CASE NO.:
Appeal (civil) 5525 of 2000

PETITIONER:
GRID CORPORATION OF ORISSA AND ORS.

RESPONDENT:
RASANANDA DAS

DATE OF JUDGMENT: 26/09/2003

BENCH:
SHIVARAJ V. PATIL & D.M. DHARMADHIKARI

JUDGMENT:
JUDGMENT

2003 Supp(4) SCR 45

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. : Civil Appeal Nos. 5525/2000, 5527-5528/2000, 5530-5531/2000, 5529/2000 and 5526/2000.

Aggrieved by the impugned orders passed by the High Court accepting the plea of the respondents as regards higher scales of pay and pension, Grid Corporation of Orissa Limited and others are in appeal in these appeals. Necessary facts required for the disposal of these appeals, briefly stated, are the following :

Hirakund Dam Project was initially entrusted to the Central Waterways, Irrigation and Navigation Commission. The workmen employed therein were getting the pay scales applicable to the employees in the work-charged establishment of the Central Public Works Department (CPWD). The State Government took over the said project w.e.f. 1.4.1960 with understanding that the work-charged employees recruited prior to 1.4.1960 should be allowed to continue on the same scales of pay and on conditions of service as were applicable to them on 31.3.1960, which is evident from the order of Government of Orissa dated 8th September, 1961. The workmen employed subsequent to 1.4.1960 were paid pay scales applicable to the employees of the work-charged establishments of the State Government. With a view to avoid disparity of pay scales between the workmen employed prior 1.4.1960 and those who were employed thereafter, the State Government terminated the services of the employees who were working in the work-charged establishments prior to 1.4.1960 and offered them fresh employment in the scale of pay applicable to the employees of the work-charged establishments of the State Government. This gave rise to dispute. Ultimately, the matter came to this Court in Civil Appeal Nos. 348-349 of 1974. The said appeals were allowed on 13.8.1985 by this Court declaring thus "We, therefore, allow this appeal and declare that the workmen working in the work-charged establishments of the Hirakud Project from before 1.4.1960 are entitled to the same scale of pay and other conditions of service as before as if they were employees of the work-charged establishments of the Central Public Works Department." Later, on 20th September, 1989, this Court directed the Labour Court to identify 1200 workmen who were entitled to the benefit of the order of this Court made on August 13, 1995 in "Civil Appeal Nos. 348-349 of 1974". It is not disputed that after the Hirakud Dam Project was taken over by the State Government on 1.4.1960, different workmen employed prior to 1.4.1960 continued to work under different departments, namely Public Health Department, Irrigation Department and the Electrical Department. It is also not in dispute that the workmen working in Electrical Department on the formation of Orissa State Electricity Board were continued in service under the said Board. One such employee of the Board was asked to retire on completion of 58 years of age on attaining

superannuation applicable to the other employees of the Board who were appointed after 1.4.1960 by the State Government or the Board as the case may be. He filed a Writ Petition OJC No. 4507 of 1992 questioning the action of the Board asking him to retire at the age of 58 years. The said writ petition was allowed holding that he was entitled to continue till the age of 60 years and he could not be retired at the age of 58 years even though the Boards regulation prescribed the age of superannuation of 58 years because of the statutory protection given to the employees under Section 60 of the Electricity (Supply) Act, 1948 notwithstanding the regulation of the Board requiring an employee to retire at the age of 58 years.

Admittedly, the scale of pay to the employees of the Board was higher than the scale of pay available to the employees of CPWD. It was also not disputed that the respondents-workmen formerly the employees of the work charged establishment under CPWD prior to 1.4.1960 were allowed the scale of pay of the Board till they attained the age of 58 years; but the dispute was regarding scale of pay to be given to such employees who continued in service beyond 58 years till they attained superannuation at the age of 60 years following the decision of the High Court in the writ petition aforementioned. There is also no dispute that the respondents-workmen are out of the 1200 employees identified by the Labour Court entitled to the benefit of decision of this Court in Civil Appeal Nos. 348-349 of 1974 dated 13.8.1985.

