2023 INSC 1033

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1320 OF 2010

UNION OF INDIA & ORS. ...APPELLANTS

VERSUS

K. SURI BABU ...RESPONDENT

WITH

CIVIL APPEAL NO.1323 OF 2010

UNION OF INDIA & ORS. ...APPELLANTS

VERSUS

M. KIRAN KUMAR ...RESPONDENT

J U D G M E N T

SUDHANSHU DHULIA, J.

1. These are the two appeals filed by the Union of India; Appeal No.1320/2010, is against the order dated 14.10.2008 passed by a Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition No.9541 of 2008 and Appeal No. 1323/2010 is against the order dated 22.01.2009, of a Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad passed in Writ

Petition No.494/2009. The issue in both the Civil Appeals raised is identical, but for the sake of convenience, for facts we would be only referring to Civil Appeal No.1320 of 2010.

2. The High Court in the impugned order dated 14.10.2008 has allowed the Writ Petition of the respondent by setting aside the order (dated 18.03.2008), passed by the Central Administrative Tribunal, Hyderabad (for short 'CAT') which upheld the initiation of the disciplinary proceedings by the Nuclear Fuel Complex-Hyderabad (hereinafter referred to as 'NFC' or 'Department'), against the respondent under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short 'CCA Rules 1965'). The short question which was there before the High Court and which is now before us, is whether the disciplinary proceedings against the respondent (who is admittedly a workman), could be initiated under the CCA Rules 1965 or it could be done only under the Standing Orders certified for the NFC-Hyderabad on 27.08.1973 (hereinafter referred to as "Standing Orders"), under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as '1946 Act').

3. NFC was set up in the 1970s, as a constituent unit of the Department of Atomic Energy, Government of India. The

respondent was appointed as a 'helper' w.e.f. 05.05.2001 in NFC. Helper is the class IV post and it seems that the eligibility requirement for the post was a Class VI certificate which the respondent had submitted in order to get the appointment. On 23.04.2003 he received a memorandum which said that he had given a false declaration that he had passed Class VI as the transfer certificate of Class VI submitted by him was found to be fake for which a disciplinary action was to be initiated against him under CCA Rules 1965. In response, the respondent denied the allegations and asserted that his certificate is genuine and further contended that the disciplinary proceedings, if any, would be governed by the Standing Orders and not under the CCA Rules 1965, and ultimately, he filed an OA before the CAT, Hyderabad, with a prayer to set aside the proceedings against him, *inter alia*, on the grounds that the disciplinary proceedings against him can only be initiated under the "Standing Orders", and not under the CCA Rules. The CAT, dismissed his O.A. vide its order dated 18.03.2008. The CAT relied on his appointment order, as well as the circular dated 12.05.2005 issued by the Department to clarify that their employees were governed by the CCA Rules

and not Standing Orders. This order of CAT, was challenged by the respondent in a writ petition before the High Court which was allowed and the order of the CAT was set aside and the disciplinary proceedings against the respondent were quashed.

4. The case of the respondent is that he being a workman will be covered by the Standing Orders which contain provisions to deal with matters, *inter alia*, of disciplinary proceedings, and therefore the proceedings initiated against him under the CCA Rules, 1965 are without jurisdiction. On the other hand, the appellants before this Court would argue that the respondent-workman is governed by the CCA Rules 1965, being an employee of NFC, Hyderabad. One of the terms and conditions stated in his appointment order was that he would be governed under the CCA Rules, even for disciplinary proceedings. Further, it is under the CCA Rules where a large number of benefits are liable to be given to the employees of the Department. On the date, an employee reaches the age of superannuation, he gets his pension only under the CCA Rules 1965, apart from a large number of other benefits and therefore it is not open for the employee to say that as long he enjoys the benefits, the Rules will be

applicable, but the same Rules will not be applicable in the disciplinary proceedings against him. Such an argument is not tenable under the law, the department would argue.

