SUPREME COURT OF INDIA

Burn and Co. Limited

Vs.

Their Workmen

C.A.Nos.673 and 674 of 1957

(S. J. Imam, S. K. Das and J. L. Kapur, JJ.)

23.12.1958

JUDGEMENT

SYED JAFER IMAM, J.:

1. These two appeals have been heard together as their arise out of the same award given by the Fifth Industrial Tribunal of west Bengal, hereinafter referred to as the Tribunal, in an industrial dispute which had, been referred to the Tribunal by the Government of West Bengal by its order dated the 5th of April, 1955, as amended by an order of that Government dated the 26th of May, 1955. In Civil Appeal No. 673 of 1957 Burn and Co. Ltd., hereinafter referred to as the Company, is the appellant whereas in Civil Appeal No. 674 of 1957 the workmen of Burn and Co. Ltd., are the appellants. The order of the Government of West Bengal referring the industrial dispute to the Tribunal contained a schedule of 32 items which were referred for its decision. The appeal preferred by the Company is confined to Items Nos. 1, 2, 4, 5, 12, 14, 18, 19 and 27 were as the appeal by its workmen covers Items Nos. 1, 2, 4, 12, 14 and 23.

2. It will appear from the award that some time in 1948 Refractory and Ceramic Workers' Union, Raniganj, Burdwan, hereinafter referred to as the Union, was formed who represent the workmen in the present dispute. The relation between the Union an the Company had been cordial, but in course of time, trouble arose. Strikes, slow-down in work and bad conduct towards the officers of the Company followed and the situation became very grave by March, 1954.

3. The Major Engineering Tribunal Award was given on the 3rd of July, 1948. On the 17th of August, 1949 an Industrial Tribunal presided over by Mr. P. R. Mukherji gave an award fixing the wage structure in the concern of the Company. This was followed by the Tripartite Agreements of 9-6-1950, 31-7-1950, 28-8-1951, 9, 10-6-195?, 12-7-1952, 22-9-1952. 22-1-1953 and 5-3-1.95:3 whereby several disputes were settled. On 26-3-1954, the workmen gave a strike notice to which the Company replied on the 1st of April, 1954. A dispute concerning the grant of bonus for the years 1951, 1952 and 1953 was referred to the 4th Industrial Tribunal on 5-4-54 which became functus officio on 25-6-56. On the 8th of April, 1954 the strike commenced and on the 30th of April, 1954 the Company announced a lock-out. In the meantime, the Company had notified the workmen on 22nd of April 1954 against further disturbances. Efforts were made to bring about a settlement and the Company wrote to the Government of West Bengal on the 24th of December, 1954 stating the conditions on which their Works would be reopened. On the 27th of December, 1954 the Union wrote to the Government accepting the conditions of the Company for reopening the Works, including the continuation of the suspension of 7 workmen. On the 30th of December, 1954 the

Company gave notice that they would reopen the Works after the withdrawal of the strike notice. On the 3rd of January, 1955 the strike notice was withdrawn and the Works reopened on the 4th of January, 1955. On the 5th of April, 1955 the present reference was made to the 5th Industrial Tribunal.

4. We propose to take up for consideration the various items specified in the schedule of the order of reference; hereinafter referred to as the Schedule, in the order in which they were presented to us on behalf of the company during the hearing of these appeals.

5. Items 18 and 19 of the Schedule: Item 18 relates to the suspension for an indefinite period of the following seven workmen an to what relief they are entitled:

1. S. K. Dey,

2. Haradhan Roy,

3. Usha Ranjan Das Gupta,

4. R. C. Ganguly,

5. H. P. Chakravorty,

6. S. N. Roy and

7. Sitaram.

Item 19 concerns the suspension for an indefinite period of the following four workmen and to what relief they are entitled :-

