SURESHCHANDRA SINGH AND ORS. A

v.

FERTILIZER CORPN. OF INDIA LTD. AND ORS.

OCTOBER 16, 2003

[S. RAJENDRA BABU AND RUMA PAL, JJ.] B

Service Law—Increase in retirement age—Government of India and concerned ministries issued O. Ms. increasing retirement age from 58 years to 60 years—Directives to come to effect on amendment in relevant rules and regulations by concerned Public Sector Enterprises—Respondent Corporation decided not to implement O.M. owing to financial constraints and excessive work force—Appellants on attaining 58 years, filed writ petition in High Court, for implementations of O. Ms.—High Court dismissed the writ petition—On appeal, Held Directives were to become effective from date of notification of amendment to the relevant rules and regulations—Relevant factors for not implementing the directives fully set out in the resolution of Board of Directors which was neither arbitrary nor unreasonable. C D

Constitution of India—Articles 32 and 226—Maintainability of writ against administrative directions—Court cannot issue writ enforcing such administrative instructions having no force of law—Appellants have no right to continue in service till age of 60 years—Decision of Board of Directors neither arbitrary nor unreasonable. E

The Government of India on recommendations of the Fifth Central Pay Commission issued O.M. dated 13.5.1998 enhanced the retirement age of Central Government employees from 58 years to 60 years. These directives were to come into effect from the date of notification of the amendment to the relevant rules and regulations. On 19.5.1998, Department of Public Enterprises, Ministry of Industry, Government of India issued another O.M. making it clear that such changes would come into force from the date the concerned Public Sector Enterprises amended their relevant rules and regulations. The Board of Directors of the respondent-Corporation considered the matter and passed a resolution deciding not to increase the retirement age due to ongoing losses, surplus work force, its declaration as sick F G H

A and reference to BFIR. Therefore, respondent-Corporation was granted exemption by the Government of India. The appellants were serving in the respondent-Corporation. On their attaining the age of 58 years they filed a writ petition in the High Court so that they should not be relieved from work before attaining age of 60 years. The writ petition B was dismissed. Hence these appeals.

Appellants contended that O.M. dated 13.5.1998 by itself increased the retirement age and the policy therein mandatorily bound the respondent-Corporation; that in violation of principles of equality Board level employees were allowed to continue in service till the age C of 60 years; and that employees of different Corporations ought to be treated alike.

Respondents contended that Board level employees could not be equated or compared with other employees as the two whole time D directors are directly appointed by the President of India for a fixed term; and that other members of the Board are government servants and are nominees or representatives from various ministries and are appointed by the President of India for a term of 3 years.

Dismissing the appeals, the Court

E

HELD : 1. O.M.s dated 25.1.1991 and 8.4.1991 of the Ministry of Program Implementation and Department of Public Enterprises made it clear that all instructions/guidelines issued by the Government of India would be of two kinds namely, Directives issued in the name of F President of India and Guidelines. Directives were to be issued by the Administrative Ministry in the name of the President while all other instructions were to be issued by the Department of Public Enterprise or by the Administrative Ministry which were advisory in nature and the Board of Directors of the concerned Public Sector Undertakings could in their discretion adopt or not for reasons to be recorded in G writing. [942-A-C]

2. Government of India took a policy decision to increase the retirement of Central Government employees. Application of that decision in respect of employees of Public Sector Enterprises is dependent H upon so many factors that are to be taken into account in the light of

the peculiar characteristics of each company or corporation or department. The OM dated 13.5.1989 itself provides that the order will come into force only with effect from the date of Notification of amendment to the relevant rules and regulations. It is for the concerned authority to make necessary changes in the rules and regulations after taking into account all the relevant aspects. Immediately after the OM dated 13.5.1998 the Department of Public Enterprises, Ministry of Industry, Government of India issued OM dated 19.5.1998 wherein the modalities of the implementation of first OM in the concerned department was detailed. OM dated 19.5.1998 is not an instruction issued in the name of the President. On the other hand, it was issued by the Department of Public Enterprise, which is advisory in nature. It accorded a broad discretion to the corporations or companies for the implementation of the enhanced retirement age after taking into account all the relevant factors. Pursuant to this direction the Board of Directors of the respondent took the decision not to increase the retirement age of its employees. The relevant factors that prevailed upon the Board of Directors are fully set out in its resolution. [942-C-G] A B C D

