Birla Cotton Spinning & Weaving Mills

Vs

Workmen and Others

Civil Appeal No. 104 of 1956

(P. B. Gajendragadkar, K. N. Wanchoo, K. Subha Rao, N. Rajgopala Ayyangar, J. C. Shah JJ)

02.05.1962

JUDGMENT

WANCHOO, J. –

This appeal by special leave arises out of an industrial dispute between the Birla Cotton Spinning and Weaving Mills Limited (hereinafter called the appellant) and its workmen. A large number of matters were referred for adjudication to the industrial tribunal but in the present appeal we are concerned with two, namely, (i) whether the wages require to be increased and standardised, and what directions are necessary in this respect, and (ii) whether any of the workmen doing the work of fancy jobbers should be designated and paid accordingly. The first point has however been confined to mistries and line jobs only as the other operatives were covered by another award in another reference (No. I.D. 52 of 1957) between the same parties, which was decided earlier by this tribunal. That award came in appeal this Court and the decision of this Court is reported in The Management of Birla Cotton Spinning and Weaving Mils Ltd. v. Its workmen [A.I.R. (1961) S.C. 1179]. This court had set aside the earlier award and sent the case back to the tribunal to proceed in the manner indicated in the judgment. We are told that that matter has ended in a compromise between the parties. The claim of the workmen concerned in the present reference (namely, mistries and line-jobbers) was that their wages were low and not standardised and in spite of representations made to the appellant, nothing had been done in the matter. The workmen therefore claimed that the wages should be increased and standardised and incremental pay scales should be introduced so far as mistries and line jobbers, were concerned. As to fancy jobbers the workmen's claim was that they had been wrongly designated recently as assistant fancy jobbers, though they were doing the job of fancy jobbers. It was therefore contended that they should be designated as fancy jobbers and their pay also increased and standardised accordingly.

The appellant resisted the claim on a number of grounds. It was contended firstly that there was an earlier award in 1951 made by Shri Dulat, which was still in force and therefore the reference was incompetent. Next it was contended that there was no comparison between the Swatantra Bharat Mills and the Delhi Cloth Mills on the one hand and the appellant-mills on the other hand therefore the wages prevalent in those mills could not be taken as a standard for fixing wages for the appellant's workmen. Thirdly, it was urged that incremental scales were provided nowhere in the textile industry and therefore this claim should be rejected. Fourthly, the workmen designated as assistant fancy jobbers had been so designated rightly and could not claim to be fancy jobbers. And lastly, it was urged that there was no case for applying the Bombay standardisation scheme to the appellant's workmen for conditions in Bombay and Delhi were in many respect different.

The tribunal rejected the contention that the Dulat award of 1951 had not been terminated and

therefore the present reference was incompetent. The tribunal further held that though there were difference between the Swatantra Bharat Mills and the Delhi Cloth Mills on the one hand and the appellant on the other, both in the matter of the working of the mills and in the matter of their financial position, they were not of importance as there were bound to be differences between unit and unit of the same industry and thus the wages paid in those two mills were comparable. As to the claim for incremental scale of wages, the tribunal held that no incremental scale had been provided in any standardisation scheme relating to textile industry and rejected this claim. It further held industry and rejected this claim. It further held that the workmen now designated as assistant fancy jobbers were really fancy jobbers and had been previously designated as such. Recently, however, they started to be called assistant fancy jobbers and therefore it was ordered that they should be designated as fancy jobbers. And lastly, the tribunal following its earlier award referred to above held that the Bombay standardisation scheme should be adopted for mistries and line jobbers as well as fancy jobbers. It also directed that "wherever the said existing wages are higher than those fixed under the Bombay Standardisation Scheme, they shall remain and shall not be lowered". It also directed that where operatives were designated by any other name, either not included in the Bombay list or materially different from the one appearing in the list, they should be paid the same wages as those doing identical work according to the Bombay list an a joint committee consisting of the representatives of the management and the union might be formed to investigate the anomalies, arising out of the application of the Bombay standardisation scheme, and in case of disagreement the matter might be refereed to the industrial tribunal either through a regular reference made with mutual consent or as an arbitrator mutually agreed upon.

