

(1994) 06 MAD CK 0016
In the Madras High Court
Case No : W.A. No. 332 of 1994

General Manager, EID Parry (India) Ltd. APPELLANT
Vs
Presiding Officer, Labour Court and Others RESPONDENT

Date of Decision : 25-06-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 1, 141
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1995) 1 LLJ 757 : (1994) WritLR 677

Hon'ble Judges : Srinivasan, J;Abdul Hadi, J

Bench : Division Bench

Advocate : P. Chidambaram and G. Subramanian, for T.S. Gopalan, for the Appellant; V. Selvaraj, for Respondents 2 to 22 and 24 to 86, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the dismissal of the writ petition filed by M/s. E.I.D. Parry (India) Ltd., Ranipet challenging the correctness of the common order passed by the Labour Court, Vellore in the claim petitions filed by respondents 2 to 86 herein u/s 33-C (2) of the Industrial Disputes Act, 1947.
2. The appellant company introduced a Retirement Benefit Scheme for the non-covenanted employees working in its specified units by General Office Order No. 26, which came into force on December 1, 1943 in the Ranipet Unit with which we are concerned. While the first part of the Office Order related to retirement allowance, the second part provided for gratuity to those who were in the service of the company prior to 1947 and who did not qualify for pension. There was a settlement of disputes between the management and workers in 1956 which contained provisions

for gratuity and retiring allowances. The Payment of Gratuity Act came into force on September 16, 1972. The appellant took the stand that

thereafter the employees were not entitled to retirement allowances under G.O.O.No.26. The appellant had introduced Voluntary Retirement

Schemes and Early Retirement Schemes in 1975, 1980 and 1983. Some of the employees opted to retire under those schemes and receive the

benefits whereupon their accounts were fully settled.

3. Some of the retired workers filed claim petitions before the Labour Court, Madras in 1981 claiming pension under G.O.O. No. 26. The

Appellant contested the petitions on the ground that the settlement of disputes in 1956 superseded G.O.O.No.26 and in any event, after the

passing of the Payment of Gratuity Act, the pension schemes ceased to be in force. The labour Court negatived their pleas and passed orders as

prayed for by the workers. With regard to the quantum, the Labour Court said that as the management had not furnished details, it was accepting

the figures furnished by the claimants. The Management filed six writ petitions in this Court to quash the order of the Labour Court.

4. In the meanwhile, the State Government referred to the Industrial Tribunal, Madras the following dispute for adjudication:- ""Whether the

demand for restoration of pension to the staff employees is justified?"". The same was registered as I.D.No. 60 of 1982. The Tribunal accepted the

stand of the Management and answered the reference against the workers. The award of the Tribunal was challenged in a writ petition filed by the

Union representing the employees. All the seven writ petitions were heard by a learned Single Judge of this Court who upheld the contentions of

the Management and negatived the claims of the employees. Appeals were filed by the Union and the employees. By judgment dated November

21, 1988, a Division Bench of this Court allowed the same holding that neither the settlement of 1956 nor the Payment of Gratuity Act had the

effect of abrogating the pension scheme introduced by G.O.O.No.26. Consequently, the order of the learned Single Judge was set aside and the

orders of the Labour Court were restored. In the industrial dispute, the Bench passed an award restoring the pension scheme as it prevailed with

the management prior to September 16, 1972, the date of coming into force of the Payment of Gratuity Act.

5. The Management obtained special leave in the Supreme Court of India and preferred appeals. By judgment dated May 2, 1991, the appeals were dismissed and the judgment of the Division Bench of this Court was confirmed. The Court said, ""We are satisfied that the Appellate Bench of the High Court was right in holding that the entitlement to pension had not been substituted by the settlement of 1956 and, therefore, the claim to pension subject to qualification being satisfied was available to be maintained notwithstanding the settlement of 1956."" Inspired by the words subject to qualification"" in the above passage, the Management refused to recognise the claims of those who had not completed 30 years of service and those who had retired voluntarily under the Voluntary Retirement Schemes or Early Retirement Schemes, known as VRS and ERS respectively. Besides, the Management disputed the claim of the employees for annual review of the pension payable on the basis of Dearness Allowance. The Management issued also a notice u/s 19(6) of the Industrial Disputes Act, 1947 on August 12, 1991 that the award passed by this Court would stand terminated on the expiry of two months of the service of the notice, i.e., on October 11, 1991.

6. That led to the filing of fourteen claim petitions by respondents 2 to 86 herein before the Labour Court, Vellore for payment of specified amount with interest for arrears at 15% per annum. The Management contested the petitions. On a joint request by both the parties, the petitions were heard together and a common order was passed by the Labour Court after evidence was recorded in common. The Management filed W.P.No. 12995 of 1993 against the common order praying for issue of a Writ of Certiorari to quash the said order. The respondents 2 to 86 contested the same. The 23rd respondent appeared in person and argued the matter himself. The other respondents were represented by counsel. The learned single Judge by judgment dated January 20, 1994 dismissed the writ petition holding that a single writ petition was not maintainable against the orders in different claim petitions, the decision of the Supreme Court in the earlier proceedings had concluded the issue of payment of retirement allowance to employees, the documents filed by the Management proved the claims of the workers and the contentions of the Management were barred by the principle of Constructive Res judi-cata. As regards interest claimed by the workers, the learned Judge observed that they were not

entitled to it but dismissed the writ petition in toto thereby confirming the award of interest by the Labour Court.

