Management of the D. C. M. Chemical Works

Vs

Their Workmen

Civil Appeals Nos. 4 and 5 of 1962

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

01.03.1962

JUDGMENT

WANCHOO, J. -

These two appeals by special leave arise out of the same award of the Industrial Tribunal, Delhi, and will be dealt with together. Appeal No. 4 is by the management of the D.C.M. Chemical Works while appeal No. 5 is by the workmen. The management hereinafter will be referred to as the appellant for the purposes of both appeals and the workmen will be referred to as respondents. A dispute arose between the parties with respect to various matters including wage scales, dearness allowance and gratuity. As the parties could not come to terms it was referred to the industrial tribunal for adjudication and there were as many as eleven issues which were the subject-matter of reference. The main point however on which the parties differed was whether in determining the wage-structure etc. of the chemical works which is a constituent unit of the Delhi Cloth and General Mills Limited (hereinafter called the Company), the over-all position of the Company should be taken into account or only the position of this one unit, namely, the chemical works. The respondents contended that the chemical works was an integral part of the Company and therefore the over-all position of the Company should be taken into account and the wage-structure etc. fixed accordingly; in particular it was pointed out that there were differences in wage-structure etc. between the various units which were controlled and owned by the Company and which were all situate in the same area in Delhi and that these differences should be eliminated and all the enterprises in Delhi controlled by the Company should be treated on the same footing. On the other hand the contention of the appellant was that though the chemical works was one unit of a large number of industries controlled by the Company, some of which were situate in the same area in Delhi, the various units were independent industries and each unit had to be considered on its own and the wage-structure etc. fixed on the basis of the financial position of each unit; in particular, it was urged that two of the main units in Delhi were the textile mills run by the Company and the claim of the respondents that the chemical works should in all matters be treated on a par with the textile units was untenable, on the ground, among others, that it would be against the principle of industry-cum-region. Before therefore we take up the particular matters raised in the two appeals before us, we shall first have to consider whether the claim of the respondents that the overall position of the Company should be taken into account in fixing the wage-structure etc. of the chemical works is sound; for if that position is accepted, the award may have to be set aside as the tribunal has held that in the circumstances of this case the chemical works should be treated as an independent unit and that the wage-structure etc. therein cannot be fixed on the basis of the over-all position of the Company.

In order to appreciate the various contentions put forward by the parties on this question it may be useful to look into the history of the Company and how it has grown. The Company came into existence in 1889 with a modest capital of about Rs. 10 lacs. It seems that the policy of those in control of the Company was to plough back a substantial part of the profits into the industry itself and to create a reserve for that purpose. Originally the Company started with a textile mill but in course of time with the help of ploughed back profits and also with the aid of further capital, the Company set up a large number of other industrial concerns in Delhi and elsewhere. In Delhi itself, the Company now has the Delhi Cloth Mills, the Swatantra Bharat Mills which are both textile concerns, the D.C.M. Tent Factory established in 1940, and the chemical works with which we are concerned in the present appeals. Besides, there are other industrial concerns owned and controlled by the Company outside Delhi, as for example, the Daurala Sugar Works established in 1932, the Lyallpur Cotton Mills in 1934 and the Mawana Sugar Works in 1940.

The Chemical works were started in 1942 and the only line of production at that time was sulphuric acid. In 1943, an alum plant was set up, in 1944 a soap plant, in 1945 a superphosphate plant and in 1946 a contact sulphuric acid plant. In 1947 a vanaspati plant was established and also a power house was erected in order to meet the requirements of the vanaspati plant. In 1948-49 a caustic soda plant was added so that what began as modest subsidiary to the textile mills has now expanded into a full fledged unit for production of chemicals and vanaspati. The total capital which was originally about Rs. 10 lacs when the Company started in 1889 has now grown to Rs. 4 crores. Even so the capital employed in the chemical works has always been found from the reserves of the Company and is now of the order of over a crore. It is also not in dispute that very little out of the production of the chemical works is used in the textile mills of the Company and that by far most of the production is sold in the open market. Further even the small part of the production that is used by other units is charged at market rates and not at cost price, so that for all practical purposes the chemical works is being run as an independent unit.

