Pfizer (P) Ltd. Bombay

Vs

The Workmen

Civil Appeals Nos. 625 & 626 of 1962

(CJI B.P. Sinha, P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta, J. C. Shah JJ)

30.11.1962

JUDGMENT

GAJENDRAGADKAR. J. –

Two items of dispute between the appellant Pfizer Private Ltd., and the respondents, its employees, were referred for adjudication to the Industrial Tribunal, Bombay, by the Government of Maharashtra under ss. 10(1)(d) and 12(5) of the Industrial Disputes Act 1947 on the 22nd of January, 1962. Both these items arose out of the proposed changes which the appellant wanted to make in the terms of employment governing the service of the respondents. The appellant proposed to reduce the existing paid holidays to 8 instead of 27 to which the respondents were entitled because so long, the appellant has been giving to its employees the benefit of public holidays as declared under the Negotiable Instruments Act. This was the first item of dispute between the parties. The second item of dispute was in regard to re-fixation of the hours of work. The appellant desired to introduce three shifts in most of its departments and accordingly it had given a notice of change under s. 9A of the Industrial Disputes Act. Both these proposed changes were resisted by the respondents. The Tribunal has rejected the appellant's case for the introduction of three shifts in its factory and this part of the award is challenged by the appellant by its appeal No. 625 of 1962. In regard to the appellant's claim for reducing the paid holidays, the Tribunal has substantially accepted the appellant's case and has directed that the holidays should be reduced to 10 every year. It has directed the appellant to fix these holidays in consultation with the respondents. It has also added that in view of the fact that a substantial reduction was being made in the number of paid holidays, the appellant should give the respondents an additional increment in their grade with effect from the 1st August, 1962. This increment would be in addition to the normal increment which may become due or after the 1st August, 1962. This part of the award reducing the number of holidays is challenged by the respondents by their appeal No. 626 of 1962. Both the appeals have been brought before this Court by special leave.

The appellant is a Company incorporated under the Indian Companies Act, 1913. It has its registered office at Bombay and it runs a factory in which it manufactures life saving drugs, such as antibiotics and anti-tubercular drugs, and vitamin products. The appellant's factory was working a multiplicity of shifts with different times. It, however, found that this working did not fully utilise the machinery installed in the factory. The utilisation of the raw product received by the appellant's factory in Bombay from its factory at Chandigarh was also not satisfactory and as a result of inadequate production, the appellant was not able to meet adequately the demand for its products from the market. That is why the appellant came to the conclusion that there was need to introduce three shifts in order to have extensive production of better quality products. The appellant felt that if it was able to produce its products on a much larger scale, it would be able to undertake export of

the said products, and in any event, larger production would enable the appellant to meet its competitors in the trade. Besides, the preparation of the well-known anti-tubercular drug 'Para Amino Salicylic Acid' (P.A.S.) which the appellant had developed in its research laboratory after carrying out laboratory and pilot plant experiments in 1960-61, needed the working of the relevant section on three-shift basis because its production was a continuous process and a result of the investigation made by its expert, the appellant came to the conclusion that the quality of the product would be very much improved if the section working in the production of the said drug was to work continuously. That was an additional reason why the appellant wanted to introduce 3 shifts in its factory. It thought that if the chemical and pharmaceutical departments were to work in three shifts, the other subsidiary sections would also have to work in three shifts in order to cope with the production. That, in brief, is the basis on which the appellant wanted to introduce three shifts in its factory; and so, it gave notice of change to the respondents, and after the conciliation efforts failed, it moved the Maharashtra Government to refer these disputes to the Industrial Tribunal for its adjudication.

The demand for three shifts was stoutly resisted by the respondents. They urged that for several years past, in the appellant's factory the respondents have received the benefit of 5-days week and that has now become a term of their employment : the introduction of three shifts would inevitably convert the 5-days week into a 6-days week, and that would a retrograde step highly prejudicial to the interests of the employees. They conceded that in case the needs of the factory required, they would be willing to work on two Saturdays every month, provided they were paid proper over-time wages for that work; but they disputed the appellant's claim that there was a case for introducing such a drastic change as three shifts. Besides, the respondents contended that the inevitable consequence of the three shifts would be addition to the work-load of the respondents, and according to them, the proposal made by the appellant in that behalf was a complete departure from the pattern prevailing in the pharmaceutical industry in the region. The respondents also disputed the appellant's claim that the production of P.A.S. was a continuous process. They were, however, prepared to agree that all the manufacturing departments should be run on a two-shifts basis, avoiding the third shift altogether with suitable adjustments in time.