The appellant challenges the award and its main contentions are-

(i) that the reference was incompetent as the Dulat award of 1951 had not been terminated;

(ii) that the tribunal was wrong in holding that the assistant fancy jobbers should be designated as fancy jobbers;

(iii) that the tribunal was wrong in applying the Bombay standardisation scheme to the appellant's workmen without allowing the appellant even a chance of producing evidence with respect to that scheme and showing the difference between the conditions in Bombay and the conditions in Delhi, which would require modification of that scheme in its application to the appellant's workmen;

(iv) that the tribunal by directing the appointment of a joint committee to investigate the anomalies had not solved the dispute refereed to it with the result that there would be further disputes arising out of this direction of the tribunal; and

(v) that the tribunal's direction that "wherever the said existing wages are higher than those fixed under the Bombay standardisation scheme, they shall remain, and shall not be lowered" is against the principle on which the standardisation schemes are based.

Re. (i).

The question whether the Dulat award of 1951 stood in the way of the present reference being competent was considered by this Court in the earlier case (refereed to above) and was rejected. It

was then pointed out that the Dulat award had held that there was no justification for delaying standardisation and had ordered the parties to work out a scheme taking the Bombay award No. 1 as the working model. In pursuance of that direction, a scheme was worked out and the parties agreed to it on September 29, 1951. It was urged for the appellant that the agreed scheme of September 1951 thus became in a sense a part of the Dulat award and as it was terminated only in November 1956, while the present reference was made on March 3, 1956, that award stood in the way of the present reference being competent. This contention was negatived by this Court in its earlier judgment on two grounds. In the first place, it was pointed out that this agreement could not be a part of the Dulat award in any sense and therefore the Dulat award could not stand in the way of the competence of the reference even if it was not terminated before the reference. In the second place, it was pointed that the agreement of 1951 did not amount to a settlement within the meaning of s. 2(p) of the Industrial Disputes Act, 1947, as it stood in 1951, and therefore s. 19(2) would not apply to that agreement. We were of opinion that on the same reasoning the present argument that the reference when it was made was incompetent because of the Dulat award being still in force, must fail and the contention on this head.

Re. (ii)

We are of opinion that the tribunal was right holding that it was only shortly before the reference that those workmen who used to be called fancy jobbers began to be designated as assistant fancy jobbers. The tribunal has considered the entire evidence on this point and we are in agreement with the view expressed by it, namely that the assistant fancy jobbers should be designated as fancy jobbers as before and the recent innovation calling theme assistant fancy jobbers was only a device to depress the status of this class of workmen. The contention therefore on this head must also fail.

Re. (iii)

It appears that the tribunal merely followed its earlier award in ID 52 of 1957 when it proceeded to apply the Bombay standardisation scheme to mistries and line jobbers as well as fancy jobbers. That award, as we have pointed out, was set aside by this Court in the earlier judgment on various grounds. It is not necessary for us to repeat the reasons which impelled this Court in the earlier appeal to set aside the award in ID 52 of 1957. Those reasons in our opinion apply with full force to the present award also in so far as it introduces the Bombay standardisation scheme for the workmen concerned in the present dispute. In addition we may point out that the appellant wanted to produce evidence with respect to the Bombay standardisation scheme and to summon two witnesses from Bombay and Kanpur with respect to the working of that scheme; but the tribunal by its order dated January 6, 1958, held that it was not necessary to examine those witnesses in view of the conditions obtaining in Delhi, the region with which it was concerned. But even though the tribunal thus refused to examine evidence with respect to the working of the Bombay standardisation scheme it went on to the adopt that scheme in its entirety without any modification when it came to make its award, in view of its earlier award. We are of opinion that it was not fair for the tribunal to shut out evidence with respect to the working of the Bombay Standardisation scheme which the appellant wanted to produce and then apply that scheme without any modification to the appellant mill.