Certain features have however been pointed out by the respondents to show that the over-all position of the Company should be taken into account in determining the wage-structure etc. of chemical works which should be treated as an integral part of the entire industry of all kinds carried on by the Company. These features are : no unit has any separate paid up capital and there is no separate depreciation fund or reserve fund for each unit; the Company publishes one balance-sheet showing the total profits of all the undertakings after taking into account losses incurred in any undertaking; the shareholders of the Company are the shareholders in all the units; the Company has got one board of directors and a common managing agency and the policy of the various units is determined on the basis of the Company as one integrated unit; the profits of the Company are all pooled together and the profits in any undertaking are not earmarked for expenditure in that undertaking; the dividends are paid from to profits of the Company as a whole; the Company has a single provident fund for all its employees in all its units and the Company has established various units from the profits earned by the Company as a whole in the past and Income-tax is paid on the entire profits of the Company made by all the units after taking into account the losses, if any, incurred by a particular unit. It is urged therefore on behalf of the respondents that these features are sufficient to establish that all the different industries carried on by the Company are one integrated whole and therefore in fixing the wage-structure etc. for the chemical works this overall position should be taken into account. There is however in our opinion a very cogent reply to these features pointed out on behalf of the respondents, and that is that the Company is a single limited concern owning and controlling various industrial units of different kinds under it and therefore under the Company Law as the Company is one legal entity these features are bound to be common and may not to enough to lead to the conclusion that the various undertakings carried on by the Company are one integrated

whole and therefore when wage-structure etc. has to be fixed in any particular unit the over-all position of the Company as a whole must be taken into account.

On the other hand there are certain features which have been pointed out by the tribunal and which are not in dispute which go to show that the Company has been treating its various units as independent concerns in actual practice. Each unit has separate books of account and separate profit and loss account showing how each particular business is faring. Each unit has separate muster-rolls for its employees and transfers from one unit to the other, even where such transfers are possible considering the utterly different kinds of business that the Company is carrying on, usually take place with the consent of the employees concerned. Further each unit has got its own separate wages and separate dearness allowance and other different allowances and bonus it also paid differently in each concern. Further even where sales take place from one unit to another they take place at market rate and not at cost price and are adjusted on this basis in the books of account. Lastly though there is a common board of directors and a common managing agency of the Company. each unit has its own separate management as it is bound to be for the business carried on by different units is in many cases utterly different.

It is on these facts that we have to see whether the chemical works can be said to be so integrated with the other units of the Company as to justify the conclusion that it is part of the same business, and the entire business carried on the Company is one establishment, and therefore it would not be right to have different wage-structure, dearness allowance, etc., in the same establishment. This matter was considered by this Court in connection with lay-off in The Associated Cement Companies Limited, Chaibasa Cement Works, Jhinkpani v. Their Workmen (1960) 1 S.C.R. 703.), where tests were laid down for determining whether a particular unit is part of a bigger establishment. These tests included geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality and general unity of purpose. But it was pointed out that it is was impossible to lay down any one test as an absolute and invariable test for all cases and the real purpose of these tests was to find out the true relation between the parts, branches, units. If in their true relation they constitute one integrated whole, then the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved. Thus in one case the unity of ownership, management and control may be the important test, in another case, functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. It was pointed out that in a large number of cases several tests may fall for consideration at the same time and the difficulty of applying these tests arises because of the complexities of modern industrial organisation. The matter was considered again by this Court in Pratap Press etc. v. Workmen ((1960) 1 L.L.J. 497.), Pakshiraj Studios v. Workmen ((1961) 2 L.L.J. 380.), Hony Secretary, South India Millowners' Association v. Secretary, District Coimbatore District Textile Workmen Union (C.A. 419 of 1960, decided on 1-2-62. and Fine Knitting Co. Ltd. v. Industrial Court, Bombay (C.A. 306 of 1961, decided on 15-2-1962.). In the case of Fine Knitting Co., this Court was considering one limited company but it was held in the circumstances that even though there was unity of ownership, management and control the two parts of the same concern were different units as there was no functional integrality between them. It is on the basis of these tests that we have to consider whether the tribunal was right in its conclusion that the chemical works has to be treated as an independent unit.