The Tribunal considered the documentary and oral evidence adduced by the parties before it in support of their respective contentions and held that the appellant had not made out a case for the introduction of three shifts. It found that the effect of the documentary evidence produced was to show that the pharmaceutical factories in Greater Bombay worked one, and in some cases, two shifts, though in a few cases, there were three shifts only in the section manufacturing chemicals and not pharmaceuticals. It agreed that the departments like Watch & Ward and maintenance were, in some companies, working three shifts, but that was so even in the appellant's factory. The Tribunal also held that the working arrangement which would result from the introduction of three shifts would not only be inconvenient to the bulk of the employees, but would involve the abolition of the 5-days week system, and it thought that, on principle, compelling the employees to work at night would be prejudicial to their interests and may not even help the production of better quality product. In regard to the appellant's claim that the production of P.A.S. involved a continuous process, the Tribunal observed that the evidence produced by the appellant did not show that in the present state of manufacture by it of P.A.S. it would be convenient to have three shifts so that the product can be produced according to specifications without too many rejections. In fact, the Tribunal was not satisfied that the production of this drug required continuous working in 3 shifts. On these findings, the Tribunal rejected the appellant's case for the introduction of 3 shifts. In rejecting this claim, the Tribunal observed that in order to give some relief to the appellant and to enable it to produce its product in larger quantity, it was reducing the number of holidays; and that

being so, there was hardly any case for increasing the working hours.

It, however, appears that while the dispute was pending before the Tribunal, an interim arrangement was allowed by it in regard to three shifts in the P.A.S. department. Under this arrangement, the appellant was authorised to introduce a third shift in that department and rotate up to two employees now engaged in the other shifts in the night shift. In its award, the Tribunal has ordered that this interim arrangement should continue for a year after the award becomes enforceable and then the question may be considered. It has also ordered that the two workers who will work in the night shift by rotation should be paid @ 10% over their basic wages and dearness allowance for the days on which they are required to work in the third shift.

Then as to the holidays, the Tribunal took the view that the number of holidays under the Negotiable Instruments Act which the appellant was allowing to its employees was unreasonably high. It compared holidays allowed by other concerns and came to the conclusion that 10 days' holidays in a year would be reasonable and just. In the result, the appellant's claim for reduction of holidays succeeded, while its claim in regard to the introduction of 3 shifts failed.

Before dealing with the points raised by the parties in these appeals, it would be convenient to indicate the present working arrangements in the factory of the appellant and the changes which would be introduced in the said working arrangements if three shifts are allowed. The factory of the appellant employs 821 workmen, 235 of whom are girl employees; and since s. 66(1)(b) of the Factories Act prohibits the employment of women in any factory, except between the hours of 6 A.M. and 7 P.M., the problem posed by the proposal to introduce three shifts involves the rotation in the 3 shifts only of male workmen and that is a factor which has to be borne in mind in dealing with the present dispute.

The statement filed by the appellant (Exb. C-1) shows that there are four departments in the appellant's factory. The first department which works 6-day week on a three shift basis deals with P.A.S. Watch and Ward, Maintenance and Hydrazine. Each of the three shifts is spread over 8 hours; there is a lunch break for half an hour and there are two tea breaks of ten minutes each. These breaks are common in all the departments of the factory. The actual working time in the first department is 7 hrs. 10 mts. per day which means 43 hrs. per week. The total number of employees in this department is 125. The P.A.S. section of this department, for instance, works in 3 shifts : 0700-1500, 1500-2300, 2300-0700, and in these 3 shifts, the number of workmen employed is 10, 8 and 2 respectively.

The second department works 5 days in a week on a one shift basis. The actual working time in this department is 8.25 hrs. per day which means 42.5 hrs. per week. This department is concerned with the production of ointment, mixing injection, orals, INA, INAH, protinex and protin Hydrolisate. The last two departments of this department work 5 days in a week. The total number of employees in this department is 75 out of whom 18 are girls and 57 are boys.

