SUPREME COURT OF INDIA

HMT Ltd.

Vs.

P. Subbarayudu

C.A. Nos. 6121-6158 of 2003

(K. G. Balakrishnan and B. N. Srikrishna JJ.)

07.08.2003

JUDGEMENT

B.N.Srikrishna, J.

1. Leave granted.

2. These appeals arise out of different writ appeals disposed of by the Andhra Pradesh High Court as well as the High Court of Karnataka. It is not necessary to refer to the facts in individual cases since the broad features of all cases are similar and the question of law urged is identical.

3. The appellant in all these cases is Hindustan Machines Tools Ltd., a Public Sector Undertaking under the control of the Department of Public Enterprises. On or about 5-10-1988 the Department of Public Enterprises (hereinafter referred to as DPE) issued an office memorandum giving guidelines to Public Sector Enterprises in the matter of introduction of voluntary retirement schemes. On 31st of March, 1989, the appellant-company introduced a voluntary retirement scheme by different office orders in its establishments. On or about 20th of October, 1992 a second voluntary retirement scheme which slightly extended the benefits, was introduced. A large number of employees - both officers and workmen - took advantage of the voluntary retirement schemes.

4. The conditions of service of the employees of the appellant are governed by collective agreements between the management of the appellant and recognised Unions representing the officers and the workmen. Although, the previous agreement had expired on 31st December, 1991, and a fresh Charter of Demands was submitted by the Unions for negotiations, the management of the appellant was unable to carry on negotiations for revision of wages and other conditions of service on account of guidelines issued by the Government of India sometime in October, 1991 prohibiting re-negotiations of terms of the employment. The prohibition continued till or about June, 1993 after which the embargo on re-negotiations of the conditions of service was lifted. Negotiations started thereafter between the management of the appellant and the trade unions. In the meanwhile, the

management had granted a one time ad-hoc recoverable advance in April, 1994 to all the employees with a clear understanding that the said advance was liable to be adjusted against the dues arising as a consequence of the final wage settlement or in the alternative that it would be recovered from current earnings.

5. While the negotiations were being carried on with regard to the charter of demands, the stand of the management was that its financial position had considerably deteriorated and that there were huge accumulated losses. A settlement was arrived at against this background of persistent losses.

6. The collective bargaining between the parties resulted in as settlement dated 23-4-1995 which substantially revised the wages and other conditions of service. Though the settlement is dated 23-4-1995, it was actually brought into effect in different units by different office orders during May to October, 1995.

7. Clause 10 of the settlement provides that the settlement would be operative for a period of five years from 1-1-1992 to 31-12-1996. Clause 12 reads as under :

> "Clause 12.1 - The recovery of the ad-hoc recoverable advance paid to the WG cadre workmen under Office Order No. 01/94 dated 7th April, 1994 will be made as and when the payment of arrears, if any which will be decided as per Clause 13.1 of this settlement.
>
> 12.2 - any other recovery arising out of this settlement will also be made/adjusted as and when the payment of arrears, if any, which will be decided as per Clause 13.1 of this settlement."

8. With regard to the question of payment of the arrears under the settlement, Clause 13 of the settlement provides as under:

> "Clause 13 - The arrears from 1-1-1992 to 31-3-1995 as well as the fringe benefits and amenities will be discussed based on the periodical review of the improvement in the financial performance of the company."

9. While Clause 13 deals with adjustment of arrears payable to the employees who were in service, Clause 15 deals with employees who had ceased to be in service of the company due to superannuation, voluntary retirement or death during the period from 1-1-1992 to the date of signing the settlement. Clause 15 provides as under:

> "Clause 15.1 - The workmen who ceased to be the employees of the company due to superannuation, by availing VRS/voluntary retirement on death during the period from 1-1-1992 to the date of signing this settlement are eligible for arrears on a pro-rate basis, subject to clause 13.1 of this settlement. Thus, separations on after 1-1-1992 due to dismissal, discharge and resignation will be executed.

15.2 - Workmen who had opted for VRS will only be eligible for arrears subject to Clause 13.1 above and not revision of VR compensation already paid to them.

15.3 - The unions agree not to reopen any of the matters or raise any fresh demands which would involve additional financial burden on the company, other than those mentioned in Clause 13.1 above, during the currency of this settlement."

10. The employees who were no longer in service as on the date of signing/implementation of the settlement demanded that the benefit of retrospective implementation of the revised conditions of service from 1-1-1992 should be made available to them as in the case of employees in service. Since this demand was not acceded to, several such employees moved writ petitions before the Andhra Pradesh High Court and the Karnataka High Court. It is not necessary to refer to details of various litigations between the parties on the subject as the judgments of the different learned Judges following each other took the view that the petitioners were entitled to immediate disbursement of the arrears arising on account of retrospective effect given to the settlement.

