

CASE NO.:
Appeal (civil) 5367 of 2001

PETITIONER:
HEC VOLUNTARY RETD.EMPS.WELFARE SOC. & ANR

RESPONDENT:
HEAVY ENGINEERING CORPORATION LTD. & ORS

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
WITH CIVIL APPEAL NOS.5368-5378 OF 2001

S.B. SINHA, J :

These two appeals involving common questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

The members of the appellant Union were employees of Heavy Engineering Corporation Limited, the respondent herein ('the Company'). It is a sick company. It was referred to BIFR in terms of the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. As one of the measures for revival of the company it floated a scheme for voluntary retirement of its employees. One of such scheme was floated in the year 1987 which remained in force upto 1990. On and about 20.10.90 a revised Voluntary Retirement Scheme was floated. The said scheme was to remain effective for an initial period of one year but admittedly the same has been extended from time to time. Both unionised and non-unionised employees numbering in thousands opted thereunder. Pursuant to or in furtherance of the said scheme the following benefits were to be given to the employees opting for voluntary retirement:

"5.1.1 Compensation at the rate of one and half month months' salary for each completed year of service, subject to a ceiling equal to the employee's monthly salary at the time of voluntary retirement multiplied by balance months of service left before the normal date of superannuation.

5.1.2 Payment of salary for the notice period as provided in the offer of appointment of the employee.

5.1.3 Cash value of the unavailed Earned Leave at the credit of the employee on the effective date of voluntary retirement subject to the existing limit of 240 days.

5.1.4 Payment of Provident Fund accumulation inclusive of Corporation's contribution in full together with interest thereon standing to the employee's credit in the Provident Fund Account as on the date of the voluntary retirement.

5.1.5 Gratuity as admissible under the Gratuity Rules applicable to the employee.

5.1.6 Payment of TA, cost of transportation of baggage, Transfer Grant and incidental Travelling Allowance etc. as in the case of serving employees on transfer for proceeding to his Home Town or to the place where he intends to settle in India."

The Company issued a circular letter being Circular No.5/97 dated 9th October, 1997 effecting revision in the scale of pay. The same, although issued on 9th October, 1997, was given retrospective effect from 1.1.1992. It was to remain in force for a period of 5 years from the said date, i.e., upto 31.12.1996. Clauses 3.2 and 3.3 thereof read as under:

"3.2 The revised Scales of Pay shall also be applicable on a pro-rata basis to only those Executives, non Unionised Supervisors and Employees in equivalent salary grades who were on the rolls of the Corporation as on 1.1.1992 but have subsequently ceased to be in service of the Corporation on account of superannuation or death.

3.3 Benefits of revision of Scales of Pay shall not be applicable to those Executives, Non Unionised Supervisors and Employees in equivalent Salary Grades of the Corporation who were on the rolls of the Corporation as on 1.1.1992 but have subsequently left the services of the Corporation for the following reasons:-

- 3.3.1 Dismissal;
- 3.3.2 Discharge;
- 3.3.3 Resignation without permission;
- 3.3.4 Resignation in cases where disciplinary action for misconduct involving moral turpitude has been initiated or contemplated."

The appellants herein indisputably opted for the said voluntary retirement scheme dated 22.10.1990 and retired between the period 1.1.1992 and 31.12.1996.

In view of the revision of scales of pay by the Company in terms of the afore-mentioned circular dated 9th October, 1997 a contention was raised by the appellant that they were entitled to the benefit thereof. The matter was referred to the Government of India and the Ministry of Industries by a letter dated 24th March, 1993 stated that the employees who had opted for voluntary retirement in terms of the aforementioned scheme were entitled to the benefit of the revision of pay in the following terms :

"\005. the employees who have voluntarily retired after 1.1.1992, on the effective date of revision of wages and salary, as the case may be, he will be eligible for arrears of wages including arrear of compensation paid under the approved voluntary retirement scheme. However, the arrears will be payable only after the wage revision is approved. It is the responsibility of the company to pay the arrears arising from wage revision. Arrears on account of V.R.S., compensation, if any, may however be met from the Budget grant of the company for V.R.S. for the year in which such revision takes effect."

As despite the said purported direction of the Central Government the benefit of the revised scale of pay were not extended to the appellants herein, they filed a writ petition before the Ranchi Bench of the High Court of Judicature at Patna (now Jharkhand High Court). A learned Single Judge of the said Court dismissed the said writ petition opining that the appellants had no legal right in relation thereto. It was furthermore opined that when the said circular No.5 of 1997 was issued, the appellants having voluntarily retired, it was not applicable in their case.