5. We have heard Mr. Arkaj Kumar, learned counsel for the appellants and Mr. Anand Padmanabhan R. learned counsel for the respondent workman, at length and have perused the material on record.

6. Learned counsel appearing for the Department has drawn our attention to the appointment order dated 05.05.2001, which states that in matters of disciplinary proceedings the employee will be governed by the CCA Rules. The relevant provision mentioned in the appointment order is as under:

> *"3. I am to add that other terms and conditions of your service including discipline will be governed by the rules as applicable to Central Government employees of your status in NFC from time to time. Your leave entitlement will be admissible to Industrial employees in departmental undertakings under Appendix-XI of CSR Vol. II (8th Edition) (Ref. Ministry of finance Memo No. 7(84) E-IV(A)/B1, dt. 17.11.61 as amended vide Ministry of Finance Memo No. B(1)-E-IV(A)/70, dt. 27.03.71). Other conditions of service will be governed by the Rules and Orders of the Central Government in force from time to time."*

Since the Rules applicable to Central Government employees are the CCA Rules 1965, the reference in the appointment order to the applicable Rules, is of CCA Rules, 1965.

7. Standing Orders made under the Industrial Establishment (Standing Orders) Act, 1946 are however Rules specific to workmen in an industrial establishment. Industrial Employment (Standing Orders) Act 1946, Industrial Disputes Act, 1947 and a number of other legislations of this period, are worker friendly legislations, which were enacted with a purpose i.e., to regulate the working conditions of workmen. Standing Orders grant a protection to a workman, *inter alia*, when he faces a disciplinary proceeding initiated by the employer. The employer is undoubtedly on a much powerful position than a workman and has much stronger bargaining power and consequently the statute has been made to create a balance. This position has been held by this Court in a catena of decisions, namely, ***Salem-Erode Electricity Distribution Co. (P) Ltd.*** *v.* ***Employees' Union (1966) 2 SCR 498[1], Management, Shahdara (Delhi)***

[1] Paragraph No. 8

Saharanpur Light Railway Co. Ltd. *v.* ***S.S. Railway Workers Union (1969) 2 SCR 131***[2] and ***Agra Electric Supply Co. Ltd.*** *v.* ***Sri Alladdin and Others (1969) 2 SCC 598***[3] etc.

8. The protection of the 1946 Act, cannot be denied to a workman merely for the reason that the employer grants him other services benefits such as pension, gratuity etc. under CCA Rules. The purpose behind this worker-friendly legislation was explained by this Court in ***Sudhir Chandra Sarkar*** *v.* ***Tata Iron & Steel Co. Ltd.*** *(1984) 3 SCC 369:*

> *"11. Parliament enacted the Industrial Employment (Standing Orders) Act, 1946 ("1946 Act" for short). The long title of the Act provides that it was an act to require employers in industrial establishments formally to define conditions of employment under them. The preamble of the Act provides that it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. By Section 3, a duty was cast on the employer governed by the Act to submit to the Certifying Officer draft standing orders proposed by him for adoption in his industrial establishment. After going through the procedure prescribed in the Act, the Certifying Officer has to certify the draft standing orders. Section 8 requires the Certifying Officer to keep a copy of*

[2] Paragraph No. 7
[3] Paragraph No. 5

standing orders as finally certified under the Act in a register to be maintained for the purpose. Sub-section (2) of Section 13 imposes a penalty on employer who does any act in contravention of the standing orders finally certified under the Act. The Act was a legislative response to the laissez faire rule of hire and fire at sweet will. It was an attempt at imposing a statutory contract of service between two parties unequal to negotiate, on the footing of equality. This was vividly noticed by this Court in Western India Match Company Ltd. v. Workmen [(1974) 3 SCC 330 : 1974 SCC (L&S) 531 : (1974) 1 SCR 434 : (1973) 2 LLJ 403] as under : [SCC para 10, p. 334 : SCC (L&S) p. 536]

