Transmission Corpn., A.P. Ltd. & Ors vs P. Ramachandra Rao & Anr on 17 April, 2006

Equivalent citations: AIR 2006 SUPREME COURT 3615, 2006 (9) SCC 623, 2006 AIR SCW 3584, 2006 LAB. I. C. 3052, 2006 (4) SCALE 362, 2006 LAB LR 576, 2006 (2) UPLBEC 1598, 2006 (5) SRJ 558, (2006) 110 FACLR 15, (2006) 2 LAB LN 826, (2006) 5 SCJ 261, (2006) 3 SERVLR 467, (2006) 2 UPLBEC 1598, (2006) 3 SUPREME 541, (2006) 4 SCALE 362, (2006) 2 CURLR 321, MANU/SC/1953/2006, (2006) 2 LABLJ 824, (2006) 2 SCT 419

Author: Arijit Pasayat

Bench: Arijit Pasayat, Tarun Chatterjee

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           CASE NO.:
Appeal (civil)  7378 of 2003

PETITIONER:
Transmission Corpn., A.P. Ltd. & Ors.

RESPONDENT:
P. Ramachandra Rao & Anr

DATE OF JUDGMENT: 17/04/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Andhra Pradesh High Court dismissing the writ appeal filed under Clause 15 of the Letters Patent. Order of learned Single Judge allowing writ petition filed by the respondents was affirmed.

Background facts in a nutshell are as follows:

> Respondents retired from the services of the Andhra Pradesh State Electricity Board (in short the 'Board") on 30.4.1990 after attaining the age of superannuation. The Transmission Corporation of Andhra Pradesh Ltd. (in short the 'Corporation'), is the successor company of the Board which came into existence with effect from 1.2.1990 by virtue of the Andhra Pradesh State Electricity Reforms Act, 1998 (in short the 'Reforms Act'). The pay scales of the employees were revised with effect from 1.7.1990

> by which time the respondents herein were drawing maximum pay in the concerned scale. The rational of fixing the date with effect from 1.7.1990 was that employees who retired prior to 1.7.1990 are entitled to D.A. at the rate of 38% on the pension whereas the D.A. payable to pensioners retired on or after 1.7.1990 is 12.4%, but not before the date of issue of the order. The revised pay scales permitted grant of three annual increments beyond the time scale in regard to those who had reached or crossed the maximum pay as on 1.7.1986. However, in respect of the respondents herein the additional amount was shown as personal pay and the stagnation increments were adjusted towards the said additional amount.

Questioning correctness of the action of the Corporation and its functionaries the respondents herein filed writ a petition. Prayer was to direct the appellants herein to fix their pension and other terminal benefits at par with other UDCs. retired on or after 1.7.1990 and to pay all the arrears of pensions and other terminal benefits. Learned Single judge having regard to the intended purpose of the scheme held that the respondents have been discriminated while calculating the pension on the ground that they had retired prior to the introduction of the scheme. Stand of the employer in essence was that the Board's proceedings Ms No 481 dated 4.2.1991 had application only to those who were on its rolls as on 1.7.1990. In view of the fact that the respondents retired on 30.4.1990 the said scheme has no application to them. In any event the scheme was introduced keeping in view the settlement dated 29.1.1991 entered into between the Wage Negotiation Committee and the Board before the Joint Commissioner of Labour and State Conciliation Officer in terms of Section 12(3) of the Industrial Disputes Act, 1947 (in short the 'Act') and the same cannot be the subject matter of interpretation in the writ petition. In the Appeal its stand before learned Single Judge was reiterated before the Division Bench. Stand of the writ petitioners was that the learned Single Judge was justified in its conclusion.

The Division Bench upheld the view taken by the learned Single Judge. Placing reliance on the decision of this Court in D.S. Nakara & Others V. Union of India (1983 (1) SCC 305) it was held that the cut off date fixed was discriminatory.

In support of the appeal learned counsel for the appellant highlighted that the learned Single Judge and the Division Bench had not considered the issues in their proper perspective. D.S. Nakara's case (supra) has no application to the facts of the present case. There was no challenge to the settlement and the only challenge relating to rational of fixing the cut off date with effect from 1.7.1990. The conclusion that the respondents were entitled to the stagnation increment deducting the same from the personal pay is clearly tenable.

Learned counsel for the respondents on the other hand supported the judgment of learned Single Judge as affirmed by the Division Bench.

A brief reference to the factual position would be necessary. Relevant portion of the Board's proceedings dated 4.2.1991 are as follows:

> "The scales of pay of Office Staff, O& M Staff, Construction Staff, Medical Staff, Fire Fighting Staff, Security Staff and Teaching Staff etc. were revised with effect from 1.7.86 in the B.P. first read above as subsequently amended, as per the negotiated settlements with the employees Unions. The said settlements expired on 30.6.90."