Letters Patent Appeals preferred there against by the appellants were also dismissed. The Division Bench of the High Court in its judgment, which is impugned herein, relying upon or on the basis of Hindustan Machines Tools Ltd. & Anr. vs. M.S. Kang/P.N. Kashyap reported in (1997) 11 SCC 186 held that as the respondents had voluntarily retired under a Special Scheme, they were not entitled for revised scale of pay as revised under the said Circular No.45 of 1990 dated 1-3-1991.

In assailing the said judgments, Mr. S.B. Upadhyay and Mr. M.A. Chinnasamy, the learned counsel appearing on behalf of the appellants would submit that the High Court committed a manifest error in arriving at the said conclusion, in so far as it proceeded on the basis that the voluntary retirement scheme dated 22.10.1990 was a special scheme as the same remained in force for a period of 10 years. It was furthermore urged that the Company being a sick industry, it had taken recourse to the voluntary retirement on a long-term basis and even prior to introduction of the said scheme of the year 1990, another scheme had been floated. The learned counsel for the appellants furthermore urged that no distinction exists between 'voluntary retirement' and 'superannuation' and in support of the said proposition, reliance has been placed on V. Kasturi vs. Managing Director, State Bank of India, Bombay & Anr. (1998) 8 SCC 30.

Mr. Ranjit Kumar, learned Senior counsel appearing on behalf of the respondent, on the other hand, would contend that having regard to the contract of voluntary retirement, the concerned employees having already taken the benefits admissible under the scheme including the proportionate pay for their future service were not entitled to benefits of revised scale of pay. The employer in arranging its financial plan on request to payment of benefits under the voluntary retirement scheme could not and did not anticipate that there would be a revision in the pay scale and the same would be applicable also to the employees who had opted for voluntary retirement. Pensioners, according to the learned counsel, stand absolutely on a different footing inasmuch as even after their superannuation they continue to draw pension. Similarly, the family members of the deceased employees would be entitled to family pension. Upon such voluntary retirement in terms of the scheme, the jural relationship comes to an end, Mr. Ranjit Kumar argued. Drawing our attention to the distinction between clauses 3.2 and 3.3 afore-mentioned, it was submitted that it specifically lays down as to what was to be included has been included and what was to be excluded has been excluded. Thus, the Company never had any intention to include the cases of the employees who had opted for voluntary retirement in terms of the scheme, they have not been included in clause 3.2 of the Circular. Revised pay scale being applicable to a person who is in service, a'fortiori the same would be inapplicable to the persons who are not in service, according to the learned counsel.

In reply, Mr. S.B. Upadhyay, learned counsel submitted that the jural relationship was created in terms of the scheme itself and in this behalf our attention was drawn to paragraph 20.2 of afore-mentioned Circular No.5/97 which reads as under:

"20.2 Only those separated Executives, Supervisors and Employees in the equivalent salary grades who ceased to be in employment of the Corporation due to superannuation or death on or

after 01.01.1992 shall be eligible for arrears on pro-rata basis."

An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefor. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. Although the Company is a "State" within the meaning of Article 12 of the Constitution of India, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme only an invitation of offer is floated. When pursuant to or in furtherance of such a voluntary retirement scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of Indian Contract Act, 1872, therefore, would be applicable to. [See Bank of India & Ors. vs. O.P. Swarnakar & Ors.. (2003) 2 SCC 721)]

It is also common knowledge that a scheme of voluntary retirement is preceded by a financial planning. Finances for such purpose, either in full or in part, might have been provided for by the Central Government. Thus financial implications arising out of implementation of a scheme must have been borne in mind by the Company, particularly when it is a sick industrial undertaking. Offers of such number of employees for voluntary retirement, in that view of the matter, were to be accepted by the Company only to the extent of finances available therefor.

We have noticed hereinbefore the benefits admissible under the scheme. The employee offering to opt for such voluntary retirement, not only gets his salary for the period mentioned therein but also gets compensation calculated in the manner specified therein, apart from other benefits enumerated thereunder.

A clarification was issued on and about 17th July, 1992 whereby and whereunder the benefit of compensation and notice pay was restricted to Basic Pay and Dearness Allowance that would have been paid to the employees till the date of their superannuation and in case the employee being released after serving the full notice period or part thereof and having drawn the salary for the same, the notice pay would not be admissible to that extent. It is on the afore-mentioned premise clauses 3.2 and 3.3 of the said scheme are to be construed.

