

## **All-India Voltas And Volkart Employees ... vs Voltas Ltd. And Anr. on 19 July, 1985**

**Equivalent citations:** AIR1985SC1718, (1985)87BOMLR485, [1985(51)FLR284], 1985LABLC1892, (1985)IILLJ409SC, 1985(2)SCALE90, (1985)3SCC682, 1985(17)UJ835(SC), AIR 1985 SUPREME COURT 1718, 1985 LAB. I. C. 1892, (1985) 67 FJR 234, 1985 SCC (L&S) 907, (1985) 51 FACLR 284, (1985) 2 LABLJ 409, 1985 (3) SCC 682, 1985 BOM LR 87 485

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**Bench:** O. Chinnappa Reddy, V. Balakrishnan Eradi, V. Khalid

### JUDGMENT

O. Chinnappa Reddy, J.

1. The All India Voltas & Volkart Employees Federation are the appellants before us. The very limited question with which we are concerned is whether the amount paid by the company during years 1964-65 and 1965-66 under a scheme styled as 'Super-annuation scheme-Special Retiring Gratuity scheme' is to be added back as "bonus to employees" as mentioned in Item 2(a) or "bonus paid to employees in respect of previous accounting years" as mentioned in Item 3(a) of the Second Schedule to the Payment of Bonus Act, 1965 for the purpose of computing the gross profits Under Section 4(b) of the Act ? The question has been answered in the negative by the National Industrial Tribunal on a reference Under Section 10(2) of the Industrial Disputes Act and by the High Court of Bombay in an application under Articles 226 and 227 of the Constitution. The workmen have preferred this appeal on a certificate by the High Court of Bombay under Article 133 of the Constitution.

2. The relevant paragraphs of the 'Superannuation scheme-Special Retiring Gratuity scheme' are paragraphs 4, 5 and 6 which are as follows :

4. Subject to such exemption as may be granted by General Management, membership of the Superannuation scheme will be compulsory for all employees drawing a basis salary of Rs. 500/-per mensem and above, and optional for all other categories of staff. Once the option is exercised to join the scheme, the concerned employee cannot opt out of it.

5. It will be appreciated that as the company agreed to contribute under normal trading conditions upto two months' basic salary of each member of the

Superannuation scheme, this by itself affords substantial security to those who become members of the scheme, since it means that such members are guaranteed for so long as the Superannuation scheme continues, the equivalent pension benefits. It must be made clear that a condition precedent to joining the Superannuation scheme is that each member of the scheme will be called upon to agree in writing not to participate in the annual bonus distributed by the Company and be bound by this for the remainder of his service with the Company. The form of letter to be taken from the concerned employee is referred to in paragraph 6 below.

6. In consideration of members of the Superannuation scheme agreeing in writing not to participate in the annual bonus distributed by the Company, a Special Retiring Gratuity scheme will be started for the benefit of such employees and they will, thereafter, be eligible upon retirement, death or termination of service for any reason whatever, to a special Retiring Gratuity of such amount and payable in such instalments as the Directors may at their discretion fix, having regard to the amount of bonus the employee would have received in the course of his service, if they had continued to participate in the distribution of bonus out of annual profits. A form of letter to be taken from the concerned employees who agree not to participate in the annual distribution of bonus is attached herewith and is marked Annexure 'A'.

3. While employees drawing a basic salary of Rs. 500/- or more were obliged to participate in the scheme, employees drawing a basis salary of less than Rs. 500/- had an option to join or not join the scheme. Those employees who did not desire to join the scheme but preferred to receive an annual bonus were required to execute a letter in a form which was prescribed. The form was as follows :

The Managing Director & General Manager, Voltas Limited, Ballard Estate, Bombay-1.

Dear Sir, Special Retiring Gratuity Bonus.

As I do not desire to participate in the benefits, the Special Retiring Gratuity scheme effective from Ist September, 1960, I request that F may be permitted to receive in lieu thereof, an annual bonus as may be sanctioned by the Directors at their sole discretion.

2. The above request, if granted by the Company, will be irrevocable as far as I am concerned.

Yours faithfully,

4. In 1966, as a result of the Payment of Bonus Act, 1965, the Company thought that those who had joined the scheme wore at a disadvantage, in. some respects, as compared with employees who had not opted for the scheme and therefore, addressed a letter to all such employees pointing out that the scheme in which the employees were participating could be treated as an arrangement Under

Section 34(3) (since repealed) of the Act. The letter requested the employees to express their agreement in writing. This apparently was so done by the employees who had opted for the scheme. It is, however, worth-reproducing the letter written by the company. It is as follows :

Voltas Limited General Management Bombay 14th January, 1966 Dear Mr...

You are at present a member of the Superannuation Fund which assures you pension benefits at the time of your retirement. To this Fund, the Company diverts currently every year a sum equivalent to your two months' salary on non-contributory basis, not involving you in any additional tax liability. But for the Superannuation Fund, you may have received two months' salary as cash bonus. In addition to this, you receive an annual bonus declared at the discretion of the Board of Directors.

2. The payment of Bonus Act, 1965, which came into force on 25th Sept., 1965, however, puts you and other employees similarly placed at a disadvantage. The reason is quite simple. The maximum bonus that you can get under this Act is Rs. 1, 800/- per annum, i.e. 20% of your annual salary calculated on the basis of the prescribed ceiling of Rs. 750/- per mensem. Even this annual payment, in any particular year, will have to be determined in relation to the profits of the company, and this figure will naturally change from year to year depending on the results.

3. In short, the payment of Bonus Act would not fetch you benefits higher than the ones you draw at present as explained in the first paragraph. Evidently, this is not a state of affairs either you or we would allow to pass. Fortunately the Bonus Act permits an : employee to come to an arrangement with the employer different from the one provided under the Bonus Act and therefore we could continue our present arrangements unaffected. This mutual understanding needs to be reduced to writing and hence we send you here with a letter, in duplicate, for you to sign. You may please return one copy to the undersigned and retain the other for your record.

Yours sincerely, Sd/-

T.K. Mukherji

5. It is clear to our mind that the scheme is no more or no less than a scheme for payment of bonus though named and addressed differently. Not only is it a condition precedent to joining the Superannuation scheme that each member of the scheme should agree in writing not to participate in the annual bonus distributed by the company, it is further expressly stated that the Special Retiring Gratuity scheme is started in consideration of the members of the Superannuation scheme having agreed in writing not to participate in the annual bonus. The letter which each of the employees who did not want to participate in the scheme, was required to write to the company recited that the Special Retiring Gratuity scheme was in lieu of the annual bonus. Any remnant of a doubt must go on a perusal of the letter dated 14.1.1966 from the company to its employees in which the company expressly purported to treat the scheme as an arrangement Under Section 34(3) of the

Bonus Act. It was said that the scheme could not have been intended to avoid the provisions of the Payment of Bonus Act, 1965 since the scheme was evolved in 1959 itself. It is true that this is so but the scheme was apparently devised to reduce the liability to Income tax. If the payment was made as an annual bonus, it would have been subject to Income tax. We are not, however, concerned with that aspect of it, since we are satisfied that the scheme was one for payment of bonus and the amount paid by the company under the scheme had therefore, to be added back for the purpose of computing the gross profit. The judgment of the High Court and the award of the Industrial Tribunal insofar as they relate to the Superannuation scheme-Special Retiring Gratuity scheme, are set aside and the matter is remitted back to the Central Industrial Tribunal at Delhi for appropriate orders in the light of our judgment. The appellants are entitled to their costs.