The third department which works 5 days in a week on a 2 shift basis, deals with packing filling washing, tablet and capsules. The actual working, time in this department is 8.25 hrs. per day which totals up to 42.5 hrs. per week. The two shifts are between 0800-1715 and 2145-0700. The total number of employees in this department in the day shift is 339, out of whom 134 are boys and 205 are girls, whereas the total number of employees in the night shift is 117 boys.

The fourth department which works 5 days in a week on one shift basis consists of research &

development, quality control, factory office, stores and despatch godown. Its actual working time is 8.25 hrs. per day which means 42.05 hrs. per week. The total number of employees in this department is 165, 14 of whom are girls and 151 are boys.

Now, as a result of the 3 shifts which the appellant proposes to introduce by its notice of change, there would be substantial change in the working arrangements in Groups II & III. There would be no change in shift working hours or work spread over in the first department. It may be that the number of its employees may increase. After 3 shifts are introduced, the second & third departments would be combined for the purpose of rotating the male workmen in the night shift. The timings for the three shifts which are proposed for these two departments combined are 7.20 A.M. to 3.20 P.M., 3.20 P.M. to 11.20 P.M. and 11.20 P.M. to 7.20 A.M. The break for lunch and the break for two teas will continue. The result of the introduction of the 3 shifts would be, the working hours will increase by 11/4, the net increase in the working timings being 55 minutes per week. As soon as the 3 shifts are introduced, the appellant expects that those working in the existing first shift would be placed in the new first shift and those working at present on the night shift will be placed on the second shift. The appellant purposes to increase the number of its employees in the second shift which it could not do at present because of difficulties in rotation. In the night shift about 30 to 50 employees would be engaged and night shift work would be rotated among the male employees with greater frequency. This, of course, will mean the employment of some additional hands which the appellant proposes to do. In regard to the fourth department, the present timings of 8.00 A.M. to 5.15 P.M. would be changed to 9.00 A.M. to 5.00 P.M. 6 days per week. This would result in increase in working hours by 11/4, the net increase in working timings being 55 mts. per week. That is the nature of the working arrangements which would evolve on the introduction of the 3 shift system in the appellant's factory. The week will cease to be 5-day week but will become 6-day week, and the working hours will increase by 11/4, the net increase in working timings being 55 mts. per week.

In dealing with the merits of the dispute in the present appeals, it is essential to bear in mind that in the face of the present national emergency, the complexion of the problem has completely changed. The whole economy of the country is now being put on a war basis and inevitably, industrial production must be geared up to meet the requirements of the nation. There can be no doubt that at present, capital, labour and industrial adjudication alike must be sensitive, and responsive, to the paramount requirement of the community which is faced with a grave danger, and so, all legitimate efforts made by the employer to produce more and more of the goods required for the community must receive the cooperation of the employees - of course, on reasonable terms. Both the learned Attorney-General and Mr. Sule conceded that at the time when this Court is dealing with the problem raised by these appeals, it would be necessary to decide the issues in the light of the peremptory and paramount requirement of the Nation at this hour. There can be little doubt that if the Tribunal had been dealing with the present dispute at this time, it would have adopted an entirely different approach.

The main argument on which Mr. Sule has relied and which has found favour with the Tribunal is based on the pattern of industrial employment in pharmaceutical industry in the region of Bombay. We would, therefore, very briefly, refer to this pattern. It is well-known that under s. 51 of the Factories Act, no adult worker shall be required or allowed to work in a factory for more than 48 hours in any week, and under s. 59, where a worker works in a factory for more than 9 hours in any day or for more than 48 hours in any week, he shall be entitled to overtime payment as prescribed by the said section. Mr. Sule made a grievance of the fact that by introducing 3 shifts, the appellant would be substantially denying the respondents the overtime wages to which they would be entitled

if they were called upon to work on Saturdays under the present arrangements. This grievance is, however, not well-founded because it appears from the record that the appellant was willing to pay for night work and was prepared to consider extra payment for third shift, but the respondents were not agreeable to consider that proposal because they were, on principle, opposed to the introduction of three shifts. Indeed, the learned Attorney-General has stated before us that in case we allow the appellant to introduce three shifts, the appellant is willing to go before the Tribunal and obtain its decision on the question as to the additional payment which should be made to the employees consequent upon the introduction of 3 shifts. Therefore, the grievance that the respondents would be wholly denied the overtime wages to which they would be entitled under the present arrangements loses much of its validity. We have already noticed that the maximum working hours under the present system in the factory of the appellant is 43 per week and it ranges between 42.05 to 43 hrs. and in no case, can the working hours be increased beyond 48. In fact, as we have already set out, according to the plan which the appellant wants to introduce, there would be an additional load of 11/4 working hour, the net additional working load being of the order of 55 mts. per week. In considering the question about the pattern of working arrangements in the pharmaceutical industry in the region, these facts cannot be ignored.

