French Motor Car Co. Limited

Vs

Workmen

Civil Appeal No. 391 of 1962

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

13.11.1962

JUDGMENT

WANCHOO, J. –

This appeal by special leave arises out of an industrial dispute between the appellant, Messrs. French Motor Car Co., Limited, and their workmen, who are the respondents before us. Four matters were referred for adjudication by the Government of Maharashtra under s. 10 of the Industrial Disputes Act, No. XIV of 1947, to the Industrial Tribunal, Maharashtra. Of these we are concerned in the present appeal with (i) wages and scales of pay for clerical staff, workshop employees and subordinate staff, (ii) dearness allowance for clerical staff, and (iii) provident fund.

The case of the respondents was that the appellant company was in a very flourishing condition and therefore the wage-scales should be revised. The appellant did not contend that its financial position was not good enough to bear an increased burden; it, however, contended that the wage scales had been revised only a few years before and there was no ground for further revision so soon thereafter. The tribunal went into the financial capacity of the appellant to bear an increased burden of wage scales and found that its finances would be able to bear the burden which it was going to put on it by revision of wage scales. It also went into the history of the appellant company to consider whether a case had been made out for further revision of wages. That history shows that for the first time in 1948 there was an agreement between the appellant and its workmen by which scales of wages were fixed. Soon thereafter an award was made by another tribunal in the case of United Motors (India) Limited, which is a concern carrying on similar business as the appellant and much higher wage scales were found to exist in that concern and were confirmed by the award. These higher scales were later adopted by two other similar concerns in Bombay, namely, Dadajee Dhakjee and Metro Motors. Then followed another dispute between the appellant and its workmen in 1953 with respect to wage scales and an award was made by which practically the same wage scales were prescribed as in the other three concerns, with respect to workshop employees and subordinate staff. Then in 1954 there was another agreement between the appellant and its workmen for fixing wage scales for clerical staff. The present dispute started in 1958, and eventually reference was made by the Government of Maharashtra in 1960, and the contention of the appellant was that there was no reason to revise so soon the wage scales, which are expected to be a long term arrangement. The tribunal has, however, pointed out that there has been a large increase in the cost of living since 1955 and the cost of living index number for workmen had gone up from 338 in 1955 to 420 in 1960. It had gone to 428 in 1961 when the award was made. In view of this change in economic conditions the tribunal was of the opinion that a case had been made out for a further revision of wage scales, particularly as the dearness allowance was also revised in 1954 by agreement and the effect of that was to reduce the dearness allowance. We see no reason in these

circumstances to disagree with the view of the tribunal that a case has been made out for revising the wage structure.

The main contention on behalf of the appellant is that wages are fixed on industry-cum-region basis and the tribunal went wrong when it took into account for comparison industrial concerns which were entirely dissimilar to the appellant's. It is now well settled that the principle of industry-cum-region has to be applied by an industrial court, when it proceeds to consider questions like wage structure, dearness allowance and similar conditions of service. In applying that principle industrial courts have to compare wage scales prevailing in similar concerns in the region with which it is dealing, and generally speaking similar concerns would be those in the same line of business as the concern with respect to which the dispute is under consideration. Further, even in the same line of business, it would not be proper to compare (for example) a small struggling concern with a large flourishing concern. In Williamsons (India) Private Ltd. v. The Workmen ((1962) 1 L.L.J. 302.), this Court had to consider this aspect of the matter, where Williamsons Private Limited was compared by the tribunal with Messrs. Gillanders Arbuthnot and Company for purposes of wage fixation, and it was observed that the extent of the business carried on by the concerns, the capital invested by them, the profits made by them, the nature of the business carried on by them, their standing, the strength of their labour force, the presence or absence and the extent of reserves, the dividends declared by them and the prospects about the future of their business and other relevant factors have to be borne in mind for the purpose of comparison. These observations were made to show how comparison should be made, even in the same line of business and were intended to lay down that a small concern cannot be compared even in the same line of business with a large concern. Thus where there is a large disparity between the two concerns in the same business, it would not be safe to fix the same wage structure as in the large concern without any other consideration. The question whether there is large disparity between two concerns is, however, always a question of fact and it is not necessary for the purposes of comparison that the two concerns must be exactly equal in all respects. All that the tribunal has to see is that the disparity is not so large as to make the comparison unreal. In Novex Dry Cleaners v. Workmen ((1962) 1 I.L.J. 271.) this Court pointed out that it would not be safe to compare a comparatively small concern with a large concern in the same line of business and impose a wage structure prevailing in the large concern as a rule of thumb without considering the standing, the extent of labour force, the extent of business and the extent of profits made by the two concerns over a number of years.