7. This appeal is filed by the Management against the said judgment. Here again the 23rd respondent appeared in person and argued the matter

while the other employees are represented by counsel.

8. The appellant's counsel has classified the employees into seven groups as follows:-

I. Employees who retired on reaching the age of superannuation and completed 30 years of service and who filed claim petitions in the earlier

proceedings and obtained orders in their favour. Their claim for retiring allowance is not disputed. But, their claim for annual review is questioned:-

Respondents 2,3,5 to 8, 10, 12 to 19, 23, 24, 27,47 to 49, 84 and 86.

II. Employees who retired on reaching the age of superannuation and completed 30 years of -service. They had not filed claim petitions for the first

time in the present proceedings. Their claim for retiring allowance is admitted and is being paid, their claim for annual review is disputed:-

Respondents 9, 11, 20 and 23.

III. Employees who left the service after 30 years and above under Voluntary Retirement Schemes and who filed claim petitions before the Labour

Court in earlier proceedings and obtained orders in their favour. Though they are not entitled to retiring allowance in terms of G.O.O.No.26, the

orders of the Labour Court having been confirmed by the Supreme Court, payment of retiring allowance is continued. However, their claim for

annual review is disputed:-

Respondents 4, 21, 25, 26 and 28.

IV. Employees who left the service under Voluntary Retirement Schemes and who did not file claim petitions, However, by reason; of the interim

order of the Supreme Court, they were being paid retiring allowance for the period May 12, 1989 to May 2, 1991. Payment was stopped from

May 2, 1991. They have now filed claim petitions for retiring allowances for the period subsequent to May 2, 1991. Their claim is disputed. But

the management is not taking any proceedings for recovery of the amounts paid already:-

Respondents 30 to 43, 45, 46, 50, 52 to 62, 64 to 67, 69 to 76,78 to 83 and 85.

V. Employees who left the services under Voluntary Retirement Schemes and who had not filed any petition earlier. Their claims are disputed:-

Respondents 51 and 77.

VI. Employee who left the service after completion of 20 years but before completion of 30 years under Voluntary Retirement Scheme and who

filed a claim petition before the Labour Court earlier and obtained an order which was confirmed by the Supreme Court. Though he is not entitled

to retiring allowance in terms of G.O.O.26, the same is being paid to him in view of the earlier order. This claim for annual review is disputed:-

Respondent No. 29.

VII. Employees who were superannuated and who had put in less than 30 years of service. Retiring Allowance was being paid to them during the

pendency of the case before the Supreme Court. Subsequently, by a resolution of the Board dated June 17, 1991, the payment was stopped.

Their claims are also disputed:-

Respondents 44, 63, 68 and 78.

9. The above classification will itself indicate the contentions raised before us by the Management. According to them, the Supreme Court has

clarified the position in its final order in the Civil Appeals made on May 2, 1991 that retiring allowance is payable only to such employees who are

qualified therefore under the Pension Schemes viz., the General Office Order No. 26. It is the contention of the Management that as per the terms

of the G.O.O.No.26, an employee becomes eligible to receive retiring allowance only if he completes 30 years of service or more. Such

employees who have not completed 30 years of service are not entitled as of right to get retiring allowance. It is in the discretion of the Board of

Management to grant retiring allowance to employees who had completed 20 years of service but superannuated before completing 30 years.

Secondly it is contended that G.O.O.No.26 provides for retiring allowance only for employees who retire on superannuation and not those who

leave the service under Voluntary Retirement Schemes or the Early Retirement Schemes. Thirdly it is argued that the employees cannot claim

annual review of their retiring allowances on the basis of the Dearness Allowance and the annual review is a matter of discretion resting with the

Board of Management. The fourth contention is that though the learned single

Judge has observed that the employees are not entitled to interest, has inadvertently dismissed the entire writ petition, thereby confirming the award of Labour Court for interest also. Yet another contention is that the Labour Court ought not to have entertained petitions u/s 33-C(2) of the Industrial Disputes Act inasmuch as the employees' right to claim retiring allowance is itself in dispute. The last contention is that the Labour Court ought to have considered the eligibility of each claimant to get retiring allowance and was in error in holding that the order of the Supreme Court in the earlier proceedings concluded the issue. As regards the judgment of the learned single judge, the appellant has contended that no argument was advanced on behalf of the respondents as to the maintainability of a single writ petition and the learned Judge was in error in holding that one writ petition was not maintainable. Learned counsel has also submitted that the learned judge has been under mistaken impression that there was documentary evidence before the Labour Court in which the Management had admitted that the workers had the necessary qualifying service for getting pensionary benefits and that in Ex.R-11 the quantum of retiring allowance was admitted. It is argued that the view taken by the learned Judge that the principle of constructive res judicata barred the pleas of the Management is erroneous.

