The Indian Hume Pipe Co. Ltd

Vs

The Workmen and Another

Civil Appeal No. 169 of 1958

(CJI B. P. Sinha, K. N. Wanchoo, P. B. Gajendragadkar JJ)

16.10.1959

JUDGEMENT

GAJENDRAGADKAR J. –

Are workmen entitled to the double benefit of gratuity scheme as well as retrenchment compensation ? That is the main question which falls to be considered in the present appeal. The same question along with some other subsidiary points arises in some other appeals and so all of them have been grouped together and placed before us for disposal. We propose to deal with the main point in the present appeal and discuss the other points arising in the other appeals separately.

This appeal by special level arises from an industrial dispute between the Indian Hume Pipe Co. Ltd., Bombay (hereinafter called the appellant) and its workmen monthly-rated including canteen boys employed under it (hereinafter called the respondents). The dispute was in regard to the claim for gratuity made by the respondents and it was referred to the tribunal in these words : "Gratuity - employees should be paid gratuity on the scale and the conditions prescribed in the industrial tribunal's award in Ref. (IT) No. 82 of 1950 dated August 13, 1951. It should also be paid to those whose services have been terminated by the management after the termination of the aforesaid award." It appears that the respondents had raised an industrial despite in 1950 which covered their claims for scale of pay, dearness allowance, provident fund and gratuity and it was referred to the adjudication of Mr. Thakore. On this reference Mr. Thakore made his award on August 13, 1951, which inter alia provided for a scheme of gratuity. Both the parties had gone in appeal against the said award but the appellate tribunal dismissed both the appeals and confirmed the award. On June 2, 1953, notice was given by the respondents terminating the said award and making a fresh demand for gratuity at a higher rate. Conciliation proceedings were started but they failed; and so on July 1, 1954, the present reference was made.

Before the tribunal the employees urged that the State Government had no jurisdiction to confine their demand to the scheme of gratuity as framed by Mr. Thakore, and they urged the tribunal to consider their claim for a revision of the said scheme. The tribunal held that its jurisdiction was limited by the terms of reference and it could not entertain any such plea; it also observed that even if it was open to the respondents to agitate for the revision of the said award there was not much change of their succeeding in that demand. The appellant opposed the scheme of gratuity framed by the earlier award and contended that no gratuity should be paid to the workmen who would be entitled to receive retrenchment compensation under s. 25F of the Industrial Disputes Act (hereinafter called the Act). This contention was negatived by the tribunal. It held that the respondents were entitled to claim both gratuity and retrenchment compensation. The Tribunal then examined the financial position of the appellant and held that the gratuity scheme framed by the

earlier award should be enforced subject to certain modifications specific by it.

This award was challenged by the appellant before the Labour Appellate Tribunal; and it was argued that the respondents were not entitled to the double benefit of the gratuity scheme and the statutory benefit of the gratuity scheme and the statutory retrenchment compensation. The appellate tribunal agreed with the view taken by the tribunal and rejected the appellant's contention. It also examined the financial position of the appellant and held that it saw no reason to interfere with the discretion exercised by the tribunal in granting "the same gratuity to the workmen in the case of retrenchment as in other cases." Then the appellant tribunal considered the merits of the scheme sanctioned by the tribunal and made some changes and added one paragraph which had been included in the earlier award but had been omitted by the tribunal. This paragraph dealt with the cases of persons retrenched after the date of reference but before the award came into operation, and it directed that in the case of such persons additional gratuity shall be paid if they have already received unemployment or retrenchment compensation in excess of the gratuity awarded above; in other cases the difference along shall be paid. It is against this award that the present appeal has been preferred.

On the contentions raised in the tribunals below, the principal point which calls for our decision is whether a scheme of gratuity can be framed by industrial tribunals for workmen who are entitled to the benefits of 25F of the Act. This question has been frequently raised before industrial tribunals and has generally been answered in favour of the employees. In dealing with this question it is important to bear in mind the true character of gratuity as distinguished from retrenchment compensation. Gratuity is a kind of retirement benefit like the provident fund or pension. At one time it was treated as payment gratuitously made by the employer to his employee at his pleasure but as a result of a long series of decisions of industrial tribunals gratuity has now come to be regarded as a legitimate claim which workmen can make and which, in a proper case, can give rise to an industrial dispute. Gratuity paid to workmen is intended to help them after retirement, whether the retirement is the result of the rules superannuation or of physical disability. The general principle underlying such gratuity schemes is that by their length service workmen are entitled to claim a certain amount as a retrial benefit.