The common features which have been emphasised on behalf of the respondents are in our opinion clearly capable of explanation on the ground that the Company is a limited concern and carries on different kinds of business. But as in law under the Companies Act, the Company being a limited

concern is one legal entity, the Common features on which the respondents rely follow from that one single circumstance, namely, that the Company is a limited concern governed by the Company Law. It would therefore in our opinion be not right to emphasise these common features and to hold on their basis only that the various businesses carried on by the Company have to be treated as one integrated whole for the purposes of wage-structure etc. The outstanding fact in the present case is that though a large number of businesses is being carried on by the Company their nature in many cases is utterly different and one has generally speaking nothing to do with the other. The three main lines of business which the Company is carrying on are sugar, textiles and chemicals. It is obvious that there is nothing common between these three different lines of business and there can be no question of one depending upon the other and there cannot be functional integrality generally speaking between these three lines of business. There might be some connection speaking between the chemical works and the textile mills of the Company inasmuch as some of the chemicals might be used in the textile mills; but the evidence shows that a very small proportion of the chemicals produced in the chemical works is used in the textile mills and that most of the production is sold in the open market. It cannot therefore be said that the chemical works as it now exists is therefor the purposes of the textile mills and is thus integrated with the textile mills. Even in the matter of employment the evidence is that there is separate recruitment of labour for the different units and each unit has separate muster rolls of employees and this is quite natural considering that different skill is required for the three lines of business carried on by the Company. It cannot also be said that there is any essential dependence of the chemical works on the textile units or that one cannot be operated without the other. Further the way in which the Company has been dealing with different units in the past also shows that they have been treated as independent units. Each unit has its own separate labour union and separate agreements are entered into between the Company and its unions with respect to the conditions of service which are also different for different Units. Even in the matter of bonus there are differences between the different units and these differences sometimes arose out of different agreements between the various units and their unions. It appears that even in the case of units carrying on the same business, as for example, textile, the workmen themselves contended in an earlier adjudication that the Delhi Cloth Mills and the Swatantra Bharat Mills were two distinct and separate units of the Company. In any case whatever may be said as to the units in the same line of business it is in our opinion perfectly clear that there is no nexus of integration between different lines of business carried on by the Company on the facts which have been proved in this case. We are of opinion therefore that the ratio of the decision in the Fine Knitting Co.'s case (C.A. 306 of 1961, decided on 15-2-1962.) applies to the facts of this case and it must be held that the chemical works is an independent unit and therefore in fixing the wage structure etc. We have to look to the position of the chemical works only and cannot integrate it with other units and consider its wage structure etc. on the basis of such integration.

It is in the background of the above finding, namely, that the chemical works is an independent unit that we now come to the specific points raised in the two appeals. We shall first take the appeal by the workmen. The following four contentions only were pressed before us on their behalf :-

(i) Even considering the chemical works as an independent unit, the tribunal should have fixed a wage structure including incremental scales;

(ii) The tribunal should have given the same minimum scales to the workmen employed in the canteen as are being given to the other workmen in this concern;

(iii) The tribunal should have made those members of the civil engineering department who had been working for more than one year permanent and should

have given them the same terms and conditions of service as are enjoyed by other workmen of the concern;

(iv) The tribunal should have awarded further bonus to the workmen.

Re. (i).