10. Per contra, learned counsel for respondents 2 to 22 and 24 to 86 argued that the Management is precluded by the principle of: constructive res judicata from disputing either the amounts claimed in the claim petition or the entitlement of the employees to annual review of the retiring allowance, or the claims of the employees who retired under Voluntary Retirement Schemes. According to him, G.O.O.No. 26 makes no distinction between employees who retire on superannuation and employees who retire under Voluntary Retirement Schemes or other such Schemes, it is argued that once an employee completes 20 years of service, he would be entitled to pro-rata pension and the matter is not left to the discretion of the Board. The 23rd respondent appearing in person argues that right to pension has been recognised to be a property and consequently right to annual review of the pension is also property. According to him, annual review should be made as a matter of course and was not left to the discretion of the Board. He argues that the Management is liable

to pay interest as it has failed to pay the retiring allowance in spite of the order of the Supreme Court. He also prayed for a direction to the Management to pay the costs.

11. On the above contentions, the following questions arise for consideration:-

1. Whether a single writ petition at the instance of the Management is maintainable in this case?
2. Whether the Management is barred by the principle of constructive res judicata from disputing any of the claims by the employees?
3. Whether persons who had served for 20 years and above but below 30 years at the time of retirement are entitled to retiring allowance?
4. Whether the employees who had retired under Voluntary Retirement Schemes or Early Retirement Schemes are entitled to retiring allowance?
5. Whether the employees are entitled to insist upon annual review of retiring allowance?
6. Whether respondents 2 to 86 are entitled to claim interest on the amounts payable?

12. Question No. 1:- There is a controversy before us whether this question was argued before the learned single Judge. While the appellants

counsel asserts categorically that the contention was not put forward in the course of arguments, counsel for the respondents as well as the 23rd

respondent are equally categorical in submitting that the point was argued. In paragraph 8 of the judgment, the learned counsel for the

respondents/workmen referred to the said contention. No doubt, a ground has been raised in the memorandum of appeal that such a contention

was not urged by the respondents in the course of arguments. But, it is well settled that a statement of fact found in the judgment as to what

happened in that Court has to be accepted by the appellate Court and any party who wants to challenge the correctness of the said statement

should only file a petition for review before the same Judge and get the statement rectified, if it is erroneous. (Vide State of Maharashtra Vs.

Ramdas Shrinivas Nayak and Another,). Hence, we propose to proceed on the footing that the matter was argued before the learned Judge as

stated by him in his judgment.

13. The learned single Judge has relied on the judgment of a Division Bench of this Court in Sellakumar Talkies v. The Board of Revenue 1984

Writ L.R. Supplement 113 in support of his conclusion that one writ petition is not maintainable in the present case. The observation relied , on by

learned Judge is really obiter. On the facts of the case, the Bench found that one writ petition Was maintainable, as the Commissioner for Land

Revenue had consolidated 18 re vision petitions and given only one number to the said proceeding. The Bench said that the ratio laid down in the

case of Chandra Bhan Gosain v. State of Orissa 4 S.T.C. 918 was applicable to the said case and extracted the relevant portion from the

judgment of the Supreme Court. Thereafter, the Bench observed:-

(17). ""The position, however, would be otherwise if the Board had treated all the revisions before it as different proceedings giving them different

numbers and disposing them all by a common order. That would necessitate filing separate writ petitions in the High Court as ordinarily and

generally as many writ petitions as there are orders complained of and sought to be quashed have to be filed. Where the order complained of has

been passed in different cases, the order though one, is really as many orders as there are cases requiring separate writ petitions for challenging

those orders. There are no rules relevant on the point framed by the High Court under Article 226 of the Constitution. Nor the procedural rule

made under Article 226 would have the effect of substantial law, as held by the Supreme Court in the case o Prabhu Narayan Vs. A.K.

Srivastava, . All that we find is that a fee of Rs.100/- has to be paid for each writ petition under Schedule II of Article 11 A of the Tamil Nadu

Court Fees and Suits Valuation Act, 1955, other than a writ or habeas corpus or a petition under Article 227 of the Constitution. The Court may ,

therefore, insist that where there are a number of cases disposed of by a common order, there should be as many writ petitions registered as there

are cases in which a common order was passed. This is a self-imposed limitation adopted by the Court in exercise of its own power under Article

226 and does not flow from the ambit of power under Article 226 of the Constitution.

14. The observation made in the above passage was wholly unnecessary for the disposal of that case. We are unable to accept that whenever

different numbers are given in the proceedings before a Tribunal or a lower Court, there should be different writ petitions challenging the orders in

those proceedings. As pointed out in the above passage itself, there is no limitation imposed or procedure indicated under Article 226 of the

constitution. The Rules framed by the High Court under Article 225 of the Constitution do not contain any provision applicable to the present case.

