The Hindustan Times Ltd., New Delhi

Vs

Their Workmen Vice Versa

Civil Appeals Nos. 489 & 490 of 1961

(P. B. Gajkendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

14.12.1962

JUDGMENT

DAS GUPTA, J. –

These two appeals by special leave, one by the employer and the other by the workmen, arise out of an industrial dispute that was referred for adjudication to the Industrial Tribunal Delhi, by an order made on January 23, 1958 by the Chief Commissioner, Delhi. The Tribunal made its award on March 16, 1959. Out of the numerous matters that were included in the terms of reference, we are concerned in these appeals only with a few. The employer challenges the award as regards : (1) Scales of pay, (2) Dearness allowance, (3) Adjustments, (4) Leave Rules, (5) Gratuity and (6) Retrospective effect of the award. The workmen also attacked the award as regards the scales of pay and dearness allowance. In addition, they have attacked the award as regards the working hours, leave rules, night shift allowance, retirement age and procedure for taking disciplinary action. At the time of the hearing before us however the learned Attorney General, appearing for the workmen, did not press their claim for modification of the award as regards, night shift allowance, leave rules and procedure for taking disciplinary action and working hours.

It appears that when the dispute was before the Conciliation Officer, Delhi, for settlement an interim agreement was arrived at between the parties on December 20, 1957 by which the management agreed to give certain interim reliefs, ranging between Rs. 6/- to Rs. 10/- per month from the month of November 1957. One of the terms of the agreement was that this payment "will be adjusted against the final outcome of the demands by constitutional means". The Tribunal has in its award given a direction that this interim relief shall remain unaffected. Taking this to be a direction that the adjustment as agreed upon of payments under the interim arrangement shall not be made, the employer has in its appeal challenged the correctness of this direction also.

The most important of the matters in dispute are the questions of the wage scale, the dearness allowance and the adjustment of existing employees into the new scales. It appears that from 1946 onwards the Company's workmen have had a consolidated wage scale, no distinction being made between the basic wage and the dearness allowance. This wage scale has remained practically unaltered except for some special increments given in the year 1948. By the award the Tribunal has introduced new wage scale for certain existing categories of workmen and in some cases has introduced new scales, after amalgamating more than one category. Thus certain railway despatchers, advertisers, Box No. sorters, filing clerks and bank clerks who were formerly in the scale of Rs. 50-4-9-EB-4-115 and Junior Clerks etc., who had a scale of Rs. 60-100-EB-4-115 have all been put on a new scale of Rs. 70-5-100-EB-5-150. There has been a similar amalgamation of clerks, assistants, cashiers, record keepers and others some of whom were on Rs. 80-175 and some

on Rs. 80-203 scale, all of them being now put on a new scale of Rs. 90-200. In both cases the starting salary has been raised; the maximum has been raised for the first category. Supervisors and others who were formerly on three different scales, some on Rs. 125-350, some on Rs. 125-300, and some on Rs. 100-250, have all been amalgamated and have been put on a new scale of Rs. 100-350. Obviously, this would mean a lower starting salary for some and maximum for some. Job Daftries some of whom were on Rs. 70-115 scale and others on Rs. 100-155 have all been put on a new scale of Rs. 80 to Rs. 155, resulting thus in a lowering of starting salary for some and a rise of a higher maximum for all. A similar lowering in the starting salary has also occurred in cases of some of the job-machinemen. They were formerly on two scales, one of Rs. 100-175 and the other of Rs. 75-175. The Assistant Foremen in the Job Department formerly on Rs. 125-175 are put on a scale of Rs. 125-202. Where there has been no amalgamation the new scale has resulted in a slight increase in some cases both in the starting salary and the maximum. In some categories, no change has been made at all.

It is unnecessary to give more details of the difference between the old scale and the new scale as what has been mentioned above is sufficient to indicate that there has been some change in favour of the workmen, though this change is not much. The employer's contention before us is that there was no case for any revision whatsoever and the Tribunal acted wrongly in making any change in the old wage scale. The workmen's contention on the contrary is that the changes do not go far enough.

