A STATE OF ORISSA AND ORS.

v.

JOGINDER PATJOSHI AND ANR.

NOVEMBER 13, 2003

B [V.N. KHARE, CJ. AND S.B. SINHA, J.]

Service Law:

Orissa Revised Scales of Pay Rules, 1985:

C

rr. 8(1)(a) and (b)—Revision of pay scales and fixation of pay—Lecturers and Professors—Prior to revision of pay w.e.f. 1.1.1986, getting emoluments less than the minimum of revised pay scale—Pay fixed at the minimum of revised pay scale as per r. 8(1)(a)—Claim for increasing pay by one increment under r. 8(1)(b)—High Court allowing writ petition holding that though petitioners' case fell under r. 8(1)(a), they were entitled to one further increment as per exception contained in r.8(1)(b), and the rule being a beneficial one required liberal construction—Held, there being no ambiguity in r. 8(1)(a), writ petitioners were only entitled to the minimum of revised scale—On fact, the principle of liberal interpretation has no application inasmuch as by reason of r.8, the State merely specified mode and manner of application thereof—Furthermore, clauses (a) and (b) of r.8, having regard to the rule of punctuation, must be read separately—Interpretation of statutes.

Padma Sundara Rao (dead) and Ors. **v.** *State of T.N. and Ors.,* **[2002] 3 SCC 533;** *Union of India and Anr.* **v.** *Hansoli Devi and Ors.,* **[2002] 7 SCC 273 and** *Dayal Singh and Ors.* **v.** *Union of India and Ors.,* **[2003] 2 SCC 593, relied on.**

Illachi Devi (D) by Lrs. and Ors. **v.** *Jain Society, Protection of Orphans India and Ors.,* **(2003) AIR SCW 4824, referred to.**

I.R.C. **v.** *Hinchy 1960 Appeal Cases 738,* **referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5579 of 1998.

From the Judgment and Order dated 19.11.96 of the Orissa High Court in O.J.C. No. 7869 of 1994.

WITH

C.A. No. 5580 and 5581 of 1998.

Jana Kalyan Das for the Appellants.

Y.P. Mahajan and R.C. Verma for the Respondents.

The following Order of the Court was delivered :

Interpretation of Rules 8(1) (a) and (b) of the orissa Revised Scales of Pay Rules, 1985 (for short the Rules'), purported to have been framed under Article 309 of the Constitution of India, falls for consideration in these appeals which arises out of the judgment and order dated 19th November, 1996. The respondents herein were holding the post of Lecturers and professors in the University. The interpretation of the Rules arose in the context of a writ petition filed by the Lecturers and Professors of the Berhampur University Teachers' Association in the High Court of Orissa. The pay scales of the Lecturers and Professors was Rs. 700-1600 and Rs. 1500-2500 respectively. By the aforesaid Rules, which came into force on 1st January, 1986, the scales of pay of the Lecturers and Professors were sought to be revised. The revised pay scales of the Lecturers and Professors was fixed at Rs. 2200-4000 and 4500-7300 respectively. On the relevant date i.e. immediately prior to 1st January, 1986, the professors were getting Rs. 2927 under the Rules.

The respondents filed a writ petition before the Orissa High Court, claiming therein that in addition to the minimum of Rs. 4500-7300, one further increment is also to be given as required under Rules 8(1) (b).

At the time when the aforesaid writ petition was filed, a Division Bench of the High Court of Orissa in O.J.C. No. 2588 of 1991 took a view that while fixing the emoluments of the Teachers of the University under the UGC scales, an additional increment is to be given at the initial stage. However, another Division Bench in O.J.C. No. 6405 of 1992 was of the view that no such increment is to be given at the initial stage of fixation in the revised pay scales under the Rules. In view of the conflicting decisions of two coordinate Benches of he High Court, the writ petition filed by the Berhampur University Teachers' Association was referred for decision to a larger Bench.