The contention on behalf of the respondents in this respect is that there are no incremental scales in this concern and the tribunal should have at any rate made a beginning by fixing some incremental scales for the workmen. The tribunal however has refused to fix incremental scales on the ground that the concern has neither financial ability nor stability to justify the fixing of incremental scales at the present times. It is not in dispute that throughout the course of its existence the chemical works has made profits only in two years and that for the rest of the time it has been making losses which had to be met by the Company out of the profits of other units. Reliance in this connection has been placed on behalf of the respondents on certain observations in the Tariff Commission Reports and on a book called "Fertilisers Statistics in India" to show that the chemical industry has a vary prosperous future in front of it. Reliance has also been placed on a communication addressed by the appellant to the respondents in which it has been said that judging from sound business principles the chemical works had not yet turned the corner of losses, but the position appeared brighter, and it was hoped that with the co-operation of labour the chemical works would be an asset to the D.C.M. family. Our attention has also been drawn to various annual reports in which an optimistic picture has been painted by the directors for the benefit of the shareholders. We agree however with the tribunal that in spite of the possibility that in time to come the chemical works might acquire stability and prove a source of increasing profit to the Company, the fact remains that upto now the chemical works has been running at a loss except for two year and one cannot be certain that it will start earning profits soon. In these circumstances it seems to us that the tribunal was justified in not framing an incremental scale of wages at the present juncture as that would put a heavy strain on the finances on the chemical works which has yet to attain financial stability. At the present moment the losses incurred in this unit have to be met from the profits earned in other units of the Company and in this situation we do not think that the tribunal was wrong in refusing to frame incremental scales.

It is however urged on behalf of the respondents that if in the course of the last twenty years the capital invested in the chemical works has increased tremendously as compared to the modest amount with which it was started in 1942 and if the Company can find capital for the purpose of expansion, it should be able to pay incremental scales of wages by dipping into the same source from which it has been able to find capital. In effect this argument means that even though the concern may be making losses year after year it should find money for paying the labour force higher wages in spite of the circumstance that that may lead it into incurring further losses. The argument seems to be that even though there may be losses the concern must pay higher wages to the workmen and if necessary pay them out of what may be called capital. Now this argument would in our opinion be unanswerable if the claim was for what is called minimum wage : (See Messrs Crown Aluminium Works v. Their Workmen ((1958) S.C.R. 651.). If the wages paid by the appellant in the present case were below the minimum wage that the tribunal would certainly be justified in ordering it to pay the minimum wage, for no industry can have a right to exist if it cannot pay wages at the bare subsistence level. Where it is a case of payment of minimum wage, the tribunal can insists on the same being found, if necessary, even out of capital. But this is not a case of bare minimum wage and we are dealing with a case of fair wage which is above the base minimum wage. It is not even the case of the respondents that they are not getting the bare minimum wage. Their case is that they should be given a fair wage, and that the present wages,

though above the bare minimum wage, are still not fair enough and therefore should be increased and an incremental scale should be fixed. In such a situation we are of opinion that the present financial condition of the concern and its stability are both necessary to be considered before an increased fair wage can be given. Both the present capacity of the employer to pay the increased rates of incremental wages and its future capacity have to be taken into account in determining an increased level of fair wages based on an incremental scale. Thus both financial ability at present and financial stability in the near future must be there to justify fixation of an increased fair wage on an incremental scale. We do not think it will be right to insist on an increased fair wage on an incremental scale in a case where the financial capacity and the financial stability as judged by business principles are both lacking. Nor would it in our opinion be right to compel the employer to bear the burden of an increased fair wage on an incremental scale and tell him to find money from what may in effect be capital, for such a situation in ordinary cases can lead only to one result, namely, the closure of the business concern, which may be more detrimental to the workmen. Therefore carrying on with the present scale of fair wages and hoping that the financial ability and stability of the concern will improve, with the result that increased fair wage on an incremental basis may be fixed in future is the only alternative at present even in the interest of the workmen employed in this concern. We therefore agree with the tribunal that in the circumstances no case has been made for fixing an incremental scale of wages at the present juncture. The contention on this head must therefore be rejected.

Re. (ii).

