The Bharatkhand Textile Mfg. Co. Ltd. & Others

Vs

The Textile Labour Association, Ahmedabad

Civil Appeal No. 1 of 1959

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

17.03.1960

JUDGMENT

GAJENDRAGADKAR, J. -

This appeal by special leave is directed against the award passed by the Industrial Court, Bombay, by which a scheme for gratuity has been framed in favour of the workmen represented by the respondent, Textile Labour Association, Ahmedabad, who are employed by the textile mills in Ahmedabad including the twenty appellant mills before us. In order to appreciate the points of law raised by the appellants in the present appeal we ought to state at the outset the material facts leading to the present dispute in which the impugned scheme for gratuity has been framed. On June 13, 1950, the respondent gave notice under s. 42(2) of the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947) (hereinafter called the Act), intimating to the Mill Owners' Association at Ahmedabad (hereinafter called the Association) that it desired a change as specified in the annexure to the communication. The annexure showed that the respondent wanted a change in that a scheme for gratuity should be framed wherever services of an employee are terminated by the mills on grounds of old-age, invalidity, incapacity or natural death. It was further claimed that the payment of gratuity in the said cases should be at the rate of one month's wages (including dearness allowance) per every year of service. Some incidental demands were also specified in the annexure. The demand thus made was not accepted by the Association, and so it was referred to the Industrial Court. Pending the reference the Employees' Provident Funds Act, 1952 (19 of 1952), came into operation on March 4, 1952, and it was urged before the Industrial Court on behalf of the Association that since the statutory scheme of provident fund would soon become compulsory it would not be advisable to adjudicate upon the respondent's claim for the specified items of gratuity at that stage. This argument was accepted by the Industrial Court; it held that when the scheme envisaged by the new Act is introduced it would be possible to see from what date it would be operative, and that, if after the introduction of the said scheme it be found that a sufficient margin is left, it would then be open to the respondent and the Association to make a fresh application for the institution of a gratuity fund either for all the employees or for the benefit of such of them as will have to retire within the next few years. It was on this ground that the demand made by the respondent was rejected on April 18, 1952.

It appears that the prescribed scheme under the Provident Funds Act came into operation on October 1, 1952. In June 1955, a fresh notice of change was given by the respondent to all the mills in respect of the demand for gratuity and the said demand became the subject-matter of certain references to the Industrial Court at Bombay under s. 73A of the Act. At that time the association and the respondent had entered into an agreement to refer all their disputes to arbitration, and in accordance with the spirit of the said agreement the references pending before the Industrial Court

in respect of gratuity were withdrawn and referred to the Board of Arbitrators. Before the Board it was, however, urged by Association that, so long as the award passed by the Industrial Court on the earlier reference was subsisting and in operation, a claim for gratuity which was the subject-matter of the said reference and award could not be properly or validly considered by the Board. This objection was upheld by the Board, and so it made no provision for gratuity. The decision of the Board of Arbitrators in the said proceedings was published on July 25, 1957.

After the said decision was made and before it was published the respondent made the present application for modification of the earlier award under s. 116A of the Act on July 6, 1957. In this application the respondent alleged that there was sufficient justification for modifying the previous award and for introducing a scheme of gratuity as claimed by it. In this application a demand for gratuity was made on the following lines :-

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1. In the case of death while in One month's basic wages andservice or becoming physically or average Dearness Allowance permentally unfit for further completed year of service.service :
2. On voluntary retirement or After 10 continuous years ofor resignation of an employee : service in the company same as in (1)
3. On termination of service For less than 10 but moreby the company : than 7 years at 3/4 rate of (1), For less than 7 years but 5 years or more than 5 years at the 1/2 rate of (1), For more than 10 years' continuous service as in (1) above.

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It appears that in the application thus made a typing mistake had crept in which failed to type properly the third category of cases. The respondent applied on August 21, 1957, for amendment of the said typing mistake and the said amendment was naturally allowed. It is the demand made by this application that is the subject-matter of the present proceedings under s. 116A of the Act.