1. Bansdev,

2. Ghutur,

3. Shanker and

4. Sura.

In this appeal we are not concerned with the case of Bansdev and Ghutur. Of the 7 workmen involved in Item 18 the finding of the Tribunal was that H. D. Roy had been systematically absenting himself without permission since December, 1938 long before the strike. This workman seemed to have taken into his head that because he happened to be the General Secretary of the Union he was beyond the clutches of the Company. The Union's secretary could never claim immunity from punishment for breaking discipline any more than any other worker. On receipt by the company of information that H. D. Roy was ill the company made enquiry from P. G. Hospital at Calcutta. He had been treated by the company's doctor round about the 25th of December, 1953, that is to say, just after he had started absenting himself, but after that the company was not apprised of his whereabouts which was highly irregular. There should have been an application for leave but Roy thought that he could claim, as a matter of right, leave of absence though that might be without permission and though there might not be any application for the same. This was gross violation of discipline. Accordingly, if the Company had placed him under suspension that was in order. On

these findings, it seems to us that the Tribunal erred in holding that it could not endorse the companys decision to dispense with his services altogether. In our opinion, when the Tribunal upheld the order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension. In Item 18 of the Schedule no question of reinstatement was referred to the Tribunal. Prima facie, it would appear that the award of the Tribunal directing reinstatement was beyond the scope of the reference. Assuming, however, at the Tribunal could have dealt with the question of reinstatement, it seems to us that on the findings no such order should have been made. The order of the Tribunal directing the reinstatement of H. D. Roy is, accordingly set aside.

6. Usha Ranjan Das Gupta is another workman concerned in Item 18. With reference to him the Tribunal found that he was almost in the habit of loitering outside his place of work and that without the permission of his departmental head. The correspondence on the record carried the impression to the Tribunal that this workman did not care to get any permission for going out. He had been warned but that had produced no effect upon him. He might have taken into his head that because he was the Assistant Secretary of the Union, he could break discipline with impunity. In such circumstances, if he was placed under suspension, it could not be said that the company was actuated by any improper motive to victimise him for his Union activities. We Tribunal, accordingly, upheld the order of suspension. In its opinion, however, the penalty of dismissal as proposed to be inflicted upon him by the Management appeared to be rather harsh and out of proportion to the offence committed by him. In his case also the Tribunal ordered reinstatement. It seems to us, as in the case of H. D. Roy, on the findings, the award declaring reinstatement was not justified and is set aside. Here also, as in the case of Roy, the question of reinstatement was not a matter referred to the Tribunal.

7. In the case of H. D. Roy and Usha Ranjan Das Gupta it may be pointed out that while the Company found them and the other five persons mentioned in Item 18. guilty of gross misconduct, as an industrial dispute was trending before the 4th Tribunal presided over by Mr. S. C. Mukherji, the Company had filed applications under S. 33 of the Industrial disputes Act before that Tribunal for permission to dismiss them. Pending the decision of that Tribunal the Company had placed these persons under suspension. The Union had contended that the Company had filed no such applications before Mr. Mukherji, but the Tribunal found that some applications had been filed before Mr. Mukherji which were missing and other applications were filed rather late. Those applications which were filed before the 4th Industrial Tribunal became infructuous because that Tribunal became functus officio on 25-6-56. There has been a controversy between the parties before us whether the Company has filed fresh applications under S. 33 of the Industrial Disputes Act before the Tribunal. The Company has asserted at various stages that such applications had been filed and we have not been shown any positive assertion by the workmen to the contrary. The evidence of Capt. T. Mookerji, the Assistant Works Manager of the Company was ". .. . . . . applications were filed under S. 33 of the Act three months after this order of reference to the Tribunal". It is possible to read this evidence to mean that the Company did file applications under S. 33 before the Tribunal. Capt. Mookerji could not have made such a statement to the Tribunal if no such applications had been filed. There was no cross-examination of the witness on this point. It is, however, unnecessary for us to find if such applications were filed, and if so, what orders should have been passed on them. We are satisfied that on the findings given with regard to Roy and Das Gupta, the order of reinstatement was unjustified and they are not entitled to any relief.

8. The remaining persons in this group of 7 persons covered by Item 18 are S. K. Dey, R. C. Ganguly, H. P. Chakravorty, S. N. Roy and Sitaram. In the case of H. P. Chakravorty, it was

admitted by Capt. Mookerji that he had taken no part in any overt act. According to the Tribunal he was suspended because his past record was bad. After having heard the submissions made on behalf of the Company and the workmen we are satisfied that the award of the Tribunal in the case of Chakravorty was correct and there is no adequate ground upon which it can be interfere with.

