

PETITIONER:
HARI SHANKAR GAUR AND ANR. ETC.

Vs.

RESPONDENT:
DELHI TRANSPORT CORPORATION AND ORS.

DATE OF JUDGMENT 30/11/1988

BENCH:
OZA, G.L. (J)
BENCH:
OZA, G.L. (J)
SHETTY, K.J. (J)

CITATION:
1989 AIR 374 1988 SCR Supl. (3) 1003
1989 SCC (1) 240 JT 1988 (4) 552
1988 SCALE (2) 1473

ACT:

Civil Services: Delhi Transport Corporation--I employees of erstwhile Gwalior and Northern Indian Transport Corporation--Protected employees under the Agreement of Take-over--Right to continue in service upto 60 years.

HEADNOTE:

The Gwalior and Northern India Transport Company (GNIT Company) was operating transport services in and around Delhi. It was taken over on May 14, 1948 by the Government of India, Ministry of Transport and named as Delhi Transport Service. The services of all employees of the (IT) company were taken over by the Government of India, but they continued to be governed by the rules in force before the take-over. Subsequently it was taken over by the Delhi Municipal Corporation and later on by the Delhi Transport Undertaking and came to be known as Delhi Transport Corporation.

All employees of GNIT Company employed before 28.10.46 and were in continuous service at the time it was taken over by the Government of India were treated as protected employees as per clause 7 of the take-over agreement. Prior to the take-over they were governed by the Gwalior State Civil Service Rules which stipulate the age of retirement at 60. Option however was there for the employee to seek voluntary retirement at 55 years and for the Government to compulsorily retire an employee at 55. The Delhi Transport Corporation retired the petitioners on the ground that they attained the age of superannuation at 58 years. It was challenged in a writ petition before the Delhi High Court and the petitioners contended that option was there both for the Corporation as also the employees to retire at 55, but superannuation could be only on reaching 60, and not at 58 as claimed by the Corporation. The Delhi High Court rejected the petition. Against this, the petitioners have come to this Court by way of a special leave petition. A writ petition has also been filed claiming the same relief.

Allowing the special leave petition as also the writ petition, this Court,

HELD: The persons who were originally in the employment of GNIT Company and were employed prior to October 28, 1946 and continued in service till May 14, 1948 and onwards will have the right to remain in service upto 60 years unless the option to retire was exercised by the person or the Corporation at 55 years. The argument that the age of 55 years at which an employee could be asked to retire has been raised by the Corporation to 58 years and if an employee has been retired at 58, it was not prejudicial to him since he could have been retired in his erstwhile Company only at 55, has little merit in it. If the Delhi Transport Corporation had exercised its right to retire the petitioners on attaining the age of 58 years, the argument would have been tenable. But that was not done by the Corporation. The Corporation retired the petitioners on the ground that they attained the age of superannuation at 58 years. That meant the Corporation was under the wrong impression that the petitioners had no right to continue beyond the age of 58 years. [1008C-D; 1007E-G; 1008C]

JUDGMENT:

CIVIL/ORIGINAL JURISDICTION: Writ Petition (Civil)
No. 1244 of 1986.
(Under Article 32 of the Constitution of India).

WITH

S.L.P. (Civil) No. 8948 of 1986.

From the Judgment and Order dated 1().4. 1986 of the Delhi High Court in C.W.P. No. 795 of 1986.

Jitender Sharma for the Petitioners.

T.U. Mehta and G.K. Bansal for the Respondents.

The Judgment of the Court was delivered by

OZA, J. This special leave petition is filed against the judgment of the Delhi High Court rejecting a petition filed by the petitioners. A separate writ petition for the same relief is also filed in this Court. The two matters raise a simple question about the age of retirement of the employees in the Delhi Transport Corporation, who were originally employed in the erstwhile Gwalior and Northern India Transport Company ('GNIT Company' for short) in 1946 or before that.

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It is not in dispute that before 1948 these petitioners were employed in the GNIT Company which was a company owned by the Rulers of Gwalior in the erstwhile native State of Gwalior. The said company was operating the transport services in Delhi and areas around upto 13th May, 1948. On 14th May, 1948 the transport services in Delhi were taken over by the Government of India, the Ministry of Transport and it was named as "Delhi Transport Service". The services of all the employees of the erstwhile GNIT company were taken over by the Government of India but they were continued to be governed by the rules which were in force before taking over. Subsequently it was taken over by the Delhi Municipal Corporation. Later on by the Delhi Transport Undertaking which came to be termed as Delhi Transport Corporation".

Clause 7 of the agreement by which the GNIT services in Delhi were taken over by the Government of India provided that the services of the employees who were employed prior to 28th October, 1946 and were in continuous service till 14th May, 1948 shall not be taken over on the terms not less liberal than those they were governed and therefore the employees who were in employment prior to 28th October, 1946

were treated as protected employees.

