The Garment Cleaning Works

Vs

Its Workmen

Civil Appeal No. 621 of 1960

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

03.04.1961

JUDGMENT

GAJENDRAGADKAR, J. –

Two demands made by the respondents, the workmen of the appellant company, the Garment Cleaning Works, Bombay, were referred for industrial adjudication to the industrial tribunal under s. 12(5) of the Industrial Disputes Act, XIV of 1947. These demands were for gratuity and provident fund respectively. The tribunal has framed a gratuity scheme and has passed an order that the appellant should draw up a scheme of provident fund on the lines of the model provident fund scheme drawn by the Government under the Employees' Provident Funds Act, 1952 (XIX of 1952), with a rate of contribution of 6 1/4 per cent. of total wages. Both the gratuity scheme as drawn up and the directions as to the drawing up of a provident fund scheme are challenged by the appellant by its present appeal which it has brought to this Court by special leave.

In regard to the direction as to the gratuity scheme the argument which has been urged before us by Mr. Sen is that the problem of starting such a scheme should have been considered on an industry-cum-region basis and considerations relevant to the said basis should have been taken into account. In support of this argument he has relied upon a judgment of this Court in The Bharatkhand Textile Mfg. Co. Ltd. & Ors. v. The Textile Labour Association, Ahmedabad [[1960] 3 S.C.R. 329.]. In that case the industrial court had no doubt dealt with a claim for gratuity made by the workmen on the industry-cum-region basis, and an attack against the validity of the said approach made by the employer in regard to the scheme was repelled by this Court. It would, however, be noticed that all that this Court decided in that case was that it was erroneous to contend that a gratuity scheme could never be based on industry-cum-region basis, and in support of this conclusion several considerations were set forth in the judgment. It is clear that it is one thing to hold that the gratuity scheme can in a proper case be framed on industry-cum-region basis, and another thing to say that industry-cum-region basis is the only basis on which gratuity scheme can be framed. In fact, in a large majority of cases gratuity schemes are drafted on the basis of the units and it has never been suggested or held that such a schemes are not permissible. Therefore the decision in the case of the Bharatkhand Textile Mfg. Co. Ltd. [[1960] 3 S.C.R. 329.] does not support the propositions for which Mr. Sen contends.

Mr. Sen has then criticised some of the provisions in the gratuity scheme. Clause (ii)(a) of the gratuity scheme provides that on retirement of resignation of a workman after ten years' service ten day's consolidated wages for each year's service should be awarded as gratuity. Mr. Sen quarrels with this provision. He contends that no gratuity should be admissible under this clause until and unless fifteen years' service has been put in by the employee. In support of this argument Mr. Sen

has referred us to certain observations made by this Court in the case of The Express Newspapers (Private) Ltd. & Anr. v. The Union of India & Ors. [[1959] S.C.R. 12, 154.]. In that case the provisions of s. 5(1)(a)(iii) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955), was struck down on the ground that its provisions violated the fundamental right guaranteed by Art. 19(1)(g). The conclusion of this Court was that the provision for gratuity made by the said clause to an employee who had put in three years' service imposes an unreasonable restriction on the employer's right to carry on business and is therefore liable to be struck down as unconstitutional. Dealing with that provision this Court incidentally observed that where the employee has been in continuous service of the employer for a period of more than fifteen years he would be entitled to gratuity on his resigning his post. Mr. Sen contends that this observation indicates that an employee who resigns his post cannot be entitled to any gratuity unless he has put in fifteen years' service. In our opinion, the observation on which this argument is based was not intended to lay down a rule of universal application in regard to all gratuity schemes, and so it cannot be made the basis of an attack against a gratuity scheme where instead of fifteen years' service 10 years' minimum service is prescribed to enable an employee to claim gratuity at the rate determined if he resigns after ten years' service. Therefore, we do not think that the provision of cl. (ii)(a) can be successfully challenged as being unreasonable.

Clause (iv) is then challenged by Mr. Sen. This clause provides that if a workman is dismissed or discharged for misconduct causing financial loss to the works gratuity to the extent of the loss should not be paid to the workman concerned. Mr. Sen contends that this clause is inconsistent with the principles on which gratuity claims are generally based. Gratuity which is in the nature of retiral benefit is based on long and meritorious service, and the argument is that if the service of an employee is terminated on the ground of misconduct it would not be open to him on principle to claim gratuity because misconduct puts a blot on the character of his service and that disqualifies him from any claim of gratuity. In this connection he has referred us to the definition of 'retrenchment' contained in s. 2(oo) of the Industrial Disputes Act. Retrenchment, according to the definition, means inter alia, the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. Mr. Sen suggests that the retrenchment benefit and gratuity are payments made to the employee for a similar purpose, and if dismissal of an employee for misconduct does not entitle him to a claim for retrenchment benefit so should gratuity be denied to him in case he is dismissed for misconduct. A similar argument is based on the rules framed under the Employees' Provident Funds Act, 1952. Rule 71 of the Provident Funds Scheme Rules provides for certain deductions from the account of a member dismissed for serious and willful misconduct. By analogy it is urged that this rule also shows that a dismissed employee is not entitled to gratuity. We are not impressed by these arguments.