The statement (Ext. C-10) filed by the appellant to show that in certain pharmaceutical concerns three shifts are working, refers to 15 industries. The respondents made comments on the said statement and challenged some of the assumptions made by the appellant in that behalf. Mr. Sule has placed before us a typed statement showing the actual position in respect of these 15 factories. It appears that in most of these factories, security and maintenance departments work three shifts. In Sandoz India Ltd., Thana, the pharma plant work 3 shifts. Similarly, in Raptakos Brott & Co. Pvt. Ltd., the Dextrone Maltose section works 3 shifts. In Merck Sharp & Dohme of India Ltd., Chemical manufacturing process goes on under 3 shifts. Similarly, in Parke Davis India Ltd., Chemical Product Operators work 3 shifts besides boiler serang, watchmen and electricians. Sarabhai Chemicals, Baroda, have some departments working 3 shifts. Alembic, Baroda, have some departments working 3 shifts. Hindusthan Anit-biotic Poona have some departments working 3 shifts. Glaxo, Thana works 3 shifts. Lederlo, Bulsar, works 3 shifts. It is true that the Tribunal was not prepared to consider any concerns situated outside Greater Bombay, but in dealing with the larger issue as to whether it would be permissible to introduce 3 shifts at least in respect of the chemical sections of the Pharmaceutical industry, the Tribunal should not have adopted this rigid attitude. Therefore, on the material placed before us, it is clear that the chemical sections of the pharmaceutical factories do work 3 shifts and this would have a direct bearing on the appellant's case in regard to the P.A.S. section of its factory. Besides, as we have already observed, in dealing with the question about 3 shifts which would inevitably lead to more production, the background of the imperative necessity of today cannot at all be ignored.

Let us then consider whether the Tribunal was right in holding that the production of P.A.S. does not involve a continuous process. On this point, the appellant led the evidence of Dr. Joshi who is M.Sc. and Ph.D. in Organic Chemistry of the Bombay University. He joined the appellant's service as a Research Chemist in 1957 and has been placed in charge of the appellant's Research Laboratory since 1959. In his affidavit he stated that the P.A.S. was put on commercial production basis in January, 1962, and he found by experience that out of the total January production of 2770 Kg. as much as 1795 Kg., i.e. 65% was rejected by the Quality Control Laboratory. The rejection was mainly due to higher M.A.P. (Meta Amino Phenol) content. This large percentage of rejection raised a problem for the appellant, and so, Dr. Joshi was deputed to investigate into the cause of bad quality of P.A.S. Having conducted several test runs in the laboratory, Dr. Joshi came to the conclusion that the M.A.P. content could be lowered within tolerable limits to pass U.S.P. XVI

specifications only if the operations after the purification stage were made continuous and carried out in shortest possible time. Dr. Joshi stated that he confirmed his conclusion by actually implementing his findings on the main plain itself.

According to Dr. Joshi, the operation leading to the production of P.A.S. consists of eleven items. The 6th item is purification. After the purification process is over, begins precipitation which takes one hour; it is followed by centrifuging & washing, digging of centrifuge which takes 6.30 hrs. Then follows wet milling which accounts for 1.30 hrs. That brings in vacuum dryer including charging and discharging and this lengthy process takes 9 hrs.; and the last process is dry milling and packing which means 2 hours. Dr. Joshi is of the opinion that the six processes beginning with precipitation must be treated continuously in order to improve the quality of P.A.S. and since they take 20 hours, three shifts are inevitable.