The fixation of wage structure is among the most difficult tasks that industrial adjudication has to tackle. On the one hand not only the demands of social justice but also the claims of national economy require that attempts should be made to secure to workmen a fair share of the national income which they help to produce, on the other hand, care has to be taken that the attempt at a fair distribution does not tend to dry up the source of the national income itself. On the one hand, better living conditions for workmen that can only be possible by giving them a "living wage" will tend to increase the nation's wealth and income on the other hand, unreasonable inroads on the profits of the capitalists might have a tendency to drive capital away from fruitful employment and even to affect prejudicially capital formation itself. The rise in prices that often results from the rise of the workmen's wages may in its turn affect other members of the community and may even affect prejudicially the living conditions of the workmen themselves. The effect of such a rise in price on the country's international trade cannot also be always ignored. Thus numerous complex factors, some of which are economic and some spring from social philosophy give rise to conflicting considerations that have to be borne in mind. Nor does the process of valuation of the numerous factors remain static. While international movements in the cause of labour have for many years influenced thinking - and some-times even judicial thinking - in such matters, in this country, the emergence of an independent democratic India has influenced the matter even more profoundly. Gajendragadkar, J. speaking for the Court in Standard Vacuum Refining Co., of India v. Its Workmen [[1961] S.C.R. 536, 543.], has observed. :-

> "In constructing a wage structure in a given case industrial adjudication does take into account to some extent considerations of right and wrong, propriety and impropriety, fairness and unfairness. As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement, collective bargaining enters the field, wage structure ceases to be a purely arithmetical problem. Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workman living in a civilised and progressive society

also come to be recognised."

In trying to keep true to the two points of social philosophy and economic necessities which vie for consideration, industrial adjudication has set for itself certain standards in the matter of wage fixation. At the bottom of the ladder, there is minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need based minimum, in the sense of a wage which is "adequate to cover the normal needs of the average employee regarded as a human being in a civilised society." Above the fair wage is the "living wage" - a wage "which will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen." (Cited with approval by Mr. Justice Gajendragadkar in Standard Vaccum Company's Case [[1961] S.C.R. 536, 543.] from "The living Wage" by Philip Snowden).

While industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage economic considerations make that only a dream for the future. That is why the industrial tribunals in this country generally confine their horizon to the target of fixing a fair wage. But there again, the economic factors have to be carefully considered. For these reasons, this Court has repeatedly emphasised the need of considering the problem on an industry-cum-region basis, and of giving careful consideration the ability of the industry to pay. (Vide Crown Aluminium's Case [[1958] S.C.R. 651.]); the Express Newspapers Ltd., Case [[1959] S.C.R. 12.] and the Lipton's Case [[1959] Supp. 2 S.C.R. 150.].

On an examination of the Tribunal's award as regards the wage scale, we are satisfied that all the considerations mentioned above were present in the mind of the adjudicator and we are of opinion that there is nothing that would justify us in modifying the award either in favour of the employer or in favour of the workmen. It is stated in the award that before the Tribunal the Company's representative desired that a fair wage level within its paying capacity should be evolved though at the time he argued that existing wage structure is quite fair "looking to the Company's financial position as well as comparative rates prevailing in the other concern." The Tribunal has not accepted the Company's contention that the existing wage structure is fair, though at the same time it has held that the wage system needs no such radical change as alleged by the Union. Mr. Pathak, who appeared before us for the Company, did not seriously suggest that the present wage structure gives the employees "a fair wage." He argued generally that no case was made out for any revision of the wage structure. Such an extreme proposition has only to be mentioned to deserve rejection. At the time the Tribunal was dealing with this question the wage scale of the workmen in this concern had remained practically unaltered for almost 12 years - 12 years of momentous change through which social ideas have moved forward in favour of workmen getting a better share of the national income; 12 years during which the new India was born and a Constitution was framed for this new democracy "to secure to all its citizens, justice, social and economic and political" and enshrining in its 43rd Article the principle that "the State shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers agricultural, industrial or otherwise" among other things "a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.....". The mere passage of time and these revolutionary changes would be sufficient to convince any right thinking man of the need for revision of wage scales which, on the face of it, were far below the "living wage" and mostly also below the "fair wage", provided the industry could bear the additional burden. The case for revision becomes irresistible when one takes into consideration the further fact that the cost of living

