Workmen of The Bharat Petroleum Corporation Ltd. (Refining Division) Bombay

Vs

M/S. Bharat Petroleum Corporation Ltd. and Another

Civil Appeal No. 1396 (NL) of 1982

(D. A. Desai, O. Chinnappa Reddy JJ)

06.10.1983

JUDGMENT

CHINNAPPA REDDY, J.

1. (for himself and Desai, J.). - The workmen of the Bharat Petroleum Corporation Limited, Bombay raised an industrial dispute with regard to the retirement age of the clerical staff employed in the refinery division of the Bharat Petroleum Corporation Limited at Bombay. The demand of the workmen was that the retirement age of the clerical staff of the refinery division at Bombay must be raised from 55 years to 60 years in keeping with the 'trend' in the Bombay region. The Company resisted the demand on the ground that in all similar oil companies, the retirement age of the clerical staff engaged in the refinery division had never been fixed at 60 years. Before the Industrial Tribunal, Maharashtra at Bombay to whom the dispute was referred for adjudication, neither party led any oral evidence. The workmen relied upon several decisions of this Court to establish that the trend of industry in Bombay was to fix the retirement age of the clerical staff at 60 years, while the Company contented itself by filing a statement showing the age of retirement of clerical staff employed in various oil companies. The Industrial Tribunal found as a fact that the wage scales of the Company were not much better than the wage scales of other comparable concerns. The Industrial Tribunal also noticed that the age of retirement of the clerical staff of the Company in its marketing division both at Bombay and other places was fixed at 58 years. The Industrial Tribunal, therefore, held that there was no valid reason why the retirement age of the clerical staff employed in the refinery division should not be raised at least to 58 years. But having regard to the circumstance that the clerical staff employed in the refinery division had already been granted, under a settlement, the benefits of provident fund and gratuity and having further regard to the fact that while the number of members of the clerical staff employed in the refinery division was 148 only, there were as many as 1095 workmen in the non-clerical category, who would also surely raise a dispute to revise their retirement age, the Industrial Tribunal thought that in the interest of industrial harmony, it would be proper to raise the retirement age of the clerical staff to 58 years only and not to 60 years. The workmen have preferred this appeal under Article 136 of the Constitution. As before the Industrial Tribunal, so too before us, the workmen relied on the 'trend' in the Bombay region while the Company relied on the position in other oil companies.

2. In fixing the age of retirement, several factors have to be taken into consideration. These factors have been explained at length in Guest, Keen, Williams Private Ltd. v. P.J. Sterling [(1960) 1 SCR 348 : AIR 1959 SC 1279 : (1959) 2 LLJ 405], Dunlop Rubber Co. (India) Ltd. v. Workmen [(1960) 2 SCR 51 : AIR 1960 SC 207 : (1959) 2 LLJ 826], Imperial Chemical Industries (India) Pvt. Ltd. v. Workmen [(1961) 2 SCR 349 : AIR 1961 SC 1175 : (1960) 2 LLJ 716], British Paints (India) Ltd. v. Its Workmen [(1966) 2 SCR 523 : AIR 1966 SC 732 : (1966) 1 LLJ 407 : 29 FJR 12], G. M. Talang

v. Shaw Wallace and Co. Ltd. [(1964) 7 SCR 424 : AIR 1964 SC 1886 : 26 FJR 224] and Burmah-Shell Oil Storage and Distributing Co. of India Ltd. v. Their Workmen [(1970) 1 LLJ 363 : 35 FJR 331 (SC)].

3. Guest, Keen, Williams Private Ltd. v. P. J. Sterling [(1960) 1 SCR 348 : AIR 1959 SC 1279 : (1959) 2 LLJ 405] was a case from Calcutta and it may not be useful to discover the trend in the Bombay region. However, some of the relevant factors to be taken into account in fixing the age of superannuation have been stated and we may usefully extract the observations made by the learned Judges in that case. It was said :

> In fixing the age of superannuation industrial tribunals have to take into account several relevant factors. What is the nature of the work assigned to the employees in the course of their employment ? What is the nature of the wage structure paid to them ? What are the retirement benefits and other amenities available to them ? What is the character of the climate where the employees work and what is the age of superannuation fixed in comparable industries in the same region ? What is generally the practice prevailing in the industry in the past in the matter of retiring its employees ? These and other relevant facts have to be weighed by the tribunal in every case when it is called upon to fix an age of superannuation in an industrial dispute.

4. The 'trend' of industry in the Bombay region to raise the age of retirement from 55 to 60 years was noticed by this Court in Dunlop Rubber Co. (India) Ltd. v. Workmen [(1960) 2 SCR 51 : AIR 1960 SC 207 : (1959) 2 LLJ 826], Imperial Chemical Industries (India) Pvt. Ltd. v. Workmen [(1961) 2 SCR 349 : AIR 1961 SC 1175 : (1960) 2 LLJ 716], British Paints (India) Ltd. v. Its Workmen [(1966) 2 SCR 523 : AIR 1966 SC 732 : (1966) 1 LLJ 407 : 29 FJR 12], G. M. Talang v. Shaw Wallace and Co. [(1964) 7 SCR 424 : AIR 1964 SC 1886 : 26 FJR 224] and Burmah-Shell Oil Storage and Distributing Co. of India Ltd. v. Their Workmen [(1970) 1 LLJ 363 : 35 FJR 331 (SC)].