In the present proceedings the Association did not file a written statement and in fact withdrew leaving it open to each mill to file a separate written statement of its own. It appears that there was a difference of opinion amongst the constituents of the Association. Accordingly written statements were filed on behalf of the 65 constituent mills and the large majority of the said written statements raised some preliminary objections against the competence of the present proceedings and disputed the respondent's claim for gratuity also on the merits. The Industrial Court has overruled all the preliminary objections and on the merits it has framed a scheme for gratuity on industry-cum-region basis. The award framing the said scheme was pronounced on September 16, 1957. It is against this award that 21 out of the 65 mills have come to this Court by special leave. One of the appellant mills has subsequently withdrawn from the appeal with the result that out of 65 mills 45 mills do not feel aggrieved by the award but 20 mills do; and the contentions raised by them fall to be considered in the present appeal.

Before dealing with the merits of the points raised by the appellants it would be relevant to refer very briefly to the relevant provisions of the Act. The Act has been passed by the Bombay Legislature because it thought that "it was expedient to provide for the regulation of the relations of employers and employees in certain matters, to consolidate and amend the law relating to the settlement of industrial disputes and to provide for certain other purposes". With this object the Act

has made elaborate provisions for the regulation of industrial relationships and for the speedy disposal of industrial disputes. An "industrial dispute" under s. 3, sub-s. (17), means "any dispute or difference between an employer and employer, or between employers and employees, or between employees and employees and which is connected with any industrial matter". The expression "industrial matter" has been inclusively defined in a very wide sense. "Approved Union" in s. 3(2) means "a union on the approved list", "primary union" under s. 3(28) means "a union for the time being registered as a primary union under the Act", "registered union" under s. 3(30) means "a union registered under the Act", while "representative union" under s. 3(33) means "a union for the time being registered as a representative union under the Act". Section 3(39) defines "wages" as meaning "remuneration of all kinds capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment, and includes, inter alia, any gratuity payable on discharge". Section 42, sub-s. (2), provides that an employee desiring a change in respect of an industrial matter not specified in Schedule I or II shall give notice in the prescribed form to the employer through the representative of employees but shall forward a copy of the same to the Chief Conciliator, the Conciliator of the industry concerned for the local area, the Registrar, the Labour Officer, and such other person as may be prescribed. Section 66(1) provides, inter alia, that if an employer and a representative union or any other registered union which is the representative of the employees by a written agreement agree to submit any present or future industrial dispute or class of such disputes to the arbitration of any person, whether such arbitrator is named in such agreement or not, such agreement shall be called submission. We have already noticed that the Association and the respondent had entered into a submission in respect of several disputes which were referred to the Board of Arbitrators. Section 73A is important for our purpose; it deals with reference to arbitration of unions, and provides that "notwithstanding anything contained in this Act, a registered union which is a representative of employees, and which is also an approved union, may refer any industrial dispute for arbitration to the industrial court subject to the proviso prescribed under it". It is under s. 73A that the reference was made on the earlier occasion to adjudicate upon the respondent's claim for a gratuity as specified in its notice of change.

That takes us to ss. 116 and 116A. Section 116 provides, inter alia, for the period during which an award would be binding. Section 116(1) lays down in regard to an award that it shall cease to have effect on the date specified therein, and if no such date is specified, on the expiry of the period of two months from the date on which notice in writing to terminate such an award is given in the prescribed manner by any of the parties thereto to the other party, provided that no such notice shall be given till the expiry of three months after the award comes into operation; in other words, the award cannot be terminated at least for three months after it has come into operation; thereafter it may be terminated as prescribed by s. 116(1). With the rest of the provisions of s. 116 we are not concerned in the present appeal. Section 116A(1) prescribes, inter alia, that any party who under the provisions of s. 116 is entitled to give notice of termination of an award may, instead of giving such notice, apply after the expiry of the period specified in sub-s. (2) to the industrial court making the award for its modification. It is unnecessary to set out the other provisions of s. 116A. The award under appeal has been made by the industrial court on the application made by the respondent under s. 116A.