9. Concerning the remaining 4 persons it was strongly urged that they had participated in an illegal strike and had incited such a strike. The finding of the Tribunal, however, was clear that there was no dependable evidence against these workmen that they had incited the workers to participate in the strike. The question, therefore, is whether mere participation in an illegal strike would be a sufficient found on which we should reverse the award of the Tribunal that the order of suspension in the case of these persons could not be upheld. It is to be remembered that although the strike was illegal, a very large number of workmen had gone on strike. All of them had been taken back when the works were reopened, except the 7 persons covered by Item 18. On the findings, the evidence was very weak to show that any overt action was taken by these four persons apart from their joining in the strike along with other workmen. The evidence did not specifically bring home any charge of incitement against these persons. It cannot be said that mere participation in the strike would justify their suspension or dismissal particularly when no clear distinction can be made between these persons and the very large number of workmen who had been taken back into service although they had participated in the strike. We do not think that the finding of the Tribunal that the order of suspension against these persons cannot be upheld is so patently erroneous in law as to justify our interference with the award of the Tribunal in this respect. The award of the Tribunal so far as these workmen are concerned is, accordingly, upheld.

10. With reference to the case of Shankar and Sura under Item 19, we have considered the findings of the Tribunal and the evidence which was read to us in this respect. We are of the opinion that the finding of the Tribunal that there had been some misunderstanding somewhere was on the whole justified by the evidence. The case of the Company against these persons was that they had refused to obey the order of their sirdars who had allotted them the work of shifting of 3" standard firebricks from the pottery shed to the warm shed. Shankar's explanation was that he did not know the work of setting and that therefore he did not do it lest the materials might get broken for defective setting. After having read the evidence we are inclined to take the view that the refusal to carry out the orders of the sirdars was not wilful disobedience. It is apparent from the nature of the evidence that setting of bricks meant putting in rows of soft bricks taken out of the kiln, or to set them in the vata before burning. This was a kind of work which, according to the workmen concerned, they were not accustomed to and it appears that their refusal was more out of fear of doing the work wrongly than wilful disobedience of the orders of their superiors or in a spirit of defiance. The award of the Tribunal accordingly, so far as the workers Shankar and Sura are concerned, cannot be interfered with and must be upheld.

11. ITEMS NOS. 1 AND 2 OF THE SCHEDULE: These two items concerned the revision of salary, basic wage and dearness allowance for all categories of workmen and revision of grades and scales of all categories of workmen. In this connection some reference to what had happened in the past requires to be stated. An Industrial Tribunal presided over by Mr. Mokerji considered the pay scale and dearness allowance (or all classes of workers and pay scale and grade for the junior staff. By its award dated 17-8-49 it ordered that so far as the labourers were concerned, boys should get 11 annas per day, women 13 annas per day and men Re. 1 per day. So far as the clerical staff was concerned the minimum pay would be Rs. 55 per month with the following increment and grades:-

(C). Rs. 55-3-85.

(B). Rs. 85-5-125.

(A). Rs. 125-5-175.

Dearness allowance was fixed according to the award of the First Major Engineering Tribunal as follows:-

Pay range	Dearness allowance
Up to Rs. 50	... Rs. 25.
From Rs. 51 to Rs. 100	... ... Rs. 35.
From Rs. 101 to Rs. 150	... ... Rs. 40.
From Rs. 151 to Rs. 200	... ... Rs. 45.
From Rs. 201 and above	... ... Rs. 50.

There was an agreement of the 9th of June, 1950 in which the grades for adult male workers were settled as follows:-

"Grade Rs.	Rs.	Rs.	Rs.
I 1- 0-0	...	...	...
II 1- 1-0	1- 2-0	1- 3-0	1- 4-0
III 1- 5-0	1- 6-0	1- 7-0	1- 8-0
IV 1- 9-6	1-11-0	1-12-6	1-14-0
V 1-15-6	2- 1-0	2- 2-6	2- 4-0
VI 2- 6-0	2- 8-0	2-10-0	2-12-0
VII 3- 0-0	3- 3-0	3- 6-0	3- 9-0
VIII 3-13-0	4- 1-0	4- 5-0	4- 9-0

Unskilled adult workers in Grade I will follow Grade II after completion of 12 months' service although they are confirmed in their services earlier.

Increment for all persons entitled to it would be made once in a year and not as individuals complete

their service year. In achieving this, a simple method of approximation shall be followed. Grade Ill shall be for unskilled workers who have already gone through Grade II. Less productive light duty unskilled personnel shall not go beyond Grade II. Semi-skilled men will be kept in Grades III and IV. Skilled men in Grades IV, V and VI. Only highly skilled will be promoted to Grades VII and VIII subject to restriction of manning.