3. The OM dated 19.5.1998 itself does not raise the retirement age to 60 years. It is only an administrative direction and Court cannot issue a writ to enforce such administrative instructions that is not having the force of law. Appellants do not have any right to continue in service till the age of 60 years. The decision of the Board of Directors is not arbitrary or unreasonable or unrelated to the question of enhancement in age of retirement. [943-B-D] E

4. The Board of Directors themselves form a different class and cannot be compared with other employees in regard to conditions of service applicable to them. There is no discrimination of appellants *vis-à-vis* employees of other corporation. Each Public Sector Undertaking is an independent body-entity and is free to have its own service conditions as per law. All employees in the respondent-corporation who are working in its various Units and Divisions retire at the age of 58 as per the relevant rules; and that even the future employees will retire at the age of 58. The employees of different corporations cannot not be treated alike as every corporation will have to take into account its separate circumstances so as to formulate its policy. [943-F-H; 944-A] F G H

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 717-719 of 1999.

From the Judgment and Order dated 16.10.1998 of the Allahabad High Court in Civil Misc. W.P. Nos. 24069, 27662 and 23656 of 1998.

B WITH

W.P. (C) No. 133/2000.

Manoj Goel, Shuvodeep Roy, Avinish Kumar and Brij Bhushan for C the Appellants.

Mukul Rohtagi, Additional Solicitor General, Punit D. Tyagi for the Respondents.

The Judgment of the Court was delivered by

D

RAJENDRA BABU, J. : Pursuant to the recommendations of the Fifth Central Pay Commission, Government of India issued an Office Memorandum (OM) No. 25012/2/87 — Col (A) dated 13th May, 1998 enhancing the retirement age of Central Government Employees to sixty E years from fifty-eight years. It was also provided that OM would come into force with effect from the date of Notification of amendment to the relevant rules and regulations. To a similar effect Department of Public Enterprises, Ministry of Industry, Government of India issued another OM No. 18(6)/98-GM-GL-002 dated 19th May, 1998 making it clear that such increase in age of retirement would come into force from the date the relevant rules F and regulations of the PSEs concerned are amended by the concerned Public Sector Enterprises. As per this OM the Board of Directors of the Fertilizer Corporation of India Ltd (FCIL) considered the matter and passed a resolution on 6th July 1998. Relevant portion of which reads:

G "...The Board noted that FCIL was referred to BFIR in April 1992 and declared sick in November 1992. No revival package has been approved by BFIR so far. Gorakpur Unit is closed since June 1990 carrying surplus of 1322 men as on 1-7-1998 and Korba, which was wound up, is carrying surplus of 54 men. Besides, FCIL is carrying surpluses in the Corporation all over for which a

H

voluntary retirement scheme providing special financial incentive to induce employees to seek early retirement is in operation since 1998 and so far 1524 persons have availed the benefit under the scheme as on 30-6-1998. FCIL is totally dependent on Govt. support for critical capital expenditure, working capital and to meet the huge operating losses by its units. Wages of the employees have not been revised; as a result there has been a flight of talent. The only little incentive was promotion which will also be blocked in case age of retirement is enhanced from 58 years to 60. Enhancing the age of retirement involves financial implications, which will further jeopardize the revival proposal of the Corporation before the BIFR.

In view of the above the Board unanimously decided not to raise the age of retirement from 58 to 60 years..."

This decision was communicated to the concerned Ministry on 21st August 1998 and the Department of Fertilizers, Ministry of Chemicals and Fertilizers, Government of India granted exemption vide its letter dated 30th December 1999 from increasing the age of retirement from 58 to 60 years.

In the meanwhile the appellants herein superannuated on their attaining the age of 58 years as per the terms of the service contract. Appellants herein moved the High Court for a direction to the Respondents herein not to retire them from services before they attained the age of sixty years and till such time not to interfere with the functioning and discharge of their duties. The High Court dismissed the petition and hence this appeal by special leave.

It is urged on behalf of appellants that the OM dated 13th May 1998 by itself increased the retirement age and the policy set out therein is mandatory and binding on FCIL to enhance the retirement age. This OM is applicable only to employees in Government Civil Services and not to employees in the Public Sector Enterprises. Hence by reason of this OM, the appellants cannot contend that they are entitled to continue in service till they attain the age of 60 years. It is only by OM issued by the Department of Public Enterprises dated 19th May 1998 the said policy was

made applicable to be effective from the date of modification of relevant Rules regarding the same.