Another reason which impelled the tribunal to apply the Bombay standardisation scheme in this case was sated by it to be that the scheme was applicable to this class of workmen in the Delhi Cloth Mills and the Swatantra Bharat Mills. This statement in our opinion is not borne out by the evidence of the two witnesses produced by the workmen from those two mills. Manoharlal (W.W. 19), a

labour officer of the Bharat Mills, was examined in this connection. He stated that for workers the Swatantra Bharat Mills had followed the Bombay standardisation scheme in the matter of payment of wages on voluntary basis but not for mistries and jobbers. This statement was apparently treated by the tribunal as meaning that the Bombay standardisation scheme in the matter of payment of wages on voluntary basis but not for mistries and jobbers. This statement was apparently treated by the tribunal as meaning that the Bombay standardisation scheme was applicable to mistries and jobbers though Manohar Lal stated exactly the opposite. It is true that Manoharlal stated that for certain categories of mistries and jobbers the Swatantra Bharat Mills paid more than the Bombay standardisation scheme gave to such categories; but that does not mean that the Bombay standardisation scheme as such was applicable to all mistries and jobbers in the Swatantra Bharat Mills. The second witness was B.L. Saxena, the labour officer in the Delhi Cloth Mills. He stated that the wages of line jobbers and mistries were more in certain cases and in some cases at par with the wages in the Bombay standardisation scheme. But he also stated that the line jobbers and mistries in the Delhi Cloth Mills had not been brought under the Bombay standardisation scheme. It appears from the evidence of both these witnesses that there is no fixed grade for mistries and jobbers and each one gets what may be called his own pay. Therefore in some cases the pay which a jobber or a mistry gets may be higher or may be equal to the wages in the standardisation scheme. But this does not mean that the Bombay standardisation scheme as such has been applied to mistries and jobbers in the other two mills in Delhi. The tribunal was therefore wrong even on a comparison of the other two mills in Delhi to hold that the Bombay standardisation scheme should be applied to the appellant-mills also.

The tribunal's award with respect to fancy jobbers would also show how the manner in which the tribunal dealt with the application of the Bombay standardisation scheme to the appellant mills has resulted in unfairness. After having rightly held that the assistant fancy jobbers should be designated as fancy jobbers, the tribunal went on to award that the fancy jobbers so designated should be paid according to the Bombay standardisation scheme without apparently examining that scheme. A copy of that scheme has been produced before us and it shows that the Bombay scheme envisages three categories of workers in what is called fancy work, namely, head fancy jobber, fancy jobber and assistant fancy jobbers. Therefore before the tribunal decided to apply the Bombay standardisation scheme it was necessary to compare the work done by the fancy jobbers in the appellant mills with the work done by either the fancy jobber or assistant fancy jobber in the Bombay standardisation scheme and then decide whether they would come under the designation of fancy jobbers or assistant fancy jobbers under the Bombay standardisation scheme or some under one and some under the other. We are therefore of opinion that the manner in which the case has been dealt with by the tribunal show, as was pointed out in the earlier case also, that it was dealt with in a ever functory way, though in this case the tribunal had the excuse to follow its own award in the earlier case. We are however of opinion that if the Bombay standardisation scheme is to be applied to the appellant mills with respect to the workmen concerned in the present appeal, the tribunal should go into the matter carefully again on the lines indicated by this Court in its earlier judgment and then decide whether the Bombay standardisation scheme as a whole should be applied to the appellant-mills with respect to the workmen concerned in the present dispute or whether there should be any modification of that scheme in view of differences between the conditions in Bombay and the conditions in Delhi. This applies to all the workmen concerned in this appeal, i.e. the line jobbers, mistries and fancy jobbers. We are therefore of opinion that this appeal must be allowed and the case sent back to the tribunal for reconsideration on the lines indicated above and in accordance with the earlier judgment of this Court.

Re. (iv)

As to the direction by the tribunal that a joint committee should be appointed to go into what is called anomalies, it is enough to refer to what was said by this Court in the earlier judgment where a similar direction had been made. It was pointed out there that by making the direction the tribunal had left a part of the dispute to be resolved by the parties themselves, so that the tribunal had not done what it was expected to do itself under the terms of reference. We set aside this direction and order that the tribunal should go into this matter itself with the assistance of assessors, if it considers that necessary, before it applies the Bombay standardisation scheme either in its entirety or with modification to the workmen concerned in the appellant-mills.