5. In the Dunlop Rubber Co. case [(1960) 2 SCR 51 : AIR 1960 SC 207 : (1959) 2 LLJ 826], the Tribunal noticed that the trend in the Bombay region was to raise the age of retirement of sixty years for clerical staff and, accordingly, raised the age of the clerical staff of the Company to sixty years, notwithstanding the fact that in the previous agreement, the retirement age was fixed at 55 years. The Supreme Court upheld the award as it accorded with the prevailing conditions in many concerns in that region. One of the submissions made to the Supreme Court was that the clerical staff of the Company employed in Bombay was a small minority of the total clerical staff employed by the Company throughout India, that in the case of the large majority employed outside Bombay, the age of retirement was 55 and, therefore, the retirement age of the small minority of workmen employed in Bombay should not be raised from 55 to 60 years. It was argued that the Company was an all-India concern and occupied a special position, and it was, therefore, desirable and proper that no change should be made to benefit a small minority of workmen employed in Bombay. The submission was repelled by the Supreme Court and it was observed :

> There is no doubt that in the case of an all-India concern it would be advisable to have uniform conditions of service throughout India and if uniform conditions prevail in any such concern they should not be lightly changed. At the same time it cannot be forgotten that industrial adjudication is based, in this country at least, on what is known as industry-cum-region basis and cases may arise where it may be necessary in following this principle to make changes even where the conditions of

> service of an all-India concern are uniform. Besides, however desirable uniformity may be in the case of all India concerns, the tribunal cannot abstain from seeing that fair conditions of service prevail in the industry with which it is concerned. If therefore any scheme, which may be uniformly in force throughout India in the case of an all-India concern, appears to be unfair and not in accord with the prevailing conditions in such matters, it would be the duty of the tribunal to make changes in the scheme to make it fair and bring it into line with the prevailing conditions in such matters, particularly in the region in which the tribunal is functioning irrespective of the fact that the demand is made by only a small minority of the workmen employed in one place out of the many where the all-India concern carries on business.

It will be seen that great emphasis was laid on the conditions prevailing in the region even to the extent of overriding the conditions of service of other workmen in the employment of the very company elsewhere.

6. In Imperial Chemical Industries (India) Pvt. Ltd. v. Workmen [(1961) 2 SCR 349 : AIR 1961 SC 1175 : (1960) 2 LLJ 716], Gajendragadkar, J. observed :

> It is generally recognised in industrial adjudication that where an employer adopts a fair and reasonable pension scheme that would play an important part in fixing the age of retirement at a comparatively earlier stage. If a retired employee can legitimately look forward to the prospect of earning a pension then the hardship resulting from early compulsory retirement is considerably mitigated; that is why cases where there is a fair and reasonable scheme of pension in vogue would not be comparable or even relevant in dealing with the age of retirement in a concern where there is a no such pension scheme.

In that case it was submitted by the Attorney General who appeared for the Company that the Company was an all-India concern and it was of great importance that the terms and conditions of service prevailing in several branches of the Company all over the country should be stable and uniform and that in the matter of retirement the Company had uniformly fixed the age of retirement at 55 since 1950 and this arrangement should not be disturbed because it would inevitably upset the age of retirement in all other branches. It was also submitted that the Tribunal had raised the age of retirement from 55 to 58 and that the Supreme Court should not interfere with the decision of the Tribunal and further raise it to 60. It was also urged that the general terms and conditions provided by the Company to its employees were very liberal and that the industrial concerns in Bombay where the age of retirement had been fixed at 60 were not comparable to the Company and, therefore, no importance should be attached to the trend disclosed by those companies. All these submissions were rejected by the Court on the primary consideration that the recent trend in the Bombay area clearly appeared to be to fix the age of retirement at 60.

7. In British Paints India Limited v. Its Workmen [(1966) 2 SCR 523 : AIR 1966 SC 732 : (1966) 1 LLJ 407 : 29 FJR 12], this Court expressed the view that there had been a general improvement in the standard of health in the country and that longevity had increased and therefore, fixation of age of retirement at 60 years appeared to be quite reasonable in the circumstance. The Court, further observed that the age of retirement at 55 years was fixed in the last century in Government service and had become the pattern for fixing the age of retirement everywhere. The Court then said :

> But time in our opinion has now come considering the improvement in the standard

> of health and increase in longevity in this country during the last fifty years that the age of retirement should be fixed at a higher level, and we consider that generally speaking in the present circumstances fixing the age of retirement at 60 years would be fair and proper, unless there are special circumstances justifying fixation of a lower age of retirement.

