General Manager, E.I.D. Parry (India) ... vs Presiding Officer, 2Nd Addl. Labour ... on 2 May, 1991

Equivalent citations: 1991 AIR 1544, 1991 SCR (2) 637, AIR 1991 SUPREME COURT 1544, 1991 AIR SCW 1475, 1991 LAB. I. C. 1465, (1991) 2 JT 588 (SC), (1991) 2 SCR 637 (SC), 1991 (2) UJ (SC) 204, 1991 (2) SCR 637, 1991 (1) SCC(SUPP) 326, 1991 SCC (L&S) 1067, (1991) 63 FACLR 1, (1991) 2 LABLJ 282, (1991) 2 LAB LN 73, (1992) 3 SERVLR 119, (1991) 2 CURLR 354

Author: Rangnath Misra

Bench: Rangnath Misra, A.M. Ahmadi, R.M. Sahai

PETITIONER:
GENERAL MANAGER, E.I.D. PARRY (INDIA) LTD.

Vs.

RESPONDENT:
PRESIDING OFFICER, 2ND ADDL. LABOUR COURTMADRAS AND ORS.

DATE OF JUDGMENT02/05/1991

BENCH:
MISRA, RANGNATH (CJ)
BENCH:
MISRA, RANGNATH (CJ)
AHMADI, A.M. (J)
SAHAI, R.M. (J)

CITATION:
1991 AIR 1544 1991 SCR (2) 637
1991 SCC Supl. (1) 326 JT 1991 (2) 588
1991 SCALE (1)844

ACT:
Industrial Disputes Act, 1947 : Sections 9-A, 33-C(2)
Payment of Gratuity Act, 1972.
Labour Law--Company--General Office Order No. 26 dated 1.12.1943--Provision for 'Retiring Allowance' (Pension) and gratuity--Memorandum of settlement between Company and workmen--Employees given option under the settlement either for Gratuity or Retiring allowance--Enforcement of Gratuity Act, 1972--Workers' claim for retiring allowance (Pension) in addition to gratuity--Held settlement had not substituted gratuity for pension--Employees held entitled to pension notwithstanding the settlement.

HEADNOTE:

The General Office Order No. 26 dated 1.12.1943 of the Appellant-Company provided that employees with 30 years' service or more would be eligible to receive "Retiring Allowance" (pension). The said office order also provided that all permanent employees who were in the Company's service prior to 1.1.1947 and who do not qualify for retiring allowance on retirement, will be eligible for gratuity on finally leaving the Company's service subject to the prescribed conditions being fulfiled. In 1956 a memorandum of settlement was signed by the appellant-company and the Employees' Union under which the employees in service prior to 1.1.47 were required to opt at the time of leaving service either for gratuity or in lieu of the gratuity the retiring allowance. Later the Payment of Gratuity Act 1972 came into force and the payment of gratuity became statuory. The employer and the Employees' Union jointly applied to the Government for exemption from the provisions the statue which was refused.

Some of the retiring employees of company filed applications under Section 33-C(2) of the Industrial Disputes Act, 1947 before the Labour Court claiming pension by alleging that payability of pension was a condtion of service and the employer had stopped it without any Justification. The Labour Court allowed the applications. Against the-

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order of the Labour Court the employer preferred six writ petitions. In the meantime the same dispute was referred to the Industrial Tribunal and by an award the Tribunal answered the reference against the employees. The Employees' Union challenged the award by filling a writ petition in the High Court. All the writ petitions were heard by a learned single judge of the High Court who allowed the writ petitions of the management against the order of the Labour Court and dismissed the writ petition preferred by the Labour Union challenging the award of the Tribunal. Writ appeals were carried against the single Judges' decision. The Appellate Bench of the High Court held that gratuity provided under the settlement was not a substitute of pension and the claim of pension was available to employees notwithstanding the settlement. Hence this appeal by the employer-company.

