Bengal Chemical & Pharmaceutical Works Ltd., Calcutta

Vs

Their Workmen

Civil Appeals Nos. 125 and 164 of 1958

(P. B. Gajendragadkar, A. K. Sarkar, K. Subha Rao JJ)

28.01.1959

JUDGMENT

SUBBA RAO, J. –

These appeals are by Special Leave from the Award by Shri G. Palit, Judge, Fifth Industrial Tribunal, West Bengal, in the matter of a dispute between Messrs. Bengal Chemical & Pharmaceutical Works Limited, Calcutta, and their employees, represented by Bengal Chemical Mazdoor Union, Calcutta.

The Government of West Bengal by its order dated September 13, 1956, referred the following dispute between the parties referred to above to the Second Industrial Tribunal under s. 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947), hereinafter referred to as the Act. "Is the demand of the employees for increase in Dearness Allowance justified ? If so, at what rate ?". The said Act was amended by the Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956 (36 of 1956), which came into force on August 28, 1956. On April 9, 1956, the Government made an order transferring the said dispute from the file of the Second Industrial Tribunal to that of the Fifth Industrial Tribunal. The Fifth Industrial Tribunal, after making the necessary inquiry, made the award on August 26, 1957, and it was duly notified in the Calcutta Gazette on September 26, 1957. As a mistake had crept in, the award was modified by the Tribunal by its order dated the 29th November, 1957; and the modified award was published in the Calcutta Gazette on the 29th November, 1957. Under the award the Tribunal held that there was a rise in the cost of living index and that to neutralise the said rise the employees should get an increase of Rs. 7 in dearness allowance on the pay scale up to Rs. 50 and Rs. 5 on the pay scale above Rs. 50. On that basis the dearness allowance payable to the employees was worked out and awarded. The correctness of the award is questioned in these appeals. The Company preferred Civil Appeal No. 125 of 1958 against the award in so far it was against it and the Union preferred Civil Appeal No. 164 of 1958 in so far it went against the employees. For convenience of reference, the parties will be referred to in the course of the judgment as the Company and the Union.

Learned Counsel for the Company raised before us the following points : (1) The order dated April 9, 1957, made by the Government transferring the dispute from the file of the Second Industrial Tribunal to that of the Fifth Industrial Tribunal was illegal; (2) the previous award made by the Tribunal between the same parties on April 26, 1951, and confirmed by the Labour Appellate Tribunal by its order dated August 30, 1951, had not been terminated in accordance with the provisions of s. 19(6) of the Act and therefore the present reference was bad in law and without jurisdiction; (3) there was no change in the circumstances obtaining at the time the previous award was made and those prevailing at the time of the present reference as to justify making out a new

award; (4) the Tribunal went wrong in taking the rise in the cost of living index between the years 1954 and 1957 instead to taking the fluctuating rate in the index between the date of the earlier award, i.e., August 30, 1951, and the date of the present reference in the year 1957; (5) the Tribunal went wrong in so far as it based its decision on the Second Engineering Award of 1950 which was already considered by the Tribunal in its earlier award of the year 1951; and (6) in any event, in computing the amount, the Tribunal applied wrong criteria.

We shall consider the above contentions seriatim. But before doing so, it will be convenient to refer briefly to the scope of jurisdiction of this Court under Art. 136 of the Constitution vis-a-vis the awards of Tribunals. Article 136 of the Constitution does not confer a right of appeal to any party from the decision of any tribunal, but it confers a discretionary power on the Supreme Court to grant special level to appeal from the order of any tribunal in the territory of India. It is implicit in the discretionary reserve power that it cannot be exhaustively defined. It cannot obviously be so construed as to confer a right to a party where he has none under the Law. The Industrial Disputes Act is intended to be a self-contained one and it seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration. Awards are given on circumstances peculiar to each dispute and the tribunals are, to a large extent, free from the restrictions of technical considerations imposed on courts. A free and liberal exercise of the power under Art. 136 may materially affect the fundamental basis of such decisions, namely, quick solution to such disputes to achieve industrial peace. Though Art. 136 is couched in widest terms, it is necessary for this Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principles of natural justice, causing substantial and grave injustice to parties or raises an important principle of industrial law requiring elucidation and final decision by this Court or discloses such other exceptional or special circumstances which merit the consideration of this Court. The points raised by the learned Counsel, except perhaps the first point, do not stand the test of any one of those principles.