rose steeply during this period. On the basis of 1939 cost as 100, the index for 1946 was 282. By 1958 it had risen to 389. It may be mentioned that since then there has been a further rise. Nor can it be seriously suggested that this concern cannot bear the burden of an increased wage scale. The Tribunal was, in our opinion, right in its conclusion that the material on record shows that the Company has been prospering and has financial stability. We have for ourselves examined the balance-sheets and the other materials on the record and have no hesitation in agreeing with that conclusion. Mr. Pathak's uphill task in the face of these balance-sheets already on the record to show that the Company would not be able to bear the burden of an increased wage scale has been made more difficult by the discovery that even after the implementation of the award the Company has made large profits during the years 1959-60, 1960-61 and 1961-62.

It appears that when the Company was given special leave to appeal to this Court the operation of the Tribunal's award was stayed only in so far as it directed the management to pay arrears of the wages determined thereby but the operation of the award in so far as it related to the payment of wages from the date of the award was not stayed; and the management was directed to pay to the workmen from that date wages in accordance with the wage scale fixed by the Tribunal by its award under appeal. The result of this has been that the Tribunal's award as regards the wage scales has been implemented with effect from the date of the award and it is possible for this Court to know how such additional payment has affected the financial position of the Company. It appears that after meeting the additional charges and also after payment of bonus and appropriation to reserves the net profits for the year 1959-60 rose to Rs. 8,04,508/-. For the year 1960-61 these profits were Rs. 8,44,627/-. For the year 1961-62 the profits are shown in the balance-sheet as Rs. 59,955/-. That the Company has been prospering is clear. It has its own aeroplanes and possesses immovable properties of considerable value. It has built up good reserves and inspite of that it has been making good profits. It is reasonable to think that with the progress of education in the country and the increasing news mindedness of the people the future prospects of the Company are no less bright. On a consideration of all this, we are clearly of opinion that Mr. Pathak's contention that the wage scale fixed by the Tribunal is too heavy for the Company to bear, must be rejected.

Equally unacceptable is Mr. Pathak's next contention that the wage scale fixed by the Tribunal operates unfavourably on this Company vis-a-vis two other concerns in Delhi region, viz., the Times of India, Delhi and the Statesman, Delhi. We have compared the wage scales in these two concerns viz., the Times of India, Delhi and the Statesman, Delhi, with the wage scale under the award and have for the purpose of comparison taken into consideration the dearness allowance as fixed by the Tribunal. The comparison shows that while in some cases the Company (the Hindustan Times) will have to pay more to its workmen than what is being paid to workmen of the same category by the Times of India, Delhi and the Statesman, Delhi, in several cases it will be less. It has also to be borne in mind that the Times of India, Delhi and the Statesman, Delhi, are much smaller units of the newspaper industry than the Hindustan Times. These Companies are mere adjuncts to the Times of India, Bombay and the Statesman, Calcutta, respectively. Therefore, even if for some categories the wage scale under the award is higher than that in the Times of India, Delhi and the Statesman, Delhi, that would be no ground for modifying the award in favour of the Company. We have therefore come to the conclusion that there is no ground whatsoever for modifying the wage scale fixed by the award in favour of the Company.

On behalf of the workmen it was strenuously contended that the increase given by the award over the previous wage scale falls far short of justice. It is pointed out that even the Times of India, Delhi and the Statesman, Delhi, which are much smaller concerns and of lesser financial stability and strength, pay to some categories of its workmen higher wages than what has been fixed by the

award. Thus our attention has been drawn to the fact that for Assistants, the Times of India, Delhi, rate is Rs. 241-402, and in the Statesmen, Delhi, it is Rs. 190-297 for some and Rs. 264-463 for others while under the award the scale is Rs. 125-375. There are several other cases also where the wage scale under the award appears to be lower than what is being paid by the Times of India, Delhi and the Statesman, Delhi.