By OMs dated 25th January 1991 and 08th April 1991, the Ministry of Program Implementation and Department of Public Enterprises made it clear that all instructions/guidelines issued by the Government of India would be of two kinds — a) Directives issued in the name of President of India and b). Guidelines. Directives would be issued by the Administrative Ministry in the name of the President while all other instructions issued by the Department of Public Enterprise or by the Administrative Ministry are only advisory which the Board of Directors of the concerned Public Sector Undertakings may in their discretion adopt or not for reasons to be recorded in writing.

Here the Government of India took a policy decision to increase the retirement of Central Government employees. Application of that decision in respect of employees of Public Sector Enterprises is dependent upon so many factors that are to be taken into account in the light of the peculiar characteristics of each company or corporation or department. So the first OM itself provides that the order will come into force only with effect from the date of Notification of amendment to the relevant rules and regulations. So it is for the concerned authority to make necessary changes in the rules and regulations after taking into account of all the relevant aspects. Immediately after the first OM dated 13 May 1998 the Department of Public Enterprises, Ministry of Industry, Government of India issued OM dated 19th May 1998 wherein the modalities of the implementation of first OM in this department was detailed. Here it is pertinent to note that the OM dated 19th May 1998 is not an instruction issued in the name of the President. On the other hand, it was issued by the Department of Public Enterprise, which is advisory in nature. It accorded a broad discretion to the corporations or companies for the implementation of the enhanced retirement age after taking into account all the relevant factors. Pursuant to this direction the Board of Directors of FCIL took the decision not to increase the retirement age of its employees. The relevant factors that prevailed upon the Board of Directors are fully set out in its resolution and they are: that the company is one of the highest loss making company in the country; that the accumulated loss till the relevant date was to the tune of 5049 crores; that the company is incurring financial losses of roughly

Rupees 2.35 crores everyday; that the company has no capacity to pay salaries to its employees; that the company was referred to BIFR and was declared as sick in 6/11/1992; that as on the relevant date the company has the negative net worth to the tune of Rupees 4316.21 crores and; that the company has surplus manpower; that it is not taking any new employees but on the contrary it is making conscious efforts to reduce the surplus manpower.

A

B

It is also to be noted that the OM dated 19th May 1998 itself does not raise the retirement age to sixty years. It is only an administrative direction and Court cannot issue a writ to enforce such administrative instructions that is not having the force of law. The Appellants do not have any right to continue in service till the age of sixty years. The decision of the Board of Directors is not arbitrary or unreasonable or unrelated to the question of enhancement in age of retirement. Hence the first contention stands rejected.

C

D

The Appellants assail the decision of the Board on the ground of violation of principles of equality. It is alleged that the Board level employees were allowed to continue in service till the age of sixty and the employees like appellants who were below the Board level were forced to retire at the age of fifty-eight. In reply respondents submitted that board level employees could not be equated and compared with the other employees. Whole time directors, who are two in numbers, are directly appointed by the President of India for a fixed term of five years that could be reviewed even earlier; and that other members of the board are government servants and are nominees or representatives from various ministries and are appointed by the President of India for a term of three years. In these circumstances we find that board of directors themselves form a different class and cannot be compared with other employees in regard to conditions of service applicable to them. Allegation of discrimination is also raised by the Appellants *vis-à-vis* employees of other corporations. Each Public Sector Undertaking is an independent body/ entity and is free to have its own service conditions as per law. However, all employees in the FCIL who are working in its various Units and Divisions retire at the age of fifty-eight as per the relevant rules; and that even the future employees will retire at the age of fifty-eight. We also find that since the employees of different corporations could not be treated alike

E

F

G

H

A since every corporation will have to take into account its separate circumstances so as to formulate its policy and consequently the argument that there is discrimination of Appellants *vis-à-vis* employees of other corporation also cannot be accepted. Thus, appellants have failed on all grounds. The Appeals stand dismissed.

B A writ petition was also filed with the prayer to issue appropriate writ or order or direction — (a) to implement OM dated 19/05/1998 and 21/08/1998 and (b) for quashing the order dated 30/12/1999 of the department of Fertilizers on identical grounds considered by us in the appeals.

C For the very reasons stated therein this petition also stands dismissed.

A.Q. Appeals/Petition dismissed.