The first contention raised before us by the learned Attorney-General on behalf of the appellant is that the application for modification made by the respondent under s. 116A is incompetent, because what the respondent seeks is not any modification of the earlier award which is permissible under s. 116A, but a reversal and a revision of the said award which is not permissible under the said section. The expression "modification of the award" may include alteration in the details of the award or any other subsidiary incidental matters. In this connection it must be borne in mind that there is a radical

difference between the meaning of the word "change" as distinguished from the meaning of the word "modification". Section 116(2) allows for a change or modification of the registered agreement, settlement or award in terms of the agreement, and that clearly brings out the difference between the two concepts of "change" and "modification". In cases falling under s. 116(2) the agreements or settlements can be wholly revoked and fresh ones substituted in their place by consent, or by consent they may be modified in subsidiary or incidental details. Where the Legislature wanted to provide for change it has expressly done so in s. 116(2) by using both the words "changed" or "modified". Section 116A, however, is confined only to modification of the award and not its change.

The same argument is placed in another form. It is contended that it was not the intention of the Legislature to permit the proceedings under s. 116A for change of policy underlying the award or its essential framework. Such a result can be achieved only by terminating the award under s. 116(1) and raising an industrial dispute as provided by the Act. In support of this contention reliance has been placed on the observations made by Mukherjea, J., as he then was, in the case of Re : Delhi Laws Act, 1912 ((1955) 2 S.C.R. 747, 1006) where the learned judge stated that "the word 'modification' occurring in s. 7 of the Delhi Laws Act did not mean or involve any change of policy but was confined to alteration of such a character which keeps the policy of the Act intact and introduces such changes as are appropriate to local conditions of which the executive government is made the judge". In the same case Bose, J. observed that "the power to restrict and modify does not import the power to make essential changes".

On the other hand, the learned Solicitor-General has contended that the context in which the word 'modification' has been used in s. 116A does not justify the adoption of the limited meaning of the word "modify" for which the appellants contend. The policy of the Act and the reason why s. 116A has been enacted show that the word "modification" has been used in a sense larger than its ordinary meaning. The Legislature realised that the procedure prescribed by s. 116, sub-s. (1), for terminating the award which necessitates the other subsequent steps was apt to be dilatory and involved and so it has purported to provide for an effective alternative speedy remedy for the change of the award under s. 116A. In support of this argument reliance has been placed on the meaning assigned to the word "modified" in "Words and Phrases" where it is stated that "though one of the primary meanings of the word "modify" is no doubt 'to limit' or 'restrict' it also means 'to vary', and there is authority that it may even mean 'to extend' or 'enlarge'" ("Words and Phrases" by Roland Burrows, Vol. 3, p. 399). It is common ground that the modification permissible under s. 116A does not mean that the provisions of the award must always be reduced; it may mean even increasing the provisions, and so it is urged by the respondent that the word "modification" should receive a wider denotation in the context of s. 116A. This construction no doubt receives some support from the provisions of s. 116A that a party may apply for the modification of the award instead of giving notice for its termination; and the latter clause tends to show that the procedure prescribed by s. 116A is an alternative to the procedure prescribed by s. 116. The industrial court was apparently inclined to put a wider denotation on the word "modification" used in s. 116A.