Re. (v).

This brings us to the last point. The direction in the present award by the tribunal is that "wherever the said existing wages are higher than those fixed under the Bombay standardisation scheme, they shall remain, and shall not be lowered". Objection is taken to this direction by the appellant. There was a similar direction in the earlier award also and in that connection this Court observed as follows at p. 1182 :-

> "It cannot be disputed that when a standardisation scheme comes into force it is an integrated whole and may sometime result in some categories of workmen getting less than what they were getting before. The whole purpose of a standardisation scheme is to standardise wages and where they are low to raise them to the standardised level. Similarly where the wages are high they have to be reduced in order to fit them in the standardised scheme. The tribunal therefore was clearly wrong in acting against the basic principle of a standardised scheme when it ordered that the wages should be increased according to the standardised scheme where they were low but should not be decreased where they were high. This principle of standardisation is clear and even the learned counsel for the workmen had to admit it."

It is urged on behalf of the respondents that these observations are liable to be misunderstood and may give rise to the impression that it is not open to a tribunal to protect the wages of individual workmen who may be getting more than the wages fixed under the standardisation scheme, at the time when such a scheme comes into force. The respondents do not dispute that the basic principal behind the standardisation scheme is what has been stated by this Court; but they but they contend that though after a standardisation scheme has been brought into force it may not be open even to the management to give more wages than those provided in the standardisation scheme, that principal does not require necessarily that the wages of individuals who might be drawing more at the date the standardisation scheme comes into force should also be reduced and should not be protected for those individuals only. It is urged that it is pen to the tribunal to protect the wages of such workmen who might be drawing more than the wages fixed in the standardisation scheme, though it may not be open to the management after the standardisation scheme comes into force to pay more wages than fixed in the standardisation scheme to any one employed thereafter. On the other hand, it is contended for the appellant that when a standardisation scheme comes into force even the wages of individuals who are getting more than what is provided in the standardisation scheme must be reduced and the tribunal cannot protect the wages even; of such individuals, Reliance in this connection has been placed on behalf of the appellant on Daru v. Ahmedabad Spinning and Manufacturing Company Limited [(1955) 1 L.L.G. 555].

In that case the principles governing a standardisation scheme were considered by the Bombay High

Court considering the report of the Textile Labour Inquiry Committee and also the book of Dr. D.R. Gadgil on "Regulation of wages and other Problems of Industrial Labour in India". It was pointed out that when in an industry divergent wages were being paid and there was considerable difference between the top wage and the lowest wage, it was very difficult to standardise these wages and therefore the first thing to be done was to fix a minimum wage which is generally somewhere between the top and bottom; but where wages in a particular occupation are not very divergent and are more or less uniform, that is the time and the stage when a labour tribunal may well standardise those wages because in standardising them although it may result in some workers being paid less than what they are being paid, the loss to them would not be considerable and if it is in the interest of labour that all workers should be paid the same wages who are doing the same work then the standardisation would result in benefit to the cause of labour.

There can be no dispute as to the validity of these principles and their soundness will be clear from the facts of that case. In that case a standardisation scheme had been brought into force in 1948. In 1951, one of the mills governed by the standardisation scheme introduced a new section the wages in which were covered by the standardisation scheme. However, the wages in the new section fixed by the said mill were higher than those fixed by the standardisation scheme. Later in 1953, the mills gave notice to the workmen reducing the wages fixed in 1951 so as to conform to the wages laid down in the standardisation scheme. This was objected to by the workmen whose wages were reduced and that is how the dispute arose. The High Court held in those circumstances that in view of the fact that the standardisation scheme was in force from 1948, it was not open to the employer to give higher wages than those fixed in the standardisation scheme in 1951 because it was of the essence of the standardisation scheme that the wages for the same work should be equal and that where higher wages had been paid than those fixed in the standardisation scheme they should be reduced to that level. That case however was not concerned with protection of the wages of individuals who might be getting more than what is provided in the standardisation scheme at the time when it is brought into force. It is in this context that the observations made by the High Court have to be understood and in that context the observations laying down the principles behind a standardisation scheme are, if we may say so with respect, sound.

