

(1997) 03 SC CK 0073

In the Supreme Court Of India

Case No : C.A. No's. 2137 of 1997 (Arising out S.L.P. (C) No. 20036 of 1996)
with C.A. No's. 2138-2140 of 1997 (Arising out of SLP (C) No's.
20306-20307/96 and 20686 of 1996)

E.I.D. Parry (India) Ltd.

APPELLANT

Vs

The Presiding Officer, Second Additional Labour Court,
Madras and Others

RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 33C(2)

Citation : (1997) 4 JT 118 : (1997) 2 LLJ 156 : (1997) 3 SCALE 203

Hon'ble Judges : A. M. Ahmadii, C.J;Sujata V. Manohar, J;K. Venkataswami, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. The appellant in these appeals, E.I.D. Parry (India) Ltd., owns factories and commercial establishments. One of its factories is at Ranipet. Parry and Company Ltd., a subsidiary of the appellant-company has only commercial establishments. These appeals arise from claims made by various categories of employees of the appellant before the Labour Court u/s 33C(2) of the Industrial Disputes Act, 1947 seeking to recover, inter alia, a retirement allowance and an annual review of this retirement allowance in terms of General Office Order No. 26 dated 1.12.1943 and the settlements of 1956. The orders of the Labour Court in one set of applications were challenged before the Madras High Court in various writ petitions from which appeals were filed before the Division Bench of the High Court. The Division Bench by its judgment and order dated 25.6.1994 held that in the case of workers in the Ranipet factory, those workers who had availed of any of the Voluntary Retirement Schemes framed by the appellant were not entitled to a retirement allowance. On the interpretation of G.O.O. No. 26 the Division Bench further said that an annual review of retirement allowance was a

matter of discretion for the management. It also held that in respect of those workers who had completed 20 years of service but had not completed 30 years of service at the date of superannuation, the payment of retirement allowance was a matter of discretion for the Board of Management under G.O.O. No. 26.

3. In another set of applications filed by the workers in the commercial establishment u/s 33C(2) of the Industrial Disputes Act, the orders given by the Labour Court were challenged in writ petitions from which appeals were filed before the Division Bench of the Madras High Court. These came up for hearing before a Division Bench different from the one which had heard the earlier writ appeals. The Division Bench by its judgment and order dated 17.8.1994 held that the employees in the commercial establishment retiring on superannuation after completing 30 years of service were entitled to a retirement allowance. It, however, held that employees who had retired under any of the Voluntary Retirement Schemes were not entitled to a retirement allowance. In respect of the right to a retirement allowance of those employees who had completed 20 years of service or more on the date of superannuation but had not completed 30 years of service it deferred from the view taken by the earlier Division Bench and referred the matter to a Full Bench.

4. In respect of the Division Bench judgment of 25.6.1994, special leave petitions were filed before this Court in which ultimately, by an order dated 13th of September, 1995, this Court directed all the disputes in both the impugned judgments of the Division Bench to be decided by a Full Bench of the Madras High Court. The Full Bench of the Madras High Court accordingly considered and decided these issues by its judgment and order dated 5th of August, 1996. The Full Bench held that every kind of severance of service, whether it was by way of superannuation or voluntary retirement or retrenchment or resignation or removal or dismissal from service or compulsory retirement, would amount to retirement entitling the workman to a retirement allowance. It, therefore, held that even those workers who had retired under any of the Voluntary Retirement Schemes would be entitled to a retirement allowance. The 3 workers who had completed 20 years of service on the date of retirement but had not completed 30 years of service would also be entitled to a retirement allowance. The workers were also entitled to an annual review of their retiring allowance. The present appeals which are filed before us are from this judgment and order of the Full Bench of the Madras High Court.

5. The respondents in appeal arising from SLP (C) No. 20686/96 are 85 former employees of the appellant at Ranipet factory. Some of them have retired on superannuation after 30 years' service, some have retired on superannuation after more than 20 but less than 30 years' service, while others have taken voluntary retirement after 30 years' or less than 30 but more than 20 years' service. Their claims were the subject matter of the Division Bench judgment dated 25.6.1994 in W.A. No. 332/94. Their case has been ably argued before us by their union leader R.C. Paul. Mr. R.K. Jain, learned senior advocate and Mrs.

Ramamurthy made submissions before us on behalf of the respondents in other appeals. In the course of arguments before us we had felt that it would be more beneficial to the workmen if a suitable settlement could be arrived at between the parties. After the completion of arguments the parties requested for time to negotiate for a settlement. Since we were not informed about the outcome of negotiations for a considerable time we were about to place the matter for judgment when the parties filed the joint memorandum dated 11.3.1997 before us signed by advocates for the appellant as well as respondents and by Mr. R.C. Paul. The agreed terms of settlement are annexed to the joint memorandum. We have gone through the terms and they appear to be reasonable and beneficial to the employees.