Neither Rule 2-A nor Rule 2-B will come into play. The question has to be decided only on first principle. Under the Code of Civil Procedure,

appeals are against the decrees. Hence, there must be an appeal against each decree because there will be a separate decree in each suit.

Therefore, even if there is one common judgment in several suits, an appeal has to be filed against each decree separately. But, in the case of a

petition for issue of a writ of Certiorari, the procedure prescribed in the CPC is not applicable. (See Explanation to Section 141 C.P.C.). If the

common award of the Labour Court is quashed, the orders in favour of the claimants get nullified. If all the claimants are made parties to the writ

petition, the requirement of law is satisfied. The matter considered in the order is common to all the employees. In fact, by consent of both parties,

the petitions were all heard together and evidence was recorded in common. The Labour Court has not gone into the individual claims of each

employee. In the absence of any express rule insisting on a separate writ petition against each claim petition, one writ petition will suffice.

15. We are aware that a Division Bench of this Court has in *Management of Rain Bow Dyeing Factory Salem and Others Vs. Industrial Tribunal*,

High Court Buildings, Madras and *Another*, considered the question whether several establishments could join together and file one writ petition to

challenge a common award passed by the Industrial Tribunal and held that the interests of the establishments in that case was several and distinct

though similar and, therefore, each one of them must file a separate writ of Certiorari and pay Court-fee. The ruling in that case will not apply here.

However, we must point out that when the decision was rendered by the Division Bench in that case, Rules 2-A and 2-B were not in existence.

Those two Rules were framed by the High Court only in 1979. Rule 2-B enables the Court to permit several persons to join in a single petition

having regard to the nature of their grievance, the source of the right which they seek to enforce, the nature of the cause of action alleged and the

nature of the relief prayed for.

16. It is also brought to our notice by learned senior counsel for the appellant that in view of the judgment of the learned single Judge treating the present writ petition as one against C.P. 18. of 1992, the appellant has now presented 13 more writ petitions against the other claim petitions and they have not yet been numbered by the Registry. We hold in the facts and circumstances of the case, the single writ petition filed by the appellant is maintainable against the common order of the Labour Court.

17. Question No. 2:- There is no dispute that principles of res judicata would apply in Industrial proceedings. In *Burn and Co., Calcutta Vs. Their Employees*, the Court held that p. 230 S.11 P.C. was not in terms applicable, but the principle underlying it, expressed in the maxim "" interest republicae ut sit finis litium"" is founded on sound public policy and is of universal application. In *The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others*, , the Court said that in order to decide whether a decision in an earlier litigation operates as resjudicata, the court must look at the nature of the litigation, what were the issue raised therein and what was actually decided in it. In *Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*, the Court held that the principles of resjudicata laid down in Section 11. P.C. would apply to industrial adjudication; but whether a matter in dispute in a subsequent case had earlier been directly and substantially in issue between the same parties and the same had been heard and finally decided by the Tribunal will be of pertinent consideration and will have to be determined before holding in a particular case that the principles of resjudicata are attracted.

18. In *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, the principle of constructive resjudicata is also held to apply. Reliance is placed on the following passage by learned counsel for the respondents:

The rule of constructive res judicata is engrafted in Explanation IV of Section 11 of the CPC and in many other situations also principles not only of direct res judicata but of constructive res judicata are also applied. If by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as resjudicata and bars the trial of an identical issue in a subsequent proceeding between the same parties.

The principle of res judicata also comes into play when by the judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication; then also the principle of res judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding, but was not so made then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided".

But, in the same judgment, the Court has administered a note of caution in the following terms :-

But the technical rule of res judicata, although a wholesome rule based upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceeding merely on an uncertain assumption that the issues must have been decided . It is not safe to extend the principle of res judicata to such an extent so as to found it on mere guess work.

19. Learned counsel for the appellant does not dispute the position that the management will be barred by the principle of res judicata from

disputing the claim for retiring allowance made by the persons who had earlier filed claim petitions and obtained orders from the Labour Court,

which were confirmed by the Supreme Court. The persons mentioned in Groups I, III and VI as set out earlier in paragraph 8 belong to that

category. The Management is not disputing their claim for retiring allowance and they are making payments on the basis of orders passed by the

Labour Court earlier. But learned counsel for the appellant submits that the only question raised and decided in the earlier proceedings were

whether the G.O.O.No. 26 was abrogated by the settlement of 1956 and Payment of Gratuity Act, 1972. The contentions of the Management in

that regard were negatived and it was found that the G.O.O. continued to be operative. It was only on that basis an award was passed in I.D. No.

