of pleadings & proof; the relevant factors mentioned by the Apex Court are as clear as gangetic waters: *the nature of work, wage structure, retirement benefits, character of the climate in the industry, retirement age fixed in comparable industries, practice prevailing in the industry, etc*; all this information and records concerning the same were obviously available with the Appellant; in fact they are the prescriptions of the employer. He could have easily laid these things bare on the table of original authority. At least, this he could have done at the appellate stage, the statutory appeal being indisputably both on law and facts. However, for the reasons best known to him, he chose to remain mute.

(iii) It is not the case of appellant that it was disabled from furnishing the requisite information spoken of in the said ruling. The Employees Union has done its job; of course, it could have done it in a far better way, is beside the point. After all, '*there is scope for improvement even in heaven'* said Oscar Wilde (1854 – 1900). It is not the case of Appellant that in other similar industries, '*60 years'* is not fixed as the age of retirement and thus, the same should not be done in his industrial precincts. There is a wealth of material on record to show that in several industries '*60 years'* is the norm for retirement. Therefore, the ruling cited does not advance the case of appellant for the invalidation of the impugned orders.

G. AS TO APPELLANT'S CULPABLE CONDUCT**:**

(i) The Appellant despite issuance of multiple Notices of hearing, chose to remain absent before the 2nd Resp. – Certifying Authority, even after filing a brief

objection statement. An industry of Appellant's stature faking absence before the Authority on the pretext that its challenge to the 2017 Amendment Rules was still pending in a Writ Petition and therefore matter was *sub judice* is only a lame excuse that fails to impress us, even in the least. Case of the appellant was one of '*non–cooperative absence'*, giving scope for attributing some ill motive such as the dilatory tactics designed to get rid of as many workmen as possible on the ground of purported superannuation, by protracting this legal battle.

(ii) When the mighty employer is not cooperative, the statutory authorities cannot remain as mute spectators *ad infinitum.* The conduct of the Appellant borders the zone of un-consionability. The authorities have to grant redressal to the genuine grievances of the vulnerable working class whom the statute intends to protect. If the Appellant were to be a peasant or a farmer, the

lapse of remaining absent & non-cooperation arguably would have paled into insignificance. But, Appellant – Industry is like a mighty empire; it has abundant resources at its disposal to fight the long drawn legal battles of the kind, against the vulnerable sections, which have to strive to make their two ends meet. What the Certifying Authority and the Appellate Authority have done in the given circumstances broadly accords with the principal intent and policy content of the legislation. In their action lie the reason & justice. Their action cannot be faltered. It hardly needs to be stated that the focal point of judicial review under Articles 226 & 227 is the *'decision making process'* and not the '*decision'* itself. Viewed from this angle, no interference in this matter is warranted.

H. AS TO CONTENTION OF HAZARDOUS INDUSTRY AND DESIRABILITY OF EARLY RETIREMENT, i.e., 58 YEARS:

(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 an arm'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 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 60 years 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.

I. CONDUCT OF THE APPELLANT AND DISENTITLEMENT TO RELIEF:

(i) The Appellant – Industry whilst prosecuting its appeal before the 3rd Resp. – Additional Labour Commissioner had specifically stated that it had *prima facie* an outlook of positive approach to the demand for the enhancement of retirement age from *58 years* to *60 years* and that in this connection, it would hold positivist talks with the Employees Union and resolve the problem. The same has been recorded at internal page 9 the impugned order dated 08.08.2018. On being

questioned as to whether such a statement was made before the authority, learned Senior Advocate, Mr. Kathawi in all fairness replied that the said observation has not been controverted, as being not true. If that be so, the appellant ought to have addressed the said issue with the participation of the Employee Union and settled the dispute, by now.

(ii) The above aspect of the matter has been discussed by the learned Single Judge at 43 of the impugned judgment which reads as under:

> *"…In fact, as noted above, the 3rd Respondent recorded that petitioner expressed willingness to increase age of retirement after discussing with Union and taking appropriate decision… The said statement led the 3rd Respondent to conclude that there was no serious opposition to the amendment sought for. Admittedly, petitioner failed to place adequate material on record to justify its opposition to increase in age of retirement…"*

About a bit less than four years have lapsed since then and nothing has been done pursuant to the

assurance given by the management before the 3rd Respondent – Additional Labour Commissioner. No plausible explanation is offered for not abiding by the solemn words given to the Statutory Authorities and the workmen during the adjudicatory process. Therefore, the Biblical saying *'…thou art weighed in the balance and found wanting…'* in all fours applies to the Appellant herein.

In the above circumstances, we make the following:

ORDER

(i) This Writ Appeal being devoid of merits fails;

(ii) The Appellant is directed to continue the workmen in its service till they attain the age of 60 years in terms of amendment to Clause 29 of the Certified Standing Orders w.e.f. 17.03.2018;

(iii) The Appellant is directed to reinstate with continuity of service and pay full

back wages to such of the workmen who retired on or after 17.09.2021, i.e., the day on which W.P No.106307/2018 was dismissed, if on medical examination they are not found to be unfit for re-employment;

(iv) Such of the retirees falling under the preceding clause but on medical examination are found to be unfit for re-employment shall be paid only 50% of the Back Wages for the period between the date of their retirement and the date on which they are called for medical examination;

(v) The Appellant shall pay 50% of the Back Wages to such of the employees who retired from service on attaining the age of 58 years on or after 17.03.2018, for the period between the date of their retirement and the date on which they attained 60 years or the date of death, whichever is earlier.

(vi) The claim of any other employees who are otherwise entitled to the benefit of

amended Clause 29 of Certified Standing Order but do not fit into any of the clauses hereinabove may approach the 2nd Respondent – Deputy Labour Commissioner and work out their grievances.

(vii) The amount payable by way of Back Wages shall be paid within a period of 60 days and that the delay shall carry interest at the rate of 2% per *mensem*.

Costs made easy.

Before parting with this case this Court places on record its deep appreciation for the able research and assistance rendered by its Official Law Clerk cum Research Assistant Mr. Faiz Afsar Sait.

Sd/-
JUDGE

Sd/-
JUDGE

KMS