It has been urged by the learned Attorney-General that in view of the fact that the wage-scale of the Company has remained practically stationary for the last 12 years and that it is indisputably well below the fair wage and the further fact that even smaller concerns in this region, like the Times of India, Delhi and the Statesman, Delhi, have been paying more to some categories of its workmen, the wage scale as fixed by the Tribunal should be raised at least for some of the categories. There is undoubtedly some force in the contention and it may be said that the Tribunal has been rather cautions in the matter of revision of wage scales. Even so, it has to be remembered that where, as in the present case, the proper principles have been applied by the Tribunal, it is not the practice of this Court to interfere, ordinarily, with details of this nature when exercising its special jurisdiction under Art. 136 of the Constitution. It also appears to us that the very fact that the Tribunal has been cautions in the matter of raising the wage scales has influenced it in the directions it has given on the question of adjustment of the present employees into the wage scale. In this way some relief has been given to the present employees which might otherwise have been given by raising the wage scale. On a consideration of all these facts we have reached the conclusion that it will not be proper for us to modify the wage scales fixed by the Tribunal in favour of the workmen also.

On the question of dearness allowance it is not disputed before us that in the circumstances of the present case the Tribunal acted rightly in awarding dearness allowance at a flat rate for all categories of workmen. On behalf of the Company it was however urged that the Tribunal has made an obvious mistake in fixing the amount of dearness allowance at Rs. 25/-. For fixing the rate at Rs. 25/- the Tribunal has said :-

> "In view of the revised scales as now laid down, I think the same should further be supplemented in the circumstances stated above by a flat rate of dearness allowance in all cases, viz., Rs. 25/- with retrospective effect from the date of reference so that the lowest paid worker will start not less than Rs. 75/-. I direct accordingly."

Mr. Pathak points out that the lowest paid worker for whom wage scales have been fixed will be getting under the award a minimum of Rs. 60/- so that with the dearness allowance of Rs. 25/- "the lowest paid worker" will start at Rs. 85/- and not Rs. 75/-. Mr. Pathak suggests that the Tribunal has made a mistake in its calculations and that having decided that the lowest paid worker will start at not less than Rs. 75/-, it should have fixed Rs. 15/- and not Rs. 25/- as the dearness allowance. This argument however overlooks the fact that the reference as regards the dearness allowance was in respect of all categories of workmen, though the reference as regards scales of pay did not cover some categories, viz., mazdoors and canteen boys. They therefore continue to remain on their old scale of Rs. 50-3-85. When the Tribunal in considering the question of dearness allowance was thinking of the starting pay of the lowest paid worker it had obviously these categories in mind. Having concluded that the lowest paid worker should start at Rs. 75/- as the total amount of basic pay and dearness allowance the necessary conclusion reached by the Tribunal was that Rs. 25/- should be fixed as the dearness allowance. It is, in our opinion, proper and desirable that the dearness allowance should not remain fixed at this figure but should be on a sliding scale. As was pointed out in Workmen of Hindusthan Motors v. Hindusthan Motors ((1962) 2 L.L.J. 352.), the whole purpose of dearness allowance being to neutralise a portion of the increase in the cost of

living, it should ordinarily be on a sliding scale and provide for an increase on rise in the cost of living and a decrease on a fall in the cost of living. On a consideration of all the circumstances of this case, we direct that a sliding scale be attached to the dearness allowance of Rs. 25/- per month as awarded by the Tribunal on the lines that it will be liable to be increased or decreased on the basis of Re. 1/- for every ten points in case of rise and fall in the cost of living from the base of 400, the 1939 index being taken to be 100 the sliding scale to take effect from April 1, 1959.