On the other hand retrenchment compensation is not a retirement benefit at all. As the expression "retrenchment compensation" indicate it is compensation paid to a workman on his retrenchment and it is intended to give him some relief and to soften the rigour of hardship which retrenchment inevitably causes. The retrenched workman is, suddenly and without his fault, thrown on the street and has to face the grim problem of unemployment. At the commencement of his employment a workman naturally expects and looks forward to security of service spread over a long period; but retrenchment destroys his hopes and expectations. The object of retrenchment compensation is to give partial protection to the retrenched employee and his family to enable them to tide over the hard period of unemployment. Thus the concept on which grant of retrenchment compensation is based is essentially different from the concept on which gratuity is founded.

It is true that a retrenched workmen would be virtue of his retrenchment be entitled to claim retrenchment compensation in addition to gratuity; because industrial adjudication has generally taken the view that the payment of retrenchment compensation cannot affect the workmen's claim the gratuity. In fact the whole object of granting retrenchment compensation is to enable the workman to keep his gratuity safe and unused so that it may be available to him after his retirement. Thus the object granting retrenchment compensation to the employee is very different from the object which gratuity is intended to serve. That is why on principle the two schemes are not at all

irreconcilable nor even inconsistent; then really complement each other; and so, on considerations of social justice there is no reason why both the claims should not be treated as legitimate. The fact that they appear to constitute a double benefit dose not affect their validity. That is the view which industrial tribunals have generally taken in a large number of reported decisions on this point.

Let us now refer to some of these decisions and indicate very briefly the broad outlines of the development of industrial law on this subject. Whenever industrial tribunals deal with the employees claim for gratuity they consider the financial position of the employer before granting the employees' demand for framing a gratuity scheme; it is only if they are satisfied that the financial condition of the employer is satisfactory and the burden of the gratuity scheme can be borne by him that they proceed to frame schemes of gratuity and thereby secure for the employees the retirement benefit in the form of gratuity. Though awards framing such schemes had been made for some years before 1951, the question of framing a gratuity scheme was carefully examined by the Labour Appellate Tribunal in the case of the Army and Navy Stores Ltd., Bombay, And Their Workmen ([1951] 11 L.L.J. 31). The scheme framed in this case directed the payment of gratuity on the follows scale :

> "(1) On the death of an employee while in the service of the company or on his becoming physically or mentally incapable of further service - 1/2 month's salary or wages for each year continuous service, to be paid to the disabled employee or, if he has died, to his heirs or legal representatives or assigns.
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> (2) On voluntary retirement or resignation of an employee after 15 years continuous service - 1/2 month's salary or wages for each year continuous service.
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> (3) On termination of service by the company - 1/2 month's salary or wages for each year of completed service.

Under this scheme gratuity was not, however payable to any employee dismissed for misconduct. This scheme has been generally treated as a model scheme in all subsequent disputes about gratuity.

It also appears that the benefit of gratuity schemes has been generally given even to workmen whose services have been terminated and who have thereby become entitled to retrenchment compensation also. In Bangalore Woollen Cotton and Silk Mills Co. Ltd. And Binny Mills Labour Association ([1952] 1 L.L.J. 656) the Labour Appellant Tribunal gave permission to the company to retrench 179 workmen subject to the condition that the workmen sought to be retrenched shall be paid by way of retrenchment relief a sum equivalent to one month's basic wage for every year of completed service in the company, and the basic wage on which such calculation is to be made shall be the last basic wage prior to the grant of this permission. It also made it clear that the grant of such retrenchment relief shall not in any way tend to prejudice the issue of a gratuity scheme which was before the adjudicator, and to which the adjudicator was directed to apply an altogether independent mind unaffected by the decision of the Labour Appellate Tribunal. It may, however, be conceded that sometimes, though rarely; tribunals have thought it fit not to grant gratuity in cases of workmen whose services have been terminated on the ground that they would be entitled receive compensation under the Act. But it is not disputed that this dissenting note has been struck only in a few cases (Vide Chemical, Industrial and Pharmaceutical Laboratory Ltd. And Their workmen ([1955] 11 L.L.J. 355). Speaking generally, subject to the capacity of the employer to pay, workmen, have been given the benefit of both retrenchment compensation and gratuity by industrial awards prior to the enactment of s. 25F of the Act. This question was elaborately considered by the

Labour Appellate Tribunal in the appeals against the award of All-India Industrial Tribunal (Bank Disputes) where it has been held that the award of retrenchment compensation cannot adversely affect the claim for gratuity. The two claims are made for entirely different reasons and in a proper case both the claims can be awarded.