These facts are not in dispute. According to the petitioners, before they were taken over, the service conditions of the employees of GNIT Company were governed by the Gwalior State Civil Service Rules. But the respondent denied that and said that they were governed by the Madhya Bharat Civil Service Rules. Admittedly, Madhya Bharat came into existence in 1948 only. Before that there was no State of Madhya Bharat. Repeatedly opportunity was given to the respondent counsel to find out as to what rules were applicable to the employees of the GNIT company before Madhya Bharat was formed. Ultimately they pleaded their inability to place any rule. So far as Gwalior State Civil Service Rules are concerned, a copy of it in Hindi has been filed by the petitioners with the English translation thereof. It is not disputed that these were the rules governing the civil servants in the Gwalior State. It is also not disputed that GNIT Company was originally a Company incorporated in India where it was owned by the rules of the erstwhile Gwalior State. According to petitioners Civil Service Rules of Gwalior were made applicable to these people. In addition to what has been stated in the petition and which has not been controverted, they have also filed a judgment of the Industrial Court in Madhya Pradesh where this question about the conditions of service about retirement came into dispute after the formation of

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Madhya Bharat and the part of GNIT Company which was operating in the territories of the erstwhile State of Madhya Bharat was taken over by the State of Madhya Bharat Road Transport Corporation. There too, a similar agreement was reached and the question arose as to whether the persons who were in employment before the taking over, were governed by the Rules of the Gwalior State Civil servants. It was held that those were the rules and in those rules the normal age of retirement was 60 years.

In view of these circumstances it appears beyond doubt that these people who were employed in the GNIT Company before taking over in Delhi by the Government of India were governed by the Gwalior State Civil Service Rules. The Gwalior Civil Service Rules provided:

"CHAPTER 1-A

7(a)(1) Every employee has a right to seek retirement from service after attaining the age of 55 years.

(2) The Government also has authority not to allow any employee to continue in employment after attaining the age of 55 years and order his retirement.

(3) In case an employee does not seek retirement from service after attaining the age of 55 years of the government also does not order his retirement from service, then he shall continue in service till he attains the age of 60 years.

(4) Every employee shall compulsory retire after attaining the age of 60 years provided his services are not ordered to be terminated earlier.

(5) An employee who retires under these rules shall be entitled for pension or Gratuity to which he is entitled according to the rules.

Note (1): These Rules will not apply to the Police Personnels.

Note (2): The concerned Departments shall initiate retirement proceeding against those employees who have

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attained the age of 60 years at the time of enforcement of the rules but immediate action shall be taken for release of

Pension or Gratuity in case of those who have become entitled for Gratuity or Pension and till pension or gratuity is not sanctioned they shall not be retired. In future this procedure shall be followed that action for pension or Gratuity shall be initiated one year in advance to which he is entitled at the age of 60 years in case of an employee who retire at the age of 60 years so that there shall be no delay in retiring him after attaining the age of 60 years."

The above rules it indicates clearly an employee who does not seek retirement from service after attaining the age of 55 years or if the Government does not order his retirement at that age, shall continue in service till he attains the age of 60 years. It is also indicated with unmistakably terms that every employee shall compulsorily retire after attaining the age of 60 years provided his services are not ordered to be terminated earlier. In other words the age of retirement was 60 years. Option however was there for the employee to seek voluntary retirement at 55 years and for the Government to compulsorily retire him at 55.

Counsel for the respondent does not dispute the above provisions. He, however, argued that the age of 55 years at which an employee could be asked to retire has been retired by the corporation from 55 to 58 and if an employee has been retired at 58 it was not prejudicial to him since he could have been retired at in his erstwhile. company only at 55. Our attention was invited to Service Regulation of the Corporation providing for these matters. The argument is attractive but on a deeper consideration we find little merit in it. If the Delhi Transport Corporation had exercised its right to retire the petitioners on attaining the age of 58 years, the argument would have been tenable. But that was not done by the Corporation. The Corporation retired the petitioners on the ground that they attained the age of superannuation at 58 years. It is so stated by the notice (Annex. E) dated January 2, 1986 issued by the Deputy Personnel Officer-I to Hari Shankar Gaur-petitioner in W.P. No.]244/86. The notice reads:

DELHI TRANSPORT CORPORATION
A GOVERNMENT OF INDIA UNDERTAKING
I.P. ESTATE: NEW DELHI

No. PLD-IX(PF)/85/128

Dt. 2.1.1986
PG NO 1008

Shri Hari Shankar Gaur s/o Shri M.L. Gaur, Office Supdt. will attain the age of superannuation i.e. 58 years on 31.1.1986. He shall, therefore, retire from the service of this Corporation with effect from 31.1.1986 in accordance with clause 10 of the D.R.T. Act (Conditions of Appointment & Service) Regulations, 1952 read with office order No. PLD/2479 dated 7.3.1974. He may avail earned leave due to him prior to 31.1. 1986, if he so desires."

We are told similar notices were issued to other employees as well. That means the Corporation was under the impression that the petitioners have no right to continue beyond the age of 58 years.

We are, therefore, of the opinion that the persons who originally were in the employment of GNIT and were employed prior to October 28, 1946 and who continued in service till May 14, 1948 and onwards will have the right to remain in service up to 60 years unless the option to retire was exercised by the person or by the Corporation at 55 years.

In the result the writ petition and the SLP are allowed to the extent indicated above.
No order as to costs.

G.N.

Petitions allowed.

JUDIS