6. Mrs. Ramamurthy, Ld. advocate for the respondents in all the S.L.Ps. except SLP No. 20686/96 in which Mr. Paul appears has signed the joint memorandum. She, however, points out that some employees of the commercial establishment are not satisfied with these terms. She relied upon the decision of this Court in *General Manager, E.I.D. Parry (India) Ltd. v. Presiding Officer, 2nd Additional Labour Court, Madras and Ors.* (1991 Supp (1) SCC 326 and submitted that benefit given under this judgment to the workers in the Ranipet factory should be extended to the workers of the commercial establishment in identical terms. In the above case, however, this Court expressly limited the application of that judgment only to the workers in the Ranipet factory. It said, (at page 329) "We would like to make it clear that we have gone into the question confined to the claim of the employees of the Ranipet factory and not the liability of the employer generally. Besides, Mr. Narayanaswamy had also told us at the hearing that there are special features in the arrangement in regard to employees elsewhere." In respect of workers in the commercial establishment there are two separate settlements between them and the management dated 7.4.1978 and 17.5.1985. Under both these settlements the claim of the workers in the commercial establishment for a retiring allowance has been rejected. The latter settlement is u/s 12(3) of the Industrial Disputes Act, 1947 before the Special Deputy Commissioner (Labour), Madras. The common understanding between both these parties has been that the workers in the commercial establishment would not get any retiring allowance. Under the proposed settlement, however, the workers of the commercial establishment will be getting substantial benefits based on their claim for retiring allowance computed in accordance with G.O.O. No. 26. The additional terms which are submitted by Mrs. Ramamurthy relate, inter alia, to certain interim payments made to the workers. These payments which are interim, are subject to final adjustment in their very nature. In our view, looking to all the circumstances of the case the claim made by Mrs. Ramamurthy for benefits being granted to the workers of the commercial establishment in addition to the benefits which they would be getting under the negotiated settlement, does not appear to be justified. The terms annexed to the joint memorandum of 11.3.1997 are beneficial to the workmen and are fair and reasonable. It is also desirable that the retired employees who are not covered

by the earlier judgment of this Court in (1991 Supp 1 SCC 326) receive comparable benefits. Mrs. Ramamurthy also stated that she would have no objection to an order being passed by us in terms of the agreed terms annexed to the memorandum.

7. Joint memorandum dated 11.3.1997 is, therefore, taken on record. The terms annexed to the memorandum are reproduced below for the sake of convenience:

1. It is noted that General Office Order No. 26 which is the bone of contention between the parties has been scrapped in so far as the employee who are in service are concerned. Settlements have been entered into for the payment of pension. Further, employees in service are being paid provident fund in accordance with the Payment of Provident Fund and Miscellaneous Act, 1952 and gratuity as per The Payment of Gratuity Act, 1972.

2. All the findings in the impugned judgment of the Full Bench of the Madras High Court dated 5.8.1995 and all Courts below shall stand vacated and shall not operate as a precedent or binding.

3. Having regard to the facts and circumstances of the case and its chequered history, consideration based on equity will meet the ends of justice. In the light of the above, the following directions are issued:

3(A) Claimants who are superannuated or left service under Voluntary Retirement or Early Retirement Schemes or retired on Medical Grounds after the payment of Gratuity Act coming into force and are parties to the present proceeding in these SLPs or claims pending in the Labour Courts at Madras, Vellore, Cuddalore and Guntur and High Court, Madras as on 1.3.1997 will be paid a lumpsum amount equal to the amount of Retiring Allowance computed as per General Officer Order No. 26 with no annual review for the period commencing from three years prior to the date of filing of such claim petitions till 31.12.1996 or from the date of leaving service till 31.12.1996 whichever is less, after deducting therefrom whatever amounts that were paid by way of:

(i) compensation/Ex-gratia paid under Voluntary Retirement/Early Retirement Schemes. Ex-gratia paid as per conditions of service on Retirement is not reckoned,

(ii) Any Retiring Allowance paid,

(iii) Any other payment made pursuant to orders of the Courts. For the purpose of this clause retiring allowance will be calculated on the basis of 10% on the basic wage drawn in the last month of employment and 50% of the average monthly D.A. drawn in the 12 months preceding the date of cessation of employment and the graded bonus as mentioned in the General Office Order No. 26.

However, in respect of claimants eligible as above who were deceased, the lumpsum amount equal to Retiring Allowance as above will be paid up to the date

of death prior to 31.12.1996 and not upto 31.12.1996 and the same will be subject to deductions as above.