60 of 1982 pursuant to the judgment of the Division Bench in the Writ Appeals. The award was only to the effect that the pension schemes

prevalent with the Management prior to September 16, 1972 was restored. No other question was raised in the industrial dispute. Nor could it

have been raised in that case. The Reference by the Government was only to

adjudicate whether the demand for restoration of the pension to the staff employees was justified. There was no question of the Industrial Tribunal or this Court in the Writ Petition or the Writ Appeals considering any other issue regarding the workers in general. The other claim petitions which were filed before the Labour Court were only on behalf of those individuals and not on behalf of all the workers. The only matter in which the Union represented the workers was the reference to the Industrial Tribunal. In that case only one matter was referred to adjudication. The orders passed in the claim petitions in favour of individual employees have admittedly become final and they are not sought to be reopened by the Management in this case. It is also stated by learned counsel for the Management that the amounts awarded by the Labour Court as confirmed by the Supreme Court are being paid to those claimants continuously.

20. A perusal of the judgment of the Division Bench in the writ appeals as well as the judgment of the Supreme Court shows that the only issues raised and considered were whether the pension scheme framed in G.O.O. No. 26 remained unaffected by the settlement of 1956 and the Payment of Gratuity Act, 1972. While answering the questions against the Management, the Supreme Court said that the claim to pension was available subject to qualification being satisfied. The position would have been the same even if the Supreme Court had not said it expressly. What all the Division Bench of this Court did was to restore the Pension Scheme which was prevalent before September 16, 1972. If under that scheme only certain specified classes of persons are entitled to pension none else can claim the benefit thereunder. The High Court could not and did not modify the G.O.O. No. 26 in any manner. Hence, the question will undoubtedly arise as and when a claim is made whether the claimant qualified to get pension under G.O.O.No.26. The authority before whom such claim is made is bound to decide that question. The said question was not decided in the earlier proceedings. The question depends upon the terms of G.O.O. No. 26. Unfortunately, in this case, the Labour Court as well as the learned single Judge have taken the view that nothing remained to be considered after the judgment of the Supreme Court in the Civil Appeals and that any person who claims retiring allowance is automatically entitled thereto irrespective of whether he satisfies the conditions of

eligibility prescribed in the said order. As rightly pointed out by learned counsel for the appellant, the learned single Judge has erroneously held that

the management has admitted the claims of the employees in Ex. R. 11 Series and other documents and there was no necessity for the Labour

Court to consider the question of quantum. It is quite obvious that Ex. R. 11 Series contained only calculations of the amounts which will be

payable to the employees if their claims are upheld by the Labour Court. Such calculation sheets will not erase the counter statements filed by the

management; nor would they deprive the management of its right to contest the proceedings. As a matter of fact, the order of the Labour Court

itself shows that the management was fighting tooth and nail against the claims.

21. Reliance is placed by the respondents on the directions given by the Supreme Court in the interlocutory applications for payment of retiring

allowance as per the order of the High Court. It is submitted that by order dated May 5, 1989 the Supreme Court directed the management to pay

pension to the employees in accordance with the order of the High Court with effect from May 1, 1989 and observed that the payment will be

subject to the final orders passed in the petition, By another order dated September 22, 1989 the Supreme Court directed payment of pension to

another set of employees comprising 58 persons, to whom the Management failed to pay under the earlier order. According to the respondents,

the final order passed in the appeals was one of dismissal and affirmation of the judgment of the High Court with the result the fight of the

employees for such payments was upheld. Learned counsel for the appellant has rightly pointed out that in the final order of the Supreme Court it

has been clearly stated that claim to pension was subject to qualification being satisfied and the directions given in the interlocutory applications

would not have the effect of upholding the claims of those persons irrespective of their qualifications. Learned counsel has also invited our attention

to the petition for clarification and directions filed by the employees in the Supreme Court and the dismissal thereof. In that petition, the employees

had prayed for a direction to pay retiral allowance on the basis of average rate of dearness allowance paid during the preceding 12 months i.e.

prior to May 1989. That application was opposed by the Management and on September 22, 1989 the Court passed an order in which that

prayer was not granted. Our attention is also drawn to the applications for review filed by the employees after the final judgment of the Supreme

Court. The prayer was for a direction to pay full pension to all the retiring employees who had served above 20 years but less than 30 years. That

application was dismissed as withdrawn on April 23, 1992. The employees also filed an application for punishing the Management for contempt. In

that application also they prayed for direction to pay arrears to all employees detailed in the Annexure thereto. The Supreme Court dismissed the

application expressing disinclination to exercise the jurisdiction, as the applicants had already moved the Labour Court u/s 33C of the Industrial

Disputes Act (present proceedings), and those matters were at an advanced stage. It is, therefore, submitted by learned counsel for the appellant

that the Supreme Court never decided either the question of eligibility to pension of the employees who had served for more than 20 years but less

than 30 years or the right of the employees to have an annual review on the basis of Dearness Allowance in the preceding year. In the

circumstances, we accept the contention of the appellant and hold that the principle of constructive res judicata will not apply in this case, and the

Management is not precluded from challenging the claims of persons who are not entitled to retiring allowance as per the terms of G.O.O. No. 26.