Usually increments in each grade would be automatic but from one grade to other would depend on experience of the prospective candidates and probably vacancies in grades."

12. The Grades for boys and women were settled as follows:

Grade	Rs.	Rs.	Rs.
I	0-13-0	0-14-0	0-15-0
II	0-14-0	0-15-0	1- 0-0

Grade No. I for ordinary women workers daily rates. Grade II for daily rate women workers doing heavier jobs. Piece-rated women workers up to 1-2-0

Boys Grade

Grade I	...	...	As. 0-11-0
Grade II	...	...	As. 0-11-6
Grade III	...	...	As. 0-12-0
Grade IV	...	...	As. 0-13-0
Grade V	...	...	As. 0-14-0

By the agreement dated the 31st July, 1950 the grades of the Daftaries were fixed as follows:

26-21/2-45	...	Junior Daftaries.
45-3 -66	...	Senior Daftaries.

By the agreement dated the 20th August, 1950 the scales of pay and the grade of the clerical staff

was fixed as follows:

C. Rs. 55- 3- 85- 4-109.

B. Rs. 85- 4-125- 5-150.

A. Rs.125- 5-150- 6-190.

Special Grade Rs. 115-10-200-15-275.

13. According to the Workmen, their contention was that the wage of a workman should be Rs. l00 and that the minimum wage of the clerical staff should be Rs. 150 per month and they claimed as follows:

Grade-

B- Rs.,180 to Rs. 300 in 12 years.

A- Rs. 280 to Rs. 380. in 10 years.

Special - Rs. 370 to Rs. 530 in 8 years.

'The Tribunal in the present reference found that the reasonableness of the present grades and scales of pay prevailing in the Company would be clear if side by side the scales of pay and grades which were granted by the Second Engineering Tribunal, West Bengal were placed. According to the award of this Engineering Tribunal the scales of pay and grades were as follows:-

A - Rs. 55-2 1/2 - 80 (meant for non-matriculates.)

B - Rs. 60-2 1/2 - 90 (meant for matriculates.)

C- Rs. 70- 4-130 (meant for graduates.)

The dearness allowance fixed by this Engineering Tribunal was as follows:-

Pay range up to Rs. 50 ... Rs. 31.

Pay range from Rs. 51 to Rs. 100 ... Rs. 42.

Pay range from Rs. 101 to Rs. 150 ... Rs. 48.

Pay range from Rs. 151 to Rs. 200 ... Rs. 54.

Pay range from Rs. 201 and above ... Rs. 60.

The Tribunal in the present dispute found that from a comparison of the two sets of pay and dearness allowance it would be clear that the pay scale granted by this Engineering 'tribunal was much smaller than what obtained in the concern of the Company, but the dearness allowance was a little better. The award of the First Major Engineering Tribunal was described by the Tribunal as widely accepted by the engineering unit in West Bengal, and that it achieved peace in the industrial field of labour for the time being and that it was a fair scale to meet the reasonable aspirations of labour. It did not, however, think it to of an ideal scale of pay that was abreast o the times or that it pretended to meet the need of the employees. The Tribunal, however, emphasized that it should not be lightly modified or disturbed and that the cost of living at Ranigunj was not certainly more than the cost of living in Calcutta and its suburbs nor could the employees in the Ranigunj Works be regarded as superior in calibre to those employed in the engineering concerns in or about Calcutta. Finally, the Tribunal concluded that prima facie the pay scale and the grades that obtained in Ranigunj may be taken as fair and adequate. It, however, went on to hold that the dearness allowance prevailing in the Ranigunj concern of the Company should be supplanted by the dearness allowance awarded by the Second Engineering Tribunal. So far as grades in the category of clerks were concerned, the Tribunal was of the opinion that there was no necessity for keeping so many grades in the category of clerks. It thought that a special grade as well as the bottom trade should be there but the two intermediare grades should be amalgamated with certain safeguards. In its opinion, there was a defect in the existing grades in that the span of the grade extended from 10 to 16 years which did not cover the normal length of service of a clerk. The works generally reached the maximum provided by the grade early and "rot" there. It regarded 20 years as the normal span of service in the grades, which would do away with the stalemate and it hoped that this would improve the morale of the workmen and remarked that the Company ought not to grudge a little more pay at the top when they got experienced men. It accordingly modified the grades as follows:-

Grade A

Rs. 55-3-85

E. B. -4-125

10 years 10 years = 20 years

Grade B

Rs. 85-4-125

E. B. -5-150

E. B. -6-192

10 years 5 years 7 years = 22 years.

