I.T.C. Ltd. Workers Welfare ... vs The Management Of I.T.C. Ltd. & Others on 29 January, 2002

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Author: P.Venkatarama Reddi

Bench: D.P. Mohapatra, P. Venkatarama Reddi

CASE NO.:
Special Leave Petition (civil) 15178 of 1999

PETITIONER:
I.T.C. LTD. WORKERS WELFARE ASSOCIATION & ANR.

Vs.

RESPONDENT:
THE MANAGEMENT OF I.T.C. LTD. & OTHERS

DATE OF JUDGMENT: 29/01/2002

BENCH:
D.P. Mohapatra & P. Venkatarama Reddi

JUDGMENT:

P.Venkatarama Reddi, J.

Leave granted and appeal taken up for hearing.

The first appellant which seems to be a representative body of the retired workmen of Munger Branch of ITC Ltd. and the second appellant who is a member thereof, have assailed the legality of

the judgment of the Patna High Court in C.W.J.C. No. 5693 of 1995 dated 10.11.1997. By that judgment the High Court upheld the award passed by the Industrial Tribunal, Patna, in Reference No.3/92, following the earlier decision of the High Court reported in 1997 (1) PLJ 934, wherein the identical issues were decided against the workmen. The Writ Petition out of which the appeal arises was filed by the second appellant herein challenging the award passed by the Industrial Tribunal on 13.12.1994.

The 1st appellant sought leave of this Court to file the SLP as it was not a party in the Writ Petition out of which this SLP arises. Leave has been granted by us. It may also be noticed that by an order of this Court dated 31.08.2001 on IA 3 of 2001 the 2nd appellant herein, who was respondent No.3 in SLP, has been transposed as petitioner in the SLP.

At the outset, it may be stated that the present SLP was filed with a delay of 460 days. The delay in filing the SLP is sought to be explained in a very casual manner, the only ground stated being "paucity of funds" which on the face of it is as vague as it could be. In the normal course, we should have dismissed the I.A. for condonation of delay and rejected the SLP summarily. However, as arguments have been advanced at length on the merits and as the grievance of retired employees is being projected, we do not consider it appropriate to dismiss the SLP on the ground of delay. Hence, leave has been granted and appeal decided on merits.

The following dispute between the Management of ITC Ltd. Basudevpur, Munger and their workmen represented by Munger Tobacco Manufacturing Union which is a recognised union was referred for adjudication by the Industrial Tribunal:

> "Whether to enforce Platinum Jubilee Scheme Pension Plan for the workers who retired from service on or after 24.8.1986 and to enforce other pension scheme for the workers retired before the 24.8.1986 and to give two types of benefits to both types of workers by the Management of I.T.C. Ltd., Basudeopur Munger is legal and justified? If not, whether the workers who retired before 24.8.1986 from I.T.C. Ltd. Basudeopur Munger are also entitled for the benefits under Platinum Jubilee Pension Plan?"

The learned Presiding Officer answered the reference in favour of the Management and against the Union, having held that the workmen who retired before 24.8.1986 were not entitled to the benefits under the Platinum Jubilee Pension Scheme. By that scheme, the workmen who retired on or after the date afore-mentioned were made eligible to get life pension. It was the contention of the workers'-Union before the Tribunal and it is also the contention of the appellants that the benefits should be extended to all those workmen who retired during and after 1977 when the pension scheme was first introduced in this industrial establishment.

To have a proper background of the dispute, it is necessary to refer briefly to the pension scheme prevalent prior to the introduction of the Platinum Jubilee Pension Scheme. A settlement entered into on 27.6.1977 paved the way for the introduction of pension scheme for the first time. It applied to the permanent workmen on the rolls of the company who retired on or after 1.6.1977. Under that

scheme, the pension was payable for a period of 10 years. By a subsequent settlement dated 22.4.1982, though the period of drawal of pension remained the same, the formula was revised and the maximum pension payable was enhanced to Rs.225/- per month. This benefit under the settlement dated 22.4.1982 governed the workmen who were on the Company's pay roll on the date of signing of the settlement. On the eve of commemoration of platinum jubilee of ITC Ltd., the Management decided to introduce a scheme known as Platinum Jubilee Pension Scheme. Under this scheme, eligible workmen will get the pensionary benefits till their life time and on their demise, part of the benefits go to their nominees or legal heirs. In order to implement the pension scheme, a fund named "Platinum Jubilee Pension Fund" was created under a trust deed dated 27.5.1987. As a follow up thereto, ITC Platinum Jubilee Pension Fund scheme Rules were framed in the year 1988. While so, pursuant to discussions and negotiations held in the course of conciliation proceedings, there was a settlement under Section 12(3) of Industrial Disputes Act on 10.4.1988. As it was agreed that the Platinum Jubilee Pension Scheme should be made part of the service conditions of employees, the following provisions were incorporated in the settlement dated 10.4.1988 :-