8. In G. M. Talang v. Shaw Wallace and Co. [(1964) 7 SCR 424 : AIR 1964 SC 1886 : 26 FJR 224] reference was also made to the report of the Second Pay Commission Pay Commission which had referred to the age of retirement in 48 countries of the world and to the report of the Norms Committee, a Committee on which both employers and employees of the Bombay region were represented, which had said :

> After taking into consideration the views of the earlier Committees and Commissions including these of the Second Pay Commission, the report of which has been released recently, we feel that the retirement age for workmen, in all industries, should be fixed at 60 years. Accordingly the norm for retirement age is fixed at 60.

The comment of the Court on the report of the Norms Committee was :

> This considered opinion of a Committee on which both employers and employees were represented emphasised the fact that in the Bombay region at least there is a general agreement that the age of retirement should be fixed at 60.

9. In the Burmah-Shell Oil Company case [(1970) 1 LLJ 363 : 35 FJR 331 (SC)], this Court observed :

In fixing the age of superannuation the most important factor that has to be taken into consideration is the trend in a particular area. That position is make clear by this Court in G.M. Talang v. Shaw Wallace and Co. Ltd. [(1964) 7 SCR 424 : AIR 1964 SC 1886 : 26 FJR 224]. There is no denying the fact that life expectation has greatly increased in recent years due to healthier living conditions, better food and improved medical facilities though we have still a long way to go in that regard. Under modern conditions, speaking generally, the efficiency of workmen is not impaired till about 60 years. The needs of a workman are likely to be greater between the age of 50 to 60 years as during that period he has to educate his children, marry his daughters, in addition to maintaining his family. If one looks at the word trend it is obvious that the age of superannuation is gradually pushed up.

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As we said earlier, in the matter of fixing the age of superannuation the trend in a particular area is the most important factor though in the matter of determining the other conditions of service of workmen, the principle of region-cum-industry is by and large the determinative factor.

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From the various decisions rendered by this Court and by the tribunals, it is obvious that the trend is to raise the age of superannuation. It is also clear from those decisions that so far as Bombay. Calcutta and Delhi areas are concerned, the trend appears to raise the age of superannuation to 60 years.

On the facts of the case, however, the Court noticing that in the appellant Company, there was a fair pension scheme for the clerical staff, fixed the age of superannuation in their case at 58 years, while leaving untouched the decision of the Tribunal fixing the retirement age of other workmen at 60 years.

10. It is to be noticed that the four cases which related to the Bombay region were all of the early sixties. Two decades have passed, industrial and labour conditions do not remain stagnant despite the passage of time. Industrial-labour relations need revision from time to time to fit and suit changing conditions. That there was an upward trend to raise the age of retirement to sixty in the early sixties may not necessarily mean that the same trend has continued till today. But, in the present case, the Company did not plead that there was any reversal of the trend nor did Shri G. B. Pai, learned counsel for the Company, urge before us that there was any such reversal of the trend. On the other hand, it may very well be said that there has been much progress in the last two decades in the matter of better living conditions and availability of medical and health facilities and, therefore, a further raise of the age of retirement may be considered necessary and justified. Shri Pai rightly did not urge before us that there was any reversal of the trend in the Bombay region and we are, therefore spared from going into that question.

11. In the Dunlop Rubber Co. case [(1960) 2 SCR 51 : AIR 1960 SC 207 : (1959) 2 LLJ 826] and in the Imperial Chemical Industries case [(1961) 2 SCR 349 : AIR 1961 SC 1175 : (1960) 2 LLJ 716], the Supreme Court primarily relied on the trend in the region and in the Burmah-Shell Oil Co. case [(1970) 1 LLJ 363 : 35 FJR 331 (SC)], the Court observed that the trend in a particular area was the most important factor in the matter of fixing the age of superannuation. Another factor which appears to be receiving importance in certain circles is the rising rate of unemployment amongst the younger generation. The effect of increasing or decreasing the age of retirement on the rate of unemployment in the younger generation and on the household economics of the older generation is a matter for deep study and investigation. There is no evidence before us on these points. Nowadays, as pointed out in the Burmah-Shell Oil Co. case [(1970) 1 LLJ 363 : 35 FJR 331 (SC)] and other cases, because of better conditions of living and availability of medical and health facilities, the average span of life has increased and a person between 55 and 60 years of age is alert, active, hale and healthy and may be said to be at the prime of his life. That is also the time when he was to meet several financial commitments and demands. To retire him at that age may mean virtually to throw him to the wolves. Can the nation afford to have on its hand several families unable to fully support themselves ? Can the nation afford to throw away the knowledge and experience of these people by retiring them when they are still capable of turning out some years of good work ? On the other hand, can the nation afford to have an army of unemployed young men, necessarily leading bitter and frustrated lives ? Can the nation afford to allow them to fritter away their energies in unhealthy pursuits to which they may be tempted ? But then arises the broader question, is the retirement of men of experience at an age when they are still useful to the community the proper solution to the problem of unemployment among the young ? Is it not an unimaginative solution ? Is not the solution the creation of greater employment opportunities, by increasing production and its modes ? All these are questions which are difficult to answer though everyone has an opinion, often ad hoc. These questions require deep investigation, research and study. We cannot properly answer them nor is there any evidence on these points. The counsel, we must say in fairness, refrained from arguing that the retirement age should not be raised because of the rising rate of unemployment and we also refrain from expressing any opinion. The workmen were content to rely on the undoubted trend as revealed by the decisions of this Court and the Company was content to rely on the comparative statement of retirement age of clerical staff in other oil companies. We are compelled to decide this case on the limited material available to us and

we, therefore, confine the decision to the facts of the case.

