

PETITIONER:  
HINDUSTAN MACHINES TOOLS LTD. & ANR.

Vs.

RESPONDENT:  
M.S. KANG/P.N. KASHYAP

DATE OF JUDGMENT: 27/01/1997

BENCH:  
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

WITH  
CIVIL APPEAL NO. 627 OF 1997  
(Arising out of SLP (C) No. 20470 of 1996)  
O R D E R

Leave granted.

These appeals by special leave arise from the judgment of the High court of Punjab & Haryana, made on 19.4.1996 in LPA Nos.2 and 3 of 1996.

The admitted facts are that the appellants have formulated a Scheme for voluntary retirement of the employees who have completed 45 years of age, effective from April 1, 1989 for a period of three months subject to the conditions specified in the scheme. The respondents had accepted the scheme and retired thereunder. Thereafter by Office Order No.45/90 dated March 1, 1991 pay scales were revised in respect of existing employees and those who retired from time to time. In furtherance thereof, the respondents claimed and revision of the scale of pay was sought to be given effect by the office but the audit objection to the payment thereof was raised. Consequently, the respondents filed the writ petitions in the High Court and the learned single Judge allowed the writ petition and appeals were dismissed. Thus, these appeals by special leave.

Shri V. Reddy, learned Additional Solicitor General, contends that the Scheme is a special scheme containing the mode of payment of compensation as calculated in terms of the Scheme. There is a distinction between those employees who retired voluntarily under the Conduct discipline and Appeal Rules and those who retired under the Scheme. The revised scales of pay are applicable to those persons who are enumerated in Clause 2.2.2 of the office orders providing for Revision of Pay Scales. Proceedings dated march 1, 1991 refers to the candidates who retired voluntarily. Under Rule 24.2. of the Conduct, Discipline and Appeal Rules, the revision of the Provident Fund would be effected only in respect of those employees who retired under the special scheme; the scale and gratuity have to be revised in terms of the revised scales of pay but not the payment of the difference of pay. On the other hand, Shri

Manoj Swarup, learned counsel for the respondents, contends that no distinction has been drawn in the proceedings dated March 1, 1991 between the employees who retired under the Conduct, Discipline and Appeal Rules or under the Special Scheme and those who retired voluntarily under the Scheme and are entitled to the same benefit of the revision of the pay scales as contemplated under the Officer Order dated March 1, 1991. He also contends that even clause 2.3 negatively puts that they are disentitled to the payment. The word 'salary' is linked to the other components, namely, additional dearness allowance, ad hoc pay, additional pay etc. Therefore, the word 'pay' would include revised pay. Thereby the respondents are entitled to the benefit of the revised pay scales.

In support thereof, he placed reliance on the judgment of this Court in Prantiya Vidhyut Mandal Mazdoor Federation & Ors. vs. Rajasthan State Electricity Board & Ors. [(1992) 2 SCC 723]. Therein the dispute relating to the revision of the pay was pending before the Industrial Tribunal. Pending dispute, the wages were revised. Consequently, after the award was made, the revision of the wages was effected. The question was: whether the P.F. was required to be recalculated on the basis of the revised scales? This Court had held that in view of the revision of the pay scales, the P.F. requires to be decided on the basis of the revised wages payable to the employees as was recalculated. The ratio therein has no application to the facts in these cases.

The question, therefore, is: whether the respondents are entitled to the benefit of the revised scales of pay under the Office Order No.45/90 dated march 1, 1991? It is not in dispute that the respondents have not completed 50 years of age for voluntary retirement under clause (b) or clause (c) of Rule 24.2 on attaining the age of superannuation. They contemplate thus:

"(b) An employee may at any time after completing the age of 50 years voluntarily retire by giving one month's notice in writing."

(c) The Competent Authority may also retire an employee at any time after he completes 50 years by giving one month's notice or one month's salary/wages in lieu of the notice, if it is considered in the interest of the Company."

Thus, an employee who is normally entitled to remain in service until he reaches the age of superannuation of 58 years, is entitled to retire either voluntarily by giving one month's notice on attaining the age of 50 years and the Company may, if it considers it necessary, in the interest of the Company, retire an employee by giving one month's notice or one month's salary/wages in lieu thereof. Thus, those who retired under the above Rule would be construed to have voluntarily retired from service. It is seen that a special voluntary retirement scheme had been introduced by the Company. The objective of the Voluntary Retirement Scheme is to achieve the optimum level of manpower with the desirable average age-mix as par the changing needs of the Company. In regard to the respondents, they come under the Scheme 'B' which contains that the scheme is applicable to all regular/permanent employees of the Company as notified from time to time who have put in 15 years of service or more in the Company and who are of the age of 45 years and above as on the date of the submission of the application

for voluntary retirement.