> "PENSION SCHEME In supersession of clause 14 Part I read with Annexure VII of Memorandum of Settlement dated 28.4.82, the following Pension Scheme shall apply :-
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> (i) The company has by a Deed of Trust dated 27.5.87 setup a Trust Fund entitled the ITC Platinum Jubilee Pension Fund for payment of pension to its workmen. With effect from the date of signing of this Memorandum of Settlement, all workmen on the rolls of the company as at 24th August, 1986 and thereafter will be eligible to become members of the aforesaid ITC Platinum Jubilee Pension Fund and will be eligible to receive benefits in accordance with the aforesaid Trust Deed and the ITC Platinum Jubilee Pension Fund rules. A copy of the said Trust Deed and Rules is attached herewith as Annexure XII.
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> (ii) With effect from 1.4.88, the ITC Workmen's Pension Fund Scheme as contained in clause 14, Part I and Annexure VII of the Memorandum of Settlement dated 28.4.82 will cease to be applicable to workmen on the rolls of the company as at 24.8.86 and thereafter. It is expressly agreed and understood that such workmen will be governed only by the ITC Platinum Jubilee Pension Fund Deed and Rules.
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> (iii) It is clarified that workmen who were on the rolls of the company prior to 24.8.86 and who are in receipt of pension under the ITC workmen's Pension Scheme as contained in clause 14, Part I and Annexure VII of the Settlement dated 28.4.82 will continue to be governed by the rules of the ITC Workmen's Pension Scheme. The ITC Platinum Jubilee Pension Fund Deed and Rules will not be applicable to them."

Under the Trust Deed dated 27.5.1987, ITC Ltd. constituted the ITC Platinum Jubilee Pension Fund to be administered by the trustees who are required to hold the fund in trust for the benefit of the members or other persons set forth in the Rules. The Fund shall be vested in the trustees who shall have the entire control of the funds. The Deed enjoins that no money belonging to the members in

the hands of the trustees shall be recovered by the Company nor shall the Company have any lien or charge on the same. The trustees are required to arrange for the investment of the funds and payment of pension due to the members in accordance with the Rules. Clause 6 stipulates that the funds of the Trust shall consist of accumulations from the contributions received by the trustees in accordance with the Rules, securities or other investments, interest and other accretion arising out of the funds as reduced by payments and disbursements. The Trust Deed also provides for possible contingencies.

Let us now advert to ITC Platinum Jubilee Pension Fund Rules. As already noticed, the fund shall be deemed to have come into operation on or from 24.8.1986 notwithstanding the date of the Trust Deed. Under the caption 'Membership', it is provided by Rule 8(a) that all confirmed and regular workmen of the Company as defined in Rule 2(h) shall be eligible for membership of the fund. An employee who is eligible for the membership of the fund may make an application in the prescribed form and furnish the particulars of the nominees in another form to the trustees through the Company. The Company, on scrutiny of such application, has to forward the same to the trustees with whose approval the employee shall be admitted as a member. Under the heading 'Contribution', it is provided that the Company may pay to the trustees in respect of the members an initial contribution as may be certified by the Actuary subject to Rule 88 of the Income Tax Rules. Under clause (b) of Rule 9, it is enjoined that the Company shall pay to the trustee in respect of each member an ordinary annual contribution as may be certified by the Actuary subject to I.T. Rules 87 and 88. Under clause 11(b), the pension admissible as per the Rules shall be payable through out the life time of the member and shall be computed at the rate of 1/180 part of the pensionable salary for each year of pensionable service. The maximum pension payable shall be Rs.400/- per month and the minimum shall be Rs.100/- per month. Provisions for payment of pension to the widow for her life time in the event of demise of the member and for the payment of pension for a period of 10 years to his nominee if the member is unmarried or widower are also made.