12. The Tribunal noticed that the age of retirement of the clerical staff of the Company in its marketing division was 58 years and observed :

> Similarly, it is apparent that the company has fixed the age of retirement of the clerical staff in its Marketing Division, both in Bombay and other places at 58 years. I do not find any valid reason why the concerned workmen should be denied a raise in the age of their retirement at least to the extent of 58 years.

So according to the Tribunal, the retirement age of the clerical staff of the refinery division had to be increased at least to 58 years, since the retirement age of the clerical staff of the marketing division of the Company had been fixed at 58 years. The relevant and outstanding fact which the Tribunal failed to notice here was that the clerical staff of the marketing division have a pension scheme while the clerical staff of the refinery division have no such scheme. The general terminal benefits on attaining the age of superannuation are pension, gratuity and provident fund. It is not in dispute that while the clerical staff of the marketing division have all three terminal benefits, the clerical staff of the refinery division are not entitled to any pension. This must necessarily have an impact on the raising of their retirement age. Therefore, without travelling outside the very Company, we think that the Industrial Tribunal fell into a serious error in failing to notice that there was no pension scheme in the case of clerical staff of the refinery division while there was such a scheme in the case of a clerical staff of the marketing division. On the material available to us, we think that the retirement age in the case of clerical staff of the refinery division should be fixed at 60 years.

13. Shri G. B. Pai, learned counsel for the respondent-Corporation drew our attention to the circumstances that the new scales of pay of the clerical staff of the refinery division of the respondent-Corporation compared favourably with the scales of pay of the clerical staff of other refineries elsewhere in India and were higher than the scales of pay of the clerical staff of the marketing division of the respondent-Corporation itself. Shri Pai, however, would not go so far as to say that the scales of pay were so designed taking into account the provision for pensionary benefits or the lack of it. He could not do so for the obvious reason that it would be an irrelevant consideration unless he could assert that the wage structure took into account the 'capacity for savings' factor. Again, obviously, he could not so assert as that was never the Company's case and also in view of the rising universal inflationary trend of which we are bound to take judicial notice. The differing nature and conditions of work may well be the reason for the different scales of pay. We assume nothing and so we make no comment one way or the other in the absence of evidence. It is enough for the present purpose to say that the Tribunal did not base its conclusion on this circumstance.

14. Shri Pai invited our attention to the circumstance that in other refineries elsewhere in India, the retirement age of clerical staff has generally been fixed at 58. But we are primarily concerned with the trend in the Bombay region. In matters of this nature, greater importance must naturally be given to the regional factor. That was why in the Dunlop case [(1960) 2 SCR 51 : AIR 1960 SC 207 : (1959) 2 LLJ 826], emphasis was laid on the "prevailing conditions, particularly in the region", in the Imperial Chemical Industries case [(1961) 2 SCR 349 : AIR 1961 SC 1175 : (1960) 2 LLJ 716], the trend in the Bombay region was considered the most vital factor and in the Burmah-Shell case [(1970) 1 LLJ 363 : 35 FJR 331 (SC)], it was stressed that in fixing the age of superannuation, the most important factor that had to be taken into consideration was the trend in the particular area. We

may add here that in applying the region-cum-industry formula, the emphasis to be placed on region or industry depends upon varying factors. In Greaves Cotton and Co. Ltd. v. Their Workmen [(1964) 1 LLJ 342 : (1964) 5 SCR 362 : AIR 1964 SC 689], this Court observed that where the number of industries of the same kind in a particular region was small, it was the region aspect of the industry-cum-region formula which assumed importance particularly in the case of clerical and subordinate staff. Reference was made to Workmen v. Hindustan Motors [(1962) 2 LLJ 352 : 23 FJR 109 (SC)] and French Motor Car Company Ltd. v. Their Workmen [(1962) 2 LLJ 744 : 1963 Supp 2 SCR 16 : AIR 1963 SC 1327] and it was said :