> *"In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith."*

The intendment underlying the Act and the provisions of the Act enacted to give effect to the intendment and the scheme of the Act leave no room for doubt that the Standing Orders certified under the 1946 Act become part of the statutory terms and conditions of service between the employer and his employee and they govern the relationship between the parties. Workmen v. Firestone Tyre & Rubber Co [(1973) 1 SCC 813, 832 : 1973 SCC (L&S) 341, 360 : (1973) 3 SCR

> *587, 612 : (1973) 1 LLJ 278] Workmen v. Buckingham and Carnatic Mills [(1970) 1 LLJ 26, 29 (SC)] and Glaxo Laboratories v. Presiding Officer Labour Court, Meerut [(1984) 1 SCC 1 : 1984 SCC (L&S) 42]"*

9. The submission made by the learned counsel for the NFC Shri Arkaj Kumar is that since the appointment order itself provides that disciplinary issues will be governed by the CCA Rules 1965, there should be no room for any doubt as to the applicability of the Rules in the disciplinary proceedings. This may not be always correct. An appointment order cannot lay down terms of service which are against what is provided in the Standing Orders, as they are binding on the employer. This Court in the case of ***Western India Match Co. Ltd.*** *v.* ***Workmen (1974) 3 SCC 330*** had directed reinstatement of a worker, who had been illegally terminated from service during his probation period, as this period was wrongly extended beyond what was permissible in the Standing Orders. This is what was said by this Court in Paragraph 11:

> *"11. The special agreement, in so far as it provides for additional four months of probation, is an act in contravention of the Standing Order. We have already held that. It plainly follows from Sections 4, 10 and 13(2) that the inconsistent part of the*

> *special agreement cannot prevail over the Standing Order. As long as the Standing Order is in force, it is binding on the Company as well as the workmen. To uphold the special agreement would mean giving a go-by to the Act's principle of three-party participation in the settlement of terms of employment. So we are of the opinion that the inconsistent part of the special agreement is ineffective and unenforceable."*

In ***Sudhir Chandra Sarkar*** (supra) it was ultimately held by this Court that the terms of a statutory contract of service was illegal because it denied gratuity to an employer which was against the Standing Orders that were legally binding on the employer.

10. Standing Orders are defined under Section 2(g) of the 1946 Act as under:

> *"2(g) "standing orders' means rules relating to matters set out in the Schedule"*

In the schedule to the 1946 Act, a whole list of topics is given which are related to workman, such as classification of workmen, their attendance, closing and reopening of the industrial establishment to suspension or dismissal for misconduct and as to what constitutes misconduct, etc.

The 1946 Act mandates under Section 3 that the employer shall submit before the certifying officer, draft standing orders proposed by him, for adoption in his industrial establishment. The draft standing orders after scrutinization under Section 4 of the 1946 Act are finally certified under Section 5 of the 1946 Act.

The standing orders are then notified under Section 7 of the Act, when it becomes effective. However, before these standing orders are notified under Section 7, it may go through a quasi-judicial process, as any party aggrieved by any provisions of the standing orders has a right to appeal under Section 6 of the 1946 Act before the Appellate Authority. The standing orders which are finally notified are then prominently posted by the employer in English as well as in the language understood by the majority of the workmen. Section 10 of the 1946 Act provides that the standing orders shall not be modified except by agreement between the parties within six months of the certification or the last modification of the Standing Orders. The Standing Order which the workman/respondent claims in the present case have gone through the above process and there is no

order under Section 10 of the 1946 Act which modifies the Standing Order applicable herein.

11. A standing order is hence no ordinary order. It has a statutory mandate. The 1946 Act mandates all owners of industrial establishments which are employing 100 or more workmen to prepare standing orders which should cover all matters relating to employment of a workman which have been given in the schedule of the 1946 Act and then these standing orders further need to be certified by the authority under the 1946 Act. The objective and purpose of the 1946 Act was to have a certainty in service conditions of workmen and a responsibility was placed upon the employer to formulate fair conditions of industrial employment, including in its disciplinary proceedings against a workman. In other words, standing orders are a set of Rules which have to be strictly followed and cannot be ignored, modified or changed, except in accordance with law.