The High Court having regard to the history of litigation, taking note of the undisputed facts, the order of this Court dated 13.8.1985 passed in Civil Appeal Nos. 348-349 of 1974 and after examining the rival contentions, by the impugned orders rejected the contentions advanced on behalf of the appellants and accepted the case as pleaded by the respondents-workmen.

Learned Senior Counsel for the appellant-Board in these appeals, contended that the respondents-workmen cannot claim double benefit; one based on the decision of this Court made on 13.8.1985 in Civil Appeal Nos. 348-349 of 1974 and the other on the basis of the higher pay scales available to the regular employees of the Board, who were recruited after 1.4.1960; they cannot choose only advantages wherever they are available; if they want the higher pay scales of the Board, they should not insist for the age of retirement as 60 years or else they should accept age of retirement as 60 years and should not claim higher pay scales than the pay scales applicable to CPWD workmen. He further contended that as per the rules of the Board, the respondents-workmen should retire at the age of 58 years: even if they are to be continued till 60 years by virtue of the order of this Court made on 13.8.1985 in Civil Appeal Nos. 348-349 of 1974 and the earlier proceedings that the respondents-workmen were entitled to retire after attaining the age of 60 years only means that they could continue in service beyond 58 years upto 60 years but they are not entitled for same pay scales applicable to the Board employees for the period between 58 years to 60 years: they are only entitled for the pay scale applicable to CPWD employees during this perriod of 2 years and their pension and retiral benefitis could be reckoned only on that basis.

Per contra, the learned counsel for the respondent-workmen made submissions supporting the impugned order. The learned counsel pointed out that the appellants were fully aware as to the protection of their service conditions including their age of retirement as 60 years as early as on 1.4.1960; they gave higher pay scales on their own in 1969; it is not now open to contend otherwise so as to deny higher pay scales or fixation of their pension or other retiral benefits on that basis.

We have carefully considered the submissions of the learned counsel for the parties.

By the order dated 13.8.1995, passed by this Court in Civil Appeal Nos. 348

and 349 of 1974 this Court declared that "the workmen working in the work-charged establishments of the Hirakud Project from before 1.4.1960 are entitled to the same scales of pay and other conditions of service as before as if they were employees of the work-charged establishments of the Central Public Works Department". It is not disputed that the age of superannuation in case of the workmen working in the work-charged establishments of the Hirakud Project prior to 1.4.1960 was 60 years. In view of the declaration made by this Court, undoubtedly, such workmen were entitled to retire at the age of 60 years after attaining the age of superannuation. When one such employee of the Board was asked to retire at the age of 58 years, which was the age of superannuation applicable to the employees of the Board, he filed a writ petition O.J.C. No. 4507 of 1992 in the High Court. The writ petition was allowed by the High Court on 16.12.1992 observing thus :

'4. Having heard learned counsel for both parties at length, we find that there is no scope for a dispute that the petitioner is one of the 1200 workmen, who was originally engaged in the Central Government as a work-charged employee and whose services were transferred to the State Government, as a consequence of taking over the Hirakund Dam Project by the State Government. It is also true that the petitioner's services were placed under the Electricity Board, where he had been continuing. The Electricity Board after it was constituted under the Electricity (Supply) Act, 1948 has framed its own regulation governing the conditions of services of its employees relying on which Mr. Patch appearing for the opp. Parties justifies the impugned order. But Section 60 of the aforesaid Act provides among other things that -

'All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for the State Government for any of the purposes of this Act before the first constitution of the Board shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Board.'

Thus the service conditions of the petitioner are to be protected and cannot be changed to his determent by virtue of the regulation of the Board.

5. We, therefore, conclude that the petitioner is entitled to continue till the age of 60 years and cannot be terminated at the age of 58 years, even though the Board's Regulation prescribes the age of 58 years to be the age of superannuation, this is so because of the statutory protection given to the employees u/s. 60 of the Act and the Board's regulation to this extent must be held to be not applicable to the petitioner and similarly placed employees."