22. Question No. 3:- Now we shall consider the contents of G.O.O. No. 26 to decide whether persons who had served for 20 years and above

but below 30 years would be entitled to retiring allowance as a matter of right. Clause I of the G.O.O. reads ""Normally only employees with 30

years service or more are eligible to receive a Retiring Allowance"". There is no ambiguity in the clause. It is very specific and categorical. Clause 4 is

a sort of exception to Clause 1. It reads as follows:-

The Board may also grant proportionate Retiring Allowance to those retired on reaching the age of superannuation, that is to say on completing

the age of 55 or those who have to retire on account of reasons beyond their control, and have completed more than 20 years service, e.g. an

employee retiring after 25 years service would be granted a Retiring Allowance calculated at 25/30th of the amount arrived at as per para 2

supra.

This clause expressly gives a discretion to the Board to grant proportionate

retiring allowance even to employees who have not completed 30 years of service. Reading clauses 1 and 4 together, there can be no doubt that clause 4 does not confer any right as such on persons who have not completed 30 years of service. It is for the Board to decide whether persons who had served for more than 20 years but less than 30 years would be entitled to retiring allowance and if they decide to grant the same, they shall do so on pro rata basis. Clause 4 does not compel the Management to grant retiring allowance to persons mentioned therein. Just because the management was paying pension to such employees during the pendency of the proceedings in the Supreme Court pursuant to interim orders passed by that Court, it does not mean that they have acquired a right to such payment. The Management was, therefore, perfectly justified in passing the resolution on June 17, 1991 after the judgment of the Supreme Court negating the claim of respondents 44,63, 68 and 78 who fall within Group No. VII. Those four employees had not filed any claim petition in the earlier proceeding and there was no order in their favour as such. Hence, they cannot rely upon the principle of res judicata or finality of orders.

We uphold that contention of the Management that payment of retiring allowance to persons who have not completed 30 years of service at the time of retirement is left to the discretion of the Board and it is not a matter of right of the employees.

23. Question No. 4:- The contention of the appellant is that G.O.O. No. 26 is applicable only to employees who retire on superannuation and not to those who retire under Voluntary Retirement Schemes or Early Retirement Schemes. A reading of clauses 1 and 4 of the G.O.O. supports the said contention. At the time when the G.O.O. was passed, there was no scheme for voluntary retirement or early retirement. The said schemes were introduced only from 1975 onwards. As we have stated already, the Management was taking a definite stand on the passing of the Payment of Gratuity Act, 1972 that G.O.O. No. 26 ceased to be enforceable. In fact, the Management and the employees filed a joint petition before the Government u/s 5 of the Act for exemption from the provisions of the Act. That was done on the basis that the employees who get gratuity under the provisions of the Act would not be entitled to the retiring allowance under G.O.O. No. 26. The employees accepted the position at that time"

that the benefits under G.O.O. No. 26 were more than the gratuity payable under the said Act. But, the Government refused to grant exemption

with the result, the Management was paying the gratuity as per the Act. The claim petitions were filed only in 1981 and 1982. Before that, the

Voluntary Retirement Schemes and Early Retirement Schemes were introduced. It is stated in the Scheme framed in 1975 that the enormous

growth in the wage bill of the Group and the apparent need of effective utilisation of manpower and the growing constraints on the Company for

various reasons beyond its control, a necessity arose to reorganise the Company's operations with a view to economise in all sectors. With that

object, the scheme was introduced so that the position could be resolved in an amicable manner with minimum hardship to the employees in the

long term interests of both the Company and the employees. The Scheme covered the employees in four Groups with reference to their age: (I) 50

to 52 years, (II) 53 to 56 years, (III) 56 to 57 years and (IV) above 57 years. It should be mentioned at this stage that when G.O.O. No. 26 was

passed, the age of superannuation was 55 as mentioned in Clause 4 thereof. By the time the Voluntary Retirement Scheme came into force, the

age of superannuation was 58. Clause 5 of the Scheme provided for payment of one month's wages in lieu of notice, ex gratia payment and

souvenirs on service eligibility as per rules applicable to retirement on normal superannuation and gratuity as per rules to those opted for voluntary

retirement. Clause 6 provided for an additional voluntary retirement compensation at the rates specified therein. Clauses 5 and 6 of the Scheme

show that all the benefits that will enure to the employee opting for voluntary retirement were mentioned therein. There was no reference whatever

to the employee being entitled to any other payment. If it was the intention of the parties to pay the retiring allowance to such employees also, it

would have been mentioned expressly in the Scheme. While reference is made to ex gratia payment and souvenirs on service eligibility as per rules

applicable to retirement on normal superannuation, there was no mention of retiring allowance. Clause 9 reads that the Scheme was completely

devoid of any element of compulsion and the employee was completely free to opt for retirement on his own will and desire. Clause 11 provided

that the employee may withdraw the application for retirement without assigning any reason. Another Scheme was brought into force with the title

Early Retirement Scheme"" on August 20, 1980. The grouping in that Scheme was as follows:-

- A. 40 to 50 years,
- B. 51 to 52 years,
- C. 53 to 54 years,
- D. 55 to 56 years.