It is however urged on behalf of the respondents that the protection given by the tribunal in this case is no more than protection for individual workmen who may be getting more wages than those fixed in the standardisation scheme when it comes into force and this direction is correct, and that there is nothing in law which prevents the tribunal from giving such a direction for the protection of individuals who might be getting more wages at the time the standardisation scheme is brought into force. It seems to us that it would not be against the basic principle of standardisation to which this Court referred in the earlier case to protect the wages of individual workmen who might be getting more than the wages fixed in the standardisation scheme at the time when such a scheme is brought into force. It will be for the tribunal to decide whether it will protect these individual workmen or not. If it gives no direction for protection to individual workmen, they will not be protected and the wages will have to be lowered in case they are higher than those fixed in the standardisation scheme. But if the tribunal considers that it will be more in consonance with justice to protect the wages of individual workmen it may give a direction to that effect, even though they may be more than the wages fixed in the standardisation scheme. In such a case three conditions will always have to be borne in mind. In the first place, there can be no further raising of the wages of these protected workmen by the management after the standardisation scheme comes into force, for any such further rise will be against the principle of standardisation. In the second place, if the standardisation scheme fixes incremental scale of wages and if the protected workman is getting a wage which is between the minimum and the maximum and he is not entitled in accordance with the length of his

service to that wage but something less in the grade, the extra amount that he may be getting will have to be absorbed in future increments till he is properly fitted in the incremental scale according to the length of service. Thirdly, when any workman's service comes to an end for any reason whatsoever, no other employee whether new or old would be entitled to claim the pay which the outgoing employee was getting on the ground that a vacancy with that higher pay has arisen. Subject to these three conditions it may be opens to a tribunal to protect, wages of individual workmen even though he may be getting higher wages than those fixed in a standardisation scheme at the time when the scheme is introduced.

Now let us see what the tribunal has done in this matter. It directs that "wherever the said existing wages are higher than those fixed under the Bombay standardisation scheme, they shall remain, and shall not be lowered." This in or opinion is not protection of individual workmen but protection of wages, which may be higher than those fixed in the standardisation scheme. This in our opinion cannot be done as it is against the basic principles of a standardisation scheme as observed in the earlier case. The result of this direction by the tribunal would be that a particular post carrying with it higher wages will remain protected so that when the individual who may be getting that pay at the time the standardisation scheme comes into force is not more employed, the other workmen may be able to claim wages on the ground that the wages have been protected. The proper ways of giving protection, if the tribunal thinks that justice demands that individuals who are getting higher wages then those fixed under a standardisation scheme should be protected, is to direct that the wages of such individuals should be fixed according to the standardisation scheme, and the difference, if any, between their wages and the standardised wages should be paid to them as personal pay so long as they are in service. As soon as such an individual goes out of service, another coming in his place will not be entitled to the personal pay the outgoing workman was getting, and will be fixed in the standardisation scheme. The direction however of the tribunal in this case is capable of being read not for the protection of individuals but for the protection of wages, and this in our opinion cannot be done in view of the basic principles governing a standardisation scheme. We are therefore of opinion that the direction for the protection of existing wages given in the form in which it has been given by the tribunal must be set aside. At the same time we leave it to the tribunal to decide if it considers it just when the matter goes back to it for reconsideration whether individual workmen should be protected, even in case a standardisation scheme is introduced, in the manner we have indicated above.

We therefore allow the appeal and set aside partly the order of the tribunal with respect to certain matters with which we have dealt in the course of this judgment and direct that the tribunal should re-hear the reference and re-consider in the light of this judgment and the earlier judgment what should be its award with respect to mistries, line-jobbers and fancy jobbers in connection with the following term of reference :

> "Whether the wages require to be increased and standardised, and what directions are necessary in this respect."

Parties will be at liberty to lead such further evidence on all matters sent back for reconsideration as they think fit. In the circumstances we order parties to bear their own costs.

Appeal allowed.

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