Dismissing the appeals, this Court,

HELD: The 1956 settlement between the parties does not provide for payment of pension except to pre-1947 employees and making the benefit liable to exercise of option under clause 6(d) of the settlement. The retiral benefit (pension) was payable to all qualfied employees as a matter of practice. If under the settlement that was not done away

with, the benefit arising out of General Office order No. 26 would still be available and gratuity contemplated under the settlement would not be a substitute of the retiral benefit of pension. The Appellate Bench of the High Court was right in holding that the entitlement to pension had not been substituted by the settlement of 1956 and, therefore, the claim to pension subject to qualification being satisfied was available to be maintained notwithstanding the settlement of 1956. The High Court rigtly came to the conclusion that the Labour Court had justifiably worked out the dues and the claim petition under section 33-C(2) of the 1947 Act. [641C-D, 642C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1450- 1458 of 1990.

From the Judgment and Order dated 21.11.1988 of the Madras High Court in W.A. Nos. 864 to 870 of 1988 and W.P. Nos. 1600 and 1601 of 1986.

Narayanswamy, N. Balasubramaniam and A.T.M. Sampath for the Appellant.

M. Ramamurthy, Mrs. C. Ramamurthy, M.A. Krishnamoorthy, for the Respondents.

R.C. Paul appeared in person.

The Judgment of the Court was delivered by RANGANATH MISRA. CJ. These are appeals by special leave and are directed against a common judgment of the Madras High Court delivered in a group of writ appeals and a writ petition.

E.I.D. Parry (India) Ltd. (hereinafter referred to as `the employer') has one of its units located at Ranipet in Tamil Nadu State where sanitary-ware, super phosphate and insecticides are manufactured. Some of its retiring employees filed applications under section 33-C(2) of the Industrial Disputes Act, 1947 (`1947 Act' for short) before the Labour Court at Madras claiming pension by alleging that payability of pension was a condition of service and the employer had stopped it without any justification and without giving notice under section 9-A of the 1947 Act. The President Officer of the 2nd Additional Labour Court, Madras, allowed the same by his order dated 30th May, 1983, after computing the amounts. The employer preferred six writ petitions. In the meantime the same dispute had been referred to the Industrial Tribunal and it answered the reference against the employees by award dated 13th February, 1985. The award was assailed before the High Court by the Union by filing of the seventh writ petition. All the seven writ petitions were heard by a learned Single Judge who allowed the writ petitions of the management against the order of the Labour Court and dismissed the writ petition preferred by the labour union challenging the award of the Industrial Tribunal. Writ appeals were carried against the Single Judge's decision.

The main controversy before the Division Bench was as to whether pension, or as is referred to by the parties, "retiring allowance" was payable to the employees. This dispute has a historical backdrop to which we may now advert. Under General Office Order No. 26 dated Ist December, 1943 "retiring allowances" were provided for. The Office Order provided that normally only employees with thirty years' service or more would be eligible to receive "Retiring Allowance". The Board reserved the right to alter the scale of "retiring allowance". either generally or in respect of individual employees and had the authority to sanction `retiring allowance' when first granted and subsequent payment became a routine matter subject to annual review.

Gratuities were also provided under the Office Order by saying that all permanent employees (other than workers who qualify for gratuities as per Factory Certified Standing Order) who were in the Company's service prior to 1.1.1947 and who do not qualify for Retiring Allowance on retirement, will be eligible for gratuity on finally leaving the Company's service subject to one or other of the prescribed conditions being fulfilled. In all four alternatives were provided. Clause (4) indicated that employees recruited on or after 1.1.1947 would not be entitled to any gratuity.

There was a Memorandum of Settlement between the parties which may be referred to as the settlement of 1956. Clause (6) thereof related to gratuity and provided:

> "Gratuity shall in future be payable by the company in accordance with the following rules:
>
> (a)(i) Where, irrespective of the length of his past service, an employee dies in service, or is retired on a medical certificate acceptable to the company, or is retired by the company on reaching the age of superannuation, he shall be entitled to gratuity calculated at the rate of one month's basic salary for each completed year of service, and pro rata for any partly completed year of his service ,subject to a maximum of 15 months' basic salary if his service is less than 30 years, together with half of one month's basic salary for each completed year of service in excess of 30 years and pro rata for any partly completed year of service in excess of 30 years.....
>
> (d) Employees in service prior to Ist January, 1947 may opt, at the time of leaving service, either for:
>
> (i) Gratuity calculated in accordance with these rules or in accordance with the current provisions of General Office Order No. 26, whichever he prefers, or
>
> (ii) in lieu of gratuity, a retiring allowance calculated in accordance with the current provisions of General Office Order No. 26."