Grade C

Rs. 150-10 -250

E. B. -15-325

10 years 5 years =15 years.

The Tribunal pointed out that it had "twisted up" the maximum a bit only to provide for a longer span of service. While it had amalgamated the existing B and C grades into one, it had put a second efficiency bar in the scale of the grade. It further observed that it was a matter of common knowledge that the pay scale still fell far short of the living wage and that they only approximated to the fair wage. No reasons were given for the award made in this way. There was no reference to the award of the 17th of August, 1949 made by Mr. Mookerji and the aforesaid agreements of 1950 by which the scales of pay and grades were settled between the Company and its employees.

14. So far as the workers were concerned the Tribunal pointed out that the Engineering Tribunal had awarded Rs. 30 per month for the unskilled workers and Rs. 35 for the semi-skilled workers. The scales of pay for the skilled workers had been left to be decided by bargaining. Rs. 50 pay plus Rs. 31. dearness allowance was hardly sufficient for 3 consumption units. It then referred to an award in the Howrah Works of Messrs. Martin Burn and Co. by which Rs. 37 was fixed as basic pay for unskilled workers and Rs. 42 as basic pay for semi-skilled workers. The Tribunal accordingly awarded the same in the present dispute. It also granted them dearness allowance as prescribed by the Second Engineering Tribunal, which was as follows :-

Rs. 31 per month up to the pay range of Rs. 50,

Rs. 42 per month for the pay range between Rs. 51 and Rs. 100.

Rs. 48 ,, ,, Rs. 101 and Rs. 150,

Rs. 54 ,, ,, Rs. 151 and Rs. 200; and

Rs. 60 ,, ,, of Rs. 201 and above.

It then finally observed that it need not go into the facts which had led to these scales of pay being computed as they were well-known and had been reiterated in most of the awards made in Calcutta. It was pointed out to us that the Tribunal had referred to some award in connection with Martin Burn and Co. of the existence of which there was no evidence in the record and it was conceded on behalf of the workmen that this was so. It is patent, therefore, that so far as the workmen are concerned the award of the Tribunal is based on some material which both parties concede does not exist in the record. There is no other reason given for altering the scales of pay and dearness allowance so far as the workmen are concerned.

15. It appears to us that the award of the Tribunal with reference to Items 1 and 2, except in respect of dearness allowance, is an arbitrary one based on no evidence or recognized principles. There is no finding that the existing scales of pay in fact are inadequate. On the contrary, the findings of the Tribunal would indicate that the scales of pay prevailing in Ranigunj concern of the Company are better than the scales of pay granted by the Second Engineering Tribunal. So far as the grades are concerned, no principal has been enunciated to justify the alteration of the existing grades which had been the subject of agreement in 1950. Nothing was pointed out by the Tribunal to show that between 1950 and 1955, when the present industrial dispute was referred by the Government to the Tribunal, circumstances had so altered as to make the existing scales of pay and the grades unreasonable or, inadequate to meet the conditions prevailing at the time the industrial dispute had

been referred to the Tribunal. The award in this respect therefore is set aside.

16. With respect to dearness allowance for all (clerks and workmen) the award of the Tribunal cannot be interfered with. The cost of living has increased since the agreements of 1950 and the finding of the Tribunal is that the scales of pay still fall short of a living wage. These grounds are sufficient justification for the award concerning the increase allowed in the dearness allowance.

17. ITEMS 4 AND 12 OF THE SCHEDULE :- These two items refer to medical facilities and other related arrangements, the question whether the Company was justified in refusing T. B. benefits as agreed upon in the agreements dated 12th July, 1952 and 2nd June, 1958, Whether the workers were entitled to compensation and whether the T. B. patients, who had been under treatment and who had been declared fit, were entitled to resume their duties. We have carefully examined the award with reference to these matters and can see no adequate ground for interfering with it. Under Item 4, so far as the T. B. patients were concerned, the Tribunal found at the Company "may" re-employ them if they were found fit and capable to do work, whereas under Item No. 12 the Tribunal used the word "must". In both cases, however, the obvious meaning of the Tribunal was that if the employee had suffered from tuberculosis he may be re-employed if he was found fit and capable to do work. Although under Item 12 the word "must" had been used, the Tribunal had clearly meant that if a T. B. patient after his recovery was declared fit by the Company's doctor to do his job and he was no longer a source of infection to his co-workers then the Company should allow him to join. The condition precedent to the person being allowed to join work was that he was to be fit and capable of doing work. If he was found fit to work and was no longer a source of infection to his co-workers, then the Company should allow him to join. The 'word "must" as used in the award under Item 12 obviously should be read as "may". Except for this classification, it appears to us that in other respects the award under Items 4 and 12 cannot be interfered with.