On principle if gratuity is earned by an employee for long and meritorious service it is difficult to understand why the benefit thus earned by long and meritorious service should not be available to the employee even though at the end of such service he may have been found guilty of misconduct which entails his dismissal. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer, and when it is once earned it is difficult to understand why it should necessarily be denied to him whatever may be the nature of misconduct for his dismissal. Then, as to the definition of retrenchment in the Industrial Disputes Act, we are not satisfied that gratuity and retrenchment compensation stand exactly on the same footing in regard to the effect of misconduct on the rights of workmen. The rule of the provident fund scheme shows not that the whole provident fund is denied to the employee even if he is dismissed but it merely authorises certain deductions to be made and then too the deductions thus

made do not revert to the employer either. Therefore we do not think that it would be possible to accede to the general argument that in all cases where the service of an employee is terminated for misconduct gratuity should not be paid to him. It appears that in award which framed gratuity schemes sometimes simple misconduct is distinguished from gross misconduct and a penalty of forfeiture of gratuity benefit is denied in the latter case but not in the former, but latterly industrial tribunals appear generally to have adopted the rule which is contained in cl. (ii)(b) of the present scheme. If the misconduct for which the service of an employee is terminated has caused financial loss to the works, then before gratuity could be paid to the employee he is called upon to compensate the employer for the whole of the financial loss caused by his misconduct, and after this compensation is paid to the employer if any balance from the gratuity climbable by the employee remains that is paid to him. On the whole we are not satisfied that the clause thus framed by the Industrial Tribunal in the present case needs to be revised.

The last contention raised by Mr. Sen in regard to the gratuity scheme has reference to cl. (v) of the scheme. This clause provides that for calculating years of service the entire service of the workmen should be taken into account. Mr. Sen contends that though the word "continuous" has not been used either in cl. (v) or in clauses (i), (ii) and (iii) we should make it clear that the service referred to in all the said clauses referred to continuous service. This position is not disputed by Mr. Dudhia for the respondents. We would accordingly make it clear that the service referred to in clauses (i), (ii) and (iii) refers to continuous service.

That takes us to the appellant's grievance against the direction issued by the Tribunal in regard to the framing of the provident fund scheme on the lines of the model provident fund scheme drawn by the Government in the Employees' Provident Funds Act. Mr. Sen contends that in issuing this direction the tribunal has not properly assessed the extent of the financial obligation which the scheme would impose upon the appellant and the limited nature of its financial capacity. It appears that when the appellant produced its balance-sheet and other relevant papers it claimed privilege under s. 21 of the Industrial Disputes Act. Inevitably the Tribunal could not discuss the figures disclosed by the said books in its award though it must have examined the said figures carefully. In the result the tribunal has naturally contented itself with the general observation as to the financial position of the appellant. It has observed that the question to consider in framing the provident fund scheme is whether the employer has made good profits, whether its future is assured, whether it has capacity to build up adequate reserves. Having thus posed the question the Tribunal has come to the conclusion that the appellant satisfies all these requirements. Mr. Sen contends that the tribunal did not take into account the fact that the appellant has no reserves and that it had borrowed large loans. We do not see how that would enable the appellant now to agitate a question which is purely a question of fact. Mr. Sen realised the difficulties in his way because, since his client had claimed the privilege of s. 21 the Tribunal was fully justified in not discussing the figures in its award. He, therefore, faintly suggested that we may remand the case subject to any order as to costs that we may deem fit to make and ask the Tribunal to reconsider the matter in the light of the relevant documents, and he assured us that he would not claim privilege under s. 21 after remand. This request is plainly untenable. If the appellant wanted the tribunal to consider the figures and state its conclusions in the light of the said figures in its award it need not have claimed privilege under s. 21 at the trial. It is now too late to suggest that the privilege be waived and that the matter be considered afresh by the tribunal or by us in the appeal. Therefore we see no reason to interfere with the direction given by the Tribunal in regard to the framing of the provident fund scheme.

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

Appeal dismissed.

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