

(1985) 01 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 2535 of 1982

Madhav Pralhad Joglekar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 15-01-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311(2)
Industrial Disputes Act, 1947 — Section 18

Citation : (1985) MhLj 954

Hon'ble Judges : V.A. Mohta, J; M.M. Qazi, J

Bench : Division Bench

Advocate : S.G. Kukdey and V.R. Manohar, for the Appellant; S.K. Sanyal, S.A. Bobde and A.P. Shinde, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—The petitioner Captain Joglekar was serving as a pilot with the Indian Airlines Corporation (respondent No. 2). He achieved the rank of the Commander during the course of his service and was declared to be medically unfit for flying since 4th October, 1971. Having contacted diabetes he lost his licence to fly the aircrafts and never got it back from the Director General of Civil Aviation. He did not report on duty, his leave upto 290 days was adjusted and he ceased to be in the service since 21st July, 1972. He was a member of registered trade union of the Commercial Pilots-Indian Commercial Pilots" Association (respondent No. 3). As a result of the agreement dated 31-10-1963, between respondent No. 2 and respondent No. 3 on many points including rehabilitation of the pilots declared medically unfit, he was entitled for an annuity at certain rates until the attainment of the age of 55. The basis of this annuity changed from time to time by mutual agreement. He started receiving annuity at the rates settled as per the agreement dated 9th September, 1972.

2. On 3rd August, 1981, there was a fresh agreement on the point between the 2nd and 3rd respondent in respect of the pilots declared medically unfit during

the period from 1st April, 1978 to 31st October, 1978. Annuity became payable with effect from 1st November, 1980 only with no right to claim arrears for the period 1st April, 1978 to 31st October, 1980, as mentioned In clause 3.2 of the said agreement. Clause 3.3 provided (i) that the annuity shall be payable to such pilots till the attainment of the age of 58 years or the date of the death whichever is earlier and (ii) that the benefit will be available only to those pilots who were declared unfit on 1st April, 1978, or afterwards. The latter part of this clause is challenged in this petition as being violative of Articles 14 and 16 of the Constitution. It is claimed that the petitioner should continue to receive annuity benefit until the age of 58 as per the new agreement.

3. Certain undisputed positions may be noticed. The annuity benefit is provided only under the agreement entered into between the 2nd respondent and the 3rd respondent which is a representative body of commercial pilots. These agreements were entered into as a result of collective bargaining and in the spirit of give and take. The agreements deal with several other benefits, which are not uniformly available to all classes and different dates are fixed for different benefits. The petitioner had full liberty to engage in any avocation after 21st July, 1972 on which day he ceased to be in the service of the respondent No. 2 and also ceased to be a member of the respondent No. 3.

4. In our judgment considering the aforesaid undisputed position the petitioner has no case whatsoever. It is one thing to adjudicate upon an industrial dispute and quite another, to test the reasonableness and validity of the settlement mutually arrived at. As very aptly put by the Supreme Court in the case of Tata Engineering and Locomotive Company Limited Vs. Their Workmen, , "A settlement cannot be weighed in any golden scales". In this connection following observations in the case of Herbertsons Ltd. v. The Workmen of Herbertsons Ltd. and others A.I.R.1977 SC 322 may also be noticed:

"When, therefore, negotiations take place which have to be encouraged particularly between labour and employer in the interest of general peace and well being, there is always give and take There may be several factors that may influence the parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between an employer and labour in arriving at a settlement which operates well for the period that is in force there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of the settlement which the Courts and Tribunals, should endeavour to encourage. It is in that spirit that the settlement has to be judged and not by yardstick in scrutinising the award for adjudication. It is not possible to scan the settlement in its bricks and pieces and hold some part acceptable and other bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all other advantages gained, the Court would be slow to hold the settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject

it as unfair,"

5. Keeping the aforesaid principles in view it is clear that only a part of the settlement cannot be picked up and judged in isolation. Very fairly the agreement as a whole has not been challenged before us as arbitrary or bad. It is pertinent to notice that the respondent No. 3 which was the representative of all the commercial pilots and which entered into this agreement has not challenged the said clause and it is only one ex-member who is aggrieved by the said clause. Such a challenge is not normally permissible in view of section 18 of the Industrial Disputes Act. There is yet another aspect to the controversy and it is that the petitioner having ceased to have any relationship either with respondent No. 2 or with respondent No. 3, has no focus standi to challenge the said agreement. By no stretch of imagination he could be said to be a party to the new settlement. The impression that the annuity scheme benefit was connected with the age of superannuation is also not correct. Even when 1963 agreement was arrived at, the age of retirement was 58 years and the entitlement to the annuity benefit was only upto the attainment of the age of 55 years. Only because in the year 1981, the age for receiving the annuity benefit was raised upto 58 years it cannot be said that there was any relationship between the age of superannuation and the payment of gratuity. Agreeing to different benefits for different class of employees at different points of time is not at all repugnant to any equality of rights. The term is also not such as to outweigh all other advantages gained. No mala fide are even suggested. We are, therefore, unable to locate any unreasonableness or arbitrariness in the relevant clause.

6. Our attention was invited to the case of D.S. Nakara and Others Vs. Union of India (UOI), , where a classification based on the date of retirement in the revised pension formula of the Union of India was declared as being arbitrary and violative of Article 14. Considering the fact that the present case relates to merely annuity scheme voluntarily entered into having no connection with the retirement benefit, it seems to us that the ratio of the said decision cannot apply to the present matter. Our attention was also invited to the case of the Union of India Vs. Bidhubhushan Malik and Others, dealing with the High Court Judges (Conditions of Service) Act, 1954. By amendment a distinction was made between those who retired before 1st October, 1974, and those who retired after that date and this amendment was struck down as the State was unable to show any valid reason for selecting the date for making distinction. Considering the fact that this case also does not refer to a portion of the voluntary agreement entered into after negotiation it is equally difficult to see how the ratio of the said decision will have any application to the present matter. Relying upon the case of Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., it was submitted that even a contract of service entered into by the Government could be challenged if it violated a constitutional guarantee afforded by Article 311(2) of the Constitution. That was a case where a contract was executed by a railway servant in terms of railway rules. One provision in the contract was

challenged as being violative of Constitutional guarantee afforded by Article 311(2) and the objection that such challenge was impermissible was repelled by the Supreme Court. There is nothing even in this decision to support the petitioner.

7. It is next contended that the agreement became regulation as contemplated u/s 45 of the Indian Airlines Corporation Act, 1955. It is difficult to see how such voluntary agreement entered into as a result of negotiations could be equated with the "regulations", which term has been defined u/s 2(vii) as meaning "regulations made by the Corporation u/s 45."

8. Under the circumstances the challenge has no merit. Articles 14 and 16 of the Constitution are not attracted at all and hence it is unnecessary to go into the debate as to whether the fundamental right can be waived or not.

9. Conclusion : The petition is dismissed. Rule discharged. No costs.