Dr. Joshi was cross-examined by Mr. Sule for the respondents, and Mr. Sule very strongly relied on Dr. Joshi's statement that if acquaeous solutions of P.A.S. are kept below 30 degrees centigrade, it will stop deterioration. We do not see how this statement can materially affect the main point made by Mr. Joshi that the relevant processes beginning with precipitation which takes 20 hours must be continuously attended to. It is true that the respondents attempted to contradict Dr. Joshi's Statement by examining Mr. Pillai who was working in the P.A.S. department under Mr. Moeller. But Mr. Pillai is obviously not a technical man and it would be futile to suggest that the statements made by him should be preferred to those made by Dr. Joshi. Besides, it is significant that when he was cross-examined, he virtually conceded that the six important processes would take at least 18 1/2 hours and that itself would make it necessary to introduce three shifts. In this connection, we ought to add that the statements made by Dr. Joshi in regard to the time occupied by each process are supported by the contemporaneous record kept by the laboratory workers. This record was produced by Dr. Joshi and it was shown to Mr. Pillai who virtually refused to look at it. Therefore, in our opinion, the Tribunal was in error in holding that Dr. Joshi's evidence did not establish the appellant's case that the process of producing P.A.S. is a continuous process and in order to improve its quality and to avoid rejection of a large percentage of the product it is necessary that three shifts must be introduced in the section dealing with it. In fact, the finding made by the Tribunal in this behalf shows that the Tribunal did not really consider seriously the value of Dr. Joshi's evidence and was prepared to accept Mr. Pilla's statements though they are plainly partisan statements made by a person without any technical knowledge. Therefore, there can be no doubt whatever that the appellant is entitled to start 3 shifts in the P.A.S. section and produce P.A.S. in larger quantities and of a better quality.

That takes up to the question as to whether the other departments in the factory should also be allowed to work 3 shifts. Now the pharmaceutical section of the department which produces ointments, injections and other pharmaceutical products is at present working on a 1 shift basis. But the evidence given by Mr. Treharne, who is the Director of the appellant Coy., makes out a strong case for working this department in 3 shifts. He has stated that the appellant has a factory at Chandigarh, and the total production of that factory is available for processing into finished goods in the Bombay factory and when it is so processed into finished goods, it becomes available for bulk sale to other pharmaceutical units in India. Mr. Treharne swore that the appellant was not in a position to utilise all the production of the Chandigarh factory because the production capacity of the Bombay factory was unable to cope with the bulk supplied from Chandigarh. At Chandigarh, there are no sufficient production facilities, and, besides, it is a different type of manufacturing unit. Thus, the material available to the appellant's factory in Bombay from its sister factory in Chandigarh cannot be promptly dealt with, because the pharmaceutical section is working only in

one shift.

Mr. Treharne has also stated that a large number of orders are outstanding because the production capacity in Bombay is not adequate; and that means that the appellant is continually losing business through its lack of production facility and is unable to meet the demand of needy patients. This factor also adversely affects the appellant's position vis-a-vis its competitors; and the witness added that the appellant sometimes finds that it is unable to quote for substantial Government and hospital tenders. Under these circumstances, particularly at the present time when the need for production of beneficent drugs is so great, it is difficult to resist the appellant's claim that it should be allowed to introduce 3 shifts in order to produce more drugs and thus meet the requirements of the community. If the two departments are allowed to work 3 shifts, it would not be reasonable to hold that the department dealing in packing, filing, washing, tablet & capsules should not keep pace. The activities of these departments are integrated, and if the object in allowing the appellant start 3 shifts in its manufacturing departments, both chemical and pharmaceutical, is to encourage and enable it to produce more goods, then that object would be assisted if the subsidiary department is also allowed to work 3 shifts. Therefore, we are inclined to take the view that the claim of the appellant to introduce 3 shifts cannot today, be rejected.

There are, however, some other considerations which have to be taken into account before we reach a final decision in the matter. Mr. Sule has strenuously urged that the 5-day week and rest at night which are guaranteed to the respondents under the present service conditions prevailing in the appellant's factory, are benefits which the respondents value very much, and he contends that it would be a retrograde step to allow the appellant to make it 6-day week and to compel some of the respondents to work at night. There can be no doubt that industrial employees are entitled to look forward to a 5-day week and work only by day. Two days' rest at the end of every week would afford adequate opportunities to the employees to take part in cultural and recreational activities and would tend to make their work for the remaining 5-days more satisfactory and efficient. Similarly, working at night may, on theoretical grounds, not be desirable. But these are goals which may be reached after we attain an adequately high level in our national economy and industrial development. In the context of today, it would be unreasonable to approach this problem in a purely doctrinaire spirit. If, today, an employer desires to produce more goods which would meet the requirements of the community and is prepared to compensate the employees for the additional work involved in the process, industrial adjudication would be reluctant to discourage the employer and would assist both capital and labour to devise ways to cooperate with each other and produce more. Therefore, the academic arguments urged by Mr. Sule cannot be treated as effective for the purpose of deciding the present appeals.