The measure of compensation, however, varied from case to case, and the awards made in that behalf naturally were not always uniform. But it does appear that the determination of the quantum of retrenchment compensation was generally linked with the period of the past service rendered by the retrenched workman. In Rashtriya Mill Mazdoor Sangh and Gold Mohur Mills ([1953] 11 L.L.J. 660) the Labour Appellate Tribunal accepted the view that the quantum of compensation payable to retrenched workmen should be calculated at the rate of 10 days' basic wages plus dearness allowance for each year of service; and it also held that no maximum limit should be put on this quantum. In the Bombay Gas Co. Ltd., And Their Workmen ([1950] L.L. J. 150) a detailed scheme was framed for the computation of the retrenchment compensation. Those who had completed a year's service but less that three years' service got wages for 26 days with dearness allowance, and those who had completed three years of service or more got 26 days wages with dearness allowance for each year of service subject to a maximum of 104 days' wages with dearness allowance. In The National Industrial Works and Their Workmen ([1950] L.L.J. 1143) a still more elaborate scheme was framed for determining the quantum of compensation. Thus it would be seen that the result of industrial decisions was that workmen, were held entitled both to gratuity and compensation on retrenchment and the amount retrenchment compensation was measured by reference to the period of service rendered by the retrenched employee. It may, however, be stated that industrial decisions on the twin topics of gratuity and retrenched employee. It may, however, be stated that industrial decisions on the twin topics of gratuity and retrenchment compensation were not always uniform, and sometimes they disclosed an element of uncertainty and perhaps even ambiguity in their approach.

While this was the state of industrial decisions on this point, Ordinance V was promulgated on October 24, 1953. By s. 25E the Ordinance prescribed conditions precedent to retrenchment of workmen. One of the conditions thus prescribed by s. 25E(b) was that before a workman is retrenched he must be paid at the time of retrenchment, gratuity which shall be equivalent to 15 days' average pay for every completed year of service or any part thereon in excess of six months. This Ordinance was followed by Act 43 of 1953, which is deemed to have come into force force on October 24, 1953. It is by this amending Act that s. 25F has been introduced in the Act. Section 25F(b) is in the same terms as s. 25E(b) of the Ordinance, except that for the word 'gratuity' the expression "retrenchment compensation" has been substituted. We may incidentally mention the fact that in the statement of aims and objects of the Act it was observed that "in regard to retrenchment the bill provides that a workman who had been in continuous employment for not less than one year under the employer shall not be retrenched until he has been given one month's notice in writing or one month's wages in lieu of such notice, and also a gratuity calculated at 15 days' average pay for every completed year of service or any part thereof in excess of six months." The appellant's case is that after s. 25F was enacted there is no longer any scope for framing gratuity schemes in addition to the statutory retrenchment compensation for retrenched employees.

In support of this contention the appellant sought to rely on the fact that both in s. 25E(b) of the Ordinance and the statement of aims and objects of the amending Act, the word 'gratuity' has been used and not retrenchment compensation. It is obvious that for construing s. 25F the words used in the statement about the aims and objects of the Act are not relevant; and in regard to the use of the word 'gratuity' in s. 25E(b) of the Ordinance it is significant that the said word has been deliberately

omitted and the words "retrenchment compensation" have been used in its place by s. 25F. Therefore it would not be possible to determine the character of the payment statutorily prescribed by s. 25F by reference to the word 'gratuity' used either by the Ordinance or in the statement about the aims and objects of the Act. If we have to decide the character of the payment merely by the words used in describing it, then the words used s. 25F are "retrenchment compensation" and not gratuity.

But apart from the mere use of words there can be no doubt that s. 25F intended to provide compensation to retrenched workmen solely on account of the difficulties which they have to face on their retrenchment. It is well-known that at the time when the Ordinance was issued the problem of retrenchment had become widespread and acute and Legislature thought it necessary to step in and make a statutory provision for the payment of adequate retrenchment compensation. Legislature knew that retrenchment compensation was being awarded by industrial tribunals; but it must have thought that in determining the amount compensation the tribunals considered a variety of relevant factors with the result that there was no uniformity or certainty in the matter; and so it decided to standarise the payment of compensation by prescribing a statutory rule in that behalf. The enactment of s. 25F thus merely standarises the payment of retrenchment compensation and nothing more. If retrenchment compensation could be claimed by the employees in addition to gratuity prior to the enactment of s. 25F there is no reason why a similar claim cannot be made by them subsequent to its enactment.