Thus the salient features of the Platinum Jubilee Pension Fund are that a separate fund is created for the purpose of payment of pension and the same is vested and controlled by the trustees; the eligible person should become member of the fund on an application submitted by him, the pension is payable during the life time of the member and in the event of demise of the member (retired workman), the pension at a stipulated rate is payable to the widow or to a beneficiary nominated by member in case of an unmarried or widower person. The ceiling limit has been raised to Rs.400/- per month. Thus, the Platinum Jubilee Pension Fund is undoubtedly much more beneficial to the retired workmen. At this juncture, we may notice that there has been a controversy on the question whether the pension scheme introduced in 1988 is in substance a new scheme or it is a revised or liberalized scheme. But, it is unnecessary to resolve that issue.

The learned counsel for the appellants has reiterated the contentions advanced before the Industrial Tribunal and the High Court in the connected matter. While accepting that Article 14 as such has no application because the Company-ITC Ltd. is not a 'State' or 'other Authority', the counsel, however, urged that on the analogy of Article 14, the relevant clauses in the settlement are to be held to be arbitrary, unjust and irrational, that the prescription of cut-off date i.e. 24.8.1986 which has the effect of denying greater benefits under the scheme to the workmen who retired before that date is

equally arbitrary, discriminatory and unjust and therefore the settlement entered into on 10.4.1988 cannot defeat the legitimate rights of the workmen who retired before 24.8.1986. It is further submitted that all the workmen drawing pension under the Company's Rules settlements belong to one class and there cannot be sub-classification amongst them by treating the workmen who retired between 24.8.1986 and 10.4.1988 as a different class. It is argued that when the benefit is given to the workmen who retired within the two dates afore-mentioned, the same benefit ought to have been extended at least to those who retired after the date of the settlement of 1982 i.e. 28.4.1982. It is then contended that the date 24.8.1986 has been fixed arbitrarily and the Management's contention that it coincided with the date of completion of 75 years of Company's existence is factually incorrect, in as much as 75 years would expire by 24.8.1985, the Company having been incorporated on 24.8.1910. It is also submitted that notwithstanding the settlement which according to the appellant's counsel is unjust and discriminatory, all the workmen retiring after 24th April, 1982, are entitled to the benefit of the Platinum Jubilee Pension Scheme.

The learned Senior counsel for the respondent-Company while drawing support from the reasoning and conclusions of the Division Bench in the case reported in 1997 1 PLJR 934, has laid considerable stress on the fact that the employees of the Company existing or retired cannot invoke Article 14 and they as well as the Management and other workmen are only governed by the provisions of the Industrial Disputes Act. The settlement which was entered into under Section 12(3) as a result of conciliation proceeding was binding on all the workmen and no workman much less any individual workman or group of workmen can challenge the same, especially after the recognised Union which espoused the cause of workmen and participated in the proceedings before the Tribunal, chose to accept the award. The learned senior counsel pointed out that the second petitioner is also a member of the recognised Union and it is not open to him to assail the settlement or the award. He was not even the person who filed the Writ Petition in the High Court. The present SLP filed after the delay of 460 days is liable to be dismissed in limine on the ground of unsatisfactory explanation for the delay. On the facts of the case highlighted by the Tribunal, there is no basis to hold that settlement is ex facie, unjust or arbitrary. Giving the benefit to the employees who retired about two years prior to the date of settlement does not invalidate the settlement on any ground known to law, but on the other hand, it is the concession shown by the Management on the occasion of celebrating Platinum Jubilee. It is further submitted that one clause in the settlement cannot be legitimately assailed and the settlement has to be viewed as a whole. When the settlement as a whole, has not been attacked as unfair or mala fide, it is not open to the Union much less to the individual workmen who are not parties to assail one clause in the settlement dealing with the pension. It is submitted that an overall view has to be taken when the question of validity of settlement is put in issue.

Before proceeding further, we shall advert to the findings of the Industrial Tribunal. At the outset, the Tribunal overruled the contention of the Management that the reference was without jurisdiction for the reason that the retired employees on whose behalf the dispute was raised are not workmen. The learned Presiding Officer of the Tribunal then observed that all the issues including the one relating to life time pension with effect from the particular date were discussed threadbare by the office-bearers of the Union, the Negotiating Committee of the Union, the Management representatives and the Joint Labour Commissioner and then the settlement was arrived at. The

cut-off date i.e. 24.8.1986 was not picked up arbitrarily. It was the date on which the Company completed 75 years of its existence. The Tribunal after having referred to the various pronouncements of this Court then observed that the cut-off date was introduced after due deliberations and no material has been placed by the Union to show that the fixation of cut-off date was arbitrary or mala fide. Earlier the Tribunal clarified that the letter addressed by the Conciliation Officer-cum-Labour Commissioner subsequent to the settlement cannot be considered to be a binding direction but it was only an appeal to the Management to take a compassionate view in the matter of extending benefits to other retired persons.