Learned Counsel for the Company, however, says that, though the said principles might be applied at the time of granting leave, once leave is given no such restrictions could be imposed or applied at the time of the final disposal of the appeal. The limits to the exercise of the power under Art. 136 cannot be made to depend upon the appellant obtaining the special leave of this Court, for two reasons, viz., (i) at that stage the Court may not be in full possession of all material circumstances to make up its mind and (ii) the order is only an ex parte one made in the absence of the respondent. The same principle should, therefore, be applied in exercising the power of interference with the awards of tribunals irrespective of the fact that the question rises at the time of granting special leave or at the time the appeal is disposed of. It would be illogical to apply two different standards at two different stages of the same case. The same view was expressed by this Court in Pritam Singh v. The State of Madras [[1950] S.C.R. 453.], Hem Raj v. State of Ajmer [[1954] S.C.R. 1153.] and Sadhu Singh v. State of Pepsu [A.I.R. 1954 S.C. 271.].

The first question turns upon the construction of the relevant provisions of the Act as amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. The relevant provisions inserted by the Amending Act read as follows :

> "Section 2(r) : 'Tribunal' means an Industrial Tribunal constituted under Section 7A."
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> "7 A. Tribunals. - (1) The appropriate Government may, by notification in the official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the

Third Schedule.

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless -

(a) he is, or has been, a Judge of a High Court; or

(b) he has held the office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellant Tribunal) Act, 1950 (48 of 1950), or of any Tribunal, for a period of not less than two years.

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it."

"33B. (1) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal, or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred :

Provided that where a proceeding under section 33 or section 33A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court."

Section 30 of the Amending Act reads :

"If immediately before the commencement of this Act, there is pending any proceeding in relation to an industrial dispute before a Tribunal constituted under the Industrial Disputes Act, 1947, (14 of 1947), as in force before such commencement, the dispute may be adjudicated and the proceeding disposed of by the Tribunal after such commencement, as if this Act has not been passed."

Section 7, before the Amendment ran thus :

"The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act.

(2) A Tribunal shall consist of such number of members as the appropriate Government thinks fit. Where the Tribunal consists of two or more members, one of them shall be appointed as chairman.

(3) Every member of the Tribunal shall be an independent person,

(a) who is or has been a Judge of a High Court or a District Judge, or

(b) is qualified for appointment as a Judge of a High Court :

> Provided that the appointment to a Tribunal of any person not qualified under part (a) shall be made in consultation with the High Court of the Province in which the Tribunal has or is intended to have, its usual place of sitting."

It will be seen from the aforesaid provisions that the Amending Act, which came into force on August 28, 1956, changed the constitution of a tribunal to some extent and conferred a power for the first time on the Government to transfer a proceeding pending before a tribunal to another tribunal; or in the case of a proceeding under s. 33 or 33A pending before a tribunal to another tribunal or to a Labour Court. Section 30 of the Amending Act expressly saves a pending proceeding before a tribunal constituted under the Act before the Amending Act came into force and directs that such dispute shall be adjudicated and the proceeding disposed of by that tribunal after the commencement of the Amending Act as if that Act had not been passed. A combined and fair reading of the aforesaid provisions, it is argued, was that s. 33B, inserted in the Act by the Amending Act, was prospective in operation, i.e., it would apply only to proceedings initiated in the tribunal constituted under the amended Act and that proceedings pending before the tribunals constituted under the Act before the commencement of the Amending Act would be disposed of as if the Amending Act had not been passed. The Parliament, presumably to clarify the position, brought out another Amending Act styled the Industrial Disputes (Amendment) Act, 1957 (18 of 1957), whereunder among other things, a new definition of "Tribunal" was given in substitution of that in s. 2(r) of the Act. The substituted reads :

> "Tribunal means an Industrial Tribunal constituted under section 7A and includes an Industrial Tribunal constituted before the 10th day of March, 1957, under this Act."

Sub-section (2) of s. 1 of the Amending Act 18 of 1957 says that s. 2 shall be deemed to have come into force on the 10th day of March, 1957. The result is that section 33B should be read along with the definition of a "Tribunal" inserted by the Amendment Act 18 of 1957, as if that definition was in the Act from March 10, 1957. If that definition of a "Tribunal" be read in place of the word "Tribunal" in s. 33B, the relevant part of that section reads :

> "(1) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Tribunal constituted before the 10th day of March, 1957, and transfer the same to another Tribunal constituted under section 7A of the Act."