It is then urged that in determining the amount of compensation payable to a retrenched workman the length of his past service has been taken into account, and it is pointed out that schemes of gratuity also provide for payment of gratuity on similar considerations and adopt a similar measure. As we have already pointed out, even before s. 25F was enacted tribunals were adopting similar methods in determining the amount of retrenchment compensation, and so the mere fact the length of the past service of the retrenched workman is made the basis for computing retrenchment compensation cannot clothe retrenchment compensation with the character of gratuity. The claims for retrenchment compensation and gratuity proceed on different considerations and it would be impossible to hold that the grant of one excludes the claim or grant of the other.

It is true that a retrenched workman would get both the retrenchment compensation and gratuity, and in a sense, on his retrenchment he would get more than what other workmen with corresponding length of service would get on their retirement; but it must be remembered that the retrenched workman gets compensation because involuntarily he has been forced to face unemployment, and it is to enable him to tide over the period of unemployment that retrenchment compensation is paid to him. So, on the general contention raised before us that the employees are not entitled to claim the double benefit of gratuity and retrenchment compensation there can be only one answer, and that is that there is no conflict between the two claims, and industrial tribunals are right in recognising that both claims can be entertained and granted, and reasonable gratuity schemes can and should be framed even after the enactment of s. 25F in the Act.

In this connection it would be relevant to refer to the definition of wages under s. 2(rr) of the Act inasmuch as it excludes any gratuity payable on the termination of the employee's service. This shows that Legislature was aware that gratuity can be claimed by employees and is often awarded to them. If Legislature had intended that the statutory retrenchment compensation provided for by s. 25F should affect the employees' claim for gratuity it would have expressly made a suitable provision in that behalf. Legislature makes such provisions when it thinks necessary to do so. Section 17 of the Employees' Provident Funds Act, 1952 (Act 19 of 1952), for instance, confers on

the appropriate Government power to except from the operation of all or any of the provisions of the scheme, establishments which have already introduced provident fund benefits which, on the whole, are not less favourable to the employees than the benefits provided under this Act. In the absence of any such provision in the Industrial Disputes Act it would be unreasonable to hold that the mere enactment of s. 25F either ousts the jurisdiction of industrial tribunals to entertain claims for gratuity schemes or makes it improper or unjust to frame such schemes for all employees including those who are retrenched.

So far we have dealt with the general question as it arose on the contention of the parties; but in fairness we must add that the learned Solicitor-General conceded that he could not urge that, as a matter of law, the point raised by his client should be answered in his favour. He, however, strenuously urged that in framing gratuity schemes industrial tribunals should make appropriate provision for giving gratuity to retrenched workmen on a basis different from that on which gratuity to other workmen is calculated. The argument is that since the retrenched workmen get statutory compensation on a very liberal scale they should not get gratuity at the rates fixed by the scheme for other workmen. They may and should get gratuity but at a lesser rate and on less generous terms and conditions. Indeed he suggested that we should make suitable amendments in the gratuity scheme framed by the appellate tribunal in that behalf. We do not think we can accede to this request. Whether or not a twofold scheme of gratuity should be framed, one applicable to retrenched workmen and the other to the rest, is a matter which may, if necessary, be raised before the tribunal in a proper case. Besides it may be pertinent to observe that the question as presented in this form is not one of general importance, for in the present state of our economy which has received and is receiving the stimulus of national plans, our industries may not have to face the problem of retrenchment on an appreciable or extensive scale; but apart from this consideration we cannot entertain or decide the point raise by the learned Solicitor-General in an appeal under Art. 136.

Before we part with this appeal, we ought to refer to another aspect of the matter which our present decision does not consider or decide. It is likely that gratuity schemes framed by consent or by awards may provide for payment of compensation to retrenched workmen either in lieu of or in addition to gratuity; in such cases the question as to whether the retrenched workmen can claim the benefit of such a scheme in addition to the retrenchment compensation under s. 25F would depend on the construction of the material terms of the relevant scheme considered in the light of the provisions of s. 25F of the Act. In the present appeal we are not called upon to consider such a question. Therefore, our decision has and can have no reference to cases which would fall to be decided under s. 25F of the Act.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

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