Rules 8 (1) (a) and (b) of the Rules reads as thus:

"8 (1) Unless in any case the University by special order otherwise

A directs, the pay of a University employee, who elects or is deemed to have elected so be governed by the revised scale from the 1st day of January, 1985 shall be fixed:

(a) at the minimum of the revised scale if the amount of the existing emolument is less than the minimum:

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(b) at the stage of the revised scale, which is equal to the amount of existing emoluments or, if there is no such stage, at the stage next above the existing emoluments and the pay so fixed, except where it is fixed at the minimum shall be increased by one increment admissible at that stage of the revised scale."

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The Full Bench of the Orissa High Court was of the view that although the case of the Teachers fall under Rule 8(1) (a), they are entitled to one further increment, in terms of the exception contained in Rule 8(1) (b); as a liberal construction is required to be put thereto, as the Rule is a beneficial one.

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The Full Bench of the High Court, interpreting the aforementioned Rules, was thus of the opinion that the explanation contained in sub-clause (b) of clause (1) of Rule 8 would apply both to clauses (a) and (b) as the same is beneficent legislation.

E Learned counsel appearing on behalf of the State of Orissa submits that a bare perusal of the impugned Rule would show that as two meanings cannot be put thereto, the Full Bench of the High Court must be held to have erred in passing the impugned judgment. Reliance in this behalf has been placed on *Padma Sundara Rao (Dead) and Ors.* v. *State of T.N. and Ors.*, reported F in [2002] 3 SCC 533, *Union of India and Anr.* v. *Hansoli Devi and Ors.*, reported in [2002] 7 SCC 273, *Dayal Singh and Ors.* v. *Union of India and Ors.*, reported in [2003] 2 SCC 593 and *Illachi Devi (D) by L.Rs. and Ors.*, v. *Jain Society, Protection of Orphans India and Ors.*, [2003] AIR SCW 4824.

Learned counsel for the respondents stated that the legislation has G been correctly interpreted being beneficent in nature. He further contended that even the Department of Industries of the Government of Orissa implemented the same by amending the Rules in terms of the resolution adopted on 26th March, 1996, which now reads as under:

"The question of liberalising the pay fixation formula adopted for the H teachers of Engineering Colleges under AICTE scale of pay in

accordance with the pay fixation formula under the Orissa Revised Scales of Pay Rules, 1985 was under active consideration of Government for some time past. A

After careful consideration, the State Government have been pleased to amend the Para-22 of this Depatt. Resolution No. 7981-I dt. 29/3/90 as follows: B

(a) In cases where the existing (pre-revised) emoluments is less than the minimum of the revised scale of pay in the revised scale of pay in the revised scale shall be fixed at the stage next above the minimum.

(b) The next increment of a Government Servant whose pay has been fixed in the revised scales shall be granted on the anniversary of the last increment in the existing scale, unless otherwise inadmissible." C

The High Court by reason of the impugned judgment even directed grant of the minimum of the pay scales of Rs. 4500 with one increment, while fixing the pay in the pay scale of Rs. 4500-7300. It is against the said judgment D of the High Court, the appellants are in appeal before us.

It is not disputed that the revised pay scale of the Professors was Rs. 1500-2500 and the appellants were getting Rs. 2927 and after revision they were required to be placed on the minimum of the scale, which was admittedly more than what they had been getting prior to the revision of the pay scale. E

A bare perusal of the aforementioned Rule would clearly show that fixation of pay in the revised scale of pay would be governed by the said Rule. Clauses (a) and (b) of sub-rule (1) of Rule 8 contemplate two different situations. In a case where the minimum of the revised scale is less than the existing emolument, the concerned employee will get at least the minimum F scale of pay as is provided in clause (a) thereof or if there is no such stage of the existing emoluments then it shall be fixed at the stage next above the existing emoluments. The exception clause contained therein is referable only to a situation occurring in clause (b) and not to clause (a). If the exception is held to cover both the situations contemplated under clauses (a) and (b) G of sub-rule (1) of Rule 8 for all intent and purport, sub-rule (a) shall become meaningless.