This brings us to the question of adjustment of the existing employees into the new scale. The Tribunal has dealt with this matter thus :-

> "..... the adjustment in the new scales shall be made with retrospective effect from the date of the reference, viz., 23rd January, 1958. In making adjustment in the new scales no one shall be adversely affected and it shall be on the line laid down by the Industrial Tribunal in the case of Caltex India Ltd., 1951 LLJ. 654 at p. 659 read with para. 23 of the decision of the Labour Appellate Tribunal, reported in 1952 LLJ. 183 at page 188."

It appears that in the case of Caltex India Ltd., (Supra) the Industrial Tribunal, West Bengal, gave the following directions for adjustment of employees into the wage scale fixed by it.

> "1. All employees for whom the scale has been stated above should be stepped up in the stage next above which the present pay is drawn. A special increment at the rate of one increment in the new scale for every three completed years of service should be given.
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> 2. The employees whose salaries are less than the minimum prescribed will be pulled up to the minimum of the prescribed scale.
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> 3. If the existing salary of an employee is higher than the salary he will be entitled to under the prescribed scale, there will be no cut and he will be stepped up to the nearest increase with the increments given above.
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> 4. After the salaries are adjusted, no employee should be staggered and he will continue to get future increments.
>
> 5. If an employee be already drawing a salary which is higher than the maximum prescribed by the award, he will be subjected to no cut in his salary."

This was followed by a direction as regards the date by which the adjustment was to be made. The Labour Appellate Tribunal modified these directions by introducing two provisions : (1) that the maximum of the grade should not be exceeded and (2) that the basic wage that was being paid to an employee at the date of the award of the Tribunal is not to be affected to the employees' prejudice. The employer's objection is to the provision that a special increment at the rate of one increment in the new scale for every three completed years of service should be given. It is argued that such a provision may well be appropriate in a case where wage scale is being fixed for the first time or where even if there was already a wage scale in force the rate of increment in the new scale is much higher than that in the old wage scale, but not where, as in the present case, the increments under the new scale and the old scale are practically the same. We are not impressed by this argument.

As was pointed out by this Court in a recent judgment in French Motor Car Co., Ltd. v. Its

Workmen ((1962) 2 L.L.J. 744.), what adjustment should be given is to be decided when fixing wage scales whether for the first time or in place of an old existing scale has to be decided by industrial adjudication after consideration of all the circumstances of the case. It may well be true that in the absence of any special circumstances and adjustment of the nature as allowed in this case by allowing special increment in the new scale on the basis of service already rendered may not be appropriate. Clearly, however, in the present case the Tribunal took into consideration in deciding this question of adjustment the fact that it had been extremely cautious as regards increasing the old wage scales. Apparently, it thought that it would be fair to give some relief to the existing employees by means of such increase by way of adjustment while at the same time not burdening the employer with higher rates of wages for new incumbents. In these circumstances, we do not see any justification for interfering with the directions given by the Tribunal in the matter of adjustment.

It will be convenient to consider at this stage the objection raised in the Company's appeal to the Tribunal's direction in connection with the interim agreement. As has been stated earlier, this agreement was arrived at between the parties when the dispute was before the Conciliation Officer. The relevant portion of the agreement is in these words :-

> "It is hereby agreed between the parties that :-
>
> 1. The Management agrees to make interim relief on the following terms of every employee, excluding working journalists, drawing salary up to Rs. 400 p.m.
>
> (i) Advance payment ranging between Rs. 6/- to Rs. 10/- per month beginning from the month of November, 1957 in the following manner :-
>
> (a) Those with annual increment of Rs. 3/-, Rs. 4/- and Rs. 5/- Rs. 6/-
>
> (b) Those with annual increment of Rs. 6/- Rs. 7/-
>
> (c) Those with annual increment of Rs. 7/- Rs. 8/-
>
> (d) Those with annual increment of Rs. 10/- Rs. 10/-
>
> Note. (i) In case any employee has already reached the ceiling of his grade, even then he would he entitled for the above benefit.
>
> (ii) This payment will be adjusted against the final out-come of the present demands by constitutional means."
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> "The final out-come of the present demands by constitutional means" is the Tribunal's award. Under the agreement therefore what has been received by the workmen as advance payment at Rs. 6/- or Rs. 7/- or Rs. 8/- or Rs. 10/- per month as interim relief has to be adjusted against what is due to be paid to them under the award. In other words, the Company is entitled under the agreement to deduct the payments made as interim relief from what is payable to these very employees under the award. The Tribunal's direction that the interim relief shall remain unaffected is in effect an order that term (ii) of the agreement need not be complied with. We can find no justification for such an order. While it is true that industrial adjudication can and often has to modify existing contracts between an employer and its workmen, there can be no justification for modification of an agreement of this nature pending