So construed it follows that in respect of proceedings pending in a tribunal constituted before the 10th day of March, 1957, the Government has the power to transfer them from that date to any other tribunal. It is said that this construction would make s. 30 of the Amending Act 36 of 1956 otiose or nugatory. That section contained only a saving clause and it was not inserted in the Act; it served its purpose, and even if it ceased to have any operative force after the Amendment of 1957, that circumstance cannot have any bearing on the impact of the amendment of the definition of "Tribunal" on the provisions of s. 33B of the Act. In the present case, the Government made the order of transfer on April 9, 1957, i.e., after s. 2 of Amendment Act 18 of 1957 was deemed to have come into force. It must, therefore, be held that the Government acted well within its powers in transferring the dispute pending before the Second Industrial Tribunal, to the Fifth Industrial Tribunal.

The second contention, namely, that the Award of 1951 was not terminated in accordance with law, does not appear to have been pressed before the Tribunal. The governing section is s. 19(6) which

says :

> "Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award."

In the first written-statement flied by the Company before the Tribunal, no plea was taken based upon s. 19(6) of the Act. In the second written-statement filed by the Company on December 20, 1956, a contention was raised to the effect that the award dated June 21, 1951, was not terminated under s. 19(6) of the Act, that the said award was binding between the parties and therefore the reference was bad in law. Notwithstanding the said allegation, the award discloses that no issue was raised on that count and no argument was advanced in support thereof. This attitude might have been adopted by the Company either because it did not think fit to rely upon a technical point but had chosen to get a decision of the Tribunal on merits, or it might be that there was no basis for the contention, as the company might have received notice under the said section. Though it may not be quite relevant, it may be mentioned that even in 1951 when the dispute between the parties was referred to the Industrial Tribunal, though a similar contention was open to the Company and indeed was suggested by the Tribunal, it moved the Tribunal to give an award on the merits of the matter. If this plea had been seriously pressed, the Tribunal, would have raised a separate issue and the Union would have been in a position to establish that notice had been served on the Company as required by s. 19(6) of the Act. As the question raised depends upon elucidation of further facts, we do not think that we would be justified in allowing the Company to raise the plea before us, and we, therefore, do not permit them to do so.

The fourth point turns on the construction of the terms of the agreement entered into between the parties on September 15, 1954. The dispute between the parties had an earlier origin and apart from the present reference, there were as many as four references and four awards, and the last of them was dated April 3, 1951. The Company preferred an appeal against that award to the Labour Appellate Tribunal, Calcutta, which, with some modification, confirmed the award of the Tribunal on August 30, 1957. That award as modified by the Appellant Tribunal fixed the basic wages and the rate of dearness allowance payable to the employees. The employees were not satisfied with the award and they placed before the Company a new charter of demands claiming higher rates of dearness allowance and wages, but the dispute was compromised and the parties entered into an agreement dated September 15, 1954, by virtue of which, the Company introduced the incremental scale in the wage structure. As regards the dearness allowance, it was stated in cl. 11 of the agreement as follows :

> "The existing rate of D.A. will prevail unless there is a substantial change in the working class cost of living index, in which case the rate will be suitably adjusted."

On the construction of this clause depends the question of the Union's right to claim enhanced dearness allowance. It is common case that if the cost of living index in the year 1951 was taken as the basis, there was a fall in the rate of working class cost of living index in 1957. On the other hand, if the cost of living index in 1954 was the criterion, there was a substantial increase in the cost of living index in 1957. The question, therefore, is what did the parties intend to agree by the aforesaid clause in the agreement. To ascertain the intention of the parties, we should consider the circumstances under which the said agreement was entered into between the parties. Exhibit 6 is the said agreement. The preamble to the agreement reads :

> "The Company and the Union came to a settlement in respect of the Pay Scales and Grades in the Charter of Demands dated 25th June, 1953, at the intervention of Shri A. R. Ghosh, Asstt. Labour Commissioner during the Conciliation proceedings ending on the 30th August, 1954."

The preamble indicates that the entire situation obtaining on the date of the agreement was reviewed and the parties agreed to the terms of the settlement mentioned therein. Under clause (1) of the agreement, pay scale and grade as given in annexure B was agreed upon for the time being for a period of three years as an experimental measure, to be reviewed, modified or suspended or withdrawn after three years, depending upon the Company's business and financial condition. By cl. (2), the employees agreed not to raise any dispute involving any further financial burden on the Company during the next three years in respect of pay scale and grade. Clauses (3) to (5) deal with increments and the age of retirement. Clause (6) provides for the piece-rated (contract) workers in respect of their increments. Clause (7) is in respect of increment for the daily-rated workers. Clause (8) is in respect of the grade and scale of pay and increments of Chemists, Engineers and Doctors, etc. Clause (9) is to the effect that the employees who would be made permanent thenceforward would be grouped under two divisions for the purposes of giving effect to the scale of pay. Clause (11) which we have already extracted above relates to the dearness allowance. Clause (12) says "barring the question of bonus for 1358 and 1359 B.S. the Union withdraws its claim in respect of other items in the Charter of Demands dated 25th June, 1953."