Where there are a large number of industrial concerns of the same kind in the same region it would be proper to put greater emphasis on the industry part of the industry-cum-region principle as that would put all concerns on a more or less equal footing in the matter of production costs and therefore in the matter of competition in the market and this will equally apply to clerical and subordinate staff whose wages and dearness allowance also go into calculation of production costs. But where the number of comparable concerns is small in a particular region and therefore the competition aspect is not of the same importance, the region part of the industry-cum-region formula assumes greater importance particularly with reference to clerical and subordinate staff and this was what was emphasised in the French Motor Car Company case [(1962) 2 LLJ 744 : 1963 Supp 2 SCR 16 : AIR 1963 SC 1327] where the company was already paying the highest wages in the particular line of business and therefore comparison had to be made with as similar concerns as possible in different lines of business for the purpose of fixing wage-scales and dearness allowance. The principle therefore which emerges from these two decisions is that in applying the industry-cum-region formula for fixing wage scales the Tribunal should lay stress on the industry part of the formula if there are a large number of concerns in the same region carrying on the same industry; in such a case in order that production cost may not be unequal and there may be equal competition, wages should generally be fixed on the basis of the comparable industries namely, industries of the same kind. But where the number of industries of the same kind in a particular region is small it is the region part of the industry-cum-region formula which assumes importance particularly in the case of clerical and subordinate staff, for, as pointed out in the French Motor Car Company case [(1962) 2 LLJ 744 : 1963 Supp 2 SCR 16 : AIR 1963 SC 1327], there is not much difference in the work of this class of employees in different industries.

15. In French Motor Car Co. Ltd. v. Their Workmen [(1962) 2 LLJ 744 : 1963 Supp 2 SCR 16 : AIR 1963 SC 1327], an argument was advanced that the appellant-Company was paying the highest wage scales in a particular line of business in which it was engaged and there was, therefore, no justification for increasing the wage scales by comparison with wage scales in other lines of business. This argument was rejected with the following observations :

> We are of opinion that this argument cannot be accepted, for it would then mean that if a concern is paying the highest wages in a particular line of business, there can be no increase in wages in that concern whatever may be the economic conditions prevailing at the time of dispute. It seems to us, therefore, that where a concern is paying the highest wages in a particular line of business, there should be greater emphasis on the region part of the industry-cum-region principle, though it would be the duty of the industrial court to see that for purposes of comparison such other industries in the region are taken into account as are as nearly similar to the concern before it as possible. Though, therefore, in a case where a particular concern is already paying the highest wages in its own line of business, the industrial courts would be justified in looking at wages paid in that region in other lines of business, it

should take care to see that the concerns from other lines of business taken into account are such as are as nearly similar as possible, to the line of business carried on by the concern before it.

16. In Workmen v. Orient Paper Mills Ltd. [(1969) 2 LLJ 398 : (1969) 1 SCR 666 : AIR 1969 SC 976], this Court relying on the French Motor Car Company case [(1962) 2 LLJ 744 : 1963 Supp 2 SCR 16 : AIR 1963 SC 1327] held that where two other paper industries in the region are of recent origin and their profits were similar, it was the duty of the Industrial Tribunal not to compare the appellant-Company with those companies, but to compare the same with other industries in the region, three of which were collieries, two cement companies, one a steel plant and one aluminium factory.

17. These decisions make it clear that where there are no comparable industries in the region, the regional aspect of the region-cum-industry formula must be given precedence. That was what was done in the Dunlop Rubber Co. [(1960) 2 SCR 51 : AIR 1960 SC 207 : (1959) 2 LLJ 826], the Imperial Chemical Industries [(1961) 2 SCR 349 : AIR 1961 SC 1175 : (1960) 2 LLJ 716] and the Burmah-Shell Oil Co. [(1970) 1 LLJ 363 : 35 FJR 331 (SC)] cases. Rightly, therefore, the Tribunal did not rest its conclusion on this factor.

18. Shri Pai informed us that even in the case of the clerical staff of the marketing division, there is no longer any pension scheme for those that have joined the Corporation after nationalisation. This again was not one of the grounds on which the Tribunal rested its conclusion and we wish to say no more about it, as we do not want to jeopardise any claim that the workmen may have on that basis or any answer that the Management may have in that regard.

19. In the result the appeal is allowed and the retirement age of the clerical staff of the refinery division of the Company is fixed at 60 years. There will be no order as to costs.

VARADARAJAN, J.

(dissenting). - This appeal by special leave is directed against the award dated July 1, 1980 made by the Industrial Tribunal, Bombay in I.T. No. 84 of 1980 raising the age of retirement of the clerical employees of the refineries division of the respondent from 55 years to 58 years insofar as it rejected the claim of the appellants to the age of retirement being raised to 60 years.

21. The dispute referred to the Industrial Tribunal, Bombay was between the Bharat Petroleum Corporation Limited, Bombay (for short "Company") and their workmen represented by the Burmah-Shell Refineries Clerical Staff Union (for short 'first union') and the Petroleum Workmen's Union (for short 'second union'). The Company has a marketing division and a refinery division at Bombay. The age of retirement of the clerical employees of the Company is 58 years in the marketing division and 55 years in the refinery division. The question for consideration by the Tribunal was whether the age of retirement of the clerical employees of the Company's refinery division should be raised to 60 years from 55 years. The retirement age of the clerical employees of the refinery division had been fixed at 55 years by a settlement dated October 31, 1973 which was to be in force for a period of four years and thereafter until it is terminated in accordance with the provisions of Section 19(2) of the Industrial Disputes Act, 1947. The period of four years fixed in that settlement expired on October 31, 1977 and the first union terminated that settlement insofar as it related to the age of retirement of the clerical employees of the refinery division by a notice dated April 6, 1979 after making a demand by a notice dated January 15, 1979 on the Company to raise

the age of retirement of these clerical employees to 60 years. The first union's contention according to its claim statement was that the model standing orders provide for the age of retirement of the clerical employees being 60 years and there is a trend in the Bombay region to fix the age of retirement of clerical employees at 60 years and in the comparable concerns as well as in the marketing division of the Company itself the age of retirement of the clerical employees is above 55 years and, therefore, the present age of retirement of the clerical employees of the refinery division is low and should be raised from 55 years to 60 years with effect from the date of the reference. The second union put forward almost similar grounds in its claim statement filed in support of the demand of the clerical employees of the refinery division.