> final settlement of a dispute. Such a direction that the solemn words of the workmen's representatives that interim relief which may be given will be adjusted against the relief finally given need not be complied with, is not only unfair to the employer but is also not calculated to serve the best interests of the workmen themselves. For one thing, an order of this nature in one case by a Tribunal that such an undertaking need not be carried out is likely to hamper interim settlements generally; it is also not desirable that workmen should be encouraged to treat their undertakings as of no value. Industrial adjudication must be careful not to encourage bad faith on the part of the workmen or the employer. A direction as given by the Tribunal in this case that the term in the agreement that payments made will be adjusted against the final outcome need not be complied with, is unfortunately to have such effect on workmen. We therefore set aside the Tribunal's direction that interim relief will remain unaffected and direct that adjustments should be made in terms of the said interim arrangement.

This brings us to the question of Leave Rules. The Company objects to the award as regards this matter in so far as it directs the Company to allow 15 day's sick leave with full pay and allowances with accumulation up to six months on production of medical certificate given by a registered medical practitioner. It also objects to the direction that the present practice as to insistence on previous application for the purpose of casual leave should not be relaxed in cases where it cannot possibly be so done in emergent and unforeseen circumstances and the direction that up to 3 days no medical certificate should be asked for. It appears that at present the Management grants 10 days' casual leave to the business staff and 7 days' casual leave to all the other categories and there is no sick leave facility available.

Mr. Pathak has tried to convince us that in view of the provisions of the Employees' State Insurance Act, 1948, no provision need be made about sickness leave at all. That this Act has been applied to the Company and that the workmen of the Company get the benefit of this Act is not disputed. It is difficult to see however how the benefit that the workmen will get under this Act can affect the question of sickness leave being provided for the workmen. This Act it has to be noticed does not provide for any leave to the workmen on the ground of sickness. It provides in s. 46(1)(a) for periodical treatment of any insured person in case of his sickness if certified by a duly appointed medical practitioner. It is unnecessary to mention here the several provisions in the Act; viz., Sections 47, 48 and 49 which deal with the eligibility of workmen for sickness benefit and the extent of the benefit that may be granted. Section 56 of the Act provides for medical benefits to the insured workman or in certain cases to the members of his family. It appears to us clear however that in providing for periodical payments to an insured worker in case of sickness (sickness benefit) or for medical treatment or attendance to him or the members of his family, the legislature did not intend to substitute any of these benefits for the workmen's right to get leave on full pay on the ground of sickness.

It is next contended that the Tribunal's direction as regards sickness leave offend the provisions of Delhi Shops and Establishments Act, 1954. Admittedly, a large number of workmen covered by the reference are governed by the provisions as regards leave under the Delhi Shops and Establishments Act, 1954. Section 22 of that Act fixes the maximum for sickness or casual leave with wages to a period of 12 days and further provides that such leave shall not be accumulated. It is thus clear that as regards those workmen to whom the Delhi Shops and Establishments Act, 1954 applies the Tribunal has acted illegally in fixing the period of sick leave at 15 days and permitting accumulation. We therefore set aside this direction in the award and direct instead that the Company

shall allow to the workmen to whom the Delhi Shops and Establishments Act, 1954 applies, sickness or casual leave of a total of 12 days with full pay and allowances and that such leave shall not be accumulated. We are also of opinion that it will not be right to have two separate leave rules for the two classes of workmen, one to whom the Delhi Shops and Establishments Act, 1954 applies and the other two whom it does not apply. For that is likely to be a source of much discord and heartburning. Therefore, in respect also of those workmen to whom the Delhi Shops and Establishments Act, 1954 does not apply, we think that the same period of 12 days in a year with full pay and allowances should be fixed for sickness or casual leave, and there should be no accumulation of such leave; and we direct accordingly.