As already noticed, the learned single Judge affirmed the award of Tribunal and dismissed the Writ Petition filed by the 1st Petitioner herein following the earlier Division Bench judgment reported in ITC Ltd. Vs. State of Bihar (1997 1 PLJR 934). To complete the narration, it is necessary to refer to the views expressed by the Division Bench in that case. The learned Judges concentrated on the issue whether the fixation of cut-off date was irrational and arbitrary, and answered the question in the negative. In reaching such conclusion, the High Court inter alia took into account the fact that the scheme emanating from the settlement dated 10.4.1988 was entirely a new scheme and therefore, the ratio of the decision in Nakara's case has no application.

> "The present case is not one of liberalization of the existing pension scheme, but one of the introduction of a new scheme", the High Court observed. Treating the Platinum Jubilee day as the cut-off date was held to be not an arbitrary decision.
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> In answering the reference the industrial adjudicator has to keep in the forefront of his mind the settlement reached under Section 12(3) of the Industrial Disputes Act. Once it is found that the terms of the settlement operate in respect of the dispute raised before it, it is not open to the Industrial Tribunal to ignore the settlement or even belittle its effect by applying its mind independent of the settlement unless the settlement is found to be contrary to the mandatory provisions of the Act or unless it is found that there is non-conformance to the norms by which the settlement could be subjected to limited judicial scrutiny. This is infact the approach of the Tribunal in the instant case. The High Court which examined the issue from a different angle as well was, in our view, justified in affirming the award of the Tribunal.
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> As the settlement entered into in the course of conciliation proceedings assumes crucial importance in the present case, it is necessary for us to recapitulate the fairly well settled legal position and principles concerning the binding effect of the settlement and the grounds on which the settlement is vulnerable to attack in an industrial adjudication. Analysing the relative scope of various clauses of Section 18, this Court in the case of Barauni Refinery Pragatisheel Shramik Parishad vs. Indian Oil Corporation Ltd. (1991 (1) SCC 4) succinctly summarized the position thus:-
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> "Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings (Section 18(i) and (ii) those arrived at in the course of conciliation proceedings (Section 18(3)). A settlement which belongs to the first

> category has limited application in that it merely binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognised majority union has extended application as it will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on the others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority."

In General Manager, Security Paper Mill vs. R.S. Sharma (AIR 1986 SC 954), E.S. Venkataramiah, J. Speaking for the Court explained the rationale behind Section 18(3) thus :-

> "Even though a Conciliation Officer is not competent to adjudicate upon the disputes between the management and its workmen he is expected to assist them to arrive at a fair and just settlement. He has to play the role of an adviser and friend of both the parties and should see that neither party takes undue advantage of the situation. Any settlement arrived at should be a just and fair one. It is on account of this special feature of the settlement sub-sec. (3) of S.18 of the Industrial Disputes Act, 1947 provides that a settlement arrived at in the course of conciliation proceeding under that Act shall be binding on (i) all parties to the industrial dispute, (ii) where a party referred to in clause (i) is an employer, his heirs, successors, or assigns in respect of the establishment to which the dispute relates and (iii) where a party referred to in clause (i) is comprised of workmen, all persons who were employed in the establishment or part of the establishment as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part. Law thus attaches importance and sanctity to settlement arrived at in the course of a conciliation proceeding since it carries a presumption that it is just and fair and makes it binding on all the parties as well as the other workmen in the establishment or the part of it to which it relates as stated above."

Admittedly, the settlement arrived at in the instant case was in the course of conciliation proceedings and therefore it carries a presumption that it is just and fair. It becomes binding on all the parties to the dispute as well as the other workmen in the establishment to which the dispute relates and all other persons who may be subsequently employed in that establishment. An individual employee cannot seek to wriggle out of the settlement merely because it does not suit him.