As to the canteen workmen, it appears that the canteen is run by the appellant departmentally on a no-profit-no-loss basis. The workmen employed in the canteen are the workmen of the appellant and their number is sixteen or seventeen. The minimum basic wage for unskilled workmen in this concern at the relevant time was Rs. 38 plus Rs. 55 i.e. Rs. 93; but the workmen in the canteen get consolidated wages and all of them (except one) get much less than the minimum, the figures varying from Rs. 50 to Rs. 78. The tribunal has held that there is no reason why the conditions of service of the workmen in the canteen should not be brought on a par with the conditions of service of the rest of the workmen. It therefore ordered that the workmen in the canteen would be entitled to the same facilities relating to leave, provident fund, bonus, and gratuity etc. as are available to the other workmen in the chemical works; but so far as wages and dearness allowance are concerned, it has not given them even the minimum as indicated above. The case of the appellant was that even if the minimum was paid to the workmen in the canteen the price of the various food-stuffs supplied by the canteen to the workmen would go up substantially and it was on that ground that the appellant resisted the increase in the wages of those workmen in the canteen who are getting less than the minimum of Rs. 93. The tribunal has held - and we think rightly - that the fact that the bettering of the conditions of service of the workmen in the canteen may lead to a rise in the price of things sold there is no reason for refusing the demand of the workmen; but it has not carried into effect fully the implications of this observation. It has ordered that same conditions as to leave facilities etc. should be extended to the canteen workmen but has stopped short of giving them the same wages and dearness allowance. The reason why the tribunal did not give the workmen the same wages and dearness allowance is that there was no satisfactory material before it to permit it to fix wages and dearness allowance for the workmen in the canteen. We are of opinion that there is no reason why the tribunal should not have at least granted the minimum which is paid to the other workmen in the concern to those workmen in the canteen who are getting less than the minimum. We can see no reason for not giving them also the minimum wages as indicated above. This will certainly result in bringing the fifteen workmen who are getting between Rs. 50 and Rs. 78 per mensem as consolidated wages into an equal position, for each will then get the minimum, namely,

Rs. 38 plus Rs. 55 and may remove part of the discontent. In the circumstances that is all that can be done in the absence of the material to which the tribunal has referred. Therefore the wages of those fifteen workmen who are getting less than the minimum should be brought to the same level. There is no reason why they should not get such benefits as may be due to them, by their wages being brought to the same minimum as the wages of the other workmen in the concern. We therefore disagree with the tribunal with respect to the workmen employed in the canteen and order that the wages of those workmen who are getting less than the minimum paid to the other workmen in the concern should be brought to the same minimum level. The rest of the award on this head will stand. The minimum wages as above will be paid from the date the tribunal has ordered its award to come into force.

Re. (iii).

The claim of the workmen in this connection was that there were 300 workmen employed in the civil engineering department and that they should be made permanent. The tribunal however rejected this contention and pointed out that most of the workmen were temporarily engaged to carry on construction work which was of a temporary nature and therefore they could not be made permanent simply because the construction had lasted for more than a year. This view of the tribunal is in our view correct in so far as the claim put forward with respect to all the three hundred workmen was concerned. It appears however that at the time when the tribunal recorded evidence the large majority of these 300 workmen had been discharged because they were no longer required and only about 65 remained in service. It appears from the evidence of the Joint Works Manager that a skeleton staff on the civil engineering side is kept for maintenance of building and this skeleton staff is of a more or less permanent nature. The argument therefore before us is that at any rate this skeleton staff should be made permanent. It was however urged on behalf of the appellant that this was not the way in which the matter was put before the tribunal. The position now is however clear that a skeleton staff is kept on a permanent basis for the civil engineering department and it seems to us fair that the appellant should be directed to make this skeleton staff permanent and give them the same facilities and wages etc., as are given to the other workmen. We therefore direct that the appellant shall make such of the skeleton staff as is maintained for civil engineering purpose permanent and give them the same conditions of service including the same minimum wages etc. as to the rest of the workmen. It is however left to the discretion of the appellant to determine what should be the strength of this staff and which persons should be retained as permanent employees. We say this because the matter was not gone into from this point of view before the tribunal and we have no material on which we ourselves can determine the strength of the skeleton staff and the persons who should be made permanent on that account. The direction will be given effect to within three months of this judgment.