It is, thus, seen that there is a distinction between the employees who retire under the Conduct, Discipline and Appeal Rules on attaining the age of 50 years and the employees who accept voluntary retirement on completion of 15 years of service or more in the Company and who are of the age of 45 years and above. In other words, before attaining the age of 50 years as contemplated under the Conduct, Discipline and Appeal Rules, the benefits enumerated for such of the employees who opt for and where option is accepted by the Company, are postulated in Clause (b) of Scheme 'B' which says that the eligible employees requesting for voluntary retirement, subject to acceptance of their requests by the Company/Competent Authority, shall be entitled to receive benefits at the following rates for the remaining period of service prior to the date of retirement on superannuation from the service of the Company. The computation thereof has been enumerated in the scheme which reads as under:

"It has been decided to introduce a Voluntary Retirement Scheme for the employees of the Company as per the enclosed copy of comprising of two parts viz., Scheme 'A' and Scheme 'B'. The scheme will be in operation from 1.4.1989 for a period of three months, subject to the following further conditions:-

i) Scheme A shall be applicable only to the employees of Lamp Unit, Hyderabad in WG Cadre with the terms and Conditions specified in Scheme A for a period of three months from 1.4.1989.

ii) Scheme B shall be applicable to all the Units/Divisions (including Lamp), Business Group Directorates, other offices and Corporate Office with the terms and conditions specified in the enclosed scheme, for a period of three months from 1.8.1989.

iii) The scheme does not confer any right or any employees to have his request for voluntary retirement accepted by the competent authority right to accept or reject the application for voluntary retirement shall entirely vest with the Company.

iv) Acceptance of application for voluntary Retirement shall depend inter alia availability of funds in the respective Units/Divisions/Business Group Directorates, other Offices and Corporate Officer.

v) The eligible employees requesting for voluntary retirement, subject to acceptance of their requests by the competent authority shall be entitled to such benefits as are specified in the scheme.

Such employees may be persuaded to

deposit the benefits received, in the Company's Fixed Deposit Scheme.

2. The existing medical retirement Scheme and Voluntary Retirement Scheme introduced for Hyderabad based Units of the Company shall stand discontinued with the introduction of the above Voluntary Retirement Scheme.

3. The Units and areas within the Units, where the Scheme could be implemented will separately be intimated by the DPS.

4. The progress of implementation of the Scheme with regard to the number of employees in each cadre and the total amount paid on account of compensation shall be reported to DPS every month."

For the computation of the payment of the compensation in terms of the calculation, the 'Note' postulates that the salary mentioned under Scheme A and B shall mean basic pay, Dearness Allowance, Interim Relief/ad hoc Relief and Personal Pay, if any, and shall be calculated on the basis of a calendar month. In other words, this contract has expressly omitted to mention the revised scale of pay from time to time. The reason would be obvious. An employee who retires on completing the age of 50 years but before the age of 58 years, is not entitled to the payment of any special component of the salary as indicated hereinbefore. On the other hand, he will be entitled only to the retirement benefits as are available under the normal Rules. If the company, in public interest, instead of giving one month's notice makes payment of salary in lieu thereof then employee would be entitled to nothing more except other retirement benefit like pension, gratuity etc. The procedure in regard to the calculation of the payment of the compensation and method of computing the compensation has been provided in Para VI; the details whereof are not material for the purpose of these cases. Para IX of the Special Scheme postulates that retirement on medical grounds in terms of clause 24.1 and voluntary retirement in terms of clause 24.2(b) and (c) of the Conduct, Discipline and Appeal Rules of the Company shall fall outside the purview of the scheme. In other words, the special scheme excluded such of the employees who voluntarily retired under Rule 24.1 or 24.2(b) and (c) of the Conduct, Discipline and Appeal Rules of the Company. Para XII in this behalf is more relevant wherein it says that the chairman and managing director shall have power to amend, modify, alter or withdraw the above Scheme either in whole or in part, at his directions, if the circumstances so warrant. In other words, whatever components are enumerated thereunder would be binding on the parties until the Chairman and the Managing Director before acceptance amends, modified, alters or withdraws the above scheme.

It is seen that the Office Order No.45 dated March 1, 1991 provides that the revised pay scales shall be effective from 1.1.1987 and will remain in force for the period of five years upto 31.12.1991. Clause 2.2. provides that the revised pay scales shall also be applicable on a pro-rata basis to those categories of employees who were on the rolls of the company as on 31.12.1986 but have subsequently separated due to superannuation and voluntary retirement etc. Those who retired on attaining the age of 58 years or voluntarily retired under Rule 24.2. (b) or (c), as the case

may be, under the Conduct, Discipline and Appeal Rules referred to hereinbefore. The benefits of the revision of pay scales shall not be applicable to those persons who were on the rolls of the Company as on 31.12.1986 but subsequently left the service of the company before the date of issue of Office Order No.45/90 for any reason, whatsoever, including resignation except the category mentioned in clause 2.2 above. Thereby, the necessary implication is that all those who are covered and stand on the same footing are excluded except to the extent of gratuity, revision of the terminal benefits as mentioned in para 6.13 which postulates that gratuity paid or payable to employees covered under Clause 2.2 will be recalculated on the revised pay subject to the prescribed ceiling. Thus, it could be seen that the distinction has been drawn between employees who retired voluntarily under Rule 24.2 of the Conduct, Discipline and Appeal Rules or the employees who retired under the Special Scheme operating from time to time. The respondents having retired under the Special Scheme are not employees covered under the voluntary retirement under Rule 24.2 of the Conduct, Discipline and Appeal Rules referred to hereinbefore. Accordingly, the High Court was not right in directing recomputation of the compensation under Office Order No.45 dated March 1, 1991.

The appeals are accordingly allowed. Consequently, the writ petitions stand dismissed. No costs.