That Scheme provided for payment of monthly allowance by way of additional compensation instead of lumpsum payment. Under (hat scheme

also the option was only with the employee and there was no compulsion, there were similar other schemes in 1983. It is not necessary for us to

refer to the contents thereof. A perusal of all the above schemes leaves no doubt that the employees choosing to retire under those schemes cannot

be treated on par with employees retiring on superannuation. Such employees are entitled to claim only the benefits mentioned in the scheme. They

cannot, of their own, add to the terms of the schemes. The option was entirely with them and if they had found that the terms thereof were not

beneficial, they would not have opted for voluntary retirement or early retirement. Having chosen to retire under (tie schemes, it is not open to them

to make a claim for the benefits given to those who retired on superannuation.

24. It should not be forgotten that though the expression ""retirement"" is used in the schemes, it is as good as resignation. If an employee resigns his

job, he would not be entitled to the benefits mentioned (herein. It is only to distinguish the persons who exercise their options under the Schemes

from those who resign their jobs, the expression "Vetirement"" has been used. It should also be noted that besides getting a lumpsum payment or

monthly allowance by way of additional compensation, such employees were not prevented from getting employed elsewhere. Hence, there is no

substance in the contention of the respondents that what they got under the retirement schemes was much less than what they would have got

under G.O.O. No. 26. Hence, we hold that persons who retired voluntarily of their own free will and accord under the Voluntary Retirement

Schemes or Early Retirement Schemes are not entitled to get the benefits under G.O.O. No. 26.

25. Question No. 5:- It is vehemently argued by the 23rd respondent that the retiring allowance is subject to annual review and that the employees

can, as a matter of right, claim such review on the basis of Dearness Allowance. Clauses 5 and 6 of G.O.O. No. 26 read thus:-

(5.) All Retiring Allowances must receive the formal sanction of the Board when first granted, and thereafter they will be subject to an annual review.

(6.) For purposes of the annual review, the average rate of Dearness Allowance paid during the preceding twelve months and applicable to the grade of each retired employee will be taken into consideration, and the necessary upward or downward adjustment will be made accordingly.

The contention is that right to pension has been held to be property by the Supreme Court. Consequently, annual review is also a right to property.

The Management has no right to deprive the employees of the same. The Management has no say in the matter and the annual review is an

automatic right and the quantum has to be fixed regularly every year on the basis of the increase or decrease in dearness allowance. Our attention

is drawn to the judgment of the Supreme Court in *Deokinandan Prasad Vs. The State of Bihar and Others*, . The Court held that the right to

receive pension was property under Article 31(1) of the Constitution and the State had no power to withhold the same by mere executive order. It

was also to be a property under Article 19(1)(f) of the Constitution. Reliance was also placed on *D.S. Nakara and Others Vs. Union of India*

(*UOI*), It is held that pension was not only compensation for loyal service rendered in the past, but it has a broader significance, in that it is a

measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to

ebbing process and therefore, one is required to fall back on savings. It was stated :-

The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and

accordingly it should receive a liberal construction and the Courts may not so interpret such statutes as to render them inane (see *American*

Jurisprudence 2d. 831).

26. The Court had, however, expressly said in that case that the enquiry therein was limited to non-contributory superannuation or retirement

pension paid by Government to its erstwhile employee and the purpose and the

object underlying it. Hence, the rulings in Deokinandan Prasad (supra) or D.S. Nakara (supra) will not apply to the present case, which relates to a private management. The position of a State which has framed Rules governing its employees is different from a private management governed by standing orders or such similar orders. The Court has only to look into the terms of G.O.O. No. 26 and cannot go outside. Reference was made to the following observation of the Supreme Court in Bharat

Petroleum (Erstwhile Burmah Shell) Management Staff Pensioners Vs. Bharat Petroleum Corporation Ltd. and Others, :-

(5.) Judicial notice can be taken of the fact that rupee has lost its value to a considerable extent. Pension is no longer considered as a bounty and it has been held to be property. In a welfare State as ours, rise in the pension of the retired personnel who are otherwise entitled to it is accepted by the State and the State has taken the liability. If the similarly situated sister concern like Hindustan Petroleum Corporation can admit appropriate rise in the pension, we see no justification as to why the respondent-company should not do so.

Even the passage indicates that the principle is made applicable only to Government Companies and it is also seen that the relief is granted because another Government Company, which is a sister concern has given and granted the benefit. The ruling will not apply to the facts of this case.

27. Our attention was drawn to Committee for Protection of Rights of ONGC Employees and others Vs. Oil and Natural Gas Commission,

Dehradun and another, . The question was whether the Scheme of Contributory Provident Fund by way of retiral benefit envisaged by the

Provident Fund Act did not deny the benefit of old age pension to an employee on the application of the Provident Fund Scheme. The decision has no relevance in the present case.