12. The CCA Rules, 1965 on the other hand were framed under the proviso to Article 309 of the Constitution of India which are applicable to employees of Central Government. The CCA Rules, 1965 are not specific to workmen as these are

general service rules applicable to all employees who work under the Central Government. These are not workman specific Rules, unlike the standing orders. Rule 3 of the CCA Rules, 1965 provides for the applicability of the Rules, which reads as under:

> *"3. Application.– (1) These rules shall apply to every government servant including every civilian Government servant in the Defence Services, but shall not apply to–*
> *(a) any railway servant, as defined in rule 102 of Volume I of the Indian Railway Establishment Code,*
> *(b) any member of the All India Services.*
> *(c) any person in casual employment,*
> *(d) any person subject to discharge from service on less than one month's notice,*
> *(e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.*
>
> *(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any class of Government servants from the operation of all or any of these rules.*
>
> *(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railway Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within exception (a) or (e) in sub-rule (1), to whom, but for such transfer, these rules would apply.*

> *(4) If any doubt arises–*
> *(a) whether these rules or any of them apply to any person, or*
> *(b) whether any person to whom these rules apply belongs to a particular Service.*
>
> *the matter shall be referred to the President, who shall decide the same.*

13. The standing orders, on the other hand, as we have seen, cover a whole range of activities of work related to a workman in an industrial establishment which not only includes his working hours, the facilities to be given to a workman, his duties and responsibilities but even minor activities of a workman in an industrial establishment. There is hardly any area which is not covered under these standing orders. Another important feature of the standing orders is that it is totally focused on the activities, nature of work of a workman and the treatment he deserves vis-a-vis the employer and the duties towards his employer. All these are comprehensively laid down. The CCA Rules, 1965 do not comprehensively cover the service conditions of a workman as a standing order does.

14. The purpose and the scope of 1946 Act is explained best in the words of Justice O. Chinnappa Reddy in ***U.P. State***

Electricity Board and Another *v.* ***Hari Shankar Jain and Others, AIR 1979 SC 65***, which held as under:

> *"6. Let us now examine the various statutory provisions in their proper context with a view to resolve the problem before us. First, the Industrial Employment (Standing Orders) Act, 1946. Before the passing of the Act, conditions of service of industrial employees were invariably ill-defined and were hardly ever known with even a slight degree of precision to the employees. There was no uniformity of conditions of service for employees discharging identical duties in the same establishment. Conditions of service were generally ad-hoc and the result of oral arrangements which left the employees at the mercy of the employer. With the growth of the trade union movement and the right of collective bargaining, employees started putting forth their demands to end this sad and confusing state of affairs. Recognising the rough deal that was being given to workers by employers who would not define their conditions of service and the inevitability of industrial strife in such a situation, the legislature intervened and enacted the Industrial Employment (Standing Orders) Act. It was stated in the statement of objects and reasons:*
>
> > *"Experience has shown that 'Standing Orders', defining the conditions of recruitment, discharge, disciplinary action, holidays, leave etc., go a long way towards minimising friction between the management and workers in industrial undertakings. Discussion on the subject at the tripartite Indian Labour Conferences revealed a consensus of opinion in favour of legislation. The Bill accordingly seeks to*

provide for the framing of 'Standing Orders' in all industrial establishments employing one hundred and more workers."