On the question of employment of industrial labour at night, rival views are expressed. Mr. Sule has replied upon the observations made by Watkins and Dodd [Management of Labour Relations, 1st Edl. p. 523.] where the learned authors have criticised night work. "Night work", they observed, "cannot be regarded as desirable, either from the point of view of the employer or of the wage earner. It is uneconomical unless overhead costs are annually heavy..... Then, it must be remembered that it is distinctly unphysiological to turn the night into day and deprive the body of the beneficial effects of sunshine. The human organism revolts against this procedure. Added to artificial lighting are reversed and unnatural times of eating, resting and sleeping. Much of the inferiority of nightwork can doubtless be traced to the failure of the workers to secure proper rest and sleep by day." In fact, it is on this passage that the Tribunal strongly relied in rejecting the appellant's case.

On the other hand, the learned Attorney-General has referred us to the observations made on this

subject in an objective and fair manner in the Encyclopaedia of the Social Sciences. (Vol. IV). Dealing with the problem of continuous industry, it is observed that the term 'continuous industry' is used to characterise an industry in which the operations are carried on day and night, without interruption, over extended periods and in which the necessary labour is applied in a sequence of shifts. Several factors are then set out which justify the continuous working of industrial factories. Amongst them, reference is made to the seasonal characteristics of the industry; customary consumer's demand involving continuous, uninterrupted production or service, as in public utilities, transportation, hotels, baking, newspapers; the desire in a competitive industry to take advantage of a peak of variable for a product as in the textile industry; the desire for full utilisation of special investments in plant and equipment before obsolescence of product or of facilities; national emergency, as the urgent needs of war; a force not yet actual but emerging, the belief that the social burden of labour can be alleviated by continuous utilisation of equipment accompanied by a distribution of the attendant labour among workers organised in shifts. The authors no doubt recognised that the assumption created by industrial and social customs is that the group working during the day-light hours is the normal one and the others are abnormal. A better intelligence and still in labour and supervision gravitate towards the day shift and are accompanied by a better emotional attitude towards goals and methods. Furthermore, studies of night work indicate that usually a worker produces less in a night than a day shift, although it is not yet clear whether this is because of inherent physiological and psychological factors, or because the worker who labours at night yields to the temptation of activities during the day which preclude the securing of normal rest. It is then stated that the principal method of achieving equivalence of shifts is by establishing conditions of night work fully equivalent to those of day work and by such a thoroughgoing establishment of standards of skill, material, facilities, processes, methods, qualities and quantities as to permit measurements, specifications and comparisons of performance. Considering the question as to the direction in which the progress would be made in this matter, the writers say that the directions of progress is not entirely clear. It is probable that night work will decrease in those industries in which it is not compelled by inherent technical conditions, for recognition of a problem of economic balance among industries as well as of the relatively lesser productivity of night work is causing the economic advantage of continuous operating to be questioned. On the other hand, it is conceivable that industry may discover how to organise night work more effectively and eliminate factors now unfavourable to workers and management, and society may decide that the social disutility of such work is less than the social advantage of shorter and shorter work periods made possible by working machinery continuously with the application of labour in short time shifts.

We do not propose to express any definite opinion on this theoretical controversy. As this Court has repeatedly observed, in dealing with industrial adjudication, it would be undesirable to reach conclusions purely on doctrinaire or theoretical considerations. Besides, as we have already emphasised, the adoption of such a theoretical or doctrinaire approach has, in the context of today, lost some of its validity. Therefore, we do not think the Tribunal was right in coming to the conclusion that the appellant's claim for the introduction of 3 shifts should be rejected on the ground that it would involve the respondents working at night.