Re. (iv).

The workmen have been given 2 1/2 months basic wages as bonus for the years in dispute, namely, 1953-54 and 1954-55. They have claimed additional bonus. It is however conceded fairly on behalf of the respondent that if the chemical works is treated as an independent unit their case for additional bonus on the basis of the Full-Bench formula cannot succeed. The demand for additional bonus was rightly rejected by the tribunal, considering the chemical works as an independent unit. We may add that this case is distinguishable from the case of Hony. Secretary, South India Mill-owners Association, (C.A. 419 of 1960 decided on 1-2-1962.) for here the two lines of business are distinct and have nothing to do with each other.

This brings us to the appeal by the appellant. Five points have been urged on behalf of the appellant. They are : (i) dearness allowance; (ii) uniforms, (iii) acid and gas allowance. (iv) leave facilities, and (v) gratuity. We shall deal with them one by one.

Re. (i).

So far as dearness allowance is concerned, the tribunal has ordered that the dearness allowance in the chemical works shall be fixed at the same rate as it is in the power house which is a part of the chemical works. It may be mentioned that dearness allowance at the relevant time in the chemical works was Rs. 55 per mensem while in the power house it was Rs. 66 per mensem. The contention on behalf of the appellant in this connection is that the reason why there was this difference between the dearness allowance in the power house and in the rest of the chemical works is historical. It is further pointed out that though the difference in the two dearness allowances is Rs. 11 the actual difference in the total wage packet was only Rs. 3 inasmuch as the minimum basic wage in the power house was Rs. 30 while in the chemical works it was Rs. 38 at the relevant time. Thus the minimum that an employee was getting in the power house was Rs. 96 while the minimum for the rest of the workmen was Rs. 93, and it is urged that the difference is not serious. The reason that the tribunal gave for increasing the dearness allowance for the other workmen in the concern was that there was no ground for discriminating between the workmen in the power house and the rest of the workmen. In increasing the dearness allowance on this sole ground the tribunal ignored firstly the historical reason why there was this difference between the dearness allowance for the power house staff and for the rest of the workmen and also ignored the difference in the basic minimum wages in the power house and for the rest of the workmen. If further seems to have ignored its own earlier finding that the chemical works was running at a loss and did not have the financial capacity to bear further burden. As a matter of fact it appears that but for this discrimination which the tribunal found between the rate of dearness allowance for the power house employees and the rest of the workmen it may not have made any changes in the dearness allowance payable to the rest of the workmen. It may be mentioned that the system of dearness allowance in the concern is to allow neutralisation at the rate of 2-1/2 annas (now 17 nP.) for each point rise over the working class cost of living index treating the base as 100 for the year 1939. It may also be mentioned that since the reference was made there has been a voluntary increase in the dearness allowance for the rest of the workmen at the rate of Rs. 6 per mensem.

The reason why this difference is existing between the rate of dearness allowance for the power house employees and rest of the workmen is that for sometime the power house was integrated with the Swatantra Bharat Mills. Therefore as an integral part of the cotton textile industry the rates of basic wages and dearness allowance in the power house were the same as in the cotton textile business of the company. Thus the rates there at the relevant time were, as we have already said, Rs. 30 basic wage and Rs. 66 dearness allowance. At that time the minimum wage in the chemical works was Rs. 38 basic plus Rs. 55 dearness allowance i.e. Rs. 93 in all. It appears however that there was some objection by the Excise Department of the Government as there was a gate between the Swatantra Mills and the chemical works. The Excise Department wanted this gate to be blocked in order to have better control over the excisable articles produced in the chemical works. The appellant therefore had to block up this gate in 1950 and therefore the power house which existed on the chemical works side of this gate was transferred from the Swatantra Mills to the chemical works. However as the power house workmen were getting the textile rates, the Company assured them that though they would thereafter be under the control of the chemical works they will be governed for the purposes of pay scales and dearness allowance etc. by the rules of the Swatantra Mills. It is this circumstance which has resulted in different scales for the power house staff and the