It was, therefore, considered, as stated in the preamble "expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them". The scheme of the Act, as amended in 1956 and as it now stands, requires every employer of an industrial establishment as defined in the Act to submit to the Certifying Officer draft Standing Orders, that is, "Rules relating to matters set out in the Schedule", proposed by him for adoption in his industrial establishment. This is mandatory. It has to be done within six months after the commencement of the Act. Failure to do so is punishable and is further made a continuing offence. The draft Standing Orders are required to cover every matter set out in the schedule. The Schedule enumerates the matters to be provided in the Standing Orders and they include classification of workmen, shift working, attendance and late coming, leave and holidays, termination of employment, suspension or dismissal for misconduct, means of redress for wronged workmen etc. Item 11 of the Schedule is "Any other matter which may be prescribed". By a notification dated November 17, 1959 the Government of Uttar Pradesh has prescribed "Age of superannuation or retirement, rate of pension or any other facility which the employer may like to extend or may be agreed upon between the parties" as a matter requiring to be provided in the Standing Orders. On receipt of the draft Standing Orders from the employee, the

Certifying Officer is required to forward a copy of the same to the trade union concerned or the workmen inviting them to prefer objections, if any. Thereafter the Certifying Officer is required to give a hearing to the employer and the trade union or workmen as the case may be and to decide "whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft Standing Orders certifiable under the Act". Standing Orders are certifiable under the Act only if provision is made therein for every matter set out in the schedule, if they are in conformity with the provisions of the Act and if the Certifying Officer adjudicates them as fair and reasonable. The Certifying Officer is invested with the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses etc. etc. The order of the Certifying Officer is subject to an appeal to the prescribed Appellate Authority. The Standing Orders as finally certified are required to be entered in a register maintained by the Certifying Officer. The employer is required to prominently post the Certified Standing Orders on special boards maintained for that purpose. This is the broad scheme of the Act. The Act also provides for exemptions. About that, later. The Act, as originally enacted, precluded the Certifying Officer from adjudicating upon the fairness or reasonableness of the Draft Standing Orders submitted by the employer but an amendment introduced in 1956 now casts a duty upon the Certifying Officer to adjudicate upon the fairness or reasonableness of the draft Standing Orders. The scheme of the Act has been sufficiently explained by this Court in Associated Cement Co. Ltd. v.P.D. Vyas [AIR 1960 SC 665 : (1960) 2 SCR 974 :

> *(1960) 1 LLJ 563 : 20 FJR 59] , Rohtak Hissar District Electricity Supply Co. Ltd. v. State of U.P. [AIR 1966 SC 1471 : (1966) 2 SCR 863 : (1966) 2 LLJ 330 : 29 FJR 76] , and Western India Match Co. Ltd. v. Workmen [(1974) 3 SCC 330 : 1973 SCC (L&S) 531 : (1974) 1 SCR 434] . The Industrial Employment (Standing Orders) Act is thus seen to be an Act specially designed to define the terms of employment of workmen in industrial establishments, to give the workmen a collective voice in defining the terms of employment and to subject the terms of employment to the scrutiny of quasi-judicial authorities by the application of the test of fairness and reasonableness. It is an Act giving recognition and form to hard-won and precious rights of workmen. We have no hesitation in saying that it is a special Act expressly and exclusively dealing with the schedule-enumerated conditions of service of workmen in industrial establishments."*
>
> *(emphasis supplied)*

Thus, it was held in ***Hari Shankar Jain (supra)*** that the Industrial Employment (Standing Orders) Act is a special act under which Standing Orders are laid down which deals with specific conditions of a workman in an "industrial establishment", and the hard won right of a workman cannot be taken away by a general enactment such as CCA Rules, 1965.

> *"10. We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely the conditions of service, enumerated in the schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hard-won and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity Supply Act and Parliament never meant that the Standing Orders Act should stand pro tanto repealed by Section 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies."*

15. The NFC was established in the 1970s as a unit of department of Atomic Energy, Government of India. The management of NFC after its establishment, in the capacity of an employer submitted draft Standing Orders under Section 3 of the 1946 Act before the certifying officer which was duly certified on 27th August, 1973, and thereafter notified. These Standing Orders are applicable to all industrial employees of NFC Hyderabad who are workmen

as defined under the 1946 Act. There is no doubt that the private respondents come under the definition of workman. Clauses 38 to 44 of the Standing Orders certified for the NCF-Hyderabad in 1973 provided for misconduct, disciplinary action, penalties, procedure, appeal and review.