The revised scale of pay have been made applicable on a pro-rata basis to those employees who were on the rolls of the Corporation as on 01.01.1992 but have subsequently ceased to be in service of the Corporation on account of superannuation or death. While extending the said benefit, the word "only" has been used which is of some significance. Clause 3.3 of the scheme which excludes the applicability of the scheme categorically states that the same shall not be applicable to those who were on the rolls of the Corporation on the said date, but subsequently left the services for the reasons stated thereunder, namely :

1. Dismissal;
2. Discharge;
3. Resignation without permission;
4. Resignation in cases where disciplinary action for misconduct involving moral turpitude has been initiated or contemplated.

The question which arises for our consideration is whether in view of the fact that the employees who had opted for voluntary retirement having not been excluded from the purview of Clause 3.3 of the said Circular No.5/97, would be treated to be included or the benefits thereof would be available to only such employees who come within the purview of Clause 3.2 thereof ?

Construction of the afore-mentioned provisions undoubtedly would depend upon the purport and object of the voluntary retirement scheme vis-a-vis the retrospective effect given to the revision of pay in terms of the afore-mentioned circular dated 9th October, 1997

The voluntary retirement scheme speaks of a package. One either takes it or rejects it. While offering to opt for the same, presumably the employee takes into consideration the future implication also.

It is not in dispute that the effect of such voluntary retirement scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.

We have indicated hereinbefore that before floating such a scheme both the employer as also the employee take into account financial implications in relation thereto. When an invitation to offer is floated by reason of such a scheme, the employer must have carried out exercises as regard the financial implication thereof. If a large number of employees opt therefor, having regard to the financial constraints an employer may not accept offers of a number of employees and may confine the same to only a section of optees. Similarly when an employer accepts the recommendations of a Pay Revision Committee, having regard to the financial implications thereof it may accept or reject the whole or a part of it. The question of inclusion of employees who form a special class by themselves, would, thus, depend upon the object and purport thereof. The appellants herein do not fall either in clauses 3.2 or 3.3 expressly. They would be treated to be included in clause 3.2, provided they are considered at par with superannuated employee. They would be excluded if they are treated to be discharged employee.

We have noticed that admittedly thousands of employees had opted for voluntary retirement during the period in question. They indisputably form a distinct and different class. Having given our anxious consideration thereto, we are of the opinion that neither they are discharged employees nor are superannuated employees. The expression "superannuation" connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation prescribed therefor, but also becomes entitled to the retiral benefits thereof including pension. "Voluntary retirement" could have fallen within the afore-mentioned expression, provided it was so stated expressly in the scheme.

Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by resorting to "golden handshake". They are bound by their own act. The parties are bound by the terms of contract of voluntary retirement. We have noticed hereinbefore that unless a statute or statutory provision interdict, the relationship between the parties to act pursuant to or in furtherance of the voluntary retirement scheme, is

governed by contract. By such contract, they can opt out for such other terms and conditions as may be agreed upon. In this case the terms and conditions of the contract are not governed by a statute or statutory rules.

The question came for consideration before the Division Bench of this Court in A.K. Bindal & Anr. vs. Union of India & Ors. [(2003) 5 SCC 163] wherein this Court took notice of the fact that in implementation of such a scheme a considerable amount has been paid to the employee ex gratia besides the terminal benefits in case he opts therefor. It has further been noticed that the payment of compensation is granted not for doing any work or rendition of service and in lie of his leaving the services of the company.

[See also Officers & Supervisors of I.D.P.L. vs. Chairman & M.D., I.D.P.L. & Ors. (2003) 6 SCC 490]

In State of Andhra Pradesh and Anr. vs. A.P. Pensioners Association & Ors. [JT 2005 (10) SC 115], this Court categorically held that financial implication is a relevant criteria for the State Government to determine as to what benefits can be granted pursuant to or in furtherance of the recommendations of a Pay Revision Committee. A' fortiori while taking that factor into account, an employer indisputably would also take into consideration the number of employees to whom such benefit can be extended.

It will also be germane for such a purpose to take into consideration the question as to whether those who are no longer on the rolls of the company should be given the benefit thereof.

Considering the matter from that context, we are of the opinion that it cannot be said that the Company intended to extend the said benefits to those who had opted for voluntary retirement. Clause 3.2 of the circular includes only those who were on the rolls of the Corporation as on 1.1.1992, as also those who ceased to be in service on that date on account of superannuation or death. The appellants do not come in the said category. In view of the fact that they have not been expressly included within the purview thereof, we are of the opinion that although they have not been excluded by clause 3.3, they would be deemed to be automatically excluded.