Incidentally, we may add that from the record, it appears that the appellant is an enlightened employer and that the terms and conditions of service offered by it to the respondents are, on the whole, very fair. It also appears that in the factory itself, the appellant makes efforts to create conditions which would be conducive to the efficient working of the respondents. Miss Kolpe who has been examined by the respondents has stated that aseptic conditions are maintained in sterile areas and the room has to be kept in sterile condition. The workmen assigned to the job spray the rooms with certain chemicals. They do swabbing of machines, walls, windows, and some other

workmen have to apply denatured spirit to machine parts before the said machines are used. Cleaning of the cabinet and machine parts has also to be done. It is true that a grievance was made on behalf of the respondents that there are no exhaust fans working in the night shifts and that as a result, body itch may be caused if M.A.P. and potassium carbonate are handled barehanded. The appellant's explanation was that the workers are given hand gloves and when complaints were made about body itch, the medical survey pointed out that they were not justified. We trust that when the appellant starts 3 shifts, it will take all reasonable precautions to make the conditions of work for the respondents healthy and conducive to the efficient discharge of their duties.

There is one more minor point which still remains to be considered. It was urged before the Tribunal on behalf of the respondents that the time-table of factory working hours which the appellant proposes to introduce after bringing into force the three-shift system, would begin at 7.20 in the morning and that would cause inconvenience to the girl employees, and in support of this plea, two girl employees were examined. Miss Desai stated that she stays at Thana and if she had to join duty at 7.20 A.M., she would have to start earlier than 5 A.M. from her house. According to her, there is another girl employee of the factory who stays at Thana, Miss Rodriguies, who also supported the plea of inconvenience, stated that if the work were to begin at 7.20 A.M., she would not be able to get sleep because after she returns home, she has to do tuitions in order to help her family, and that means she cannot go to bed before midnight. Evidence was also led to show that in the locality where the factory is situated, if the girls were to go early in the morning, they stood the risk of being molested by bad characters. We are not impressed by this evidence. In considering the plea of inconvenience raised by the respondents, it would be reasonable to rely upon stray cases of girl employees who stay away from Bombay, as far instance, at Thana or whose unfortunate economic condition compels them to work after factory hours. On the whole, it can be stated without any hesitation that 7.20 A.M. is not an unduly early hour for work in Bombay. Besides, it is relevant to remember that this hour has been taken as a starting hour having regard to the convenience of transport available in the locality. The Factory Manager, Mr. Pillai whom the appellant examined, has stated that he prepared a summary of the bus and train timings and came to the conclusion that 7.20 A.M. would be convenient to all the workmen. Therefore we do not think the ground of inconvenience on which the Tribunal has relied in rejecting the appellant's case for 3 shifts, can be sustained.

In this connection, we may incidentally refer to the fact that the Standing Order 10(1)(a) of the Standing Orders framed by the appellant clearly provides that more than one shift may be worked in any department or a section of a department at the discretion of the Manager; and it adds that in such cases, workmen shall be liable to be transferred from one shift to another. There is no doubt that the Standing Orders sanctioned by the Industrial Employment (Standing Orders) Act 1946 (No. 20 of 1946) constitute statutory terms and conditions of service between the employer and his employees, and so, it is open to the appellant to suggest that when the respondents took up their employment with it, they knew that more shifts than one can be started by the management in its discretion. It is quite true that though the relevant Standing Order enables the appellant to introduce more shifts than one, if a dispute is raised by the employees in that behalf and is referred for industrial adjudication, the Industrial Tribunal may have to consider the reasonableness of the change proposed to be made by the management. It is obvious that additional shifts may result in additional work load being imposed on the employees, and in that sense, may constitute a change in the conditions of service. Therefore, it would be open to the Industrial Tribunal to examine the reasonableness of the change proposed to be made. But in dealing with this question, it would not be irrelevant to bear in mind the fact that more than one shift was contemplated by the Standing Order. In this connection, we would not be prepared to uphold the extreme stand taken by both the parties.

We cannot hold that because the Standing Order contemplates the adoption of more than one shift, it is entirely and absolutely in the discretion of the management to make the change without due scrutiny by industrial adjudication, and so, the extreme stand taken by the appellant cannot be upheld; similarly, we cannot accept the contention that because the introduction of 3 shifts would mark a departure from the pattern prevailing in the pharmaceutical industry, the change cannot be permitted. After all, the question must be considered in the light of relevant facts adduced before the Court, and in doing so, the importance and the necessity for more production must be borne in mind. We are therefore, satisfied that the Tribunal was in error in rejecting the appellant's case for the introduction of 3 shifts.

