BHARAT PETROLEUM CORPORATION EX-EMPLOYEES ASSOCIATION AND ORS. A

v.

BHARAT PETROLEUM CORPORATION LTD. AND ORS.

DECEMBER 15, 1994

B

[K. RAMASWAMY AND N. VENKETACHALA, JJ.]

Constitution of India, 1950: Articles 14 and 21

Pension—Corporation—Employees—Disparity in pension—Claim for increased pension after merger of DA with basic pay—Rejection by Industrial Tribunal—Compromise between parties—Under compromise terms employees retiring prior to 1.1.89 were entitled to higher compensation than those retiring afterwards—Matter attaining finality between parties—Held disparity in pension payable to employees of same Corporation retiring in different regions was on account of Industrial adjudication—Articles 14 and 21 held not violative. C D

The appellant-Association raised certain disputes including the dispute relating to increase of pension by merging DA with basic salary. The Industrial Tribunal allowed other demands but rejected the pension claim. The appellant-Association as well as the respondent-Corporation filed writ Petitions in the High Court but a compromise was reached between the parties where under the finding of the Tribunal rejecting the claim for the increase in pension was allowed to become final and binding between the parties. Subsequently, the appellant-Association made an unsuccessful attempt to re-open the consent order by seeking a declaration from the High Court that the terms of the consent do not bind the appellant-Association. Thereafter, the appellant-Association filed another petition in this Court which was permitted to be withdrawn with liberty to approach the appropriate forum. Accordingly, a writ Petition was filed in the High Court claiming that the former employees of the respondent-Corporation who retired prior to 1.1.1989 (clerical cadre) employed in the Bombay region were entitled to the parity in payment of pension with the employees who retired on that date in other regions of the Corporation and the non-payment thereof was violative of Articles 14 and 21 of the Constitution. E F G H

A **The High Court dismissed the petition against which an appeal was preferred in this Court.**

Dismissing the appeal, this Court

HELD: Having consented to the adjudication made by the
B **Tribunal and having allowed the industrial award to become final, it is not open to the appellants to go behind the award and claim pension on parity with others on the anvil of Articles 14 and 21. That apart the difference of payment of the pension had arisen on account of the revision of the wages etc. Only in the industrial adjudication and demands by the Union on behalf of the workmen. The discrimination**
C **was due to the judicial determination and not due to the acts of the respondents. It is no longer, therefore, open to the workmen to contend that they are entitled to parity in the payment of pension with the employees in the other regions. The retired employees in other regions are getting higher pension than the retired employees from Bombay region but it is only due to judicial adjudication. Considered in the said**
D **perspective and in view of the facts and circumstances, the High Court was well justified in refusing to grant relief claimed by the appellant.**

[641 D to F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9648 of 1994.

E

From the Judgment and Order dated 24.6.92 of the Bombay High Court in W.P.No.3571 of 1989.

P.S. Poti, E.M.S. Anam, Sanjay Kunur and R.N. Keshwani for the Appellants.

F V.C. Mahaian and Santosh Hegde, Ms. A. Subhashini, Ms. Sushma Suri, Ms. Kitty Kumaramanglam, Anil Katiyar, Wasim Qadri, Parijat Sinha, B.D. Ahmed and M.K.D. Namboodiri for the Respondents.

The following Order of the Court was delivered :

G Leave Granted.

This appeal by special leave arises from the judgment of the Division Bench of the Bombay High Court in Appeal No.681/90, dated 12.9.91. The appellants filed writ petition No. 3571/89 seeking that the former employees of the respondent-Corporation who retired prior to 1.1.89
H (Clerical cadre employed in the Bombay region are entitled to the parity in

payment of pension with the employees who retired on that date in other regions of the respondent-Corporation and the non-payment thereof is violative of Article 14 and 21 of the Constitution. To understand the contention, it is necessary to mention the background of the case.

Consequent upon the nationalization of the erstwhile Burmah-shell on January 24, 1976, the Burmah-shell pension fund operating prior to the nationalization was taken over and a new trust fund was created with terms and conditions mentioned therein found beneficial to the employees even after the nationalization. According to the terms, the pension is payable on the basic salary and not on basic salary plus D.A. In 1978, disputes were raised by the employees' union including the dispute relating to the increase of the pension by merging D.A. with basic salary which had been referred to the Industrial Tribunal. In its Award dated 24.10.83, the Industrial Tribunal rejected the demand No.3 *i.e.* claim to increase the pension with merger of D.A. in the basic salary and computation of the pension on that basis. In respect of this rejected demand, the employees filed W.P. No. 1568/85 and in respect of other demands allowed by the Tribunal, the respondent-employer filed W.P. No. 757/84. Therein a compromise had been reached by and between the parties and the relevant part reads thus:–

> "(d) The old clerical employees who have retired from the Corporation prior to 1.1.89 will be paid as one time lump-sum compensation in lieu of awarded amount of H.R.A., gratuity and duty allowance (so far as divisional offices are concerned) amounting to Rs.50,000 within four weeks from that date."