18. ITEM NO. 5 OF THE SCHEDULE :- This was concerned with the proper arrangement for quarters or revision of allowance in this respect for all categories of workmen. Where quarters were not provided by the Company to a workman, an allowance of Rs. 4 per month was given both to the staff and the workers. The Tribunal found that this amount was inadequate. It, accordingly, increased it to Rs. 5 per month so far as the workers were concerned and to Rs. 6 per month so far as the staff was concerned. It is true that no positive ground had been stated as to how the Tribunal came to increase the existing grant of Rs. 4 per month. The increase, however, is so small that we do not think we can say that any principle has been violated by the increase awarded. The decision of the Tribunal in this respect cannot be interfered with.

19. ITEM NO.14 OF THE SCHEDULE :- This is concerned with revision of leave rules. In the written statement of the Staff Union it was claimed that the leave rules should be 30 days annual leave accumulated up to two years and 36 days privilege leave and sick leave annually on full pay and also 15 days sick leave on half pay. In the written statement of the Workers' Union it was stated that out of the 15 holidays admissible to the workers only 5 holidays were with pay and dearness allowance and the rest on dearness allowance only. They wanted that all these 15 days should be holiday with full pay. The Tribunal set out the award of the Engineering Tribunal regarding leave conditions and stated that they were as follows :

For the operatives - statutory leave under the Factories Act - 8 festival holidays and sick leave for 15 days on half pay. Five days' other leave.

For, the clerks - festival leave as above, Privilege leave for 21 days full pay. Sick leave 15 days on

half pay and casual leave one week on full pay. Privilege leave accumulates for three years.

The Tribunal then considered the case of the Staff. It considered that 12 days' annual leave which they got was inadequate and it made 21 days as annual leave to accumulate for 3 years. It thought that privilege leave should be unqualified for 21 days and in view of it it allowed 15 days sick leave with full pay out of 21 days, as at present granted by the Company as casual-sick leave, and 15 days' sick leave on half pay per year as at present. Concerning the festival holidays, it was of the opinion, that it should be the same as in the case of the workers. Regarding the workers it made the annual leave as provided under the Factories Act. Regarding the festival holidays it granted 8 days as given by the award of the Engineering Tribunal on full pay including dearness allowance and also 7 days festival holidays with dearness allowance only without pay. Regarding sick leave the workers were to get 15 days per year on half pay.

20. The existing rules of the Company with respect to the staff are:-

Casual-Sick leave - 21 days with full pay and dearness allowance.

Additional Sick leave- 15 days on half pay and dearness allowance. This is to be given when the 21 days casual-sick leave with full pay and dearness allowance is exhausted.

Annual privilege leave- 12 days for each completed year of service. This can be accumulated for two years, i. e., 24 days.

Festival holiday with pay - 161/2 days annually.

Accident leave- 7 days full pay and after that at half monthly rates until recovery.

so far as the workers were concerned the existing leave rules are :

Holiday leave with pay- as per Factories Act but with minimum of 12 days.

Sick leave with pay- 24 days with full pay and dearness allowance and 24 days with half pay and half dearness allowance after completion of 12 months' service. 24 days full basic pay and 24 days half basic pay after completion of 3 months' service.

Maternity leave- 4 weeks prior to delivery and 4 weeks after delivery with pay and dearness allowance after completion of 9 months' service (average earning for 3 months from the time of notice of confinement.)

Paid festival holiday- 5 days in a year with pay and dearness allowance.

Unpaid festival holiday- 91/2 days in a year without pay but with dearness allowance.

Accident leave- 7 days full pay and after that at half monthly rates until recovery.

Casual leave- without pay normally 6 days.