As we have already pointed out, the appellant was always willing to consider the question of paying additional amounts to the respondents either by way of increase in wages or by way of compensation in consequence of the change proposed to be made in the working structure of the factory. In fact, we were told that though the Tribunal has ordered that the appellant should pay to the night workers 10 % over their basic wages and dearness allowance for the days on which they are required to work in the third shift, the appellant is paying 12% and it is similarly paying 8 % to those who work in the second shift. Therefore, it cannot be said that the appellant was not prepared to submit to an order in regard to the additional adequate payment which should be made to the employees consequent upon the introduction of the third shift. Since this matter cannot be decided by us in appeal, we direct that the case should be sent back to the Tribunal which dealt with this dispute for its decision on this question. The Tribunal should allow the parties to lead evidence if they so desire, should hear them and should decide what additional payment should be made to the employees either by way of increase in the wages or by way of compensation, or otherwise in consequence of the change in the working time table of the factory resulting from the introduction of the third shift. The 3 shifts will come into operation after this issue has been fully decided by the Tribunal. Until then, the interim arrangement sanctioned by the award will continue. We trust the Tribunal will deal with the issue remitted to it as expeditiously as possible.

That takes us to the appeal preferred by the respondents in respect of the reduction of holidays made by the award. We have already seen that the appellant gives to its employees all the public holidays under the Negotiable Instruments Act. In the relevant year, the number of such public holidays was 27. The Tribunal has taken the view that the number of public holidays thus allowed is unreasonably high and has ordered that they should be reduced to 10. Mr. Sule for the respondents contends that there is no justification for this reduction. He urges that the employees have enjoyed this benefit as their term of service condition and no case has been made out for the reduction in that behalf. He has also relied on the fact that the Tribunal reduced the number of holidays substantially because he was not prepared to allow the appellant's case for the introduction of the 3rd shift or for the addition in working hours and he argues that if we allow the introduction of the 3rd shift, there would be no justification for confirming the award made by the Tribunal in respect of holidays. There is some force in this latter contention. It is true that the Tribunal made a drastic reduction in the number of holidays partly because he refused the appellant permission to add to the working hours.

In dealing with the question of paid holidays, it may be relevant to remember that the holidays declared under the Negotiable Instruments Act are usually applicable to Government institutions only and they have certain financial and statutory implications envisaged by the Act itself. The commercial establishments and factories do not usually adopt these holidays and so, it would not be reasonable to insist that the appellant is bound to grant holidays as sanctioned by the Negotiable Instruments Act. Besides, it is now generally accepted that there are too many public holidays in our country and that when the need for industrial production is urgent and paramount, it may be

advisable to reduce the number of such holidays in industrial concerns. In dealing with the present appeals, the need for more production which has weighed in our minds in considering the question of 3 shifts, cannot be ignored. It is true that the Maharashtra Government seems to have adopted a very liberal policy in the matter of public holidays. In 1961, for instance, the said Government had declared 28 public holidays out of which 3 happened to fall on Sundays. It may be noticed that other State Governments have shown a tendency to reduce these holidays. U.P., for instance, had 18 public holidays, Andhra Pradesh had 17, Mysore 15 and Madras 14 in 1961. According to the Government of India, the number of public holidays is generally limited to 16. It is obvious that this question does not admit of a categorical answer one way or the other. It has to be decide on an ad hoc basis, bearing in mind all the relevant facts. Having considered all the relevant facts in the present case, we are disposed to think that the number of public holidays which are granted by the appellant to the respondents should be reduced from those sanctioned under the Negotiable Instruments Act to 16 every year.

The result is, both the appeals are allowed. Appeal No. 625 of 1962 succeeds and the change proposed to be made by the appellant according to the notice of change served by it on the respondents is allowed to be made, subject to the decision of the Tribunal on the question remitted to it. Appeal No. 626 of 1962 is also substantially allowed and the number of paid holidays in a year is raised from 10 to 16. In the circumstances of this case, there would be no order as to costs.

Appeal allowed.

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