Clause (4) is relevant for this purpose. It would articulate that "award in respect of items and demands other than those items settled above will operate".

The Industrial Tribunal has stated in respect of the demand for increasing the pension at para 11 thus:—

> "The present demand of the Union is that the existing pension scheme should be modified and revised so to include:—
>
> (a) pension amount should be calculated on the wages/salaries inclusive of Dearness-allowance and other non-personal allowances.

A (b) it should be assessed on the basis of 50% of wages/salaries last drawn by the workman without any deduction."

Considering this aspect of the matter, the Tribunal had held that the demand for the revision and modification of the pension scheme, if granted, would impose an unreasonable financial burden on the company without B any justification. It was, therefore, held that "no question arises for revising calculation of pension or checking the basis of calculating pension from basic wages to total wages. The demand is, therefore, rejected". In view of the terms of consent referred to herein before, this finding on demand No. 3 for increasing the pension stood concluded and binds the appellants.

C Subsequently, another attempt had been made by filing W.P. No. 2907/89 to reopen the consent order seeking a declaration that the terms of consent dated 14.2.89 in the writ petition do not bind the appellants-Association. That writ petition was dismissed by the High Court on 19.2.90 and that order was allowed to become final.

D Yet another attempt was made by filing a writ petition under Article 32 of the Constitution in this court in W.P. No. 527/89. This court permitted the appellants by order dated 27.10.89 to withdraw the petition with liberty to approach the appropriate forum. In consequence, the appellants filed W.P. No. 3571/89, which, as stated earlier, was dismissed and the Division Bench concluded in its order thus :—

E

> "It is now well settled that in relation to persons drawn from different backgrounds and who have functioned under differential conditions of service, and who had their own advantages and disadvantages under the employment patterns in existence of different industrial units, no absolute equality F could be predicated. It has been a mixed bag, that by and large, had satisfied the requirements of the employees and the conscience of industrial jurisprudence. The establishment in question had agile and agitating unions. The terms and conditions had been subject-matter of settlements and awards, and even judicial orders. When the establishment has G punctiliously adhered to the requirements of such settlements, claims and judicial decisions, courts are not expected to break a ripple in the otherwise translucent waters of industrial relations."

It is sought to be contended for the appellants that when the other H employees similarly situated in the same respondent-Corporation, are

receiving pensionary benefits on D.A. merged basis, the denial thereof to the appellants is arbitrary, unjust and unfair offending the right equality and impinges the livelihood of the retired employees violating Articles 14 and 21 of the Constitution. We find no substance in the contention. It is seen from the narrative that the appellants had specifically raised the demand for increasing the pension on the basis of D.A. merger basic pay and demand that 50% of the total wages should be the foundation for calculation of the pension. In the industrial adjudication this demand was expressly negatived and was allowed to become final. That apart, it is seen that in the industrial adjudication the other demands also had been raised and while granting the benefits on other demands the parties— Management and the workmen entered into a compromise in the High Court, agreeing to pay to the employees retired prior to 1.1.89 higher amount of Rs. 50,000 and the working employees the benefit of Rs. 25,000.

Thus, it could be seen that having consented to the adjudication made by the Tribunal and having allowed the industrial award to become final, it is not open to the appellants to go behind the award and claim pension on parity with others on the anvil of Articles 14 and 21. That apart the difference of payment of the pension had arisen on account of the revision of the wages etc, only in the industrial adjudication and demands by the union on behalf of the workmen. The discrimination was due to the judicial determination and not due to the acts of the respondents. It is no longer, therefore, open to the workmen to contend that they are entitled to parity in the payment of pension with the employees in the other regions. The retired employees in other regions are getting higher pension than the retired employees from Bombay region but it is only due to judicial adjudication.

Considered in the said perspective and in view of the facts and circumstances, we are of the view that the High Court was well justified in refusing to grant the relief claimed by the appellant. The appeal is accordingly dismissed. No costs.

T.N.A. Appeal dismissed.