rest of the workmen of the chemical works. It further appears that there was some retrenchment in the power house in 1957 and the retrenched workmen were absorbed as far as possible in others units. At that time there was an agreement between the Company and the power house workmen and it was agreed that these workmen would be absorbed in other units but they would accept the conditions of service etc. of those units where they were absorbed, with the result that only those who are left in the power house continue on the textile scales of the Swatantra Bharat Mills. These circumstances however were not taken into account by the tribunal at all when it ordered that the power house scale of dearness allowance should be introduced for the rest of the workmen also. The power house scale is really the textile scale and the appellant contended that it would lead to a good deal of complication if the textile scale of dearness allowance is ordered to be introduced for the chemical works. We are of opinion that there is force in this contention raised on behalf of the appellant and the tribunal was not justified in increasing the dearness allowance for the chemical works merely because of this fortuitous circumstance arising out of historical reasons. In any case the number of the power house workmen is very small, say about 30/40, who who are getting a different rate of dearness allowances. Further it appears that there was not much difference between the total wage packet for the power house workmen and for the rest and that was another reason why the tribunal should not have introduced the power house scale for the rest of the workmen. It has however been urged on behalf of the respondents that the difference in the basic minimum wages between the power house workmen and the rest of the workmen in the chemical works has disappeared after the recommendations of the Textile Wage Board by which the minimum basic wage for textile workers has been increased by Rs. 8 and it became Rs. 38 from January 1, 1960. Therefore, it is urged that there is no reason why the tribunal's award with respect to making the dearness allowance for the rest of the workmen the same as the workmen of the power house should not be allowed to stand. Superficially, this argument looks attractive; but if one examines it in the light of the Textile Wage Board's recommendations it will be found that the linking of the dearness allowance for the chemical work's workmen with the power house workmen would lead to endless complications, for the power house workmen would be entitled to the same dearness allowance etc. as would govern the textile workmen in the Swatantra Bharat Mills. The Textile Wage Board report shows that it recommended not only that the basic wage should be increased but also that a large part of the dearness allowance should be merged with basic wage, the remainder alone remaining as dearness allowance. It is submitted on behalf of the appellant that it has carried out the recommendations of the Textile Wage Board and the result of the same has been that the basic wages of the textile workmen which would apply to the power house workmen would be fixed at about Rs. 88 or Rs. 89 and the dearness allowance would be reduced to about Rs. 15. It is urged that the practical linking of the dearness allowance for the rest of the workmen with dearness allowance in the power house which has been ordered by the tribunal on the ground that there should be no discrimination, would result in endless trouble, apart from the question whether in view of the earlier finding of the tribunal as to the financial capacity of the appellant it would be possible for the appellant to bear the extra burden of the increased dearness allowance. The operative order of the tribunal is that the workmen of the chemical works, excluding to workmen who are governed by Ex. W/2, should be paid dearness allowance at the rate at which it is being given to the workmen of the power house, and this undoubtedly in our opinion would lead to endless trouble now that the recommendations of the Textile Wage Board will for historical reasons apply to the workmen in the power house.

We are therefore of opinion that the ground on which the tribunal ordered the rate of dearness allowance for the other workmen of the chemical works to be paid on a par with the rate for the power house is not sustainable and the tribunal went wrong in not giving due weight to the historical

reasons for the rates prevailing in the power house. Further we are of opinion that the increase is not sustainable on its own merits on the ground of the financial capacity of the concern, which the tribunal itself found was not sound as the concern had been running at loss practically since it came into existence except for two years. The contention therefore on behalf of the appellant on this head must be accepted and the order of the tribunal increasing the dearness allowance set aside.

Re. (ii).