The contention on behalf of the appellant is that in fixing the wage structure for workshop employees in particular, the tribunal has taken into account for purposes of comparison concerns which are in a different line of business altogether and which are also very much bigger concerns than the appellant company. There is in our opinion force in this contention. In dealing with the workshop employees, the tribunal has taken into account wages prevalent in concerns like Greaves Cotton and Dumex, which are very much larger concerns than the appellant company and which are also not in the same line of business. It is obvious that the fixing of wage scales for workshop employees made by the tribunal has been affected by taking into account these concerns, and to that extent the award cannot be upheld. At the same time, it appears that the appellant company is practically paying the highest wage scales in the particular line of business in which it is engaged, and it is urged on its behalf that if it is compared with concerns in its own line of business, there would be no justification for increasing the wage scales for it is already paying the highest scales in that line of business. We are of opinion that this argument cannot be accepted, for it would then mean that if a concern is paying the highest wages in a particular line of business, there can be no increase in wages in that concern whatever may be the economic conditions prevailing at the time of dispute. It seems to us, therefore, that where a concern is paying the highest wages in a particular

line of business, there should be greater emphasis on the region part of the industry-cum-region principle, though it would be the duty of the industrial court to see that for purposes of comparison such other industries in the region are taken into account as are as nearly similar to the concern before it as possible. Though, therefore, in a case where a particular concern is already paying the highest wages in its own line of business, the industrial courts would be justified in looking at wages paid in that region in other lines of business, it should take care to see that the concerns from other lines of business taken into account are such as are as nearly similar as possible, to the line of business carried on by the concern before it. It should also take care to see that such concerns are not so disproportionately large as to afford no proper basis for comparison. In the present case even though the tribunal had justification to go beyond the concerns in the particular industry in which the appellant company is engaged for purposes of comparison, because the appellant in already practically paying the highest wages in that line of business, it was not right for the tribunal to take for comparison concerns like Dumex and Greaves Cotton which are in completely different and dissimilar lines of business and also so disproportionately larger than the appellant company as not to afford a proper basis of comparison. We are therefore of opinion that the wage structure fixed by the tribunal so far as workshop employees are concerned cannot be upheld and must be set aside. In the circumstances the award with respect to the workshop employees is set aside and the matter remanded to the tribunal to fix proper wage scales in the light of the observations made by us.

It appears that evidence was given before the tribunal for purposes of comparison of concerns which were in the line of business nearly similar to the business carried on by the appellant company. Consequently, it would not be necessary to take fresh evidence to the point and the tribunal should proceed to fix the wage structure afresh after excluding for purposes of comparison concerns in absolutely different lines of business and also concerns which are disproportionately larger than the appellant company.

Turning now to the wage scales for clerical and subordinate staff, the argument on behalf of the appellant is the same viz., that the tribunal has taken for comparison concerns which were really not comparable. There is however, difference between workshop employees on the one hand and clerical and subordinate staff on the other, for workshop employees generally require a particular skill which is peculiar to the particular industry, while the same cannot be said to a great extent with respect to the clerical and subordinate staff. A somewhat similar question was considered by this Court in Messrs. Lipton Limited v. Their employees ([1959] Supp. 2 S.C.R. 150.). In that case the tribunal was considering the question of wage fixation for clerical and subordinate staff, and the argument on behalf of the employer was that there was no reliable evidence to show that in any comparable industry in the same region the wages were higher and therefore the wage structure in the particular case required revision. The employer concerned in that case was Messrs. Lipton Limited, carrying on tea business as merchants in Delhi. Evidence was given by the workmen in that case about the scales of pay of employees in the Delhi office of a number of other concerns like the Standard Vacuum Oil Company, Thomas Cook (Continental) Overseas, Burmah Shell, Lever Brothers (India) Limited, and Associated Companies and Marshall Sons and Company (India) Limited. But it was contended on behalf of the employed that these were not comparable concerns. Some were oil concerns and some engineering and some manufacturing concerns. The workmen, however, contended that so far as drivers, sweepers, peons, clerks, godown keepers, typists, stenographers, and the like were concerned, the nature of their work was the same in all the aforesaid concerns which were relied on for comparison, and therefore it could not be said, as urged by the employer, that there was no evidence of comparable concerns. This Court observed in that connection that it was impossible to say that there was no evidence on which the tribunal could proceed to revise the wage structure and that on the contrary there was evidence which justified a