This settlement as a fact incorporated the relevant part of the Office Order.

The Payment of Gratuity Act came into force with effect from September, 1972 and payment of gratuity became statutory. When that Act came into force, the Employer and the Employees ' Union jointly applied to the Government for exemption from the provisions of the statute. The exemption was, however, not granted. Payability of gratuity is no longer in dispute. What is challenged is the claim of the workmen to retiring allowance (pension) under Office order No. 26. The stand of the employees has been that the retiring allowance under General Office Order No. 26 has not been substituted by the 1956 settlement and they are, subject to being qualified, entitled to the benefit of pension and the statutory advantage of gratuity. It is a fact that the settlement does not provide for payment of pension except to pre-1947 employees and making the benefit liable to exercise of option under clause 6(d) above. It is not in dispute that the retiral benefit (pension) was payable to all qualified employees as a matter of practice. If under the settlement that was not done away with, the benefit arising out of General Office Order No. 26 would still be available and gratuity contemplated under the settlement would not be a substitute of the retiral benefit of pension.

The Appellate Bench of the High Court has found that gratuity provided under the settlement was not a substitute of pension. Mr. Narayanaswamy, learned senior counsel appearing in support of the appeals took us through the various documents and placed the matter at considerable length and with lucidity. He even relied on what he described as the prevailing practice between 1956 and 1972-the settlement and the Gratuity Act-when no retiral benefit was either claimed or paid. We have, however, not been able to see any defect in the reasoning of the Division Bench decision of the High Court where it has ultimately come to the conclusion that the settlement had not substituted gratuity for pension. We find that by way of an interim measure this Court by an order dated 5th May, 1989 had directed the employer to pay the pension to the employees in accordance with the order of the High Court with effect from Ist May, 1989 and that from the record appears to have been paid.

A petition had been filed in this Court on 23rd April, 1990 by the employer for modification of the condition indicated in the order granting special leave and we had heard counsel for both the sides on the said petition. We had made it clear at the hearing of the petition for modification of the order granting special leave that the question as to payability of retirement benefit after the 1956 settlement would be examined. The total number of employees involved in this dispute was about 347. Many of them had not only retired but had also died and in respect of those who were dead it would be a question of the benefits up to the date of death of the respective employees to be paid to their legal representatives. Mr. Narayanaswamy had emphatically contended that what was being decided was not a claim of 347 employees but it had its repercussion on the industrial peace between the employer and the employee at other places. We would like to make it clear that we have gone into the question confined to the claim to the employees of the Ranipet factory and not the liability of the employer generally, Besides, Mr. Narayanaswamy had also told us at the hearing that there are special features in the arrangement in regard to employees elsewhere.

We are satisfied that the Appellate Bench of the High Court was right in holding that the entitlement to pension had not been substituted by the settlement of 1956 and, therefore, the claim to pension subject to qualification being satisfied was available to be maintained notwithstanding the settlement of 1956, The High Court rightly came to the conclusion that the Labour Court had

justifiably worked out the dues and the claim petitions under section 33-C(2) of the 1947 Act. We uphold the judgment of the High Court and dismiss these appeals. The employees had asked for award of interest on their dues. The challenge of the employer was not groundless and we do not think in the facts of these cases the employees or their legal representatives would be entitled to interest. We hope and trust that the employer would not liquidate its liability without delay by satisfying the orders of the Labour Court and the claims of the workmen or their legal representatives as and when made.

A sum of Rs. 10,000 had been given by the employer to Sri Pant for the Union to contest these matters and he has been paid the amount under this Court's order. No order for further courts.

T.N.A. Appeals dismissed.