11. The appellant-company did not dispute its liability to make payment of arrears under the settlement, not only to the employees in service, but also to the employees who had ceased to be in service, for the period from 1-1-1992 till the date they were in employment. The only contention urged to oppose the claim was that under Clause 13 of the settlement the question of arrears for the period from 1-1-1992 to 31-3-1995 could only be based on 'the periodical review of the improvement in the financial performance of the company', which, according to the appellant, had not improved at all. The appellant urged that from the financial year 1992-93 to the dates on which the writ petitions were filed not only had there been no improvement in the financial performance but that its financial performance had deteriorated. The High Courts of Andhra Pradesh and Karnataka were not impressed by this contention and directed disbursement of the arrears. We may also mention here that two such cases of individual employees where payments of arrears were directed, were brought before this Court vide Special Leave Petition (C) Nos. 18556 and 18765 of 2000 and were summarily dismissed by this Court on 24-11-2000 with the observation : "The SLPs are dismissed".

12. In view of the fact that two special leave petitions were summarily dismissed, the respondents contended that all the present special leave petitions should also be dismissed. We are unable to accept this contention. We are not inclined to read the summary dismissal of the said special leave petitions as deciding any principle or question of law but merely as indicative of the disinclination of this Court to entertain the special leave petitions in two individual cases.

13. Shri Rao, learned counsel for the appellant, urged that, although the appellant does not dispute its liability to disburse the arrears under the terms of the settlement dated 23rd April, 1995, the appellant seriously disputes its liability to pay such arrears at the present juncture. He contends that the timing of disbursement has been left to the discretion of the appellant-management by reason of Clause 13. As to whether there has been "improvement in the financial performance of the company" is to be determined by "periodical review"; after

carrying out this periodical review, the management was satisfied that there was no requisite improvement in the financial performance. Hence, the appellant took the view that for the disbursement of the arrears for the period from 1-1-1992 to the employees who were not in service, the time had not yet arrived.

14. Learned counsel on both sides have taken us through the performance highlights of the company over the financial years 1991-92 to 2000-01. We notice therefrom that from the financial year 1998-99 the financial performance of the company has shown steady improvement. The financial figures show net loss of Rs. 3657 lakhs during the year 1998-99 and net earnings Rs. 2441 lakhs during the year 2000-01. The net worth of the company rose from Rs. 2410 lakhs to Rs. 5414 lakhs during the same period. Learned counsel for the appellant company, however, attempted to focus our attention on the figures of the accumulated losses which are Rs. 139.60 lakhs in 1998-99, Rs. 436.51 lakhs in 1999-2000 and Rs. 379-99 lakhs in 2000-01. Even here, the figures show that the company was able to bring down the accumulated losses substantially in the last of the year referred to. We were also shown the figures for the year 20-01-02. The net earnings of this year were Rs. 1024 lakhs and the accumulated losses as on 31st March, 2002 were Rs. 368 crores. We are informed that as on 31st March, 2003 the accumulated losses would be about 403.33 crores.

15. On the basis of these figures it was submitted that the time was not yet ripe to meet the liability towards disbursement of arrears under the settlement. In our view, the contention is unsound. Clause 13 does not say that the disbursement of arrears would be made only after all accumulated losses are completely wiped out. It merely says that it would be done on periodical review of the improvement in the financial performance. In our view, therefore, the appellant was not justified in taking the rigid stand of refusing to disburse any of the arrears on the ground that accumulated losses persisted. This was obviously an unreasonable stand and the High Courts were justified in exercising their writ jurisdiction in directing the appellant to make the disbursements. However, we are not satisfied that the High Courts were justified in directing full disbursement of arrears at one go. We are conscious of the fact that there has been improvement in the financial performance, yet at the same time, we are also not satisfied. that the financial performance had improved to such extent that the entire liability needs to by discharged at one go. In our view, it would be necessary to give some more breathing time to the appellant to ensure that the trend of financial improvement does not get reversed.

16. In the result, we allow the appeals partly and modify the judgments of the Karnataka and Andhra Pradesh High Court as under:

> "(A) It is held that there is some improvement in the financial performance of the appellant company subsequent to the settlement dated 23-4-1995 and its implementation.
>
> (B) It is held that the appellant's obligation to discharge the liability towards arrears under Clause 13 of the said settlement has partly arisen.

(C) It is directed that the appellant shall disburse 55% of the arrears payable during the period from 1-1-1992 to 31-3-1995 to all eligible employees, to the extent of their eligibility, within three months from today.

(D) The balance amount of the arrears payable as aforesaid shall be computed and disbursed to all eligible employees in three equal annual instalments on or before 31st of March, 2005, 31st of March, 2006 and 31st of March, 2007 respectively."

17. The appeals are accordingly disposed of with no order as to costs.

Order accordingly.