We do not think it is necessary to decide this larger question of the construction of s. 116A because, in our opinion, in the present case, even if the limited and narrow construction suggested by the appellant is put on the word "modification", the respondent's application cannot be said to be outside the purview of the said section. There is no doubt that the claim for gratuity made by the respondent in the earlier proceedings has been rejected by the industrial court and that is an award; but, whether or not the present application seeks for a modification of the said award within the meaning of s. 116A would depend on what the industrial court had decided on the earlier occasion. It is clear that

the industrial court did not then consider the merits of the claims at all. It upheld the Association's contention that the matter should not be decided then but may be considered later in view of the fact that the Employees' Provident Funds Act had already been passed and the statutory scheme for provident funds was about to come into force. It was on this ground alone that the industrial court rejected the claim as it was then made it took the precaution of expressly adding that after the introduction of the provident funds scheme it would be open to the respondent or the Association to make a fresh application for the institution of a gratuity fund as it may deem expedient to claim. It would not be unreasonable, we think, to assume that when liberty was thus reserved to the parties to make a fresh application the industrial court had presumably s. 116A in mind. In substance, the effect of the order then passed was that the application was regarded as premature and liberty was reserved to the parties to renew the application if the statutory scheme was thought to be insufficient or unsatisfactory by either of them. In such a case, if the respondent applies to the industrial court for modification of its award it is difficult to accept the argument that the respondent seeks to alter the framework of the award or to change any principle decided in the award. The true position is that by the present application the respondent is asking the court to consider the demand now that the scheme has come into force and is, according to the respondent, insufficient to meet the workmen's grievance. What the industrial court then promised to consider after the scheme came into force is brought before it for its decision again. That being the true nature of the award and the true scope of the prayer made by the respondent in its present application it is difficult to hold that the application is incompetent under s. 116A.

The next argument which is pressed before us by the learned Attorney-General is that the application for modification is incompetent in regard to matters not covered in the earlier proceedings. We have already referred to the items covered in the earlier proceedings as well as those which are the subject-matter of the present application. It is true that the notice served by the respondent prior to the earlier reference specifically set out the claim for gratuity in four categories of cases of termination of services of the employees, whereas in the present proceedings some other categories are included. The objection raised against the competence of the present application purports to treat the earlier notice in a very technical way and confines the subsequent proceedings taken before the industrial court to the said four categories only. The argument is that the cases of termination of services which were not specified in the earlier notice cannot now be brought before the industrial court under the guise of the modification of the award. If the modification of the award can be claimed under s. 116A it must be claimed only in regard to the said four categories and no more. This argument has been rejected by the industrial court, and it has been held that in substance the earlier notice should be construed as constituting a claim for the scheme of gratuity in general. The validity of this conclusion has been seriously challenged by the appellant.

There is no doubt that disputes in regard to industrial matters not covered by an award do not fall within the scope of s. 116 of the Act; and so if the claim for gratuity in regard to categories not specified in the earlier notice is deemed to be outside the said notice and the relevant reference proceedings, could the respondent have made a claim in that behalf and ask for industrial adjudication without terminating the award ? It is difficult to answer this question in the affirmative. It is well-known that a scheme for gratuity is an integrated scheme and it covers all classes of termination of service in which gratuity benefit can be legitimately claimed. Therefore, when the industrial court refused to frame a gratuity scheme in regard to the four categories brought before it on the earlier occasion, in substance its refusal amounted to a rejection of any scheme for gratuity at all; otherwise it is very difficult to assume that having rejected the claim for gratuity in respect of the said four categories it would still have entertained a claim for gratuity on behalf of other categories not included therein. That is why we are inclined to think that though in form the

rejection of the demand for gratuity on the earlier occasion was in regard to the four categories specified in the notice, in effect it was rejection in regard to the claim for a gratuity scheme itself.

It cannot be disputed that if the earlier demand had been for a gratuity scheme pure and simple and no categories had been specified in connection therewith the present application for the modification of the award coupled with a claim for a gratuity scheme in respect of all the categories specified in the application would be within the purview of s. 116 of the Act. That in substance is what has happened in this case according to the finding of the industrial court on this point, and having regard to the unusual circumstances of this case we see no reason to interfere with it.