Learned counsel appearing on behalf of the respondents' submission that subsequently another Department of the State of Orissa intended to grant a higher benefit is of no consequence. In this case, this Court is H

A required to interpret Rule 8 of the Rules as it stood prior to the amendment and not the amended Rules. It is now well settled principle of law that where the language used in a Statute is clear and unambiguous, the question of taking recourse of any principle of interpretation would not arise. In *Padma Sundara Rao's* case (supra), this Court held:

B "While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misuse and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. See *Rishabh Agro Industries Ltd.* v. *P.N.B. Capital Services Ltd.*, [2000] 5 SCC 515 . The legislative *casus* C *omissus* cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in *Narasimhaiah* case. In *Nanjudaiah* case the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is D accepted it would mean that a case can be covered by not only clause (1) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent."

Similarly in *Hansoli Devi's* case (supra), this Court held:

E "9. Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of a statute. The rule stated by Tindal, C.J. in *Sussex Peerage* case (1844) 11 CI & Fin 85 : 8 ER 1034 still holds the field. The aforesaid rule is to the effect: (ER p. 1057)

F "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

G It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and H policy of the Act. In *Kirkness* v. *John Hudson & Co. Ltd.*, [1995] 2

All ER 345: (1995) AC 696: [1955] 2 WLR 1135 Lord Reid pointed out as to what is the meaning of "ambiguous" and held that: (All ER p. 366 C-D)

"A provision is not ambiguous merely because it contains a word which in different contexts is capable or different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision, is in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning."

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J in the case of *Aswini Kumar Ghose* v. *Arabinda Bose,* AIR (1952) SC 369: [1953] SCR 1 had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplausage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway, Light Heat & Power Co. Ltd.* v. *Vandry,* AIR (1920) PC 181, it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons, Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature and their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle let us now examine the provisions of Section 28-A of the Act, to answer the questions referred to us by the Bench of two learned Judges. It is no doubt true that the object of Section 28-A of the Act was to confer

A a right of making a reference, (sic on one) who might have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But Parliament having enacted Section 28-
B A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector under Section 18" in Section 28-A of the Act. The aforesaid expression would mean that if the landowner has made an application for reference under Section 18 and that reference is
C entertained and answered. In other words, it may not be permissible for a landowner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in *Pradeep Kumari's* case the three learned Judges, while enumerating the conditions to be satisfied, whereafter an application under Section 28-
D A can be moved, had categorically stated (SCC p.743, para 10) "the person moving the application did not make an application to the Collector under Section 18". The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the
E reference and the reference was answered. When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to the effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We, accordingly,
F answer Question 1 (a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894."

G In *Dayal Singh's* case (supra), a three Judge Bench of this Court, in which both of us were members, observed as under: "

"37. It is a well-settled principle of law that the court cannot read anything into the statutory provision which is plain and unambiguous. The court has to find out legislative intent only from the language
H employed in the statutes. Surmises and conjectures cannot be restricted

to for interpretation of statutes. See *Union of India* v. *Filip Tiago De Gama*, [1990] 1 SCC 277: AIR (1990) SC 981. A

"38. This Court in *Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd.*, [2003] 2 SCC 111: [2002] 9 Scale 102, has observed: (SCC p.121, para 25)

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"25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, C unworkable or totally irreconcilable with the rest of the statute."

The said decision has been followed by this Court in *Illachi Devi's* case (supra).

The principle of liberal interpretation which is applied in case of an D beneficent legislation has no application in the instant case inasmuch as by reason of Rule 8 of the said Rules, the State had merely specified the mode and manner of application thereof. The same was necessary having regard to the difficulty which may cause to the employees who might have been receiving higher emoluments than the minimum prescribed under the revised E pay scale at a point of time when the revised pay scale came into force. Furthermore, clauses (a) and (b) having regard to the rule of the punctuation must be read separately. Even the decision referred to by the High Court, namely, *I.R.C.* v. *Hinchy,* (1960) Appeal Cases 738, shows that in modern statute punctuation has a role to play.

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In that view of the matter, we are of the view that there being no ambiguity in Rule 8 (1) (a), the writ petitioners were only entitled to the minimum of the revised scale.

For the aforesaid reason, the appeals deserve to be allowed. The judgments under challenge are set aside. G

The appeals are allowed. There shall be no order as to costs.

R.P. Appeals allowed.