



Tax alert: Bombay High Court upholds contractual retirement age of 58 years

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The Bombay High Court has clarified that employers may legally enforce a retirement age of 58 years if it is supported by a valid and binding settlement agreement with the employee.

In a nutshell



As per the Industrial Employment (Standing Orders) Act, 1946, employers need to define and communicate the conditions of employment (including retirement age) to their workers.

Employers may adopt the prescriptions laid out in these standing orders or use these as guidelines to define their respective working conditions as per their agreement with the employees.



In the case cited, the employer entered into an agreement in 2006, where the retirement age was fixed at 58 years and sought to enforce the same. However, the retirement age under the Act was 60 years.

The dispute arose when the employees challenged the retirement age of 58 years:

- They stated that it was not valid and binding
- That the agreement cannot override the provisions of the Standing Orders of the law.



The High Court of Bombay clarified that under Model Standing Orders of the Industrial Employment (Standing Orders) Act, 1946, the retirement age of 60 years applies only in the absence of an agreement, settlement, or award.

It stated that where an agreement exists, the agreed-upon retirement age is valid and enforceable, even if it is lower than 60 years.



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Background

As per the case¹, the employer entered into an agreement in 2006, when the retirement age was fixed at 58 years age, and sought to enforce the same. The employees had also accepted all the benefits such as wage raise, flowing through the stated agreement. However, the employees, including Shankar Mahadev Takmare and Sanjay Pandurang Ghorpade, argued for a retirement age of 60 years as per the Model Standing Orders ('MSO') and sought to prevent their retirement at the agreed age of 58 years.

Proceedings

The Labour Court granted interim relief to the employees, staying their retirement pending the outcome of the proceedings. The matter reached the Bombay High Court ('HC'). The HC found that the Labour Court's decision to grant interim relief was inappropriate, especially when employees raised the issue at the last minute before their retirement and were being selective about which benefits must apply to them. The HC's reasoning was that if the employees ultimately succeed in their claim, the Labour/Industrial Courts can award them appropriate compensation. However, granting interim relief to continue employment beyond the agreed retirement age, was seen as inappropriate.

Issue

- Whether the agreement entered in 2006, which stipulated the retirement age as 58 years, was valid and binding?
- Whether the agreement can override the provisions of the MSO?
- Whether employees can selectively question applicability of agreement?

Judgment

The Maharashtra Industrial Relations Act, 1946 ('MIRA') mandates that employers in industrial establishments formally define and communicate the conditions of employment to their workers. This includes specifying rules related to work hours, leave, retirement age, termination, and disciplinary actions. MIRA aims to bring clarity and consistency to employment terms, prevent unfair labor practices, and promote harmonious employer-employee relations.

Paragraph 25A of the MSO mentions the possibility of any other age as may be agreed upon between the employer and the employees by any agreement. The HC stated that the age of retirement prescribed under MSO would apply only in the absence of an agreement. The HC clarified that the language under Paragraph 25A of the MSO of MIRA makes it lawful for employer and employee to agree by way of an agreement, settlement or award a different age of retirement than 60 years. Hence, agreements deviating from MSO are permissible, provided they are lawful and mutually agreed upon. The HC rejected the argument that agreements can only increase the retirement age, affirming that agreements prescribing a lower retirement age are equally enforceable.

The HC also found it inconceivable that the employees pick the higher wage benefit (benefits flowing out of Agreement dated 2006) but selectively question the age of retirement prescribed therein towards the end of their service.

Comments

This judgment clarifies that an agreement with different clauses, including that of retirement age, is permissible and will be binding between an employer and its employees. The judgment provides clarity on the entitlement of employer and employee to agree upon the age of retirement which is different from the one prescribed under the MSO. As per the ruling, the retirement age specified in an agreement takes precedence over the default

¹ Indo Count Industries Ltd. vs. Shankar Mahadev Takmare , Writ Petition No.4631 OF 2025 dated 30 April, 2025.

retirement age under 25A of the MSO. Thus, the HC of Bombay upheld the validity of agreements on retirement age, emphasizing that such agreements are lawful and binding if mutually consented to, and not in contravention of any law.

Employers should ensure that their retirement policies, employment terms, standing orders etc., are reviewed and assessed for gaps and accordingly carry out a workforce planning to avoid legal challenges in the future.

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