The Tribunal seemed to regard, in the case of the Staff, casual-sick leave as privilege-cum-sick leave and thought this to be rather anomalous because privilege leave could be claimed more or less as a matter of right and it could be taken to meet any necessity while sick leave can only be had in case

of sickness certified by a doctor. On this misconception of the existing rule it proceeded to award 21 days as privilege leave. If the decision of that Tribunal were to stand the Staff would get 21 days' annual leave to accumulate for 3 years, 21 days' privilege leave and out of 21 days' sick leave leave 15 days on full pay arid 15 days on half pay. Under the existing rules, the staff would get 21 days as casual (sick leave) on full pay and dearness allowance which certainly is better than sick-leave for 15 days on full pay and 15 days on half pay. The Staff would also under the award lose the benefit of additional sick leave as existing under the present rules. The annual privilege leave under the existing rules is 12 days to be accumulated for two years, and the award has made it 21 days to be accumulated for 3 years. In this respect the award is more generous than the existing rules. The festival holidays in the existing rules are 161/2 days annually with pay and dearness allowance. Under the award the festival holidays will be, as in the case of the workers, 8 days on full pay including dearness allowance and 7 days without pay but with dearness allowance. In this respect the existing rules are more, favourable. Under the existing rules the staff and the workers get 7 days as accident leave on full pay and thereafter on half monthly rates until recovery. Under the award they do not get this benefit. So far as the workers are concerned, in respect of the festival holidays, the award is sightly more favourable to them than the existing rules. So far as sick leave is concerned, the award works adversely to them because it has granted only 15 days per year on half pay, whereas under the existing rules the workers get 24 days with full pay and dearness allowance and 24 days with half pay and half dearness allowance. The changes made by the Tribunal in the existing leave rules have been made without stating the grounds upon which it was considered that they were inadequate or unfavourable to either the staff or the workers of the Company. If the existing leave rules are read as a whole they are more favourable to the employees of the Company thin what has been given by the award. The Company has opposed any change and we can see no justification to alter the existing rules in a fashion which on the whole acts adversely to the interest of the staff and the workers. Indeed, Mr. Vyas who had appeared for the workers and on behalf of some of the staff candidly stated that they would prefer to abide by the existing leave rules of the Company than have the change in the rules made by the Tribunal. We would, accordingly, set aside the decision of the Tribunal with reference to Item 14 of the Schedule in the order of reference.

21. ITEM NO. 27 OF THE SCHEDULE : - This is concerned with the revision of the Acting Leave allowance. Under the existing r ules the quantum of acting allowance is to be the difference between the salary or wages of the acting incumbent and the minimum salary or wages of the higher block or grade, subject to a maximum of 25 per cent of the incumbent's basic salary. It was claimed on behalf of the employees of the Company that the quantum of the acting allowance should be the difference between the actual salary of the acting incumbent and the actual salary of the man in whose place he was acting. The Tribunal awarded the difference between the actual pay of the incumbent and the actual pay of the person in whose place the employee acted subject to the maximum of 25 per cent of his basic salary. In other respects it did not alter the existing rules. The ground upon which it modified the existing rules regarding acting allowance was that the acting man does practically the same work as was done by the person for whom he was acting and the Company derived benefit from his work. The existing rules, however, are consistent with the recognized principle that the acting incumbent will get as acting allowance the difference between his salary and the minimum salary of the higher post in which he is acting subject to a maximum of 25 per cent, of the incumbent's basic salary. In our opinion the award in this respect is based on no recognized principle and is set aside.

22. ITEM NO. 28 OF THE SCHEDULE : - This is concerned with the Company's refusal of medical aid and medicines to the suspended workers and whether they were entitled to any relief on account thereof. The workmen have appealed against the award in this connection. The Tribunal

was of the opinion that as the orders of suspension were justified in most of the cases no relief by way of compensation could be allowed to the suspended workers for the withholding of medical relief to them by the Company during the period of suspension. When a man is placed under suspension, as a rule, his wages including allowance etc. are withheld for the time being. In that view free medical aid and medicines could also be withheld. We cannot find anything wrong in principle in the view taken by the Tribunal and its decision in this respect must be affirmed.

23. In the net result Civil Appeal No. 673 of 1957 by the Company is allowed in part and the award of the Tribunal is modified to the extent stated in this judgment. Civil Appeal No. 674 of 1957 is dismissed. Each party will bear their own costs in this Court in these appeals.

Order accordingly.

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