As to uniforms, we see no reason to differ from the view taken by the tribunal. The reasons given by the tribunal for ordering that uniforms should be given to certain category of workmen are in our opinion sound. But the tribunal has made a mistake when it went on to order that protective equipment should also be given in addition to uniforms, to the persons found entitled to uniforms according to the directions of the tribunal. The tribunal seems to have overlooked the difference between uniforms and protective equipments; which is provided in the Delhi Factory Rules. So far as protective equipment is concerned, it is given for certain specific purposes to be found in the Rules and has no connection with uniforms which employers are ordered to supply to their workmen, for reasons entirely different. We are therefore of opinion that the direction of the tribunal that protective equipment should also be supplied to persons found entitled to uniforms under its order, is not correct and should be set aside. So far as protective equipment is concerned, it will only be supplied to those who are entitled to it under the Delhi Factory Rules and not necessarily to all to whom uniforms may have to be supplied under the orders of the tribunal. We order accordingly.

Re. (iii).

As to acid and gas allowance, the tribunal has ordered the payment of Rs. 3 per month to certais categories of workmen. It appears that originally the appellant used to pay Rs. 5 as acid and gas allowance in the Nitric acid gas plant and Rs. 3 in the contact plant. Later, however, this gas allowance was merged in pay. But it appears that gas allowance is still being paid to the workmen in the nitric acid gas plant. It is contended on behalf of the appellant that this was because the gas allowance in the case of these workmen was not merged in pay. There is, however, nothing on the record to prove this. As the record stands we have no reason to hold that the gas allowance which was originally paid to the workmen of the nitric acid gas plant was not merged in their pay. On the whole therefore the reasons given by the tribunal for making the allowance of Rs. 3 to those workmen who are engaged in the manufacture of chlorine, sulphuric acid, caustic soda and hydrochloric acid appear to us to be sound and we see no reason to interfere with that part of the award.

Re. (iv).

So far as leave facilities are concerned, the tribunal has awarded that privilege should be granted as provided under the Factories Act. It has further provided that casual-cum-sick leave should be granted for twelve days in the year. We do not think that this award is in any way unreasonable. The tribunal has however gone on to deal with festival holidays, and that in our opinion the tribunal had no jurisdiction to do. The reference was in these terms : "Whether leave facilities should be increased, and if so, to what extent". There was no reference with respect to holidays. The tribunal has however taken the view that holidays are covered within the words "leave facilities" used in the order of reference. We are of opinion that this view is incorrect. Holidays are entirely different from leave facilities. On a holiday the entire business is closed and no one works while leave facilities deal with leave for individual workers while the business as a whole is running. We may in this

connection refer to item 4 of the Third Schedule to the Industrial Disputes Act (No. 14 of 1947), which is in these terms : "Leave with wages and holidays". This shows that holidays stand on a different footing altogether from leave with wages and a reference with respect to leave facilities cannot include a consideration of holidays. The tribunal's order with respect to holidays is set aside.

Re. (v).

Lastly we come to the gratuity scheme sanctioned by the tribunal. It is true that in this concerns there is already a provident fund scheme in force. But it is now well settled that both gratuity as well as provident fund schemes can be framed in the same concern if its financial position allows it. It is true that the financial position of the chemical works has not been found to be good and stable enough to warrant an incremental wage-structure; but gratuity is a long term provision and there is no reason to suppose that in the long run the appellant will not be in a flourishing condition. As to the burden of the scheme, we do not think that, looking at it from a practical point of view and taking into account the fact that there are about 800 workmen in all in the concern, the burden per year would be very high, considering that the number of retirements is between three to four per centum of the total strength. Further we find that in this very concern there is a gratuity scheme for clerks who number between 100 and 200 and are part of the labour force. We can see under the circumstances no reason why a similar gratuity scheme should not be framed for the rest of the workmen. We therefore see no reason to interfere with the order of the tribunal in this respect.

We therefore allow the appeals in part and dismiss them in part in the manner indicated in the course of this judgment. In the circumstances parties will bear their own costs in both the appeals.

Appeals allowed in part.

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