We cannot find any justification for the direction of the Tribunal that the practice of insistence on previous application for the purpose of casual leave should be relaxed in cases where it cannot possibly be so done in emergent and unforeseen circumstances and that upto 3 days no medical certificate should be asked for. The leave rules of the Company as they now stand provide that ordinarily previous permission of the head of the department and the Establishment Manager shall be obtained before casual leave is taken but that when this is not possible due to sudden illness, the head of the Department or the Manager as soon as may be practicable should be informed in writing of the absence from work and of the probable duration of such absence. In our opinion, this provision is reasonable and is calculated to meet the needs of workmen for taking leave without previous permission, in case of emergency. In these circumstances, the further directions as regards this that have been given by the Tribunal appear to us to be unnecessary and are hereby set aside.

On the question of gratuity, the only argument seriously pressed by Mr. Pathak was that the scheme as framed by the Tribunal would put undue strain on the Company's sources. We have already expressed our agreement with the Tribunal's conclusion that the Company's financial resources are strong and stable and that not only has the Company been prospering in recent years but that its future prospects are also bright. Therefore, we do not think that the scheme of gratuity as framed by the Tribunal is unduly favourable to the workmen or that it places any undue strain on the Company's financial resources.

One provision in the gratuity scheme which ought to be mentioned is that under it an employee who is dismissed for misconduct shall not be entitled to any gratuity. It has been pointed out by this Court in more than one case that having regard to the nature of gratuity it will not be proper to deprive an employee of the gratuity earned by him because of his dismissal for misconduct and the proper provision to make in this connection is that where an employee is dismissed for misconduct which has resulted in financial loss to the employer the amount lost should be deducted from the amount of gratuity due. As however in the present case, the workmen have not appealed against the award as regards the gratuity scheme framed by the Tribunal, it will not be proper for us to make the modification as indicated above.

Coming now to the question of retirement age on which the workmen have appealed, we find there is some controversy as regards the existing position. The workmen stated in their written statement before the Tribunal that "at present there are no set rules in the Company in this matter." Their claim was that the retirement age should be fixed at 60 for all the employees of the Company. According to the Management's written statement "the existing super-annuation system is that the age of retirement is fixed at 55." The Management further stated that the age of retirement "as fixed, that is, 55 years" is appropriate and should not be raised. In respect of this controversy as regards the existing position there appears to be little material on the record. From the appointment letters of some of the employees that we find on the record it appears that for some appointments made in

1955 the age of retirement was mentioned as 55. In the several letters of appointments made prior to that year no age of retirement has been mentioned. It is not clear, therefore, how on the question of retirement age the Tribunal proceeded on the basis that the "existing retirement" age is 55. Proceeding on this basis the Tribunal directed "that the existing retirement age at 55 years should continue but the workers may be allowed to remain in employment and work up to 60 years if found fit. The question of the further extension should rest with the discretion of the Management." On behalf of the workmen the learned Attorney-General has contended that the assumption that the existing retirement age is 55 is wrong in respect of most of the workmen and that except for a few persons appointed after 1955 no retirement age is fixed either in the letters of appointment or in the standing orders of the Company. For all these employees for whom no retirement age has been fixed already, the learned Attorney-General argues on the basis of the decision of this Court in Guest Keen, Williams Private Ltd., v. P. J. Sterling., ([1960] 1 S.C.R. 348.), that it would not be fair to fix any age of superannuation. It was held in that case that it was unfair to fix the age of superannuation of previous employees by a subsequent standing order. The Labour Appellate Tribunal had held that it would be unreasonable and unfair to introduce a condition of retirement at the age of 55 in regard to the prior employees having regard to the fact that when they entered service there was no such limitation. This Court felt that it would not be justified in reversing this decision of the Labour Appellate Tribunal. Dealing next with the question whether it followed that there should be no rule of superannuation in regard to these previous employees the Court said :