It is, however, true that the Ministry of Labour, Government of India had issued an OM dated 29th July, 1977 where it had clarified that wherever Section 13B of the 1946 Act was applicable for the establishments, the standing orders need not be certified any longer and in case they have already been certified they would become invalid. All the same, the High Court of Andhra Pradesh in its impugned order correctly makes a distinction here which is that whereas for the Madras Atomic Power Project (similarly constituted as NFC-Hyderabad) there is an exclusionary clause in terms of Section 13B of the 1946 Act in its Standing Orders but in the Standing Orders certified for NFC-Hyderabad, there is no mention of Section 13-B of the 1946 Act.

16. It is also true that in the present case, both the private respondents when they were given employment, their appointment orders clearly said that their service

conditions, including disciplinary proceedings, if any, would be governed under the CCA Rules, 1965. Therefore, the case of the employer is that disciplinary proceedings also have to be initiated under the CCA Rules, 1965 and the standing orders will have no applicability in the present case.

The employer also relies upon Section 13B of the 1946 Act, which reads as follows:

> *"13B. Act not to apply to certain industrial establishments.—Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations as may be notified in this behalf by the appropriate Government in the Official Gazette, apply."*

Relying on the above provision, the argument of the employer is that the 1946 Act will not apply to an industrial establishment, if for the industrial establishment CCA Rules, 1965 have been made applicable, and since the CCA Rules, 1965 have been made applicable and it was specifically stated in the appointment orders of the respondents, the standing orders will have no application.

17. Section 13B of the 1946 Act declares that to those workmen in an industrial establishment to whom the CCA Rules, 1965 are applicable, the provisions of the 1946 Act will not apply. The question which still remains is whether in order to oust the 1946 Act a separate notification under Section 13 B would be necessary as Section 13 B speaks of "…*as may be notified in this behalf by the appropriate Government in the Official Gazette, apply".*

The Andhra Pradesh High Court, in the impugned judgment, though is of the opinion that there is some ambiguity in Section 13B of the 1946 Act as to whether a separate notification is required for only unspecified rules mentioned in Section 13B or will a separate notification also be necessary for the specified Rules such as CCA Rules, 1965. All the same, this question has been answered to a large extent by this Court in ***Hari Shankar Jain*** (supra). The question before this Court was whether the standing orders would be applicable to a workman or will it be the regulations framed under the Electricity Supply Act, 1948. In the said case, there were standing orders for the workmen, who were working for the U.P. State Electricity

Board (as it was then), but subsequently a notification was issued by the Government of India on 28th May, 1970 specifically under Section 13B of the 1946 Act. The notification read as under:

> *"In pursuance of the provision of Section 13-B of the Industrial Employment (Standing Orders) Act, 1946 (Act No. 20 of 1946), the Governor is pleased to notify in the official Gazette that the U.P. State Electricity Board has made the following Regulations under sub-section (c) of Section 79 of the Electricity (Supply) Act, 1948 (Act No. 54 of 1948):*
>
> *Notwithstanding any rule if an order or practice hitherto followed, the date of compulsory retirement of an employee of the Board will be the date on which he attains the age of 58 years; provided that—*
>
> *(i) in the case of the inferior servants of the Board, whose counterparts under State Government are at present entitled to serve up to the age of 60 years, the age of compulsory retirement will be the date on which they attain the age of 60 years.*
>
> *(ii) the Board or its subordinate appointing authority may require an employee to retire after he attains or has attained the age of 55 years on three months' notice or three months' salary in lieu thereof without assigning any reason."*