22. The Company denied in its statement of defence that the model standing orders framed by the Central Government provide for the age of retirement being 60 years and contended that the settlement dated October 31, 1973 was a package deal arrived at in consideration of the union agreeing inter alia to the age of retirement being fixed at 55 years and the Company revised certain benefits which would not have been revised otherwise. The Company disputed the correctness of the grounds relied upon by the unions in support of their claim for raising the age of retirement of the clerical employees of the refinery division to 60 years.

23. The Tribunal rejected the Company's contention that the reference itself is not competent in view of the said settlement dated October 31, 1973 as being untenable. That question is not in dispute in this appeal.

24. The parties filed a joint statement before the Tribunal saying that they do not want to let in any oral evidence. The Company and the first union produced their respective comparative statements. In addition to the comparative statement, strong reliance was placed by the unions on what is called the trend in the Bombay region to fix the age of retirement at 60 years. The Company's comparative statement showed that on April 1, 1980 there were 148 clerical employees and 1095 non-clerical employees in the Company and provided information in regard to wage scales and other benefits such as provident fund and gratuity and admitted that the age of retirement of the clerical employees in the Company's marketing division at Bombay is 58 years while that of the clerical employees of the Company's refinery division at that place is only 55 years. It was contended for the Company before the Tribunal that the wage scales of the clerical employees covered by this reference are far better than those of similar categories of employees in comparable concerns and that the Company took a generous view in the settlement dated October 31, 1973 and arrived at a package deal and revised the benefits of the employees taking into consideration the agreement of the employees to continue the age of retirement of the clerical employees of the refinery division at 55 years. The Tribunal found that the contention regarding the settlement being a package deal in regard even to the age of retirement after taking other benefits into consideration was not without substance and observed that it is, however, not sufficient to reject the demand of the clerical employees of the refinery division for raising the age of retirement in toto and that it has to be taken into account while considering the extent to which the age of retirement should be raised.

25. The following observation made by this Court in Guest, Keen, Williams Private Ltd. v. P. J. Sterling [(1960) 1 SCR 348 : AIR 1959 SC 1279 : (1959) 2 LLJ 405] was noticed by the Tribunal :

In fixing the age of superannuation industrial tribunals have to take into account several relevant factors. What is the nature of the work assigned to the employees in the course of their employment ? What is the nature of the wage structure paid to them ? What are the retirement benefits and other amenities available to them ? What is the character of the climate where the employees work and

what is the age of superannuation fixed in comparable industries in the same region ? What is generally the practice prevailing in the industry in the past in the matter of retiring its employees ? These and other relevant facts have to be weighed by the tribunal in every case when it is called upon to fix an age of superannuation in an industrial dispute.

26. The Tribunal noticed also the following observation made in a later decision of this Court in the case of Burmah-Shell Oil Storage and Distributing Co. of India Ltd. v. Their Workmen [(1970) 1 LLJ 363 : 35 FJR 331 (SC)] :

> In fixing the age of superannuation the most important factor that has to be taken into consideration is the trend in a particular area. That position is made clear by this Court in G. M. Talang v. Shaw Wallace and Co. Ltd. [(1964) 7 SCR 424 : AIR 1964 SC 1886 : 26 FJR 224]. There is no denying the fact that life expectation has greatly increased in recent years due to healthier living conditions, better food and improved medical facilities though we have still a long way to go in that regard. Under modern conditions, speaking generally, the efficiency of workmen is not impaired till about 60 years. The needs of a workman are likely to be greater between the age of 50 to 60 years as during that period he has to educate his children, marry his daughters, in addition to maintaining his family. If one looks at the word trend it is obvious that the age of superannuation is gradually pushed up.

27. The Tribunal commented upon the lack of evidence relating to the various factors indicated in the above passage in the present case and has arrived at its decision as follows :

> The only material placed before me pertains to the wage scales in existence in the industries in the region and more so comparable industries. The wage scales of the Company and those of other comparable concerns do not show that the wage scales of the Company are much better. Similarly, it is apparent that the Company has fixed the age of retirement of the clerical staff in its Marketing Division, both in Bombay and other places at 58 years. I do not find any valid reason why the concerned workmen should be denied a raise in the age of their retirement at least to the extent of 58 years. I have already observed that the concerned workmen have been granted benefits of retirement by way of provident fund and gratuity under the settlement. It is also to be borne in mind that there are about 1095 workmen in the non-clerical category. They may also raise a dispute about the revision of their retirement age. Here, neither party has placed on the record the extent of additional financial burden consequent upon the grant of the demand in terms it is made. To keep harmony amongst the workmen of the Company employed in its marketing division and refinery, it is proper to raise the age of retirement of the concerned workmen to 58 years, and not to 60 years in terms of the demand. For the aforesaid reasons, the age of retirement of the clerical staff is fixed at 58 years.