Then it is urged that the industrial court has erred in law in framing a gratuity scheme even though the statutory scheme under the Employees' Provident Funds Act has been in operation since 1952. The provident fund guaranteed by the statute under the statutory scheme is one kind of retirement benefit and since this retirement benefit is now available to the workmen it was not open to the industrial court to provide an additional gratuity scheme; that in substance is the contention. This contention has been frequently raised before the industrial courts and has been generally rejected. The Employees' Provident Funds Act has no doubt been passed for the institution of provident funds for employees covered by it; and the statutory scheme for provident funds is intended to afford to the employees some sort of a retirement benefit; but it cannot be ignored that what the statute has prescribed in the scheme is the minimum to which, according to the Legislature, the employees are entitled; and so in all cases where the industrial courts are satisfied that a larger and higher benefit can be afforded to the employees no bar can be pleaded by virtue of the Provident Funds Act. It is true that after the Act came into force, the industrial courts would undoubtedly have to bear in mind the benefit of the statutory scheme to which the employees may be entitled; and it is only after bearing that factor in mind and making due allowance for it that any additional scheme for gratuity can and must be framed by them; but it is not open to an employer to contend that the Act excludes the jurisdiction of industrial courts to frame an additional scheme.

In this connection it may be pertinent to point out that s. 17 of the Employees' Provident Funds Act empowers the appropriate government to exempt from the operation of all or any of the provisions of the statutory scheme to establishments as specified in s. 17(1)(a) and (b). Under s. 17(1)(b), for instance, any establishment may apply for exemption if its employees are in enjoyment of benefits in the nature of provident fund, pension or gratuity which, in the opinion of the appropriate government, are on the whole not less favourable to such employees than the benefits provided under the Act or any scheme in relation to employees in any other establishment of a similar character. This provision brings out two points very clearly. If the benefits provided by the employer are not less favourable than the statutory benefits he may apply for exemption and the appropriate government may grant him such exemption. If, on the other hand, the benefits conferred by him are less favourable than the statutory benefits he may not be entitled to any exemption, in which case both the benefits would be available to the employees. These provisions clearly indicate that the statutory benefits which in the opinion of the Legislature are the minimum to which the employees are entitled, cannot create a bar against the employees' claim for additional benefits from their employers. In this connection we may incidentally refer to the decision of this Court in the case of Indian Hume Pipe Co. Ltd. v. The Workmen ((1960) 2 S.C.R. 32) where this Court has held that the statutory provision for the payment of retrenchment compensation under s. 25F is no bar to a claim for gratuity. The argument urged that the statutory retrenchment partook the character of gratuity and thus constituted a bar for the additional claim for gratuity was rejected. We must accordingly hold that the Industrial Court was right in rejecting the appellants' contention that the statutory provision for provident fund under the Employees' Provident Funds Act is a bar to the present claim

for a gratuity scheme.