We have also noticed that in the above case, there was a specific notification under Section 13B of the 1946 Act, which admittedly is not there in the case at hand. What is important is that the notification (in the above case), was not

of a general nature but it was specific to "compulsory retirement", of employees of the Electricity Board. An employee was to be compulsory retired after attaining the age of 58 years, subject to certain provisions. This Court held that essentially the Regulations, made under the Electricity Supply Act are of a general nature, and the Standing Orders are the special rules. Therefore, the special rules would override the general. Nevertheless, since there is also an exclusion clause under Section 13B of the 1946 Act and there was indeed a notification under the said Act which we have already referred above, it will be the regulations made under the 1948 Act which will be applicable, but only so far as it relates to compulsory retirement, since the notification dated, 28th May, 1970 was only limited to compulsory retirement. It has been held as under:

> *"17. … In our view the only reasonable construction that we can put upon the language of Section 13-B is that a rule or regulation, if notified by the Government, will exclude the applicability of the Act to the extent that the rule or regulation covers the field. To that extent and to that extent only 'nothing in the Act shall apply'. To understand Section 13-B in any other manner will lead to unjust and uncontemplated results. For instance, most of the Service Rules and*

> *Regulations expressly mentioned in Section 13-B do not deal with a large number of the matters enumerated in the schedule such as 'Manner of intimating to workmen periods and hour of work, holidays, pay-days and wage rates', 'shift working', 'Attendance and late coming", 'conditions of, procedure in applying for, and the authority which may grant leave and holidays', 'Closing and reopening of sections of the industrial establishments and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom, etc. To exclude the applicability of Standing Orders relating to all these matters became the Fundamental Rules, the Civil Service Rules or the Civil Services Control, Classification and Appeal Rules provide for a few matters like 'Classification of workmen' or 'suspension or dismissal for misconduct' would be to reverse the processes of history, apart from leading to unjust and untoward results. It will place workmen once again at the mercy of the employer be he ever so benign and it will certainly promote industrial strife. We have indicated what according to us is the proper construction of Section 13-B. That is the only construction which gives meaning and sense to Section 13-B and that is a construction which can legitimately be said to conform to the Directive Principles of State Policy proclaimed in Articles 42 and 43 of the Constitution."*

It, then, went on to hold as further:

> *"18. We, therefore, hold that the Industrial Employment (Standing Orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect unless such regulations are either*

> *notified by the Government under Section 13-B or certified by the Certifying Officer under Section 5 of the Industrial Employment (Standing Orders) Act. In regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect of which no regulations have been made by the Board, the Industrial Employment (Standing Orders) Act shall continue to apply. In the present case the regulation made by the Board with regard to age of superannuation having been duly notified by the Government, the regulation shall have effect notwithstanding the fact that it is a matter which could be the subject-matter of Standing Orders under the Industrial Employment (Standing Orders) Act."*

Relying upon the aforesaid decision, the Delhi High Court in ***Air India*** *v.* ***Union of India, ILR (1991) 1 Del 88*** held that in order to make the exclusion clause (under Section 13B of the 1946 Act) applicable a notification is required to be made and that too by none other than the Government of India.

The logical conclusion therefore would be that CCA Rules, 1965 are the general Rules whereas Standing Orders are the Special Rules, and therefore the Standing Orders would override the CCA Rules, 1965. Moreover, the Standing Orders cover a wide area of activities of a workman and are workmen specific yet in view of Section 13B of 1946 Act a specific notification can be made applying CCA Rules, 1965

to that specific aspect. But a notification is necessary. In view of the ***Hari Shankar Jain*** (supra), this can be the only interpretation of Section 13B of the 1946 Act.

18. The NFC was established much after the 1946 Act and the CCA Rules, 1965 had come into force. Yet a conscious decision was taken by the management of NFC to submit draft Standing Orders under Section 3 of the 1946 Act, which was duly certified by the certifying authority and then notified which then became applicable since then. Once the standing orders have been notified and have come into force, there is a procedure prescribed under the 1946 Act for modifying or withdrawing such a standing order, which we have stated in the preceding paragraphs. There is nothing or record to show that after the standing orders, which stood certified in the year 1973 and were in force, any subsequent modification was made or any order passed curtailing these standing orders, under Section 10 of the 1946 Act.