28. Unfortunately, very limited material is available on record for arriving at a decision in this case. Before the Tribunal comparative statements regarding the wage scales and other benefits such as gratuity and provident fund and age of retirement were produced by the Company and the first union and the unions relied upon the trend in the Bombay region to fix the age of retirement of employees at 60 years. In this Court Mr. M. K. Ramamurthi, Senior Counsel appearing for the appellants invited this Court's attention to and heavily relied upon some decisions of this Court in which that trend has been noticed. The Tribunal also noticed the decision of this Court in the

Burmah-Shell case [(1970) 1 LLJ 363 : 35 FJR 331 (SC)] in which also reference has been made to the trend as seen from the passage in that judgment extracted earlier. Mr. G. B. Pai, Senior Counsel appearing for the Company admitted before this Court as had been done even before the Tribunal that there is no pension scheme for the clerical employees of the refinery division of the Company with whom we are concerned in this case. He also admitted that there is a pension scheme in regard to clerical employees of the Company's marketing division at Bombay. But he submitted that that scheme is restricted to only employees who had joined service before the date of nationalisation of the oil companies and does not relate to those who joined service after that date. The fact that the pension scheme relating to the marketing division applies to only employees who had joined service in the Company before the date of nationalisation is not disputed by Mr. Ramamurthi. It is true that the Tribunal has not noticed the fact that there is such a pension scheme for some of the Company's employees in the marketing division at Bombay. Mr. Pai drew this Court attention to comparative statements produced by the Company as exhibits 'A' and 'B' with the counter-affidavit filed in the special leave petition in this Court. They are referred to in paras 15 and 17 of that counter-affidavit. No objection was raised by Mr. Ramamurthi to Mr. Pai drawing this Court's attention to those comparative statements. One of those statements shows the salaries of junior and senior clerical employees in all the oil companies (corporations) in this country. It is seen from that statement that there are four oil companies in this country, namely, Hindustan Petroleum Corporation Limited (Caltex), Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited and Bharat Petroleum Corporation Limited. The pay scales of junior clerical employees of the Hindustan Petroleum Corporation Limited are Rs. 890.50 - Rs. 1498.50 in the marketing division and Rs. 995.25 - Rs. 1348.60 in the refinery division. Those scales compare favourably with the pay scales of similar employees in the Hindustan Petroleum Corporation Limited (Caltex) and Indian Oil Corporation Limited. But the pay scales of junior grade clerical employees of the respondent-Company (Bharat Petroleum Corporation Limited) are better in the refinery division with which we are concerned in this appeal than those in the Hindustan Petroleum Corporation Limited, for the pay scales in the respondent-Company are Rs. 924.23 - Rs. 1597.17 in the marketing division as on March 1, 1980 and Rs. 1093.92 - Rs. 1809.96 in the refinery division at Bombay as on April 1, 1980. In the comparative statement there is a note that the grade of Rs. 1093.92 - Rs. 1809.96 is the lowest grade in the clerical cadre as per the subsisting settlement and that individuals have, however, not yet been fitted that grade because of various disputes. There can be no doubt that once the individuals are fitted in that grade they will be entitled to payment according to that scale as from April 1, 1980. So far as senior grade clerical employees are concerned the scales of pay are Rs. 1012.50 - Rs. 1727.50 in the marketing division and Rs. 1359.56 - Rs. 2040.20 in the refinery division of the Hindustan Petroleum Corporation Limited and Rs. 1215 - Rs. 2200 in the marketing division and Rs. 1212 (for those who joined service after August 8, 1978) - Rs. 2126 (for those who joined service prior to August 8, 1978). These scales of pay compare favourably with the scales of pay in the Indian Oil Corporation Limited. But the scales of pay of the respondent-Company are much better as they are Rs. 1171.91 - Rs. 1960.59 in the marketing division as on March 1, 1980 and Rs. 1352.30 - Rs. 2510.46 in the refinery division at Bombay as on April 1, 1980. Thus it is seen that the pay scales of junior grade clerical employees and senior grade clerical employees of the Company in the refinery division at Bombay, namely, Rs. 1093.92 - Rs. 1809.96 as on March 1, 1980 and Rs. 1352.30 - Rs. 2510.46 as on April 1, 1980 compare favourably with the pay scales of junior grade clerical employees and senior grade clerical employees in the marketing division of the Company at Bombay, namely, Rs. 924.23 - Rs. 1597.17 and Rs. 1171.91 - Rs. 1960.59 as on March 1, 1980 respectively. Therefore, the Company's contention before the Tribunal that higher pay scales were fixed for the clerical employees in the retinery division at Bombay in the settlement dated October 31, 1973 in view of their agreement to continue the age of retirement at 55 years is not