28. Turning to the terms of G.O.O.No. 26, they have to be interpreted by reading all the clauses together. Clause 2(d) provides that one half of the

average monthly dearness allowance drawn during the twelve months preceding retirement. Clause 3 reserves to the Board the right to alter the

scale of retiring allowances, either generally or in respect of individuals, in the light of circumstances that may exist at any particular time. When the

Board has got a right to alter the scales, it cannot be said that the Board is

bound to make an annual review of the retiring allowance on the basis of the Dearness Allowance. It cannot also be contended that under Clause 6, a retired employee will be automatically entitled to one half of the Dearness Allowance payable to the Grade during the preceding year as claimed now.

29. It is not in dispute that the retiring allowance was reviewed only once in 1981 in this establishment and at that time the amount was increased

by 50% thereof without any reference to the Dearness Allowance. That is, if the amount was Rs. 115.50, it was increased to Rs. 173.25 in 1981.

Apart from that, there was no review whatever of retiring allowance at any time and the employees had never made any claim therefor. Hence, we

hold that the respondents are not entitled as of right to claim annual review of the retiring allowance. It is a matter entirely within the discretion of

the Board.

30. Question No. 6:- The 23rd respondent has argued vehemently that the management is liable to pay interest on the retiring allowance, as it failed

to pay the same even after the judgment of the Supreme Court. Reliance is placed on *Sudhir Chandra Sarkar Vs. Tata Iron and Steel Co. Ltd.* and

Others, . In that case, the employee had claimed gratuity and filed a suit to recover the same. The trial Court decreed the suit with costs and

interest at 6% per annum. On appeal, the High Court reversed the decree and dismissed the suit. The Supreme Court set aside the judgment and

decree of the High Court and restored that of the trial Court, but modified the rate of interest and awarded 15% from the time of his retirement.

The Court found in that case that the stand taken by the Management was unjustified and upheld the claim of the employee. Reference is also

made to the judgment in *Katheeraj Bai v Superintending Engineer* AIR 1984 SC 188. While directing the Tamil Nadu Electricity Board to pay the

special contribution to provident fund payable to the appellant's husband under the Payment of Gratuity Act, the Court directed the Board to pay

interest at 15% per annum from the date on which the amount fell due and Rs. 2500/- towards compensatory costs. The 23rd respondent

contends that the appellant should be made to pay interest as well as compensatory costs to the respondent. As we have upheld the claim of the

appellant, we cannot accept the contention of the respondents in this regard. As

pointed out already, the learned single Judge also found that the employees were not entitled to interest as claimed by them. However, he dismissed the writ petition in toto, thereby confirming the award of interest by the Labour Court. Probably, it was a matter of oversight. The learned Judge, however, ordered payment of Rs. 5000/- by way of costs.

As we have accepted the contentions of the management on the merits no question of payment of interest or costs by the appellant arises.

31. Before concluding, we must refer to a contention which was not very seriously argued by the appellant, though a reference was made to it by the counsel on record who followed the argument of his senior. It was submitted that the applications u/s 33-C(2) of the Industrial Disputes Act are not sustainable as the right of the employees to get retiring allowance is a matter in dispute. Reference was made to the judgment of the Supreme Court in *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, . It was held in that case that a proceeding u/s 33-C(2) is generally in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman by his employer, on the basis of an existing right to the same in view of its being previously adjudged or otherwise duly provided for.

When a similar contention was raised on the previous occasion before the Division Bench, it was held that the question had lost its significance because the Bench had adjudicated the dispute in favour of the employees. It would be inequitable and unfair to throw out their claim petitions after such adjudication, taking note of the technical plea. We have now found on the merits that the employees are not entitled to the benefits claimed by them. As we have decided the merits of the case, it is unnecessary for us to express our opinion on the above objection. However learned counsel for the respondents has brought to our notice the judgment of a Constitution Bench of the Supreme Court in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, . The Court held that for the purpose of making the necessary determination u/s 33C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workmen's rights rest. The Court pointed out the claims which would not fall u/s 33C(2). The Court also said that the observations of the Supreme Court in *Punjab National Bank Limited Vs. K.*

L. Kharbanda, that Section 33C(2) as a provision in the nature of execution should not be interpreted to mean that the scope of Section 33C(2) is exactly the same as Section 33C(1). In view of the fact that claims of the employees in the present case depend on the interpretation of the terms of G.O.O. No. 26 and the Voluntary Retirement Schemes, it may not be possible to accept the technical plea of the Management that the applications are not maintainable u/s 33C(2).

32. In the result, the appeal is allowed. The order of the learned single Judge dated January 20, 1994 in W.P.No. 12995 of 1993 is set aside. The order of the Labour Court in C.P. Nos. 18 to 31 of 1992 in so far as they are against the appellant and they direct the appellant to pay the amounts claimed by the respondents in the claim petitions is quashed. The parties will bear their respective costs in the writ petition as well as in the Writ Appeal.