Nothing has also been placed on record to suggest that a notification under Section 13B of the 1946 Act was made by Government of India, making its intentions clear that from henceforth for such and such matters, it will be the

CCA Rules, 1965 which will be applicable and not the standing orders. In the absence of such notification, we do not find any fault with the order of the Andhra Pradesh High Court which has held that it will be the standing orders and not the CCA Rules, 1965 which will be applicable.

19. This Court in the case of ***Hari Shankar Jain*** (supra)[4] held that Standing Orders have the nature of Special Rules. It is a settled principle of law that only in those cases, where the Special Rules fail to lay down provisions for dealing with certain subjects, can the General Rules be pressed into service. The CCA Rules are General Rules which apply to all Government Servants. When the Standing Orders for the Department have clearly laid down a procedure to be followed in cases of Disciplinary proceedings under Order Nos. 38, 39 & 40, there is no reason for the Department to initiate the said proceedings under the CCA Rules.

20. Any modification sought to be made to the service conditions of the respondent can only be done as per the procedure which is given under Section 10 of the Standing Orders Act, 1946. This Court in the case of ***Oil and Natural Gas***

[4] Paragraph No. 10

Corporation Ltd. *v.* ***Petroleum Coal Labour Union & Ors.*** ***(2015) 6 SCC 494*** was deciding the validity of a policy decision taken by ONGC to appoint CISF personnel to security posts. The temporary workmen who were appointed on the said posts were opposing this decision and it was their contention that their services should be regularised instead. This Court observed that the temporary workmen who had completed 240 days in 12 months had acquired a right to be regularised under Clause 2(ii) of the 'Certified Standing Orders for Contingent Employees of the Oil and Natural Gas Commission'. Further, that any modification to the service conditions of the temporary workmen could only be done as per Section 10 of the 1946 Act. Replying upon the seminal decision of this Court in ***Hari Shankar Jain*** (supra), it reads as under :-

> "For the Corporation to implement such a provision which affects the service conditions of its employees, it is necessary for the Corporation to first modify the Certified Standing Orders by following the procedure provided under Section 10 of the Industrial Employment (Standing Orders) Act, 1946 as the same is a special enactment and therefore, prevails over the provisions under the ONGC Act and the Recruitment Rules. The Corporation undisputedly has not made any such modification to its Certified Standing

> Orders by following the procedure for modification of conditions of service as per Section 10 of the Industrial Employment (Standing Orders) Act, 1946."

As we have already stated above NFC, Hyderabad has failed to place on record any modification made under Section 10 of the 1946 Act to show that the Standing Orders certified for NFC-Hyderabad would not be applicable to the respondent.

Service conditions of respondents will be governed by the 'Standing Orders' as far as the disciplinary proceedings are concerned. 'Standing Orders' being in the nature of special Rules will override any other general Rule including CCA Rules, 1965. Further, in view of the law laid down in ***Hari Shankar Jain (supra)*** the 'Standing Order' will in any case prevail until modified under Section 10 of the 1946 Act, which has not been done. This position has been reiterated by this Cout in ***Oil and Natural Gas Corporation Limited*** (supra) where conditions of appointment were held to be void and inapplicable to a worker if it makes any other Rule applicable in suppression of the 'Standing Orders' without

there being a modification under Section 10 of the Standing Orders.

21. In view of our findings given above, we dismiss these appeals and uphold the order dated 14.10.2008 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad. The order of *status quo* granted by this Court on 02.03.2009 is hereby vacated.

No orders as to cost.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[C.T. RAVIKUMAR]

.....J.
[SUDHANSHU DHULIA]

New Delhi,
November 29, 2023.