We are informed that the special leave petition filed against this order in Court was also dismissed. Thus, the issue that the employees, who were working in the work-charged establishments of the Hirakud Project prior to 1.4.1960 and when finally they became the employees of the Board, could be retired only after their attaining the age of superannuation on completion of 60 years. The appellants by the Office Order No. AW. LW. - 11.65/69/8398 dated 22.7.1969 for the various reasons stated therein gave better pay scales to the employees, who came from the Hirakud Project. These pay scales were given without any reservation or subject to any condition and also knowing fully well that such employees were entitiled to retire at the age of 60 years and not at the age of 58 years. Apart from the order of this Court passed in the aforementioned appeals, the High Court in the impugned order, referring to Section 60 of the Electricity (supply) Act, 1948, pointed out to the order passed in O.J.C. No. 4507 of 1992 that the service conditions of such employees are to be protected and cannot be changed to their disadvantage or detriment of their interest by virtue of the regulation of the Board. As already stated above, the special leave petition against the said order was dismissed by this Court. The High Court was right in taking the view that although the service conditions of such

employees could not be changed to their disadvantage by reducing their scales of pay or taking away any other service benefit, it cannot be understood as depriving of the benefit of higher scale of pay to them as given to other employees of the same employer. The High Court in the said order also observed that there was a bar to change the service conditions of such employees to their detriment and there was no bar to offer such employees better prospects.

We may add that there was protection of service conditions of such employees but there was no prohibition from improving them or giving better pay scales. The appellants having given better pay scales, as early in 1969, cannot reduce the pay scales when it comes to granting pensionary/ retiral benefits for the period between the age of 58 to 60 years. The argument advanced in this regard that although the employees are entitled to continue in service up to the age of 60 years but during the period of 58 to 60 years they should not be governed by the pay scale applicable to regular employees of the Board cannot be accepted. When the employees continue to work up to the retirement age of 60 years their pay scales cannot be reduced for the period between 58 to 60 years. There is no question of taking any double advantage as sought to be contended on behalf of the appellants in the light of the undisputed facts. Better pay scales were given without any reservation and even at the time of giving these pay scales it was not mentioned that after the age of 58 years they should be governed by the regular pay scales applicable to the employees of the Board. There cannot be two types of pay scales one for the purpose of continuing in service up to the age of retirement and the other for the period between 58 to 60 years. It must be kept in mind that pension is not a bounty but it is hard-earned benefit for long service, which cannot be taken away. Looking to the facts found and the reasons recorded by the High Court in the impugned orders we cannot find fault with them. These appeals do not have any merit. Consequently they are dismissed with no order as to costs.

LA. Nos. 15-16 and 19-20 in C.A. Nos. 348-349/1974

In these I.As. applicants have sought for certain directions relating to fixing of time limit for filing applications by the employees for identification before the Labour Court pursuant to the judgment dated 13.8.1985 in Civil Appeal Nos. 348 an 349 of 1974, with regard to payment of interest @ 10% per annum from the particular date and to pay errears of rent as to the quarters occupied by the employees at the market rate/penal rent in accordance with the Rules for the period after the amployees attained the age of 60 years with interest. It is needless to state that those employees, who have overstayed after attaining the age of 60 years and who have not vacated the quarters after attaining the age of 60 years, shall pay arrears of rent/penal rent in accordance with the Rules for the period of their occupation and they shall have to vacate the quarters occupied by them. They cannot continue occupying the quarters after their retirement even at the age of 60 years. As regards the belated claims for identification of the workmen and the payment of interest on their arrears due, appropriate orders are to be passed in the light of the earlier orders of this Court and the order passed in the aforementioned appeals. The I.As. are disposed of accordingly.

Special Leave Petition (C) Nos. 14650/2001, 14653/2001, 14755/2001 and 14756/2001.

We do not find any merit in these petitions. Plain reading of the impugned orders shows that the appellants did not dispute the claims made by the respondents. In a way they conceded. In this view no further exercise is to be made in dealing with these petitions. Hence, they are dismissed.