revision of the wage structure. In effect this decision means that in case of employees of the class mentioned therein it may be possible to take into account even those concerns which are engaged in entirely different lines of business for the work of employees of this class is more or less similar in all concerns. We are in agreement with this view and the argument therefore urged on behalf of the appellant company cannot prevail so far as clerical and subordinate staff are concerned.

It appears however that a mistake has been made by the tribunal in respect of subordinate staff. The subordinate staff in the appellant company consists of drivers, watchmen, peons, cleaners and sweepers. According to the system prevailing in the company, drivers and watchmen stood by themselves and had separate scales. Peons, cleaners and sweepers were however in the same scale and were treated similarly in this company. What the tribunal has done is to prescribe one scale for drivers, another for watchmen, peons and cleaners and a third for sweepers, thus distributing the system prevailing in the appellant company without any reason given for it. It appears that the tribunal made a mistake inadvertently when it said that in this company the scales of watchmen, peons and cleaners had been uniform. That was in fact not so and the respondents' counsel also fairly admits it. In the circumstances we direct that the order of the tribunal fixing the scale of 50-3-77-4-85 for watchmen, peons an cleaners will only apply to watchmen and not to peons and cleaners. We also order that the scale of 40-2-58-3-73 will apply not only to sweepers but also to peons and cleaners. The appeal therefore with respect to clerical staff and subordinate staff must fail except as to the modification pointed out above.

We now come to dearness allowance for clerical staff. We have already indicated that dearness allowance was revised by agreement in 1954 with respect to clerical staff, and the revision resulted in reduction. What the tribunal has done is to set aside the agreement of 1954 and to bring back the system of dearness allowance prevailing before that agreement. In the circumstances we cannot see how the system now introduced by the tribunal which is also more in consonance with the pattern of dearness allowance prevailing in Bombay and which was in force in the appellant company itself before 1954 can be successfully challenged. We therefore reject the contention of the appellant in this behalf.

We now come to provident fund. It appears that in this company there is a scheme of gratuity as well as provident fund. Originally, the rate of provident fund contribution in this company was 8 1/3 per centum of the basic pay but from July 1, 1960, the rate has been changed to 6 1/4 per centum of the gross earning i.e. basic pay plus dearness allowance, on the application of the Employees Provident Funds Act, (No. XIX of 1952) and the Employees Provident Funds Scheme, 1952, to this industry. What the tribunal has done is to fix the contribution at 8 per centum of the gross earnings (i.e. basic pay plus dearness allowance) instead of the present rate of 6 1/4 per centum. This has been done on the sole ground that a technical committee had reported some time before the tribunal made its award that the rate should be raised to eight per centum of the gross earnings (i.e. basic pay plus dearness allowance). The Tribunal therefore increased the provident fund contribution to eight per centum on the ground that that percentage was recommended by the technical committee after a thorough study of the problem from all points of view and it should be adopted by well-established and prosperous concerns like the appellant, though the tribunal was not unaware of the fact that this was not the rate generally prevalent in that region. It is urged on behalf of the respondents that legislation is under contemplation in this respect; but the fact remains that no law has so far been made making any change in the rate of contribution. We see no reason why simply because some recommendation, which is still to be implemented, has been made by a Committee, that the contribution should be increased to eight per centum in the case of the appellant company only, when the general rate is only 6 1/4 per centum. In the circumstances, this part of the award must be

set aside and the rate of provident fund contribution so far as the appellant company is concerned should remain at 6 1/4 per centum of the gross earnings (i.e. basic pay plus dearness allowance) as at present.