The learned Attorney-General has then challenged the validity of the scheme on the ground that the Industrial Court was in error in dealing with the problem on industry-wise rather than unit-wise basis. He contends that the claim for gratuity is more allied to a claim for bonus and must, therefore, be dealt with on unit-wise basis. It is not disputed that the benefit of gratuity is in the nature of retiral benefit and there can be no doubt that before framing a scheme for gratuity industrial adjudication has to take into account several relevant facts; the financial condition of the employer, his profit-making capacity, the profits earned by him in the past, the extent of his reserves and the chances of his replenishing them as well as the claims for capital invested by him, these and other material considerations may have to be borne in mind in determining the terms of the gratuity scheme. This position has always been recognised by industrial courts (Vide : Arthur Butler & Co. (Muzaffarpur) Ltd. And Arthur Butler Workers' Union ((1952) 11 L.L.J. 29). It appears also to be well recognised that though the grant of a claim for gratuity must depend upon the capacity of the employer to stand the burden on a long-term basis it would not be permissible to place undue emphasis either on the temporary prosperity or the temporary adversity of the employer. In evolving a long-term scheme a long-term view has to be taken of the employer's financial condition and it is on such a basis alone that the question as to whether a scheme should be framed or not must be decided, and if a scheme has to be framed the extent of the benefit should be determined (Vide : Boots Pure Drug Co. (India) Ltd. And Their Workmen ((1956) 1 L.L.J. 293)). For our present purpose it is really not necessary to embark upon the academic question as to whether gratuity is a part of deferred wage or not; we will assume that it is not. Even so it would not be reasonable to assimilate the character of the scheme for gratuity to that of a profit bonus and to seek to import the considerations of the Full Bench formula which governs the grant of bonus. A claim for profit bonus is based on the assumption that the employees contribute at least partially to the profits made by the employer and that they are entitled to ask for a share in the said profits in order to bridge the gulf between the wages actually received by them and a living wage to which they are ultimately entitled. A claim for gratuity is a claim for retiral benefit and it is strictly not a claim to receive a share of the profits at all; and so there would be no scope for importing the several considerations which are relevant in determining the claim for profit bonus. That is the view taken by the Labour Appellate Tribunal in Indian Oxygen and Acetylene Co. Ltd. Employees' Union And Indian Oxygen and Acetylene Co. Ltd. ((1956) 1 L.L.J. 435) and the said decision has been cited with approval by this Court in Express Newspapers (Private) Ltd. v. The Union of India ((1959) S.C.R. 12 at p. 156). Therefore, we are not prepared to accept the argument that the claim for gratuity is essentially similar to a claim for profit bonus, and like profit bonus it must always be considered on unit-wise basis. Incidentally we may add that even a claim for profit bonus can and often is settled on industry-wise basis.

That still leaves the larger question to be considered whether the industrial court was in error in dealing with the claim for gratuity on industry-wise basis. It is urged for the appellants that an industry-wise basis is wholly inappropriate in dealing with gratuity and it should not have been adopted by the industrial court. It may be conceded that when an industry-wise basis is adopted in dealing with a claim like gratuity often enough stronger units of the industry get a benefit while the weaker units suffer a disadvantage. Take the case of a gratuity scheme. If such a scheme is based on industry-wise basis employees working under the stronger units do not get that amount of benefit of gratuity which they would have got if the question had been considered unit-wise, whereas employees working in weaker units get a better scheme than they would have got if the matter had been considered unit-wise. Such a result is inevitable in an industry-wise approach. This possible mischief can, however, be mitigated by taking a fair cross-section of the industry or by working on a

rule of averages after collecting the relevant facts of all the constituent units of the industry. Even so, if some of the units of the industry are very weak they are apt to suffer a disadvantage just as the very strong units in the industry are likely to get an undue advantage in the process; but the question which calls for our decision is : does this possible result mean that a scheme for gratuity should on principle not be framed on an industry-wise basis but must always be framed on a unit-wise basis ?

There are several factors which militate against the appellants' suggestion that unit-wise basis is the only basis which should be adopted in such a case. Equality of competitive conditions is in a sense necessary from the point of view of the employers themselves; that in fact was the claim made by the Association which suggested that the gratuity scheme should be framed on industry-wise basis spread over the whole of the country. Similarly equality of benefits such as gratuity is likely to secure contentment and satisfaction of the employees and lead to industrial peace and harmony. If similar gratuity schemes are framed for all the units of the industry migration of employees from one unit to another is inevitably checked, and industrial disputes arising from unequal treatment in that behalf are minimised. Thus, from the point of view of both employers and employees industry-wise approach is on the whole desirable. It is well-known that the Committee on Fair Wages which had examined this problem in all its aspects had come to the definite conclusion that "in determining the capacity of an industry to pay it would be wrong to take the capacity in a particular unit or the capacity of all the industries in the country. The relevant criterion should be the capacity of a particular industry in a specified region", and it recommended that as far as possible the same wages should be prescribed for all units of that industry in that region. This approach has been approved by this Court in the case of Express Newspapers (Private) Ltd. ((1959) S.C.R. 12 at p. 156) (p. 19). What is true about the wages is equally true about the gratuity scheme. In the present economic development of our country we think industrial adjudication would hesitate to adopt an all-India basis for the decision of an industrial dispute like that of gratuity; and so, on principle, it would be difficult to take exception to the approach adopted by the industrial court in dealing with the present dispute.