> "In our opinion it is necessary to fix the age of superannuation even with regard to the prior employees, and we feel no difficulty in holding that it would not be unfair or unreasonable to direct that these employees should retire on attaining the age of 60. An option to continue in service even thereafter which the respondent claimed is wholly unreasonable and is entirely inconsistent with the notion of fixing the age of superannuation itself. Once the age of superannuation is fixed it may be open to the employer for special reasons to continue in its employment a workman who has passed that age : but it is inconceivable that when the age of superannuation is fixed it should be in the option of the employee to continue in service thereafter. We would accordingly hold that in the circumstances of this case the rule of retirement for the previous employees in the concern should be 60 instead of 55 and that the rule of 55 should apply to all employees who enter the service of the appellant after the relevant standing orders came into force."

Assuming therefore that for the majority of the employees there is no existing retirement age it would on the authority of the above case, be open to the Tribunal to fix the age of superannuation even with respect of them. As however the Tribunal's decision that this age should be 55 is vitiated by the incorrect assumption that there is an existing retirement age of 55 it has been necessary for us to consider the question for ourselves. It appears that before the Tribunal the Union's representative himself desired that the retirement age should be fixed at 58 years which may be extended up to 60 years in fit cases. Before us the Counsel for the Company did not seriously contest that in consideration of the present day circumstances in the country it would be fair to fix the retirement age at 58. Accordingly, we set aside the Tribunals award on this question of retirement age and fix the age at 58 years, subject to the proviso that it will be open to the Company to continue in its employment a workman who has passed that age. This rule should apply to all the employees of the Company.

There remains for consideration the question of retrospective operation of the award. Under s. 17A of the Industrial Disputes Act, 1947, an award shall come into operation with effect from such date

as may be specified therein but where no date is so specified it shall come into operation on the date when the award becomes enforceable. Even without a specific reference being made on this question it is open to an industrial tribunal to fix in its discretion a date from which it shall come into operation. The reference, in the present case, included as a matter in dispute the question of retrospective effect in these words :

> "Whether all the above demands should be made applicable retrospectively with effect from April 1, 1956 and what directions are necessary in this respect ?"

The Tribunal rejected the workmen's claim for giving effect to its award from April 1956. Wherever however the Tribunal has given relief the Tribunal has directed that the award should come into effect from the date of reference, i.e., January 23, 1958. On behalf of the Company Mr. Pathak contends that there is no reason why the award should be given effect to from any date prior to the date of its pronouncement. We are not impressed by this argument. No general formula can be laid down as to the date from which a Tribunal should make its award effective. That question has to be decided by the Tribunal on a consideration of circumstances of each case. There have been cases where this Court has made an award effective from the date when the demand was first made. There are other cases where the orders of the Tribunal directing the award to be made effective from the date of the award has not been interfered with. It is true that in some cases this Court has modified the Tribunal's award in such a case. But it does not appear however that any general principles have been laid down. Indeed, it is difficult and not even desirable that this Court should try to lay down general principles on such matters that require careful consideration of the peculiar circumstances of each case for the exercise of discretion. It is sufficient to say that we find no reason to interfere with the Tribunal's direction in this case that the reliefs given by it would become effective from the date of the reference.

We therefore allow both the appeals in part by modifying the Tribunal's award as regards dearness allowance, leave rules and retirement age and also as regards the adjustment of the interim relief as mentioned above. In all other matters in appeal before us the award is confirmed. The modifications made as regards dearness allowance will, as already stated, take effect from April 1, 1959. The modifications as regards leave rules and as regards retirement age will take effect from this date. In both the appeals the parties will bear their own costs.

Appeals allowed in part.

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