

## HR Law Hotline

August 02, 2022

### CONSTITUTIONAL COURT AFFIRMS INCREASE IN EMPLOYEES' RETIREMENT AGE

- Karnataka High Court dismisses the legal challenge to the statutory increase of the retirement age from 58 to 60 years.
- Directs Appellant industry to pay retirees unfit for reemployment 50% of the back wages for the period between date of retirement and date on which the medical examination is conducted.
- 50% of back wages is payable to employees who retired from service on attaining 58 years on or after March 17, 2018.

A division bench of the Karnataka High Court (Dharwad bench), in its recent judgement<sup>1</sup> dismissed the employer's intra-court appeal challenging the government order increasing the retirement age of employees from 58 to 60 years. The Appellant is an 'employer' as per the Industrial Employment (Standing Orders) Act 1946 ("**Standing Orders Act**") and the members of Respondent Union are workmen under the law.<sup>2</sup>

#### BACKGROUND

The Standing Orders Act requires the employers (to whom the law applies) to formally define the employment conditions. It includes matters pertaining to classification of workmen; shift working; suspension; dismissal; termination; procedure and conditions for leave; way of informing workmen regarding period, work hours, holidays and wage rates; attendance and late coming; requirements for entry and search; closing, re-opening and temporary stoppage of work and means of redressal for wrongful exactions and unfair treatment amongst others.

Further, the Standing Orders Act mandates the employer to submit the draft Standing Orders to Certifying Authority for certification and after certification, the Certifying Officer sends the Certified Standing Order ("**CSO**") to the employer and trade union.<sup>3</sup> The Supreme Court of India has previously commented that the aim of the Standing Orders Act is to require employers to define with certainty conditions of service in their industrial establishment, to reduce them to writing and to get them compulsorily certified, so that unnecessary industrial disputes can be avoided.<sup>4</sup>

#### ANALYSIS

On March 28, 2017, the state government of Karnataka increased the retirement age of employees under the Karnataka Industrial Employment (Standing Orders) Rules, 1961 through Entry No. 15-A of Schedule I from 58 to 60 years. This was done by modifying the Model Standing Orders prescribed under the Karnataka Industrial Employment Standing Orders (Amendment) Rules 2017<sup>5</sup> ("**Standing Orders Amendment Rules**"). The trade union had applied to the Deputy Labour Commissioner ("**DLC**") for a modification to increase the retirement age to 60 years in the Standing Orders Amendment Rules. The DLC through order dated March 17, 2018 certified the modification to clause 29 of the CSO to increase retirement age.

However, the move was not welcomed by some employers citing that an increase in retirement age will defer hiring of young blood in factories. The objection relied on the premise that at a time when unemployment level is growing in the state, increasing the retirement age to 60 years will deny jobs to younger professionals. It will lead to widening the gap between the employed and the unemployed in the State; especially in the manufacturing sector where the general rule of thumb is that the productivity decreases as the age of the employee increases.

The division bench directed the appellant to reinstate the workmen who retired on or after September 17, 2021 with continuity of service and pay full back wages, if they were not found unfit for reemployment on medical examination. The court further ordered that retirees falling under the court order, but found to unfit for reemployment on medical examination, shall be paid 50% of the back wages for the period between date of retirement and date on which the medical examination is conducted.

The Court also ordered for payment of 50% of the back wages to employees who retired from service on attaining 58 years on or after March 17, 2018, for the period between date of retirement and date on which they attained 60 years, whichever is earlier. The Court further stated that other employees not falling under the class of employees referred to in the order but otherwise entitled to the benefit of amended clause 29 of the CSO may approach the DLC for their grievances.

#### CONCLUSION

This case is another reminder for employers to ensure due compliance with the labour laws in India. It would become

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even more relevant as the new labour codes, which are on the horizon, are made effective by the government.

The concept of absolute contract freedom and the laissez faire have been replaced by Fabian concepts of social welfare and common good. India is constitutionally ordained 'welfare state'. The Karnataka High Court, keeping these principles in mind, upheld the statutory increase in the employees' retirement age to 60 years. While employees and trade unions welcome the decision, there are arguments against this decision, relying upon the entry of younger talent in the workforce and liberty of the employer regarding the workforce in an establishment.

The concept of retirement itself is currently being questioned especially considering the increasing life span and the need for people to work longer. It was part of the agenda at this year's World Economic Forum at Davos.<sup>6</sup> Governments worldwide will need to take a more holistic view on the need for a retirement age under labour law, in order to allow private employers to define their own arrangements. Insurance, pension and social security systems will also need to be restructured as part of this initiative, while promoting newer forms of work arrangements. In fact, even the court here discussed how life expectancy has increased with scientific and medical developments demanding increase in the retirement age. Additionally, even India's flag carrier airline – Air India which used to retire pilots at the age of 58 is planning to extend tenures of select pilots till they attain the age of 65.<sup>7</sup> To improve justice delivery system, discussions have also taken place to increase the retirement age of judges of the Indian writ courts.<sup>8</sup> It is imperative that discussions should take place to mull increasing the retirement age of the workforce of the Indian employment sector to let experienced individuals contribute for a longer period of time.

– Nitish Raj & Vikram Shroff

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You can direct your queries or comments to the authors

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<sup>1</sup> Grasim Industries Ltd. v. Harihar Polyfibers, Employees Union WA 100250 of 2021

<sup>2</sup> Though Section 2(i) of the 1946 Act links it to the definition in the Industrial Disputes Act

<sup>3</sup> Section 5(3), the Standing Orders Act.

<sup>4</sup> AIR 1969 SC 513

<sup>5</sup> Notification No. LD 72 LET 2013, Bengaluru dated 27.03.2017

<sup>6</sup> <https://www.weforum.org/agenda/2022/03/why-the-concept-of-retirement-needs-to-retire/>

<sup>7</sup> <https://timesofindia.indiatimes.com/business/india-business/ai-prepares-for-mega-fleet-expansion-pilots-to-fly-till-65-years-of-age-not-retire-them-at-58/articleshow/93273106.cms>

<sup>8</sup> <https://www.deccanherald.com/opinion/in-perspective/why-should-judges-retire-at-65-1114467.html>

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