In this connection it may be relevant to take notice of the fact that the wages of textile employees have been standardised on an industry-wise basis. Similarly, dearness allowance has been fixed on the same basis, and unsubstituted holidays have been prescribed on a like basis. The Employees' State Insurance Scheme (Act 34 of 1948) is industry-wise and retrenchment compensation has been statutorily standardised on the same basis (Section 25F of Act XIV of 1947). What is more remarkable is the fact that the Association and the respondent had entered into an agreement regarding bonus for a period of five years and the gratuity scheme for the clerical and supervisory staff between the said parties is also based on the same industry-wise approach by agreement between them. The Association and the respondent can justly claim with some pride that in the past most of their disputes had been amicably settled. It is only on the present occasion that owing to a difference of opinion amongst its constituent members that the Association withdrew from the proceedings and left it to the members to appear individually before the industrial court. Even so 45 out of the 65 mills have accepted the award. Under these circumstances the question which we have to decide is : Did the industrial court err in law in adopting an industry-wise basis in deciding the present proceedings ? It would no doubt have been open to the industrial court to deal with the dispute unit-wise just as it was open to the court to deal with it on an industry-wise basis. As we have already indicated there are several factors in favour of adopting the latter approach though it may be conceded that by adopting the said course some hardship may conceivably be caused to the weakest units in the industry. Having carefully considered this question in all its aspects we are, however, not prepared to hold that the scheme of gratuity under appeal should be set aside on the ground that the industrial court ought to have adopted a unit-wise approach. In this connection it

may not be out of place to observe that the cotton textile industry is the premier industry of our country and there is a concentration of a large number of mills in Ahmedabad. A good many of them have capitalised large portions of reserves and documents produced in the present proceedings show that the production has steadily increased and has found a responsive market. There is a gratuity scheme framed on an industry-wise basis in operation in Bombay and a similar scheme appears to have been extended to Nadiad and Khandesh. In fact an award for gratuity has been made on an industry-wise basis even in respect of the textile industry at Coimbatore. Having regard to these facts we think the industrial court was right in observing that "there was no justification why an important textile centre like Ahmedabad should not have a gratuity scheme when the needs of the labour require it and the industry can afford it".

It is true that in dealing with industrial disputes on industry-cum-region basis, if the region covers the whole of the country industrial adjudication sometimes takes resort to the classification of the constituent units of the industry in question. Industrial adjudication in regard to the fixation of wage-structure in respect of newspapers and banks in the country is an illustration in point. The need for such a classification is not as great when the region happens to be limited in area, though, even in respect of a limited area, in a proper case industrial adjudication may adopt the course of classification. In the present case the industrial court took the view that classification was not possible and would be inexpedient. No classification was made in dealing with the textile mills in Bombay, and the industrial court did not feel called upon to make a departure in respect of Ahmedabad. We do not think that this conclusion suffers from any infirmity.