As result the earlier settlement expired on 30.6.1990 the paras 5 & 6 are also relevant and they read as follows :

> "The A.P.S.E. Board also directs that the amount of stagnation increments not released earlier in 1986 pay scales but adjusted against P.P. shall now be released on 30.6.1990 but effect shall be given from 1.7.1990 or from the date of going over to the revised scales, as the case may be, this amount will be taken into account for the purpose of fixation of pay in the revised pay scales.
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> The date of option for the revised pay scales shall be 1.7.1990 or the date on which an employee earns his next increment in the existing scale of pay."

The notification issued on 4.2.1991 is in exercise of powers conferred under Section 79(C) of the Electricity Supply Act, 1948, which notified Boards' regulations. It is stated at Para 1(ii) that the regulations shall be deemed to have come into force with effect from 1.7.1990. In Clause 2(iv) it is stated that 'Pensioner" means an employee who retired on or after 1.7.1990 but before the date of issue of the order. Grievance of the writ petitioners basically was that the persons who retired from service after 1.7.1990 were drawing more pension than the writ petitioners. Learned Single judge referred to the Memorandum of Settlement but did not attach much importance to it. The Memorandum of Settlement clearly shows that the period of settlement was from 1.7.1990 to 30.6.1994. Claim of the writ petitioners was that the employer and its functionaries were liable to fix the pension and other terminal benefits of the writ petitioners at par with the other UDCs retired on or after 1.7.1990. As noted above, the grievance was that the said category of persons was drawing more pensions. It was pointed out that the revision of pay scale in BPMs. No. 878 dated 5.10.1981 effective from 1.4.1981 was only for a period of 4 years and the same was required to be revised after expiry of the period i.e. with effect from 1.4.1985. The Board instead of revising the pay scales with effect from 1.4.1985 revised the same with effect from 1.7.1986. It was, therefore, submitted that the classification as done was violative of Article 14 of the Constitution of India, 1950 (in short the 'Constitution').

Learned Single Judge and the Division Bench clearly overlooked the fact that there was no challenge to the settlement. Undisputedly, the three stagnation increments deducted from personal pay have been added to the basic pay.

There was no challenge to the settlement made under Section 12(3) of the Act. No finding has been recorded by either learned Single Judge or the Division Bench that the modality adopted is wrong. It has to be noted that in terms of the Fifth Schedule to the Act under Section 2(ra) as per Sr. No. 13 consequences flow for failure to implement the award, settlement or agreement. There is no dispute that the Board's decision is prospective. There is also no challenge to the legality of the Board's

decision on the ground that there is no rational for fixing the date, except saying that it should have been done from an earlier date i.e. 1985 and not from 1.7.1986 as done earlier. There was no challenge at the stage it was done. The line of enquiry whether settlement was unfair and unjust has been examined by this Court in several decisions.

In Herbertsons Ltd. v. 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 touchstone 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 :

> "25. 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. v. Presiding Officer (1996) 10 SCC 446) was adopted by a three-Judge Bench of this Court speaking through Majumdar, J. It was observed at SCC p. 451, 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 the entire industrial dispute should have been disposed of in the light of this settlement". It was reiterated in the case of Tata Engg. and Locomotive Co. Ltd. v. Workmen ((1981) 4 SCC

627) 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."

These aspects were highlighted in ITC Ltd. Workers' Welfare Association and Anr v. Management of ITC Ltd. and Another (2002(3) SCC 411.) Exclusion of workmen retiring before the date fixed is no good ground to characterize settlement as unjust or unfair. In fact in the instant case there is no challenge to the legality of the settlement.

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 v. Indian Oil Corpn. Ltd. (1991) 1 SCC 4) succinctly summarized the position thus:

> "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."

As observed by this Court in Tata Engineering's case (supra) a settlement cannot weigh 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 comes into play when an industrial dispute is under adjudication. If the settlement had been arrived at by a vast majority of 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 made under the Act merely because a small number of workers were not parties to it or refused to accept it or because the Tribunal was on the

opinion that the workers deserved marginally higher emoluments than they themselves thought they did. The decision in Herbertsons Ltd.'s case (supra) was followed.

As noted above there was no challenge to the settlement which was the foundation for the Board's decision. A copy of the Memorandum of Settlement under Section 12(3) of the Act before the Joint Commissioner and Labour and State Conciliation officer, Government of Andhra Pradesh, Hyderabad was placed on record. On the basis of the settlement, the Board's decision was taken. Paragraph 2 of the proceedings is very significance and read as follows:

> "A Wage Negotiation Committee was therefore constituted by the Board in the B.P. sixth read above. The committee held detailed discussions with the representatives of the unions and finally reached a negotiated settlement with the recognized union under the code of discipline on 29.1.1991 before the Joint Commissioner of Labour and State Conciliation Officer under Section 12(3) of I.D. Act."

Above being the position the judgment of the learned Single judge and that of the Division bench affirming the same cannot be maintained and are, therefore, set aside. The appeal is allowed but in the circumstances no order as to costs.