We have given the agreement in extenso only for the purpose of showing that all the disputes between the parties arising out of the charter of demands dated June 25, 1953, were settled between them and reduced to writing. The agreement was self-contained and started a new chapter regulating the relationship of the parties to the dispute in respect of matters covered by it. The award must be deemed to have been superseded by the new agreement. In this context the crucial words "existing rate of D.A.", on which both the learned Counsel relied, could have only one meaning. Do the words "existing rate" refer to the date of the agreement or to the date of the award ? It is true that the existing rate of D.A. had its origin in the award and was made to prevail under the agreement, that is to say that the rate was accepted by the parties as reasonable on the date of the agreement, till there was a substantial change in the working class cost of living index. If the contention of the learned Counsel for the Company should prevail, the agreement would not be self-contained, but only to be constructed as modifying the earlier award to some extent. We are satisfied that in regard to matters covered by it, the agreement replace the earlier award and therefore the date of the agreement is the crucial one for ascertaining whether there was substantial change in the working class cost of living index in the year 1957. We, therefore, reject this contention.

Contentions 3, 5 and 6 raise pure questions of fact. The Tribunal, on the consideration of the entire material placed before it, came to the conclusion that there was change of circumstances which entitled the employees to calam an increase in their dearness allowance. It has also fixed the rate of increase in the dearness allowance on the basis of the rise in the cost of living index. In doing so, it also took into consideration the difficulties facing the industry and the repercussion of the rise in the dearness allowance on the consumers in general. Having regard to the overall picture, it came to the conclusion that full neutralisation of the deficiency as a result of rise in the cost of living index by dearness allowance could not be permitted and therefore allowed them only 75 per cent. of the increase in the dearness allowance to which they would have otherwise been entitled on the basis of the rise in the cost of living index. The finding given by the Tribunal is one on fact and we do not see any permissible ground for interference with it in this appeal by special leave.

Before closing, one point strenuously pressed upon us by the learned Counsel for the Company which is really another attempt to attack the finding of fact given by the Tribunal from different angle must be mentioned; it was that the Tribunal wrongly relied upon Exhibit 3, corrected on the basis of the information given by the State Statistical Bureau, West Bengal, for ascertaining the working class cost of living index since August 1954 up to March 1957. On the basis of Exhibit 3, the Tribunal held that the working class cost of living index stood at 344.1 in August 1954 and it rose to 400.6 in May 1957, with the result that there was a rise of 56 points, a substantial rise in the cost of living index. Exhibit 3 certainly supports the finding of the Tribunal. The learned Counsel for the Company points out with reference to the relevant entries in the Monthly Statistical Digest, West Bengal, that the said figures relate only to working class menials and the corresponding entries in regard to the working class cost of living index do not indicate so much increase as in the case of the menial class. Learned Counsel has also taken us through the relevant figures. The relevant entries in the Monthly Statistical Digest were not filed before the Tribunal. Indeed when the Union's witness, Shri Satyaranjan Sen, was examined before the Tribunal, he was not cross-examined with a view to elicit information that Exhibit 3 did not relate to the working class cost of living index. When Shri Chatterjee, the Assistant Manger of the Company, who was examined after Shri Sen, gave evidence, he not only did not object to the entries in Exhibit 3 but stated that he was not aware of any substantial increase in the working class cost of living index and complained that similar entries for all the relevant years had not been produced. Even before the Tribunal it does not appear that any argument was advanced contesting the relevancy of Exhibit 3 on the ground that it did not refer to the working class cost of living index. In the circumstances, we do not think that we are justified to allow the learned Counsel for the Company to make out a new case for the first time before us, upsetting the Tribunal's basis for calculation and involving further and different calculations.

In the result, we confirm the award of the Tribunal and dismiss the appeal with costs.

The learned Counsel, appearing for the Union, did not press the appeal No. 164 of 1958, filed by the Union, and therefore it is also dismissed with costs.

Appeals dismissed.

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