

SUPREME COURT OF INDIA

Dalmia Cement (Bharat) Ltd.

Vs.

Their Workers

C.A.No.90 of 1958

(B. P. Sinha, C.J.I., P. B. Gajendragadkar and K. N. Wanchoo, JJ.)

16.10.1959

JUDGEMENT

GAJNENDRAGADKAR, J.:

1. This appeal by special leave arises out of an industrial dispute between M/s. Dalmia Cement (Bharat) Ltd., (hereinafter called the appellant) and its workmen (hereinafter called the respondents) which was referred for adjudication to the industrial tribunal. The dispute related to several items of claim made by the respondents but in the present appeal we are concerned only with one of them; that is the respondents' claim for gratuity. The tribunal considered the objections raised by the appellant against the scheme of gratuity which was then in force and held that there was no substance in them. Certain alterations were suggested by the respondents in the said scheme some of which were accepted by the tribunal. In the result an award was made directing appropriate revision of the scheme of gratuity. Against this award the appellant preferred an appeal, and on its behalf the same contentions were raised and with the same result. The appellate tribunal saw no reason to interfere with the award made by the tribunal. It is against this part of the award that the present appeal has been preferred.

2. It appears that two modifications were suggested by the appellant in the current gratuity rules. The second of these modifications was not pressed before the tribunal and need not be considered. The first modification suggested was that the rules regarding payment of gratuity should not be applicable in the case of a worker who is entitled to gratuity under any law or special award for the time being in force and applicable to him in which case the gratuity will be payable to him according to that law or special award, and not according to these rules. By this amendment the appellant sought to raise the general question which has been considered by us in the case of Indian Hume Pipe Co. Ltd. v. Its Workmen, Civil Appeal No. 169 of 1958, D/- 16-10-1959 : (AIR 1960 SC 251). It is true that the modification proposed by the appellant refers to the gratuity payable to the workmen under any award for the time being in force; it does not refer in terms to retrenchment compensation. But the failure to use the words "retrenchment compensation" can be easily explained if it is remembered that the modification was suggested on December 1, 1953, when Ordinance V of 1953 was in force. As we have pointed out in the case of the Indian Hume Pipe Co. Ltd., (AIR 1960 SC 251) (supra), S. 25- E of the Ordinance had itself used the word 'gratuity' which had been subsequently substituted by the words "retrenchment compensation" by S. 25- F of the Act. Therefore it is clear that the contention raised by the appellant by suggesting this modification was based on the general argument that the workmen are not entitled to the double benefit of gratuity and retrenchment compensation. The learned Solicitor General is, therefore, right in arguing that the

appellant tribunal should not have held that it was not open to the appellant to raise the general issue under the head of this modification; but that is a matter of mere academic importance because on the general question which the appellant seeks to raise we have already held that what is described as a double benefit of gratuity and retrenchment compensation can be claimed by workmen. Therefore, on the merits the decision of the appellate tribunal which confirmed the award passed by the tribunal is right.

3. We must, however, add that in the present appeal we are not dealing with the claim made by any retrenched workman for gratuity in addition to the compensation due to him under S. 25-F. We are dealing with the general question as to whether the gratuity scheme originally framed by the appellant should be modified as suggested by it, and having regard to the view which we have taken on the general question we see no reason to interfere with the order passed by the appellate tribunal on this point. If the appellant's case is that under the scheme framed by it retrenchment compensation is provided for, it may be open to the appellant to raise such a plea if and when any retrenched workman claims the double benefit of gratuity and retrenchment compensation. The dispute would then be decided on a construction of the material clauses of the current scheme, Vide : Brahmachari Research Institute, Calcutta v. Its Workmen, Civil Appeal No. 4 of 1958 : (AIR 1960 SC 257), in which we are delivering our judgment today.

4. The learned Solicitor-General incidentally attempted to argue that there was a subsisting contract between the parties which had been entered into on May 26, 1949, and that in view of that contract it was not open to the tribunal to accede to the respondents' case for making modifications in the gratuity scheme. This point does not appear to have been raised either before the tribunal or in appeal before the appellate tribunal; and so we cannot allow the appellant to raise this point for the first time before us.

5. The result is the appeal fails and is dismissed with costs.

Appeal dismissed.

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