In Hindustan Machine Tools Ltd. & Anr. vs. M.S. Kang/P.N. Kashyap (1997) 11 SCC 186, this Court observed that

"10. \005\005..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 are the persons referred to in clause 2.2.2 of the office order. 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 of 1990 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 Special Scheme are not employees covered under the voluntary retirement under Rule 24.2 of the Conduct, Discipline and Appeal Rules referred to hereinbefore."

The expression "Special Scheme" used therein must be understood in the context of a general Scheme of employment governing the terms and conditions of service or which is a part of the statutory rules governing the service of the employees. In this sense also the Voluntary Retirement Scheme is a Special Scheme. The scheme was initially introduced for one year. It might have been extended from time to time. Extension of such scheme indisputably must have been on the basis of exercises resorted to by the employer as regards the financial implications thereof, availability of fund, average number of employees opting therefor and other relevant factors. Only because the said scheme remained in force for a total period of 10 years, the same would not mean that it became a part of the general terms and conditions of contract of employment. Furthermore evidently as the scheme floated in 1987 did not work to the satisfaction of the Company, it was replaced by the year 1990 scheme upon extending more benefits to the employees.

State Bank of India vs. A.N. Gupta & Ors. [(1997) 8 SCC 60] whereupon Mr. Upadhyay placed strong reliance, departmental proceeding could be initiated in terms of the pension rules. It is in that context this Court held:

"It cannot be said that an employee retires only on superannuation and there is no other circumstance under which an employee can retire. Retirement on superannuation is not the only mode of retirement known to service jurisprudence. There can be other types of retirements like premature retirement, either compulsory or voluntary. It would be in the case of a premature retirement or any other contingency when an employee leaves the service of the Bank before he superannuates, Rule 11 would become applicable. Retirement on superannuation is automatic as per Rule 26 of the Service Rules. No further action on the part of the Executive Committee of the Central Board of the Bank would be required in such a case and rule 11 will not be applicable."

The said has no application in the present case.

It has not been suggested that voluntary retirement, in absence of any express statutory rule governing the filed, would bring about a case of superannuation. In V. Kasturi (supra) a new Rule was introduced providing for pension of an employee after retirement on completion of 20 years of service, provided he requested in writing therefor. The questions which fall for consideration therein was that if a person was eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, whether he would become entitled to enhanced pension or would become eligible to get more pension as per the new formula of computation of pension. In the fact situation obtaining therein, it was held that employees could be divided in two categories, i.e., those who were eligible for pension at the time of his retirement and those who were not. Whereas in the case of first category the benefit of the amended provisions would be applicable, but in the second it would not. V. Kasturi (supra) also, thus, in our opinion, is not applicable to the fact of the present case.

It may be true that the Central government interpreted the provision differently, but in the absence of any statutory provision the same is not binding upon the respondent. It is of some interest to note that the Central Government opined that the Company itself has to bear the burnt of additional burden which on all probabilities was an impossible task.

Our attention has not been drawn to the provision of any statute that even in its day to day functioning the Company would be bound by any direction issued by the Central Government. It may be that the respondent is a Government Company within the meaning of Section 617 of the Companies Act. It may be that entire shareholding of the Company is held by the the President of India or his nominee but in law it is a separate juristic entity and, thus, in absence of any statutory provision, the Company was not bound by any such clarification issued by the Central Government. Even where a statute confers such a jurisdiction on the Central Government, the same must be held to be confined only to the provisions contained therein. [See State of U.P. vs. Neeraj Awasthi & Ors. (2006) 1 SCC 667]

Although either before the High Court or before us no submissions were made relying on or on the basis of office memorandum dated 5th May, 2000, a copy whereof has been annexed only with the written submissions. We are, however, of the opinion that the same would not advance the case of the appellants for more than one reason. Firstly, the said office memorandum dated 5th May, 2000 cannot be considered by us as the same had been filed for the first time with the written submissions. No opportunity therfor had been given to the respondents to respond thereto. Secondly, the same is a general circular whereas the circular letter dated 24th May, 1993 issued by the Union of India deals with the particular problem wherein it has categorically been stated that the Central Government shall nor undertake the financial responsibility therefor. In any event, the said letter refers to the schemes which might have come into force after 2000. It evidently, does not refer to the 1987 Scheme vis-'-vis the revision of the pay scales.

The Appellants filed the writ petition relying on or on the basis of the aforementioned circular of the Union of India dated 24th May, 1993.

For the foregoing reasons, we are of the view that the impugned judgment cannot be faulted with. The appeals, thus, being devoid of any merit are dismissed. No costs.