The scheme has been further attacked on the ground that before framing it the industrial court has not considered the extent of the liabilities already imposed on the industry. It has been strenuously argued before us that in assessing the extent of the liabilities the actual liabilities accrued as the result of the scheme has not been taken into account and the serious strain imposed on the industry by the imposition of excise duty has also been overlooked; on the other hand, undue importance has been attached to bonus shares and no account has been taken of the industry's obligation to contribute to the State Insurance Scheme. We are not impressed by these arguments. The argument about the actual liability accrued is really theoretical and cannot have much practical significance. If it is suggested that in framing a scheme of gratuity the capacity to pay should be determined only if the employer can set apart a fund to cover the whole of the liability theoretically accrued, then gratuity schemes can be very rarely framed. Such schemes are long-term schemes and a fund to cover the total liability in that behalf must inevitably be built up in course of time year by year. In regard to the excise duty the industrial court has rightly pointed out that the imposition of a higher duty was the consequence of the excessive increase in prices of mill cloth and in fact it was levied "to mop off those extra profits". When the prices fall down it is not unlikely that the excise duty may be reduced. In any case the obligation to pay excise duty or to contribute to the insurance scheme, though perhaps relevant, may not have a material bearing on the framing of the scheme of gratuity. Then, as to the bonus shares, it is not right to contend that the industrial court has attributed undue importance to them. All that it has observed is that the issue of bonus shares by a large majority of the mills in addition to good dividends during the war and post-war period is an index to the prosperity enjoyed by the cotton textile industry in Ahmedabad. In our opinion, no criticism can be made against this statement. In this connection it may perhaps be pertinent to observe that the statutory ceiling placed on the agent's commission may in due course assist the mills to some extent in meeting their liability under the scheme.

The last argument urged against the validity of the scheme is based on the assumption that in working out the preliminary figures before framing the scheme the industrial court has committed

an error. What the industrial court has done is to take the information collected by the Association on the earlier occasion, to compare it with the statement prepared by the respondent, and to make a rough estimate about the extent of the industry's liability under the scheme. In considering these statements it is important to emphasise that the Association's calculations have been made not on the basis of basic pay but on the basis of pay including dearness allowance, and that naturally has made considerable additions to the amounts involved. The scheme framed is by reference to the basic wages. This position is not disputed. The other material point which deserves to be mentioned is that the calculations made by the Association proceed on the assumption that most of the employees would seek to retire from employment as soon as they complete fifteen years' service. Such an assumption seems to us to be not warranted at all. It is common ground that employees generally seek employment in textile industry between 18 and 20 years and the age of superannuation is 60. On an average each employee would work 35 to 40 years and so it would be unrealistic to make calculation on the basis that each one of the employees retires as soon as he completes 15 years of service. In the absence of better employment in Ahmedabad it is quite likely that most of the employees would stick on to their jobs until the age of superannuation. The figures collated are in respect of the years 1953, 1954 and 1955. They are collated in seven different columns, and ultimately the percentages of persons who retired during the three respective years are worked out as at 3.13%, 4.13% and 3.84%. The industrial court has observed that the largest number of persons retired voluntarily on payment of gratuity because there was an agreement between the Association and the respondent whereby the respondent agreed to rationalisation which involved retrenchment of staff on condition that the surplus staff retrenched would be given gratuity. It also appears that the retired workmen included a number of employees who voluntarily resigned because they had not completed 15 years of service and were not entitled to gratuity. It is on a consideration of all the relevant facts that the industrial court came to the conclusion that the number of persons who would have been entitled to gratuity under a normal gratuity scheme would probably not have exceeded 2% of the labour force. If it is assumed, as we think it can be safely assumed, that on an average an employee works 35 to 40 years with his employer the said percentage deduced by the industrial court cannot be said to be erroneous. Even so the scheme framed by the industrial court has provided, inter alia, one month's basic wage for each completed year of service for the period before the coming into force of the Employees' Provident Funds Act, 1952, and half-a-month's basic wage for each completed year of service thereafter, subject to a maximum of fifteen months' basic wages to be paid to the employee or his heirs or executors or nominees as the case may be. This provision which amounts to a departure from the Bombay scheme of gratuity brings out the fact that the provisions made by the Employees' Provident Funds Act have been duly taken into account by the industrial court. We are, therefore, satisfied that the scheme framed by the industrial court does not suffer from any infirmities as alleged by the appellants.

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

Appeal dismissed.

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