We now come to the question of adjustment. The contention on behalf of the appellant is that when wage scales were introduced in the appellant company, they were granted on a generous scale and there was therefore no reason for adjustment in the manner in which the tribunal has done in this case, for it is not usual to grant adjustment where wage scales already existed, though adjustment is granted when wage scales are fixed for the first time by tribunals. On the other hand, it is contended on behalf of the respondents that industrial tribunals have been granting adjustment even where wage scales existed formerly and that the grant of adjustment is not limited to those cases where wage scales are being introduced for the first time. In this connection, reliance was placed on behalf of the respondents on a number of awards which were listed in Ex. U-15. We asked parties to give an agreed statement as to what these awards provided in the matter of adjustment and whether they showed that adjustment had been granted by industrial tribunals even where there were wage scales from before. Such an agreed statement has been filed. The large majority of the awards listed in Ex. U-15 show that they are cases where wage scales were being fixed for the first time and adjustment was therefore granted whether point to point or in such other manner as the tribunals considered just on the facts and circumstances of each case. In some of the cases, however, it appears that adjustment was granted even though there were previous scales of pay in existence. The ground for such grant of adjustment seems to have been that the previous scales were found to be low and the increments prescribed thereunder were particularly low. In those circumstances, the tribunal was of the view that adjustment should be granted even though there had been previous scales of pay.

A review therefore of the cases cited on behalf of the respondents shows that generally adjustments are granted when scales of wages are fixed for the first time. But there is nothing in law to prevent the tribunal from granting adjustment even in cases where previously pay scales were in existence; but that has to be done sparingly taking into consideration the facts and circumstances of each case. The usual reason for granting adjustment even where wage scales were formerly in existence is that the increments provided in the former wage scales were particularly low and therefore justice required that adjustment should be granted a second time. In the present case, however, grades of pay for clerical staff which were existing previously provided increments from Rs. 5/- to Rs. 10/- per year, which was in accordance with the rate of increments prevailing generally in the region for such staff. Further in the case of unskilled workshop employees and subordinate staff the previous rate of increment in the appellant company was comparatively on a generous scale as compared to even such companies as Dumex Private Limited and Greaves Cotton Company. The same could be said of the semi-skilled grade and even of the skilled grade previously in force in this company. In the circumstances, it seems to us that there is no justification for adjustment in the manner provided by the tribunal when new scales are fixed in the present case, and all that should be reasonably provided in the matter of adjustment is that when an employee is brought on to the new scale his pay should be stepped up to the next step in the new scale in case there is no such pay in the new scale. We ought to add that in making the order of adjustment the tribunal did not consider the merits of the rival contentions from this aspect. In a case of this kind we do not think that adjustment should have been ordered almost as a matter of course. Nor have the respondents satisfied us that a case has been made out for granting adjustments even when a comparatively generous rate of increment was in force in this company previously and the company was paying the highest wages in its own line of business. We are therefore of opinion that the order as to adjustment should be modified as above.

The last point is with respect to clarification. So far as that is concerned, the parties agreed that after the publication of Part I of the award the company will classify its employees and send its classification to the sabha (i.e. the union). The sabha will then file its objection if any and finally the disputed cases will be decided by the tribunal. The tribunal therefore did not go into the question of classification when it gave the award under appeal, though there are some observations in the award which appear to have some bearing on the question of classification. However, in view of the fact that the tribunal has not gone into the question of classification at this stage any tentative observations made by it would not affect the agreement between the parties, viz., that the employees will in the first instance be classified by the appellant company and the classification will be sent to the union which will have the right to object and thereafter the disputed cases will be decided by the tribunal. In view of this agreement no question of classification arises at the present stage.

We therefore partly allow the appeal and set aside the order of the tribunal with respect to workshop employees and remand the case for fixing their wages in the light of the observations made by us in this judgment. We also set aside the order with respect to provident fund and reduce the contribution to 6 1/4 per centum. We also set aside the order as to adjustment which shall be carried out hereafter in the manner provided in this judgment. The appeal as regards salary in the case of clerical staff and sub-ordinate staff (except for the modification re : sub-ordinate staff), and dearness allowance to the clerical staff fails and is hereby dismissed. We may add that the new scales of pay to be fixed on remand shall take effect from July 1, 1960, as already ordered in the present award. In the circumstances the parties will bear their own costs.

Appeal allowed in part.

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