without substance as stated by the Tribunal in its judgment. In this Court also Mr. Pai submitted that higher pay scales have been fixed for the clerical employees in the refinery division of the Company at Bombay taking into consideration that there is no pension scheme for them and their agreement to continue the age of retirement as 58 whereas the retirement age for the clerical employees of the marketing division at Bombay for whom there is a pension scheme in regard to those who entered service prior to the date of nationalisation is 58. The learned counsel fairly conceded that it could not be stated with certainty that the difference in the pay scales of the clerical employees in the refinery division and marketing division at Bombay fully takes care of the absence of a pension scheme for the clerical employees of the refinery division. It was not contended by Mr. Ramamurthi that the workload of the clerical employees in the refinery division is greater than that of the clerical employees in the marketing division of the Company at Bombay. Therefore, in considering the absence of a pension scheme for the clerical employees of the Company in the refinery division one has to take note of the fact that the pay scales of those employees are more advantageous and compare favourably with the pay scales of clerical employees of the Company in the marketing division at Bombay.

29. The trend strongly relied upon by Mr. Ramamurthi has no doubt to be taken into account for fixing the age of retirement of the employees. But according to the decision in Burmah-Shell case [(1970) 1 LLJ 363 : 35 FJR 331 (SC)] referred to above, it is only one of the factors which have to be taken into account in fixing the age of retirement though in that decision it has been stated to be the most important factor. Several other factors are mentioned in this Court's judgment in Guest, Keen, Williams Private Ltd. v. P. J. Sterling [(1960) 1 SCR 348 : AIR 1959 SC 1279 : (1959) 2 LLJ 405] and they are the nature of work assigned to the employees, the wage structure of the employees, the retirement benefit and other amenities available to the employees, the nature of climate where the employees work and the age of superannuation fixed in comparable industries in the region. The employees in this case should have placed the other materials also before the Tribunal for justifying their claim for raising the age of retirement from 55 years to 60 years. They have not placed any of those factors before the Tribunal apart from relying upon the trend mentioned above. The trend must, undoubtedly, be in comparable industries. The employees in this case have not placed any material on record to show that there is any trend in the refinery division of any other oil company in the Bombay region to fix the age of retirement of clerical employees at 60 years. They have relied upon the trend generally and not in any comparable industry. There is no evidence to show that there is any other refinery in the Bombay region than that of the Company. On the other hand, the Company has placed before this Court a comparative statement regarding the age of retirement of clerical employees in all the refineries in this country. That statement produced with the counter-affidavit filed in the special leave petition shows that the age of retirement is 60 years only in the marketing division of the Indian Oil Corporation Limited, that it is 58 years in the refinery division of that Corporation and that in all the other Corporations including the respondent-Company after the age of retirement was raised to 58 years from 55 years by the Tribunal it is 58 years both in the marketing division and the refinery division. Thus, the trend in the refinery divisions of the Corporation throughout the country is to fix the age of retirement of the clerical employees at 58 years. It is not possible to accept the appellants' contention that the age of retirement should have been raised by the Tri__bunal to 60 years on the basis solely of the "trend in the Bombay region". There is nothing in the award of the Tribunal to show that the employees contended before it that the "trend in the Bombay region" heavily relied upon by them, could be general in nature and not in comparable industries in the region. No such argument was advanced even in this Court by Mr. Ramamurthi, on behalf of the appellants. Consequently the Company did not have any opportunity of meeting any such contention that the trend in the region need not be in

comparable industries (not necessarily similar industries) but may be general and is yet binding on the Company. It is significant to note that the clerical employees in the marketing division of the Company at Bomb have till now not raised any demand for raising their age of retirement to 60 years from 58 years. Therefore, on the question of trend also it is seen that the employees concerned have not placed any material on record to hold that in their case the trend should be taken as being towards fixing the age of retirement at 60 years. The Tribunal has taken all factors into consideration including the absence of a pension scheme for the employees in question except the fact that there is a pension scheme for the clerical employees in the marketing division of the Company at Bombay who had joined service prior to the date of nationalisation in raising the age of retirement of the Company's clerical employees in the refinery division at Bombay to 58 years from 55 years at par with the age of retirement of the clerical employees in the Company's marketing division at Bombay. Even under the Tribunal's award challenged in this appeal the employees concerned are better placed than their counterparts in the marketing division who have joined service after the date of nationalisation of oil companies in regard to wage scales. There is no material on record to show the quantum of disadvantage to which the employees in question are subjected by the absence of a pension scheme compared with the section of clerical employees of the Company's marketing division at Bombay who have the benefit of a pension scheme in addition to gratuity and provident fund benefits to which alone the employees concerned in this appeal are entitled as retirement benefits. In these circumstances, there is no satisfactory reason for interfering with the Tribunal's award raising the age of retirement of the clerical employees of the Company's refinery division at Bombay from 55 years to 58 years at par with the age of retirement of the clerical employees of the Company's marketing division at Bombay and declining to raise it to 60 years as demanded by the employees. The appeal accordingly fails and is dismissed but without costs.

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