The next principle to be borne in mind is that in a case where the validity of the settlement is assailed, the limited scope of enquiry would be, whether the settlement arrived at in accordance with sub-section (1) to (3) of S.12, is on the whole just and fair and reached bonafide. An unjust, unfair or malafide settlement militates against the spirit and basic postulate of the agreement reached as a result of conciliation and, therefore, such settlement will not be given effect to while deciding an industrial dispute. Of course, the issue has to be examined keeping in view the presumption that is attached to the settlement under Section 12(3).

In Herbertsons Limited vs. The Workmen (1976 (4) SCC

736), this Court called for a finding on the point whether the settlement was fair and just and it is in the light of the findings of the Tribunal that the appeal was disposed of. Goswami, J. speaking for the three-Judge Bench made it clear that the settlement cannot be judged on the touch stone of the principles which are relevant for adjudication of an industrial dispute. It was observed that the Tribunal fell into an error in invoking the principles that should govern the adjudication of a dispute regarding dearness allowance in judging whether the settlement was just and fair. The rationale of this principle was explained thus:-

> "There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which courts and tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinizing an award in adjudication."

The line of enquiry whether settlement was unfair and unjust in K.C.P. Ltd. Vs. Presiding Officer and others (1996 (10) SCC 446), was adopted by a three-Judge Bench of this Court speaking through Majmudar, J. It was observed at paragraph 21 that "under these circumstances, respondents 3 to 14 also would be ordinarily bound by this settlement entered into by their representative Union with the Company unless it is shown that the said settlement was ex facie, unfair, unjust or mala fide". The Court came to the conclusion that the settlement cannot be characterised to be unfair or unjust. It was further observed that "once this conclusion is reached it is obvious that another industrial dispute should have been disposed of in the light of this settlement". It was reiterated in the case of M/s. Tata Engineering and Locomotive Co. Ltd. Vs. Their Workmen (AIR 1981 SC 2163), that "a settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication". Earlier, it was observed :-

> "If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers (in this case 71, i.e., 11.18 per cent) were

> not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did."

Another principle which deserves notice is the one firmly laid down in Herbertsons case (supra). It was emphasised that the settlement has to be taken as a package deal and it should not be scanned 'in bits and pieces' to hold some parts good and acceptable and others bad. Then, it was observed "unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust."

Having noted that the only objectionable feature of the settlement as found by the Tribunal was reduction of dearness allowance from cent per cent to 85 per cent, it was held that, that part of the settlement cannot be held to be invalid or inoperative. This proposition laid down in Herbertsons case was reiterated in K.C.P. Ltd. case (supra), approvingly citing the said decision. The passages in Herbertsons case were quoted in extenso and approved by the three-Judge Bench in TELCO case (supra) as well.

What follows from a conspectus of these decisions is that a settlement which is a product of collective bargaining is entitled to due weight and consideration, more so when a settlement is arrived at in the course of conciliation proceeding. The settlement can only be ignored in exceptional circumstances viz. if it is demonstrably unjust, unfair or the result of mala fides such as corrupt motives on the part of those who were instrumental in effecting the settlement. That apart, the settlement has to be judged as a whole, taking an overall view. The various terms and clauses of settlement cannot be examined in piecemeal and in vacuum.

Viewed in the light of these principles, it cannot be said that the settlement in the present case which is otherwise valid and just suffers from any legal infirmity merely for the reason that one of the clauses in the settlement extends the benefits of life pension scheme only to the employees retiring after a particular date i.e. 24.8.1986. Exclusion of workmen retiring before that date is no ground to characterise the settlement as unjust or unfair. Of course, the allegations of mala fides such as corrupt motives have not been levelled against anyone and that aspect becomes irrelevant here.

The High Court proceeded to consider whether even that particular clause in the settlement dealing with the pension is per se arbitrary or discriminatory and reached a conclusion that it is not so for the reason that a new scheme for pension has been introduced by the impugned settlement and that the question of arbitrariness in fixing the cut-off date does not therefore arise. The High Court further held that the fixation of cut-off date for the purpose of entitlement of life pension cannot be said to be arbitrary or irrational as such fixation becomes imperative from financial point of view and moreover the date coincided with the Platinum Jubilee Celebrations of the Company. The date was not 'picked up from the hat', the High Court observed. The High Court approached the issue more from the angle of Article 14 and referred to the decisions in which the State's action in making the classification for the purpose of extending the pensionary benefits or additional benefits fell for