Further in the event the amounts paid by the appellant companies in respect of any claimant who is alive is higher than the lumpsum payable as at Para 3(A) the companies shall adjust the amount payable by the claimant either against the lumpsum payable as at Para 3(B) below or adjust against amount as at Para 3(D) below.

3(B) Claimants referred to in Para 3(A) above i.e. those who left under superannuation, voluntary retirement schemes, early retirement schemes, medical retirement after The Payment of Gratuity Act coming into force in the category of Non-covenanted Staff immediately prior to the cessation of employment and who are parties to the present proceeding in these SLPs or to claims pending in the Labour Courts at Madras, Vellore, Cuddalore and Guntur as on 1.3.1997 and who are alive will be paid a one time lumpsum payment at the rate of Rs. 90,000/- for those who are with not less than 20 completed years of service on the date of cessation of employment with an addition of Rs. 2,000/- for every completed years; provided however, the maximum amount shall not exceed Rs. 1,20,000/- for 35 or more completed years of service. As far as the lower grade employees are concerned, the lumpsum amount will be Rs. 60,000/- for not less than 20 completed years of service with an addition of Rs. 2,000/- for every completed year of service over and above 20 completed years; provided however, the maximum amount shall not exceed Rs. 90,000/- for 35 or more completed years of service.

3(C) All other claimants/employees who ceased to be in service for any reason whatsoever except on superannuation, voluntary retirement shall not be entitled to any relief as General Office Order No. 26 did not cover them. Besides employees who have expressly given up their claim for retiring allowance when they opted to leave their employment either under voluntary retirement schemes, separation scheme or on their own through settlements or otherwise specifically agreeing that they would not claim retiring allowance are also not eligible for any relief in terms of this order as General Officer Order No. 26 did not cover them.

3(D) In view of the long pending litigation at various forums and the claimants/employees having to wait without any relief as being provided to the existing employees, and keeping in view the claims made by the respondents for annual review which is not available under General Officer Order No. 26 as a matter of right but at the discretion of the Managements, the appellant companies will disburse a gesture payment as detailed below only to the employees referred to above in Para 3(B) i.e. those who left service under superannuation, voluntary retirement schemes, early retirement schemes, medical retirements after the Payment of Gratuity Act coming into force who are parties to the present proceeding in these SLPs or to claims pending in the Labour Courts as above as on the date of the judgment of the Full Bench of Madras High Court and who are

alive as on 1.3.1997, Age as on 1.1.1997,

3(E) The appellant companies during the proceedings expressed time and again their difficulty to discharge the huge financial commitments if any crystallized on them in disposal of this matter. The appellant companies are advised to make arrangements to pay the amounts referred to in Paras 3(A) and 3(D) above within six weeks and in so far as the payment referred in Para 3(B) requiring huge sums of money payable to the respective persons who are alive as on 1.3.1997, the appellant companies either retain the amount with them or form a trust and pay interest on such amounts not less than the rate of interest payable for Fixed Deposits in the appellant companies as applicable from time to time. Such payment shall however be regulated on a quarterly basis for the period commencing from 1.1.1997. On the death of such claimants only, the lumpsum amount referred to above shall be paid to the nominee of such claimant.

All payments are subject to eligibility and proof of the claimant being alive and the amount due to the claimants will be calculated and paid in terms of the order of this Court within four weeks of each claimant lodging his claim furnishing the proof in support of his claim. In case of deceased claimants the payment will be subject to legal heir producing the necessary documents in support of the claim.

4. The appellant companies have raised the issue regarding amounts deposited in Courts consequent to interim orders passed by the Courts. The Courts are directed to return such deposits to the appellant companies within a month's time to facilitate smooth compliance of the above directions.

5. Save to the extent dealt with above, the right to claim for Retiring Allowance in respect of any employee on the rolls of Non-covenanted staff and Lower Grade, who was in service during the period when General Office Order No. 26 was in operation, is available only to those who have retired on reaching the age of Superannuation and who were retired on the ground of physical incapacity or medical grounds and who have put in the qualifying period of service.

6. Any claim for retiring allowance as per General Office Order No. 26 shall be in accordance with Clause 3(A).

General Office Order No. 26 is no longer binding on the appellants in respect of any employee in any establishment.

7. The order of this Court dated 2.5.91 and the order of the Division Bench of the Madras High Court dated 19.10.78 in W.P. No. 4696/- 75 shall be binding on the respective parties to those proceedings.

8. The above directions shall completely dispose of all the matters of this long drawn litigation on the issue of retiring allowance under General Office Order No. 26 in various forums. Consequent to this order no claim whatsoever from any retiree/employee who has ceased to be in service of the company for retiring allowance under General Office Order No. 26 or any other relief shall lie against the appellant companies in future.

8. We pass an order accordingly in terms of the above terms in all the appeals. The appeals are disposed of accordingly. There will be no order as costs.