consideration of this Court. Strictly speaking, such approach is not apt and appropriate. The present case is one where Article 14 cannot be applied as the respondent is not 'State' or 'other Authority'. On this, there is practically no dispute. If so, the approach should be as we indicated earlier; that is to say, whether the settlement can be said to be unjust, unfair or vitiated by mala fides. No mala fides is imputed to anyone. What remains to be considered is whether it is fair and just, viewed from a broader angle and taking a holistic view of the matter. It is true that certain considerations germane to Article 14 may also be germane while deciding the issue whether the settlement is just and fair. But, it does not follow that the doctrine of classification and the principles associated with it should be projected wholesale into the process of consideration of justness and fairness of the settlement. There may be some overlapping and there may be some facets which apply in common to determine the crucial issue whether the settlement on the whole is just and fair, but that is not to say that the settlement is liable to be tested on the touchstone of Article 14, more so when it has no application in the instant case. Keeping this distinction in mind and considering the grounds of attack on the particular clause of settlement, we are unable to hold that it is vulnerable to challenge on any well- recognised grounds. The facts on record do not establish that the settlement which was reached was palpably unjust or unfair from the point of view of the entire body of workmen. The preponderence of circumstances and the material on record do not in our view, displace the presumption attached to the settlement arrived at in the course of conciliation.

Firstly, it is to be borne in mind that there was no challenge at any time to any of the terms of the settlement other than the clause relating to pension in so far as it confines the benefit of life-long pension only to those who retire on or after 24.08.1986. Secondly, we must give due weight to the fact that the settlement was reached as a result of collective bargaining and with the assistance of Conciliation officer. Invariably, there would be an element of give and take in the deal leading to the settlement. Granting the benefit of life-long pension prospectively or with limited retro-active effect does not make the settlement unjust or unfair. It is certainly beneficial to the workmen in service and those who retired few months earlier. The mere fact that the Management did not go the whole hog to extend the benefit to all the retired employees does not impart an element of unjustness or unreasonableness to the settlement. Financial implications apart, the benefits granted to workmen under various other clauses of settlement have to be kept in view. This particular clause relating to pension cannot be considered in isolation. The learned senior counsel for the petitioners argued that there was no justification in making a sub-classification amongst the retired employees by giving the benefit to those who retired only between 24.08.1986 and the date of settlement. In our view, conferment of such additional benefit to workmen who retired after the date of platinum jubilee celebration and before the date of culmination of settlement, far from making it unjust or irrational, tantamounts to extending benefit to some more workmen who would not have got it otherwise, if the decision was implemented prospectively. Apparently, such decision was taken to arrive at an amicable settlement and to comply with the demands of the workmen to the extent feasible and practicable. The argument that either all the retired employees should be given the benefit or none at all cannot cut ice if the principles of collective bargaining and justness of the settlement viewed as a whole is kept in view. There is nothing which is palpably unjust or irrational in giving the benefit only to those who retired during and after the platinum jubilee year. Though there was some dispute as to the correctness of the date on which the platinum jubilee falls, no material has been placed before us excepting the date of incorporation of the Company to establish the version of the

appellants in this regard. Picking up that date by going a little backwards from the date of settlement cannot be regarded as a whimsical or arbitrary step, more so when it was done with the consent of large majority of workmen. The Tribunal while adjudicating the dispute and the High Court while exercising its jurisdiction under Art. 226/227 should be circumspect and cautious in disturbing the terms of settlement founded on collective bargaining and conciliation. The adjudicator of industrial dispute could not have directed the benefit to be extended to all the retired employees by substituting its own views to those reflected in the settlement, on an application of the usual principles governing industrial adjudication.

Another factor to be taken into account is that the recognised union of workmen which espoused the cause of the retired employees and contested the issue before the Industrial Tribunal did not pursue the matter further obviously because they felt that in the larger interests of maintaining industrial harmony and peace, the matter should be left off at that stage. A member of that recognised union had taken up the issue before the High Court.

Considering all these factors, we find no legal infirmity in the award of the Tribunal which has been affirmed by the High Court and we say so without going into the subtle question whether the scheme is a new one for all practical purposes or only a revision or liberalization of the pre-existing pensionary benefits.

In the view we have taken it is not necessary to dwell on the contention raised by the learned senior counsel for the respondent regarding the maintainability of the writ petition and SLP at the instance of the appellants.

We see no merit in the appeal and it is hereby dismissed. No costs.

.J. (D.P. Mohapatra) .J. (P.Venkatarama Reddi) January 29, 2002.